

**REQUEST FOR EXTENSION OF TIME TO COMMENT ON SUPPLEMENTAL PROPOSAL FROM ATTORNEYS GENERAL OF NEW YORK, NEW JERSEY, CALIFORNIA, CONNECTICUT, DELAWARE, ILLINOIS, IOWA, MAINE, MARYLAND, MASSACHUSETTS, MINNESOTA, OREGON, WASHINGTON, AND THE DISTRICT OF COLUMBIA, AND THE ATTORNEYS OF KING COUNTY, WASHINGTON AND THE CITIES OF CHICAGO, LOS ANGELES, NEW YORK, OAKLAND, PHILADELPHIA AND SAN FRANCISCO**

March 19, 2020

**By Electronic Submission to [www.regulations.gov](http://www.regulations.gov)**

Andrew R. Wheeler, Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Mail Code: 1101A  
Washington, DC 20460

Re: Request for Extension of Comment Period for EPA Supplemental Notice of Proposed Rulemaking to Limit Use of Scientific Evidence in Rulemakings, 85 Fed. Reg. 15,396 (March 18, 2020) Docket ID No. EPA-HQ-OA-2018-0259.

Dear Administrator Wheeler:

The undersigned Attorneys General and City and County officials are very concerned by the Environmental Protection Agency's (EPA) above-referenced March 18, 2020, supplemental notice of proposed rulemaking ("supplemental proposal"), which proposes changes to EPA's April 2018 proposed rule to limit the use of scientific evidence in agency rulemakings. The supplemental proposal, like the proposed rule, would limit the body of scientific evidence that EPA can consider when adopting regulatory standards to protect public health and the environment, and additionally proposes to extend these limitations to a newly defined category of "influential scientific information." Many of the undersigned filed detailed and comprehensive comments on August 18, 2018 opposing the proposed rule, and nothing in the supplemental proposal addresses our concerns. At a minimum, given the significant new elements of the supplemental proposal in the context of a proposed rule of such consequence, as well as the significant disruption facing our nation due to the COVID-19 pandemic, EPA must extend the comment period to at least 120-days to permit adequate time for the public to consider the supplemental proposal and provide feedback on it.

While we support the use of best available science and transparency in agency decision-making, we are unable to discern how the proposed rule and/or the supplemental proposal will further those goals. Accordingly, we again request that you withdraw the proposed rule, and likewise request that you withdraw the supplemental proposal. EPA should first consult with the National Academy of Sciences and other independent scientists and science organizations in a meaningful manner before deciding whether any changes to EPA's current use of scientific evidence are in order. We are aware that the National Academy offered to provide EPA with its

objective, expert guidance on this complex undertaking, but there is no evidence that EPA has taken advantage of that offer.

If you are unwilling to withdraw the proposed rule and the supplemental proposal, we ask that you significantly extend the supplemental proposal's 30-day comment period. Given its extremely broad impact, 30 days is woefully insufficient to give the public adequate opportunity to participate in the rulemaking through submission of feedback to EPA, as required by the Administrative Procedure Act. 5 U.S.C. § 553(c). We note, preliminarily, that Executive Order 13,563, section 2(b), provides that "each agency *shall* afford the public a meaningful opportunity to comment ... on any proposed regulation, with a comment period that should generally be at least 60 days" (emphasis added).<sup>1</sup> However, given the scope of the supplemental proposal, and the profound effect any final rule would have on the regulatory process for all or nearly all of the statutes EPA implements and enforces, we believe that a comment period of no less than 120 days is necessary. Moreover, EPA has not provided any justification for deviating from the 60-day standard.

While the supplemental proposal solicits comment on only the changes and additions to the 2018 proposed rule, these proposed changes and additions are sweeping and significant, and will require substantial evaluation by the undersigned and other interested parties. First, under the supplemental proposal, the proposed rule would apply to all data and models, not just dose-response data and dose-response models, and further, would not just apply to regulatory decision-making, but now also to "influential scientific information." Second, EPA is now proposing definitions for new key terms that could significantly impact how the rule would work in practice, as well as deleting or revising definitions provided in the initial proposal. Third, EPA is proposing to consider two, new "alternate options" for how it will prioritize and give weight to scientific studies and information, and is also proposing to change the criteria under which the Administrator may discretionarily exempt scientific studies or information from the rule on a case-by-case basis. Finally, EPA is now requesting comment on the "option" of using the Federal Housekeeping Statute (5 U.S.C. §301) as the sole statutory authority for the proposed rule or, alternatively, relying on it in conjunction with the substantive statutes identified in the 2018 proposed rule as authority for EPA's action. Accordingly, the comment period should, at a minimum, be commensurate with the 115-day comment period allowed for the initial proposal.<sup>2</sup>

In light of these major proposed changes and additions to the 2018 proposed rule, we request that if EPA declines to withdraw the proposed rule and supplemental proposal, the agency extend the comment period on the supplemental proposal to 120 days, until July 16, 2020, in order to give the public (including the scientific community) a meaningful opportunity to comment. This extension would allow time for EPA to consult with the National Academy of Sciences and other independent scientists and science organizations regarding the supplemental

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<sup>1</sup> See also Executive Order 12,866, section 6(a)(1), which provides that, "[E]ach agency should afford the public a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than 60 days."

<sup>2</sup> EPA first announced a 30-day comment period for the initial proposal but, in response to requests from multiple parties, including a request from many members of this group, agreed to a reasonable extension. 83 Fed. Reg. 24,255 (May 25, 2018).

proposal, and allow time for a public hearing on this supplemental proposal. A 120-day comment period would be consistent with past practice for matters of similar importance and complexity, and is necessary to provide the public and other stakeholders adequate time to evaluate the supplemental proposal and its implications for the agency's ability to meet its obligation to protect public health and the environment under federal environmental laws. Finally, a significant extension or, alternatively, a suspension of the rulemaking process is necessary in light of the national emergency that has arisen from the COVID-19 pandemic. States, healthcare professionals, and scientists who should weigh in on the supplemental proposal will not be able to devote the time necessary to fully evaluate the supplemental proposal and its implications during this evolving crisis.

We appreciate your consideration of this urgent matter and await your decision regarding our request.

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