



May 18, 2020

Maria Doa, Director
Science Policy Division
Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460

Re: Supplemental Notice of Proposed Rulemaking for Strengthening Transparency in Regulatory Science, Docket ID No. EPA-HQ-OA-2018-0259-9322

Ms. Doa:

The Association of State Drinking Water Administrators (ASDWA) appreciates the opportunity to offer comments on the supplemental notice for “Strengthening Transparency in Regulatory Science” as published in the Mar 18, 2020 *Federal Register* (Volume 53 Number 53). ASDWA is the independent, nonpartisan, national organization representing the collective interests of drinking water program administrators in the 50 states, five territories, the District of Columbia, and the Navajo Nation who implement the Safe Drinking Water Act (SDWA) every day to ensure the protection of public health and the economy. ASDWA supports and represents the collective interests of its members in their administration of national drinking water regulations and requirements within their states or territories. The following ASDWA comments are intended to broadly address the proposed rule, but they do not necessarily reflect the concerns of individual states. ASDWA appreciates the extension to the comment period for this notice in order to provide useful and detailed comments on the proposed rule.

Overview

ASDWA strongly supports EPA’s ability to consider the best available science in making decisions about public health and environmental protection, even if the underlying data or models are not publicly available. SDWA Section 1412(b)(3) requires the use of the “the best available, peer-reviewed science and supporting studies” in its rulemakings. ASDWA does not agree with the need to limit EPA’s use of scientific studies, even in cases where such studies rely on confidential patient information or when there are other barriers to disclosure, be they legal, ethical, or other. If EPA moves forward with the final rule, ASDWA offers the following comments and suggestions to increase the rule’s flexibility while maintaining transparency.

Definitions

ASDWA supports transparency in both regulatory and non-regulatory EPA actions, including the data and information used to inform EPA decision-making. ASDWA appreciates the additional information and definitions provided in the supplemental notice, as this information is critical to understanding the scope and meaning of the rule.

Influential Scientific Information

ASDWA does not support the expansion of this rule to include influential scientific information. Due to the complexity and impracticality of including influential scientific information, ASDWA recommends the final rule only apply to underlying studies, data, and models when promulgating significant regulatory actions.

Exemptions

Allowing for exemptions to this rule is necessary, as it provides flexibility in rule implementation. The provision allowing the Administrator to grant exemptions from the rule on a case-by-case basis should be added back into the final rule. This provision allows such exemptions if the Administrator determines that compliance is impracticable because it is not feasible to conduct independent peer review on all pivotal regulatory science. ASDWA does not agree with the supplemental notice's removal of this provision.

Retroactivity

This rule should not apply to the previous record and should clearly state so in the rule. Attempting to apply the proposed requirements to data, rules, and research that have already begun or have concluded would only serve to set current work back and undermine work already completed. ASDWA supports "grandfathering" completed work, models, and data that have already been used by the agency and supports implementing this rule in stages to prevent further delay of EPA's work. For example, the Safe Drinking Water Act requires EPA to review each national primary drinking water regulation at least once every six years and then, if appropriate, revise them based on any newly available data, information and technologies. ASDWA recommends ensuring that during this review process, studies that have historically been used by the agency to make regulatory decisions are not rejected from use because of this rulemaking.

Options

If the Agency moves forward with a final rule, ASDWA supports EPA's proposal that when promulgating significant regulatory decisions or finalizing influential scientific information, the Agency will give greater consideration to studies where the underlying data and models are available in a manner sufficient for independent validation, but will still use and consider studies when there is limited or no access to the underlying data and models, due to Confidential Business Information(CBI), proprietary information, or Personally Identifiable Information (PII).

Independent Review

The proposal states that “EPA shall conduct independent peer review on all pivotal regulatory science used to justify significant regulatory decisions and on all pivotal science underlying influential scientific information,” implying that EPA will have to conduct additional agency-led peer review for every applicable study. ASDWA does not agree with this provision as most of these studies have already undergone expert, independent peer review and creating an additional level of peer review to be conducted by the agency adds unnecessary hours and labor to EPA’s decision-making procedures. ASDWA recommends this requirement be removed from the final rule.

If you have any questions about these concerns or want to discuss these comments further, please contact Wendi Wilkes at wwilkes@asdwa.org or myself at aroberson@asdwa.org or give me a call at (703)-812-9507.

Sincerely,

A handwritten signature in blue ink that reads "J. Alan Roberson". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

J. Alan Roberson, P.E.
Executive Director
Association of State Drinking Water Administrators (ASDWA)

Cc: Jennifer McLain – EPA OGWDW
Eric Burneson – EPA OGWDW