



June 22, 2020

Sharon Cooperstein
Policy and Regulatory Analysis Division
Office of Regulatory Policy and Management (Mail Code 1803A)
Environmental Protection Agency
1200 Pennsylvania Avenue Northwest
Washington, DC 20460

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

Dear Ms. Cooperstein:

The Agricultural Retailers Association (ARA), which represents the nation's agricultural retailers and distributors, is submitting comments in support of the U.S. Environmental Protection Agency's proposed regulations intended to increase the transparency of the agency's guidance practices and improve the process used to manage EPA guidance documents.

Statement of Interest

ARA is a not-for-profit trade association that represents America's agricultural retailers and distributors. ARA members provide goods and services to farmers and ranchers which include fertilizer, crop protection chemicals, seed, crop scouting, soil testing, custom application of pesticides and fertilizers, and development of comprehensive nutrient management plans. Retail and distribution facilities are scattered throughout all 50 states and range in size from small family-held businesses or farmer cooperatives to large companies with multiple outlets. ARA members employ certified crop advisors (CCAs), qualified agronomy experts who advise farmers on the most up-to-date and effective agronomic practices. CCAs provide advice on proper pest management to avoid development of resistance or alleviate resistance problems to meet the need for improved environmental stewardship.

General Comments

ARA applauds the EPA's efforts to promote transparency and fairness in the agency's development of guidance documents. ARA members over the past decade have been increasingly impacted by guidance documents where they did not have any input through a formal notice and comment rulemaking process. The impact on industry has resulted in uncertainty and an agency creating new regulatory policies without following the requirements of the Administrative Procedures Act (APA).

ARA believes these proposed changes will create an improved process for the EPA to gather the necessary public input from impacted stakeholders and help ensure a more equitable and beneficial guidance document that promotes compliance with existing regulations. EPA is taking these steps per the requirements of Executive Order (E.O.) 13891, "Promoting the Rule of Law Through Improved Agency Guidance Documents" (84 FR 55237, October 15, 2019), which directs Federal agencies to develop regulations to set forth processes and procedures for issuing guidance documents. As correctly stated in EO 13891, "Agencies may clarify existing obligations through non-binding guidance documents, which the APA exempts from notice-and-comment requirements. Yet agencies sometimes used this authority inappropriately in attempts to regulate the public without following the rulemaking procedures of the APA. Even when accompanied by a disclaimer that it is non-binding, a guidance document issued by an agency may carry the implicit threat of enforcement action if the regulated public does not comply. Moreover, the public frequently has insufficient notice of guidance documents, which are not always published in the *Federal Register* or distributed to all regulated parties." Unfortunately, previous Administration far too often have used guidance documents to avoid the APA required rulemaking process.

ARA appreciates the agency's online portal to clearly identify active EPA guidance documents for the public. The portal is divided into subject areas of the various agency departments as well as EPA Regional offices. This will make it significantly easier for regulated industries to find helpful information and promote regulatory compliance.

ARA strongly supports the EPA's definition of "guidance document" and "significant guidance document". According to EPA, "guidance document" would mean an Agency statement of general applicability, intended to have future effect on the behavior of regulated parties, that sets forth a policy on a statutory, regulatory, or technical issue, or an interpretation of a statute or regulation. In the proposal, "significant guidance document" would mean a guidance document determined to be significant pursuant to E.O. 12866 and E.O. 13891. As stated in the proposal "Section 2(c) of E.O. 13891 defines "significant guidance document" to mean 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."

ARA also supports a notice published in the *Federal Register* and a comment period of at least 30 days and perhaps longer given the potential impact the guidance document could have on regulated industries. We also believe it is important for the EPA Administrator or other Presidentially-appointed EPA official, or an official who is serving in an acting capacity of either of the foregoing, be required to approve each


significant guidance document before it is issued and posted on the EPA Guidance Portal as this promotes more accountability within the agency.

ARA supports the EPA providing a system that allows the public to submit petitions “using one of the two following methods described on the EPA Guidance Portal: (1) An electronic submission through the EPA's designated submission system identified on the EPA Guidance Portal (*i.e.*, using a link labeled “Submit a petition for Agency modification or withdrawal of guidance documents”), or, (2) a paper submission to the EPA's designated mailing address listed on the EPA Guidance Portal.” These petitions can help the agency be made aware of existing guidance that is of concern to impacted stakeholders, including ARA members. The EPA proposal to respond to petitioners in a timely manner, no later than 90 days for an initial response, will ensure they do not languish in perpetuity and the agency is responding to legitimate concerns raised by public stakeholders.

Conclusion

ARA commends EPA's proposal to bring about increased transparency, fairness, and public participation in the development of guidance documents. We look forward to working with agency officials to finalize this proposal and help ensure its full implementation.

Sincerely,

A handwritten signature in blue ink that reads "Richard D. Gupton". The signature is written in a cursive, flowing style.

Richard D. Gupton
Senior Vice President, Public Policy & Counsel