



March 18, 2020

**SUBMITTED VIA REGULATIONS.GOV**

Administrator Andrew R. Wheeler  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460

**ATTN:** DOCKET NO. EPA-HQ-OA-2018-0259

**RE:** REQUEST TO IMMEDIATELY HALT AND WITHDRAW EPA'S CENSORED SCIENCE RULEMAKING ACTION, AND SUSPEND DEADLINE FOR PUBLIC COMMENTS ON EPA'S SUPPLEMENTAL NOTICE OF PROPOSED RULEMAKING, 85 FED. REG. 15,396 (MAR. 18, 2020), IN LIGHT OF ONGOING NATIONAL PUBLIC HEALTH EMERGENCY

Administrator Wheeler:

Environmental Defense Fund (EDF) calls on you to immediately halt and withdraw the Environmental Protection Agency's (EPA) ongoing rulemaking action attacking the public health science that protects all Americans from the scourge of air pollution and toxic chemicals. At the very least, we call upon you to suspend the public comment deadline on the dangerous action you have taken today, **amid a national health crisis**, to expand your attack on the health science that saves lives. It is unconscionable, dangerous, and in contravention of due process under our nation's laws that you would take this action today and require the public—including public health experts on the front lines of saving lives imperiled by the coronavirus, and the millions of Americans heeding government and private sector responses to prevent harm by sheltering in place, closing schools, and working remotely—to comment by April 17.

On March 13, 2020, President Trump declared a national emergency in response to an ongoing global pandemic caused by a novel coronavirus. Thousands of Americans have been infected, scores have died, and public health experts at the forefront of this crisis believe conditions will worsen before they improve. Public officials have advised millions of Americans not to leave their homes. People nationwide are only beginning to adjust to new and rapidly evolving work conditions, with many now juggling remote work, homeschooling, and child-care, among other challenges. At the same time, public health and scientific experts—whose input on this proposal

is essential—are courageously attempting to prevent the pandemic from claiming thousands more American lives.

Amidst these trying and uncertain circumstances, today EPA issued a supplemental notice for its proposed rule to censor public health science, **providing a mere 30 days for public comment**. Having taken no further action on the Trump administration’s original proposal for nearly two years, EPA offers no rationale whatsoever for why public health experts, the scientific community, and the broader public should—or even could—now abruptly divert their attention from our national crisis in order to meet the Agency’s ill-timed and arbitrary deadline. This indifference to reality is as irrational as it is dangerous. And the result would be a compromised rulemaking that is a direct attack on public health science, adds to the tremendous and growing burden faced by nearly every person in the country, and contravenes due process under the law.

In addition to its egregious timing, today’s supplemental notice further undercuts life-saving health science at the heart of EPA’s work and mission while raising broad, numerous, and novel questions. The implications are far-reaching, both for the health and well-being of people and their communities, and for EPA actions under a broad array of health and environmental statutes. EDF reaffirms its longstanding position that this proposal is dangerous and fundamentally flawed and must be withdrawn.

At a minimum, EDF requests that EPA suspend the public comment period while President Trump’s national emergency declaration remains in effect, and provide at least 90 days for comment and three public hearings once the national emergency is lifted. It is essential that EPA afford the public adequate time to thoughtfully consider the effects of this supplemental proposal and an opportunity to be publicly heard on key issues.

EPA’s original proposal<sup>1</sup> would significantly restrict EPA’s ability to rely on the best available science in carrying out its mission of protecting public health and the environment. Today’s supplemental notice lays out numerous complex, consequential addendums to that proposal: dramatically expanding the scope of the rulemaking in a variety of respects; proposing novel “weighing” options for EPA that raise multifaceted and untested implications for agency treatment of scientific research; further detailing the unilateral ability of the Administrator—a political official—to exempt certain science from this regime; asserting a new, alternative legal basis for this action; and proposing additional regulatory definitions for numerous important terms. These issues are at least as weighty and complex as those raised in the original proposal, for which EPA provided 108 days for public comment. Further, Executive Order 12,866 makes clear that in most cases a 60-day comment period is the minimum necessary to afford the public a meaningful opportunity to comment.<sup>2</sup> A 90-day comment period—after the national emergency subsides—is clearly warranted for the public to weigh and provide input on this complex, consequential and dangerous supplemental notice.

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<sup>1</sup> 83 Fed. Reg. 18,768 (Apr. 30, 2018).

