

June 22, 2020

Ms. Sharon Cooperstein
Policy and Regulatory Analysis Division
Office of Regulatory Policy and Management
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Via Electronic Filing at <http://www.regulations.gov>

**RE: Proposed Rule, Docket No. EPA-HQ-OA-2020-0128, EPA Guidance:
Administrative Procedures for Issuance and Public Petitions**

Dear Ms. Cooperstein:

The National Association of Chemical Distributors (NACD) submits the following comments in response to the Environmental Protection Agency's (EPA) proposed rule Docket No. EPA-HQ-OA-2020-0128, EPA Guidance: Administrative Procedures for Issuance and Public Petitions.

About NACD

NACD is an international association of nearly 440 chemical distributors and their supply-chain partners. NACD members represent more than 85% of the chemical distribution capacity in the nation and generate 93% of the industry's gross revenue. NACD members, operating in all 50 states through nearly 1,800 facilities, are responsible for more than 155,000 direct and indirect jobs in the United States. NACD members are predominantly small regional businesses, many of which are multi-generational and family owned.

NACD members meet the highest standards in safety and performance through mandatory participation in NACD Responsible Distribution®, the association's third-party-verified environmental, health, safety, and security program. Through Responsible Distribution, NACD members demonstrate their commitment to continuous performance improvement in every phase of chemical storage, handling, transportation, and disposal operations.

EPA Guidance Should be Standardized and Provide a Standard Petition Process

As part of Executive Order 13891, "Promoting the Rule of Law Through Improved Agency Guidance Documents" (EO 13891), each federal agency was required to set forth processes and procedures for issuing guidance documents. EPA met this obligation by issuing the proposed rule, EPA Guidance: Administrative Procedures for Issuance and Public Petitions, to further outline the agency's approach to preparing and releasing guidance. As part of EO 13891, EPA has already created an online "EPA Guidance Portal" where all EPA guidance is maintained and searchable.

According to the proposed rule, EPA will require certain standard elements for all guidance documents issued after the rule is finalized. EPA proposes that each guidance will identify the office issuing the document, provide the title of the guidance, provide the unique document identification number, and include the date of issuance, among other requirements. NACD recommends that in addition to identifying each office that is issuing the guidance, the guidance also identify a responsible EPA official for each guidance, including a name, email address, and telephone number. NACD also recommends that EPA provide a short summary at the end of each guidance document with a list of the modification dates of the guidance and a list of the changes made at each modification. Therefore, each guidance will have a “version history” to track the changes and determine applicability of certain provisions as they are modified over time.

EPA requests comments on the most effective way to inform the public that a new guidance has been released, an active guidance has been modified, or an active guidance has been withdrawn. NACD recommends that EPA issue a notice in the *Federal Register* for each new, updated, and modified guidance. Additionally, EPA could take advantage of the already created EPA Guidance Portal and enhance the features to allow for public notification from the portal. The Guidance Portal could allow email alert triggers on certain guidances, so that interested parties could be notified when their followed guidances are updated or withdrawn.

Further, NACD supports the EPA proposal that guidance documents will avoid using mandatory language such as “shall,” “must,” “required,” or “requirement”, unless used to describe a statutory or regulatory requirement.

EPA Proposes Additional Steps for “Significant” Guidance Documents

EPA proposes to seek “significance” determinations from the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB) for certain guidance documents, in the same manner as is currently done for rulemakings through Executive Order 12866, Regulatory Planning and Review (EO 12866). Significant guidance documents are statutorily defined as any document that will reasonably lead to an annual effect on the economy of \$100 million or more. Therefore, in accordance with the requirements of EO 12866, EPA would assess how the potential effects of the significant guidance would impact the economy via the issuance of a Regulatory Impact Analysis or an Economic Analysis. NACD supports the additional step of seeking significance determinations from OIRA for significant guidance documents.

Significant guidance documents will be made available in draft format and open for public comment before finalization. EPA proposes to post a notice in the *Federal Register* announcing availability and opening the comment period, provide a 30-day comment period, and respond to major concerns and comments in the final guidance document and in a companion document. NACD supports these steps to ensure a fair process for the interested public.

NACD Supports the Petition Process for Modifying or Withdrawing EPA Guidance

The proposed rule will give the public the right to petition the EPA to modify or withdraw any active guidance document posted on the EPA Guidance Portal via electronic or paper

submission. The petition must include certain elements, including the nature of the relief sought (modification or withdrawal), an explanation of the interest of the petitioner, and the rationale for the requested modification or withdrawal. EPA must respond no later than 90 days after receipt of a petition or may take an additional 90 days (totaling 180 days) as long as the agency provides notice to the petitioner that more time is required.

NACD supports the petition process outlined by EPA, the timeline for response, and the content requirement for a petition. However, we suggest the agency provide further specificity in the final rule regarding the quality of the agency's response to a denied petition for withdrawal or modification. In the event of a denied petition, the agency should provide a reasoned response that gives an explanation for the grounds of denial, including, if applicable, responses to major issues raised in the petition.

EPA Should Create Unified Petition Procedures for Rulemaking

EPA requests whether the agency should create unified petition procedures, similar to the proposed procedures for guidance documents, for EPA rulemakings. Currently, the petition process to modify regulations at EPA is guided only by the language outlined in the Administrative Procedure Act (APA), which requires an agency response to petitioners "within a reasonable time" but does not specify what a reasonable time should be. The APA's petition mechanism is vague when it states, "Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule," but does not mandate standardized procedures for doing so. NACD strongly supports a unified petition process for EPA rulemakings and would be pleased to engage with EPA through comments to create a unified petition process.

NACD Supports the Proposed Rule for Standardized EPA Guidance

NACD commends EPA for taking much-needed steps to standardize the agency's guidance transparency and procedures in accordance with EO 13891. We support the proposed rule and hope the agency will consider our suggestions above.

Thank you for the opportunity to comment on EPA's proposed rule. If you have questions or need additional information, please do not hesitate to contact me.

Sincerely,



Jennifer Gibson
Vice President, Regulatory Affairs