Background for Developing the Spreadsheet

This document was initially designed as an internal analysis to help guide our comment letter writing for the EPA’s 401 Certification Rulemaking. EPA has requested that comment letters structurally respond to the proposed requests for comment. In order to understand and respond to the breadth and depth of questions, I wanted to know what the actual “list” was.

Description of Columns and Methodology for Creating each Column

Request for Comment Column: Based on the pre-publication rule document, I conducted a search for the word “comment” throughout the document. Methodically, I cut and pasted each request for comment into a spreadsheet. Where the comment request does not reference what is being discussed, additional text was cut and pasted (in italics) into the comment box to provide context. NOTE: Users should refer back to the actual rule document, rather than cut and paste directly from this spreadsheet to avoid errors.

Context Column: Additional information that will allow the user to read the document more effectively.

Page Numbers Columns: This document was developed before the federal register notice was published. The matrix includes both the Federal Register page number and the pre-publication rule document page number for reference where each request for comment is located.

Provides Discussion of Alternatives Column: This column identifies places where EPA is either proposing or expressly soliciting alternatives. This is important, because a final rule that is changed significantly would likely require additional public notice to allow for responses to changes. ASWM looked for places where the word “alternative(s)” was used or they expressed openness to options.

Specifically Requires Additional Legal Analysis Column: This column identifies a range of potential legal analysis needs. It identifies where the rule specifically invites submission of legal analysis, as well as where ASWM does not have the legal expertise or familiarity with case law, precedent, etc. to be might be comfortable working to submit an informed comment without additional legal expertise. This opinion is, of course, subjective but has gone through review by a Stetson University law student.

Defines Terms: This column was developed to identify all areas in the rule document that relate to the establishment or review of definitions for specific terms. This column includes both those comments specifically requested (included in comment request count) and those that are implied, such as writing a new definition in the document, but not specifically requesting comment on it (not included in the comment request count).
Requires a Submission Column: This column captures when a request for comment invites some form of submission – a document, a list, a case study, etc. This is captured in the spreadsheet to help users consider what submissions they would like to make.

Open v. Specific Column: Internally, ASWM identified a desire to be able to discern whether a question requested a specific, delimited piece of input or was more open. This is a highly subjective labeling and should be considered as such. A basic breakdown used when making the decision to label a request for comment as open or specific used the following logic: Open = probing, general, larger set of information requested, often subjective to the commenter about what to share; Specific = Yes/No answers, short answer, targeted request. This column is designed for ASWM use primarily.

Number of Questions Column: One of the big challenges of this rule is that not only does it solicit comments in approximately 100 individual places within the document, but it also uses a relatively consistent practice of writing requests in the form of double-barreled questions (where one request for comment is really asking for multiple pieces of information). The very first column in the spreadsheet identifies the number of specific questions that arise from each request for comment. Where the use of “and” or “or” helps identify that multiplicity, those words are highlighted and underlined in the comment text column.

Additional ASWM Work Columns: As this document was created to assist ASWM in its analysis and writing of its comment letter, the spreadsheet also includes (currently unpopulated) columns where the organization will be adding text about initial responses, the final submitted response, comments to keep in mind that will be helpful in guiding or interpreting the response, and relevant references (either to include in a comment letter or not). Other users are welcome to use these columns for their own review and comment letter development purposes.