



June 19, 2020

The Honorable Andrew Wheeler  
Administrator  
Environmental Protection Agency

Re: Docket ID: EPA-HQ-OA-2020-0128, *EPA Guidance; Administrative Procedures for Issuance and Public Petitions*

Dear Administrator Wheeler,

The Association of Metropolitan Water Agencies (AMWA) is an organization representing the largest publicly owned drinking water utilities in the United States. Any changes in how the agency creates, updates, or discontinues the use of guidance documents, particularly regarding actions under the Safe Drinking Water Act or activities related to source water protection, can significantly impact our members. EPA published a proposed rulemaking: *EPA Guidance; Administrative Procedures for Issuance and Public Petitions* in the Federal Register May 22, 2020. AMWA has frequently engaged EPA on matters of transparency and applauds the agency’s continued work to strengthen transparency, supporting this objective whenever possible. The association has reviewed the proposed rule and is pleased to provide feedback.

The purpose of this proposed rule, according to the agency, is to ensure that the EPA's guidance documents are developed with appropriate review, accessible and transparent to the public, and provided for public participation in the development of significant guidance documents. AMWA supports all three of these goals and appreciates the agency’s push for meaningful engagement from the public on these documents.

The proposed rule would “establish a public review and comment opportunity for all significant guidance documents, whether that document is new or a modification or withdrawal of an active guidance document.” The EPA is proposing to require a notice in the Federal Register to be published announcing the availability of either a new draft significant guidance document or a modification or withdrawal of an active significant guidance. This notice would provide a 30-day public comment opportunity prior to issuing the final new guidance, modification, or withdrawal. AMWA supports the use of public input in these situations and believes this will help to ensure these documents are practical and implementable.

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However, AMWA believes that a 30-day comment period for significant guidance documents may, at times, be insufficient to ensure adequate stakeholder involvement. A significant guidance document, as defined by Executive Order 13891, is a guidance document that may reasonably be anticipated to: (i) Lead to an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (ii) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (iii) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or, (iv) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles of E.O. 12866.6.

The criteria that qualify a guidance document as significant may require more thoughtful and extensive comments than a 30-day comment period would allow. AMWA requests EPA allow for a minimum of 60 days for the public to provide comment on a new guidance, as well as for modifications or withdrawals of existing significant guidances.

Finally, the EPA is proposing to “publish a Notice in the Federal Register announcing when the issuance of a new or modified active significant guidance document or withdrawal of an active significant guidance document is finalized.” The proposed rule would also require EPA to respond to major public comments and identify within the notice how the public may access these comments and any agency responses. AMWA greatly supports this component of the proposed rule as this helps to accomplish the agency's goal of transparency throughout the entire process.

AMWA thanks EPA for the opportunity to provide input on this important rulemaking. If you would like to further discuss our concerns, please contact Stephanie Hayes Schlea, Director of Regulatory and Scientific Affairs, at [schlea@amwa.net](mailto:schlea@amwa.net).

Sincerely,



Diane VanDe Hei

Chief Executive Officer

Association of Metropolitan Water Agencies

cc: David Ross, Assistant Administrator for Water

Jennifer McLain, Director, Office of Ground Water and Drinking Water