

"Miles, Cindy" <cmiles@hunton.com>
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To: Mabel E. Echols OMB_Peer_Review/OMB/EOP@EOP

cc:

Subject: UWAG Comments on OMB's Proposed Bulletin on Peer Review and Information Quality

Attached are Comments of the Utility Water Act Group on OMB's Proposed Bulletin on Peer Review and Information Quality.

Cindy Miles

Senior Professional Assistant

Hunton & Williams LLP

951 E. Byrd Street

Richmond, VA 23219

(804) 788-8358

- UWAG Comments on OMB's Proposed Bulletin on Peer Review and Information Quality.PDF

UTILITY WATER ACT GROUP

Steering/Audit Committee
J. Brad Burke - Chairman
C. Richard Bozek
Alan E. Gaulke
M. R. Greeson
Angela M. Grooms
David M. Lee
James F. Stine
Maureen F. Vaskis, Esq.
Kerry M. Whelan
Judson White

Hunton & Williams LLP
Counsel to UWAG
1900 K Street, N.W.
Washington, D.C. 20006

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December 15, 2003

BY E-MAIL: OMB_peer_review@omb.eop.gov

Dr. Margo Schwab
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, N.W.
New Executive Office Building
Room 10201
Washington, DC 20503

**Comments of the Utility Water Act Group on OMB's
Proposed Bulletin on Peer Review and Information Quality
68 Fed. Reg. 54,023-29 (September 15, 2003)**

Dear Dr. Schwab:

These are the comments of the Utility Water Act Group (UWAG)¹ on the proposed OMB Bulletin and Supplemental Information Quality Guidelines published in the Federal Register of

¹ UWAG is an association of 159 individual electric utilities and three national trade associations of electric utilities, the Edison Electric Institute, the National Rural Electric Cooperative Association, and the American Public Power Association. The individual utility companies operate power plants and other facilities that generate, transmit, and distribute electricity to residential, commercial, industrial, and institutional customers. The Edison Electric Institute is the association of U.S. shareholder-owned electric companies, international affiliates, and industry associates. The National Rural Electric Cooperative Association is the association of nonprofit electric cooperatives supplying central station service through generation, transmission, and distribution of electricity to rural areas of the United States. The American

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September 15, 2003. Any questions about these comments can be addressed to Donna B. Hill, Chair of UWAG's Analytical Procedures Committee, 205/257-5234.

The proposed Bulletin is an admirable product and, while UWAG might disagree with certain details, we fully support all the important elements of it. In particular, we endorse the following principles, which we see embodied in the Bulletin:

1. Agencies should have a scientifically rigorous peer review for all significant regulatory information that they intend to disseminate.
2. An agency's peer review mechanism should be based on the novelty and complexity of the science to be reviewed, the benefit and cost implications, and any controversy regarding the science.
3. Peer reviewers should be selected primarily on the basis of necessary scientific and technical expertise and should be independent of the agency.
4. Peer reviewers should receive an explicit, written charge statement describing the purpose and scope of the review.
5. Peer reviewers should receive sufficient information to enable them to understand the data, methods, analytical results, and conclusions of the material to be reviewed.
6. An agency should provide an opportunity for other interested agencies and persons, including groups like UWAG, to submit comments.
7. Peer reviewers should be directed to issue a final report detailing the nature of their review and their findings and conclusions.
8. Agencies should consult with OIRA and OSTP about the sufficiency of their peer review policies.

Public Power Association is the national trade association that represents publicly owned (municipal and state) electric utilities in the United States. UWAG's purpose is to participate on behalf of its members in EPA's rulemakings under the CWA and in litigation arising from those rulemakings

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9. The administrative record for any major regulatory action should contain a certification explaining how the agency has complied with the peer review requirements.
10. Retaining an outside firm to oversee the peer review process may be appropriate in some circumstances.
11. Each agency should incorporate OMB's peer review requirements explicitly in its own information quality guidelines.

UWAG believes that putting these principles into writing, as the proposed Bulletin does, would have a beneficial effect on the administrative rulemaking process. We have been critical in the past of certain peer review efforts by the Environmental Protection Agency. Particularly in the peer review of the interlaboratory validation study of the whole effluent toxicity (WET) methods, we felt that the peer reviewers were not given enough information to conduct an informed peer review. The proposal in the Bulletin to require peer reviewers to have sufficient information to enable them to understand the data, methods, analytical results, and conclusions of the material to be reviewed would help to solve this problem in the future.

Please count UWAG as wholeheartedly supporting OMB's efforts to set standards for the agency peer review process.

OMB seeks comment particularly on the "scope" of the Bulletin (68 Fed. Reg. at 54,026 col. 3). UWAG believes that the scope should by no means be reduced and might well be enlarged.

In one respect the scope should be clarified. It appears from the definitions in the proposed Bulletin (Section 1) that "significant" information is the same as "influential" information, but since the two separate terms are preserved, it is not clear whether the two terms cover the same information. The relationship of the two terms might well be clarified.

The scope of the "foreign affairs" exemption may be too broad. Peer review need not be conducted on information that "relates to national defense or foreign affairs" (Section 2). This is very broad and might allow an agency to avoid the quality guidelines by citing "national defense" for all manner of things. Later on (Section 4c) there is a waiver for "emergency, imminent health hazard, homeland security threat, or some other compelling rationale." This "waiver" provision is much better crafted than the earlier national defense exemption in Section 2, because the "waiver" requires a showing by the agency (indeed a "compelling" one)

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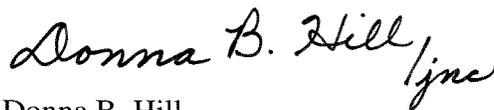
and review by OIRA. We suggest that the national defense and foreign affairs exemption be reconsidered and possibly narrowed.

Likewise the exemption (Section 2) for “peer review undertaken by a scientific journal” is probably too broad. This exemption is merely a presumption that can be rebutted by a “persuasive” showing. Still, because of the widely varying quality of “scientific journals” (including, no doubt, journals that may be published only on the Internet), UWAG thinks it may be inappropriate to have a presumption of any kind that publication in any “scientific journal” is adequate for agency information that may have a great impact on public policy.

Finally, UWAG questions whether the \$100 million threshold for “formal, independent, external peer review” (Section 3) is appropriate. Section 2 of the Bulletin says that “appropriate and scientifically rigorous” peer review must be conducted on all significant regulatory information that an agency intends to disseminate. Section 3 qualifies this by saying that the peer review must be “formal, independent,” and “external” if (among other things) the information would have a “clear and substantial impact on important public policies or important private sector decisions with a possible impact of more than \$100 million in any year” (68 Fed. Reg. 54,027 col. 3).

We realize that the \$100 million figure has significance based on Executive Order 12866 and the Unfunded Mandates Reform Act. We also appreciate that having it as just one category of information, among others, that deserves formal peer review may be better than leaving the conditions for formal review more vague. Nevertheless, we are concerned that this \$100 million provision may encourage agencies to exempt from formal peer review any action perceived to have less than a \$100 million impact. OMB should caution agencies not to use this provision as a reason to restrict their interpretations of “influential” or “significant” only to information with a \$100 million impact.

Yours very truly,

A handwritten signature in cursive script that reads "Donna B. Hill" followed by a stylized flourish or initials.

Donna B. Hill
Chair, Analytical Procedures Committee