

March 19, 2020

Andrew Wheeler, Administrator  
United States Environmental Protection Agency  
William Jefferson Clinton Building  
1200 Pennsylvania Avenue, NW  
Mail Code: 1101A  
Washington, DC 20460

SUBJECT: STRENGTHENING TRANSPARENCY IN REGULATORY SCIENCE, “SUPPLEMENTAL NOTICE OF PROPOSED RULEMAKING, 85 FED. REG. 15,396 (MARCH 18, 2020); DOCKET ID. NO. EPA-HQ-OA-2018-0259

Dear Administrator Wheeler:

As Secretary for Environmental Protection of California Environmental Protection Agency (CalEPA) and on behalf of our component boards, departments, and offices (the California Air Resources Board, the Office of Environmental Health Hazard Assessment, the Department of Toxic Substances Control, the Department of Pesticide Regulation, and the State Water Resources Control Board) I write to express deep concern about the 30-day comment period allotted by the U.S. Environmental Protection Agency (U.S. EPA) for the above-referenced Supplemental Notice of Proposed Rulemaking (SNPRM). A comment period that short would be inadequate for such a complex and consequential rule even in ordinary circumstances and is especially so in light of the global COVID-19 pandemic. In this unprecedented time, we respectfully urge you to extend the comment period by at least 90 days to allow CalEPA and other stakeholders – including those in the scientific community – sufficient time to adequately comment on U.S. EPA’s expansion of the 2018 proposal (83 Fed. Reg. 18,768, April 30, 2018).

Executive Order 13,563, section 2(b), provides that federal agencies – including U.S. EPA – “*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.) The SNPRM establishes a comment period of half that length and offers no explanation for the rushed approach to such a significant and far-reaching proposal. Despite U.S. EPA’s characterization of the 2018 proposal and SNPRM as a “housekeeping” rule that would merely “modify [U.S.] EPA’s internal procedures” (85 Fed. Reg. at 15,397), the proposal and SNPRM would profoundly alter U.S. EPA’s work and the landscape of federal public health and environmental protection. U.S. EPA implicitly acknowledged the complexity of commenting on its 2018 proposal by extending the comment period from the initially-allocated 30 days to a total of 105 days (83 Fed. Reg. 24,255, May 25, 2018). CalEPA appreciated the opportunity to fully comment on that proposal as reflected in the detailed comments submitted to your predecessor, Scott Pruitt, on August 16, 2018.

The SNPRM dramatically expands the scope of the 2018 proposal. The original proposal would have applied only to “dose-response” studies and models, while the SNPRM would apply to all data, studies, and models. The original proposal would have applied only to science that forms the basis of significant regulatory decisions, while the SNPRM would apply to science the agency relies on or references in much broader contexts. The original proposal would have precluded consideration of non-publicly available (dose-response) studies and models, subject to exemption at the Administrator’s discretion; the SNPRM removes most of the bases for potential exemption but proposes an alternative to the crux of the proposal: to weight consideration of non-publicly available studies and models of all types less heavily than their publicly-available counterparts. While the SNPRM solicits comment “only on the changes and additions to the proposed regulatory text discussed in this supplemental document” and bars comment on aspects of the 2018 rulemaking “not addressed, altered, or replaced by this SNPRM” (85 Fed. Reg. at 15,399), the SNPRM comprises such a thorough expansion of the 2018 proposal that these limitations provide little practical reduction in the burden of providing informed comment.

Under the current extraordinary circumstances of a national public health emergency, providing full review and comment on the SNPRM within 30 days is extremely burdensome if not impossible. The coronavirus has affected all aspects of American life and has forced organizations large and small to adjust daily operations and reallocate resources. On March 13, 2020, President Trump declared a national emergency.<sup>1</sup> On March 15, 2020, the Office of Management and Budget encouraged federal agencies in the Washington, D.C., area to offer “maximum telework flexibilities” and to “develop an operational plan that maximizes resources and functional areas to most safely and efficiently deliver these mission-critical functions and other Government services (including but not limited to staggered work schedules and other operational mitigation measures).” (M-20-15.) It has been reported that US EPA authorized voluntary unscheduled leave and telework for all of its employees and that it is now facing possible coronavirus outbreaks at multiple offices.<sup>2</sup> In short, US EPA has firsthand experience with the disruptions the coronavirus has caused, and it should appreciate all the more the added complications stakeholders now face in attempting to submit comments within an abbreviated 30-day comment period.

The State of California has been a leader in attempting to proactively contain the coronavirus. Governor Newsom declared a State of Emergency on March 4, 2020.<sup>3</sup> Many local jurisdictions in California – including Sacramento, where CalEPA’s headquarters is located – have issued “stay at home” orders. Like other state agencies, CalEPA is working hard to reduce the risk of further contagion while continuing to provide our essential services to the public. But these circumstances do limit the ability of CalEPA to fully comment on a complex US EPA rulemaking in only 30 days.

---

<sup>1</sup> Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak, <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

<sup>2</sup> Rachel Frazin, *EPA faces possible coronavirus outbreaks at multiple offices*, THE HILL (March 18, 2019), available at <https://thehill.com/policy/energy-environment/488324-epa-employee-in-montana-tests-presumed-positive-for-coronavirus>.

<sup>3</sup> Proclamation of a State of Emergency, <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf>.

Andrew Wheeler, Administrator

Page 3

March 19, 2020

In response to the 2018 proposal, US EPA received nearly 600,000 comments and more than 9,000 unique substantive comments. CalEPA can only imagine many of its fellow stakeholders who previously commented – whether scientific bodies, public interest organizations, or state and local governments – have important perspectives to share on the 2020 proposal but also face logistical and resource challenges.

Therefore, we respectfully urge you to extend the comment period by 90 days, so that the full comment period spans 120 days. Such a duration would be consistent with past practice for matters of similar importance and complexity and is necessary to provide the public and other stakeholders with 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.

Sincerely,

A handwritten signature in black ink, appearing to read "Jared Blumenfeld". The signature is fluid and cursive, with a horizontal line at the end.

Jared Blumenfeld  
Secretary for California Environmental Protection