

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

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).¹ 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.²

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

¹ 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."

² 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.

FOR THE STATE OF NEW YORK
LETITIA JAMES
ATTORNEY GENERAL

/s/ Gavin G. McCabe
Gavin G. McCabe
Assistant Attorney General
Environmental Protection Bureau
Office of the Attorney General
28 Liberty Street, 19th Floor
New York, NY 10005
(212) 416-8469
gavin.mccabe@ag.ny.gov

FOR THE STATE OF CALIFORNIA
XAVIER BECERRA
ATTORNEY GENERAL
David A. Zonana
Acting Senior Assistant Attorney General
Sarah Morrison
Supervising Deputy Attorney General

/s/ Meredith J. Hankins
MEREDITH J. HANKINS
JAMES POTTER
Deputy Attorneys General
Office of the Attorney General
300 S. Spring St., Suite 1702
Los Angeles, CA 90013
(213) 269-6177
meredith.hankins@doj.ca.gov

FOR THE STATE OF NEW JERSEY
GURBIR S. GREWAL
Attorney General

/s/ Daren Eppley
DAREN EPPLEY
Deputy Attorney General
New Jersey Division of Law
25 Market Street
Trenton, New Jersey 08625
Tel: (609) 376-2739
Email: Daren.Eppley@law.njoag.gov

FOR THE STATE OF CONNECTICUT
WILLIAM TONG
ATTORNEY GENERAL

/s/ Jill Lacedonia
Jill Lacedonia
Assistant Attorney General
Office of the Attorney General
165 Capitol Avenue
Hartford, CT 06106
(860) 808-5250
jill.lacedonia@ct.gov

FOR THE STATE OF DELAWARE

KATHLEEN JENNINGS
ATTORNEY GENERAL

/s/ Valerie S. Edge
Valerie Satterfield Edge
Deputy Attorney General
Department of Justice
102 W. Water Street
Dover, DE 19904
(302) 257-3219
valerie.edge@delaware.gov

FOR THE STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

/s/ Daniel I. Rottenberg
Matthew J. Dunn
Chief, Environmental Enforcement/
Asbestos Litigation Division
Daniel I. Rottenberg
Assistant Attorney General
69 W. Washington St., 18th Floor
Chicago, IL 60602
(312) 814-3816
drottenberg@atg.state.il.us

FOR THE STATE OF MAINE

Aaron M. Frey
Attorney General

/s/ Laura E. Jensen
Laura E. Jensen
Assistant Attorney General
Office of the Attorney General
6 State House Station, Augusta, ME 04333
207.626.8868

FOR THE STATE OF IOWA

TOM MILLER
ATTORNEY GENERAL

/s/ Jacob J. Larson
Jacob J. Larson
Assistant Attorney General
Environmental Law Division
Hoover State Office Building
1305 E. Walnut St., 2nd Floor
Des Moines, IA 50319
(515) 281-5341
jacob.larson@ag.iowa.gov

FOR THE STATE OF MARYLAND

BRIAN E. FROSH
ATTORNEY GENERAL

/s/ Joshua M. Segal
Joshua M. Segal
Special Assistant Attorney General
Office of the Attorney General
200 St. Paul Place
Baltimore, MD 21202
(410) 576-6446
jsegal@oag.state.md.us

FOR THE COMMONWEALTH OF MASSACHUSETTS

MAURA HEALY
ATTORNEY GENERAL
Christophe Courchesne
Assistant Attorney General and Chief

/s/ Turner Smith
Turner Smith
Assistant Attorney General
Office of the Attorney General
Environmental Protection Division
One Ashburton Place, 18th Floor
Boston, MA 02108
(617) 727-2200
turner.smith@mass.gov

FOR THE STATE OF MINNESOTA

KEITH ELLISON
ATTORNEY GENERAL

/s/ Leigh K. Currie

Leigh K. Currie
Special Assistant Attorney General
Minnesota Attorney General's Office
445 Minnesota Street Suite 900
Saint Paul, MN 55101
(651) 757-1291
leigh.currie@ag.state.mn.us

