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Subject: Comments to Proposed Bulletin on Peer Review and Information Quality, 68 FR 54023.

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**Comments to Proposed Bulletin on Peer Review and Information Quality, 68 FR 54023, OMB, EOP, 15 September 2003.**

Comments from the Utilities Department, City of Las Cruces, NM: The Municipal PWS serves about 76,000 persons within the incorporated limits of the City. We appreciate the opportunity to comment on the proposed Bulletin, and OMB's ongoing efforts to effectively implement its authority and responsibility under Executive Order No. 12866 and the Information Quality Act. We strongly support these efforts and applaud OMB's Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Information Disseminated by Federal Agencies, 67 FR 8452.

Our major concern is for all rule makings to be based on scientifically-sound information and analyses. Capitalization and operating costs to meet the regulatory requirements of a new rule can easily run into tens of millions of dollars for our community. Although Las Cruces is the second largest city in New Mexico, we are a community with limited resources. The per capita income in Las Cruces is only 60% of the national average, while the cost of living nearly equals the national average. The incidence of poverty in southern New Mexico is among the highest in the nation.

As providers of both water and wastewater services to our community, we are legally, professionally, and morally bound to protect the health and well-being of our customers and the environment. We also have a fiduciary responsibility to our customers. So, we are very concerned when large amounts of community resources must be diverted to meet the requirements of a new rule ... the reasons must be scientifically sound, and the benefits, comprehensible. We bear the burden of explaining and justifying the costs of unfunded mandates to the public. The diverted funds will not be available for other important programs and projects that are needed in our community.

We urge OMB to give full weight and consideration to the importance of the need for genuinely independent, rigorous, and objective peer review in the regulatory process, as they have recounted in the critical comments on pp. 54024-25 of Part I. The process must be transparent and there must be a high standard of accountability to comments from the public and outside experts. Deficiencies such as "agency peer review mechanisms have not always been sufficient to ensure the reliability of regulatory information" and "agencies do not always conduct peer review according to their own policies – even for major rulemakings" must be eliminated.

Comments to the proposed guidance:

1. Peer review should be required for all rulemakings which entail scientific or technical information and analyses.
2. Waivers should be allowed only for the most extraordinary and critical imperatives. Courts give extensions when justified; peer review must be regarded as a critical part of the rulemaking process, and should not be abrogated.
3. EPA must make full and complete disclosure of all technical information and analyses to peer reviewers. Reviewers must be given an appropriately broad charge. Further, they must also be allowed to consider any aspect and all information that

they find appropriate to the regulatory matter and its implementation, including possible unintended impacts and policy implications.

4. Selection of peer reviewers, the review process or plan, its results, and the agency's response to the reviewers' comments and recommendations must be transparent and fully disclosed to the public. The public must have a credible and meaningful way to participate in the entire process.
5. If the peer review process is completely and genuinely independent, and their findings and recommendations fully disclosed in citable reports or preambles to proposed rules and agency policies, then there should not be a need for another agency to monitor compliance. Complaints of non-compliance should be filed directly with the administrator of the agency or office that is proposing the rule or regulatory policy. OMB or OSTP could serve as an ombudsman in this scenario.
6. The peer review process should parallel the review process for scientific papers submitted to refereed journals. Reviews by agency employees should be limited to in-house preliminary reviews for the purpose of producing a sound regulation or policy to be evaluated by peer reviewers. Authors may and are often requested to submit names of qualified reviewers, but the Editor or review committee retains the discretion to select qualified reviewers, which remain unknown to the authors. Something like a FACA committee which is independent and has real authority could function as a review committee to select peer reviewers and facilitate the review process. Thus, peer reviewers could be sufficiently removed from the agency, be selected to provide the specific expertise needed, and yet be connected to a body that understands and represents the broader concerns of those affected by the regulation or policy.
7. There are many sources of independent, qualified reviewers who can benefit from this kind of participation as a way to enhance their professional development and make a contribution to their discipline and community: committees and taskforces associated with scientific and professional organizations, universities and research centers or institutes, other federal and state agencies, science and engineering consultants, and even technical staff from regulated entities. Obviously, a much larger world of qualified experts and possible reviewers exists outside the agency. I believe many would be interested to apply their expertise to play a responsible, effective role in the development of regulations and policies that govern their community. Travel expenses and modest recognition would encourage participation.

Much of what is needed for a proper review process already exists and many of costs are already being paid. More respect for the expertise, concerns, and comments of entities outside the particular agency is needed. Agencies should put more of their efforts into producing a sound, defensible, regulation or policy by incorporating the best ideas and information from all qualified sources, rather than trying to control the process that evaluates it. At the end of the day, what they produce should be able to withstand public scrutiny... or be improved by it. The "us vs. them mindset" must go... we are all in this together. Advisory committees, working groups, and peer reviewers need to be more independent and franchised with an appropriate measure of real authority to improve the process and what comes out of it. Agencies need to be more forthright in full disclosure to the public, and be accountable to comments by the public and outside experts.

Standards for QA/QC must be met and policies for sound science must be adhered to prevent a biased or arbitrary decision-making process. Policy must be consistent with science, not the other way around.

I thank you for taking the time to consider these comments.

Sincerely,

/s/

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