

June 20, 2018

The Honorable E. Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Inadequate opportunity for public engagement—Strengthening Transparency in Regulatory Science (Docket No. EPA-HQ-OA-2018-0259)

Dear Administrator Pruitt,

On behalf of the 19 undersigned organizations, which collectively represent millions of people across the United States, we write to express our serious concern about the inadequate opportunity for public engagement on the U.S. Environmental Protection Agency’s (“EPA”) proposed rule entitled “Strengthening Transparency in Regulatory Science.”¹ On May 25, 2018, in response to public comments requesting public hearings on the proposed rule, EPA scheduled a single public hearing to be held on July 17, 2018 in Washington, D.C.² EPA subsequently explained that “[a] teleconference or webinar of the public hearing will not be available.”³ This refusal to accommodate remote participation will significantly prejudice many stakeholders—including members of the vulnerable communities most likely to be harmed by the proposed rule’s exclusion of relevant science in agency decision-making. **We urge EPA to reverse its position and ensure that the public hearing provides an opportunity for testimony and other meaningful participation by *all* interested members of the public, including those unable to attend the hearing in person.**

The proposed rule is plagued with problems, both procedural and substantive, not the least of which is the inadequate opportunity for public engagement, and thus EPA should withdraw the rule altogether. The rule – which will preclude consideration of scientific studies in the rulemaking process unless the underlying data is made publicly available – finds no statutory authority, but rather directly conflicts with many of the statutes EPA administers. Though the rule significantly departs from long-standing policy at EPA and is inconsistent with well-established practices used throughout the scientific community, EPA failed to consult with the National Academy of Science or its own Science Advisory Board before issuing the proposed rule, and failed to provide any justification or documentation supporting the changed position or the need for the rule. In light of these and many other significant flaws – including but not limited to the purported grant of unfettered discretion to the Agency to disregard science when convenient to do so, and the possible retroactive application of the rule – EPA should withdraw the proposed rule immediately.

¹ Strengthening Transparency in Regulatory Science, 83 Fed. Reg. 18,768 (Apr. 30, 2018).

² Strengthening Transparency in Regulatory Science; Extension of Comment Period and Notice of Public Hearing, 83 Fed. Reg. 24,255, 24,256 (May 25, 2018).

³ E-mail from Tom Sinks, Director, Office of the Science Advisor, EPA, to Veena Singla, Associate Director, Science & Policy, Program on Reproductive Health and the Environment, University of California, San Francisco (May 31, 2018, 2:19 PM EDT).

If, however, EPA continues to pursue this unlawful and irresponsible proposal, it must allow public engagement. Given the far-reaching implications of this rule and its impact on nearly every statute that EPA administers, EPA should hold multiple public hearings at locations across the country. At the very least, EPA must create an opportunity for remote participation in the single public hearing it has scheduled.

Decades of scientific research demonstrate that communities of color and low-income communities bear the brunt of exposure to pollution and dangerous chemicals.⁴ The proposed rule would disproportionately harm these communities by “preclud[ing]” consideration of epidemiological studies,⁵ which are essential to the development of regulations governing safe levels of exposure.⁶ In introducing the proposed rule, EPA improperly failed to consider the rule’s contribution to environmental injustice.⁷ Now, EPA is compounding this failure by refusing to provide adequate opportunities for remote participation in the public hearing. Because many members of vulnerable communities live outside the Beltway and lack the financial resources and flexibility to take time off work or travel on short notice, this decision functionally eliminates an important opportunity for these individuals to make their voices heard.

EPA’s refusal to allow for remote participation in the public hearing is also inconsistent with the agency’s recent practice. For instance, in May 2017, EPA held a remotely accessible public meeting concerning its approach to assigning and applying “unique identifiers” for certain chemical substances.⁸ In November 2017, EPA provided for remote access to two meetings about its activities to implement the amended Toxic Substances Control Act.⁹ EPA has provided no explanation for its decision to depart from its recent practice here, and it is unlikely that any sufficient explanation for limiting public engagement exists.

EPA’s commitment to providing a verbatim transcript of the public hearing is a woefully inadequate substitution for remote participation, for several reasons. *First*, many people are more comfortable providing oral testimony than they are submitting written comments—for example, because they are fluent in spoken but not written English. *Second*, although EPA has

⁴ See, e.g., Ram B. Jain, *Trends and Variability in Blood Lead Concentrations among US Children and Adolescents*, 23 *Envl. Sci. and Pollution Research* 7880 (2016) (finding that, from 2010–11, the mean blood lead level among children of color was almost 40 percent higher than that among white children of the same age); Asa Bradman et al., *Determinants of Organophosphorus Pesticide Urinary Metabolite Levels in Young Children Living in an Agricultural Community*, 8 *Int’l J. of Env’tl. and Public Health* 1061 (2011) (finding that children aged 2–6 living near pesticide application sites were more likely to show signs of exposure to pesticides).

⁵ 83 Fed. Reg. at 18,769 n.3.

⁶ See, e.g., *Coal. of Battery Recyclers Ass’n v. E.P.A.*, 604 F.3d 613, 615 (D.C. Cir. 2010) (concluding that EPA appropriately relied on an epidemiological study that the agency described as providing “the most compelling evidence” for the effects of certain levels of lead exposure).

⁷ See 83 Fed. Reg. at 18,773 (concluding, without justification, that the proposed rule “is not subject to Executive Order 12898,” which requires EPA to analyze the environmental justice impacts of its actions).

⁸ Assignment and Application of the “Unique Identifier” Under TSCA Section 14; Notice of Public Meeting and Opportunity to Comment, 82 Fed. Reg. 21,386, 21,389 (May 8, 2017).

⁹ New Chemicals Review Program Implementation and Approaches for Identifying Potential Candidates for Prioritization for Existing Chemical Risk Evaluations Under the Amended Toxic Substances Control Act (TSCA); Notice of Public Meetings and Opportunity for Public Comment, 82 Fed. Reg. 51,415, 51,415 (Nov. 6, 2017).

promised to provide a transcript, it has not committed to do so by any particular date. Unless EPA makes the transcript available several weeks before the proposed rule's comment deadline, those who submit written comments will lack the opportunity to respond to opposing viewpoints expressed at the hearing. *Finally*, certain potential commenters who would otherwise fully participate in the public hearing, including some people with learning disabilities, may struggle to read, understand, or respond to a verbatim transcript.

EPA should provide a meaningful opportunity for all people interested in the role of science in agency decision-making to participate in a public hearing on the proposed rule.

Sincerely,

Alaska Community Action on Toxics
American Public Health Association
CATA - The Farmworker Support Committee/
El Comite de Apoyo a los Trabajadores
Agricolas
Defenders of Wildlife
Earthjustice
Farmworker Association of Florida
Food & Water Watch
Food Chain Workers Alliance
Government Accountability Project
The Humane Society of the United States
National Hispanic Medical Association
Physicians for Social Responsibility
Public Citizen
Rural Empowerment Association for Community
Help
Safer Chemicals Healthy Families
Science and Environmental Health Network
Union of Concerned Scientists
Wayne Action for Racial Equality
WE ACT for Environmental Justice

Cc: Thomas Sinks, Director, Office of the Science Advisor, U.S. Environmental Protection Agency