FOR THE STATE OF OREGON

ELLEN F. ROSENBLUM
ATTORNEY GENERAL

/s/ Paul Garrahan

Paul Garrahan
Attorney-in-Charge
Steve Novick
Special Assistant Attorney General
Natural Resources Section
Oregon Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
(503) 947-4593
Paul.Garrahan@doj.state.or.us
Steve.Novick@doj.state.or.us

FOR THE STATE OF WASHINGTON

ROBERT W. FERGUSON
ATTORNEY GENERAL

/s/ Kelly T. Wood

Kelly T. Wood
Assistant Attorney General
Counsel for Environmental Protection Unit
800 5th Ave. Suite 2000
Seattle, WA 98104

FOR THE DISTRICT OF COLUMBIA

KARL A. RACINE
ATTORNEY GENERAL

/s/ Sarah Kogel-Smucker

Sarah Kogel-Smucker
Special Assistant Attorney General
Social Justice Section
Office of the Attorney General
441 4th Street, N.W., Suite 630 South
Washington, D.C. 20001
(202) 724-9727
Sarah.kogel-smucker@dc.gov

FOR THE CITY OF CHICAGO

MARK A. FLESSNER
CORPORATION COUNSEL OF THE
CITY OF CHICAGO
Benna Ruth Solomon
Deputy Corporation Counsel

/s/Jared Policicchio

Jared Policicchio
Supervising Assistant Corporation Counsel
30 N. LaSalle Street, Suite 800
Chicago, IL 60602
(312) 744-7764

FOR THE CITY OF LOS ANGELES

MICHAEL N. FEUER
LOS ANGELES CITY ATTORNEY

/s/ Michael J. Bostrom

Michael J. Bostrom
Assistant City Attorney
Los Angeles City Attorney's Office
200 N. Spring Street, 14th Fl
Los Angeles, CA 90012
(213) 978-1867
michael.bostrom@lacity.org

FOR THE CITY OF NEW YORK

JAMES E. JOHNSON
CORPORATION COUNSEL OF THE
CITY OF NEW YORK

/s/ Hilary Meltzer

Hilary Meltzer
Chief, Environmental Law Division
New York City Law Department
100 Church Street
New York, NY 10007
(212) 356-2070
hmeltzer@law.nyc.gov

FOR THE CITY OF OAKLAND

BARBARA J. PARKER
OAKLAND CITY ATTORNEY
Maria Bee
Chief Assistant City Attorney

/s/ Erin Bernstein

Erin Bernstein
Supervising Deputy City Attorney
One Frank H. Ogawa Plaza, Sixth Floor
Oakland, CA 94612
(510) 238-6392
eberstein@oaklandcityattorney.org

FOR THE CITY OF PHILADELPHIA
MARCEL S. PRATT
CITY SOLICITOR

/s/ Patrick K. O'Neill

Patrick K. O'Neill, Esq.
Divisional Deputy City Solicitor
The City of Philadelphia
Law Department
One Parkway Building
1515 Arch Street, 16th Floor
Philadelphia, PA 19102-1595
Tel: (215) 683-5172
Patrick.ONeill@phila.gov

FOR THE CITY AND COUNTY OF SAN FRANCISCO

DENNIS J. HERRERA
CITY ATTORNEY

/s/ Robb Kapla

Robb Kapla
Deputy City Attorney
Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102
(415) 554-4647
robb.kapla@sfcityatty.org

cc: Paul Ray, Administrator, Office of Information and Regulatory Affairs
Honorable Eddie Bernice Johnson, Chair, House Committee on Science, Space,
and Technology
Honorable Frank Lucas, Ranking Member, House Committee on Science, Space, and
Honorable Frank Pallone, Jr., Chair, House Committee on Energy & Commerce
Honorable Greg Walden, Ranking Member, House Committee on Energy & Commerce
Honorable John Barrasso, Chair, Senate Committee on Environment and Public Works
Honorable Thomas R. Carper, Ranking Member, Senate Committee on Environment and
Public Works