<sup>2</sup> Exec. Order No. 12,866, 58 Fed. Reg. 51,735, 51,740 (Oct. 4, 1993).

The supplemental notice greatly expands the scope of EPA’s original proposal. For example, the notice “broaden[s]” its applicability to encompass and censor *all* data and models, “not simply dose-response data and dose-response models.”<sup>3</sup> EPA acknowledges that this new expanded scope would encompass a wide and varied range of information, including “environmental fate studies, bioaccumulation data, water-solubility studies, environmental fate models, engineering models, data on environmental releases, exposure estimates, quantitative structure activity relationship data, and environmental studies,” among others.<sup>4</sup> These various kinds of data and models present distinct data availability issues and challenges and have a wide range of different roles in EPA proceedings—and accordingly application of this rule to these different scientific resources presents a wide range of distinct implications for EPA’s statutory responsibilities to protect human health and the environment. Similarly, the supplemental notice broadens the proposal to encompass a range of additional, significant EPA proceedings (such as “influential scientific information” developed by the agency), raising an array of distinct, major concerns. The breadth highlighted by EPA strongly weighs in favor of a comment period comparable in length to that of the original proposal so that stakeholders and the broader public can evaluate and comment on the supplemental notice.

EPA’s supplemental notice also proposes two new approaches to considering and weighing different scientific research.<sup>5</sup> Each approach implicates its own unique set of questions, challenges, and concerns, and must be evaluated not just relative to each other, but to the baseline that is EPA’s current approach to considering regulatory science as well. Affording the public only 30 days to consider and comment on these complex questions—which have broad, highly consequential implications for EPA activities, statutory responsibilities and decision-making, and therefore the health and well-being of all Americans—is wholly inadequate. That EPA newly asserts authority to take this action under the Federal Housekeeping Statute<sup>6</sup> further complicates the questions raised by this supplemental notice and underscores the public’s need for adequate time to evaluate and comment on it.

Lastly, a public hearing for this proposal is required under section 307(d) of the Clean Air Act, which requires the Administrator to “give interested persons an opportunity for the oral presentation of data, views, or arguments” on any proposed rule identified in section 307(d)(1).<sup>7</sup> Because the supplemental proposal—like the original proposal—would “pertain[] to” many EPA rulemakings enumerated in section 307(d)(1),<sup>8</sup> this proposal is clearly subject to the procedural requirements of section 307(d). That EPA relied on the Clean Air Act as a source of authority for the original proposal, and indicates in the supplemental proposal that it is still considering that

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<sup>3</sup> 85 Fed. Reg. at 15,401.

<sup>4</sup> *Id.* (noting that “[t]his list is not exhaustive”).

<sup>5</sup> *Id.* at 15,399.

<sup>6</sup> 5 U.S.C. § 301; *see* 85 Fed. Reg. at 15,397.

<sup>7</sup> 42 U.S.C. § 7607(d)(5)(ii).

<sup>8</sup> *See, e.g., id.* at § 7607(d)(1)(E), (R).

possibility,<sup>9</sup> only reinforces EPA's obligation to abide by the public hearing requirements of section 307(d). EPA must therefore provide meaningful public hearing opportunities and keep the administrative record open for a period of at least thirty days following.

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EPA provided 108 days for public comment and held a public hearing on its original proposal.<sup>10</sup> As explained above, this supplemental proposal significantly expands the scope of the original, cites new statutory authority, and proposes two new approaches to EPA's treatment of science, among several other highly consequential aspects. This increased scope and complexity cannot be reconciled with the supplemental proposal's considerably truncated comment period and lack of any opportunity for the public to present their concerns directly to EPA. More importantly, the United States is in the midst of a national emergency, the severe burdens of which will significantly hinder the public's ability to engage in this rulemaking. EDF calls on EPA to immediately halt and withdraw this dangerous rulemaking altogether. At a minimum, however, we urge EPA to suspend the comment period for this supplemental proposal while the national emergency declaration remains in effect, and provide at least 90 days for comment once it is lifted, during which time EPA should provide at least three public hearings to allow for meaningful public engagement. The public deserves ample time and opportunity to evaluate the consequences of the supplemental notice on EPA's ability to rely on the best available science in protecting human health and the environment.

Respectfully,

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<sup>9</sup> See 85 Fed. Reg. at 15,398.

<sup>10</sup> See 83 Fed. Reg. 24,255, 24,256 (May 25, 2018) (extending 30-day comment period ending May 30, 2018, to August 16, 2018).