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Congress of the United States
House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

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March 20, 2020

The Honorable Andrew Wheeler
Administrator
Environmental Protection Agency
Office of the Administrator 1101A
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator Wheeler:

I write to you regarding the Agency's publication of a supplemental notice of proposed rulemaking (SNPRM) to the Strengthening Transparency in Regulatory Science proposed rule.[1] I am extremely concerned about the impact that this rule, if finalized, will have on the EPA's ability to protect public health and the environment. Under the cynical guise of promoting scientific transparency, the rule is designed to weaken the Agency's ability to promulgate science-based, health-protective environmental regulations. If it is implemented, EPA scientists will be prohibited from considering a vast spectrum of essential scientific research, and the Agency's policymaking will be vulnerable to political manipulation. The rule is incompatible with EPA's mandate to use the best available science and offensive to EPA's mission to reduce environmental risks and protect human health. For nearly two years, the nation's leading scientific, public health, and environmental organizations have strenuously opposed the rule and implored EPA to abandon it. The fact that the Agency persists in moving forward with this disastrous policy calls into question whether science still has a place in today's EPA.

Unfortunately, I am all too familiar with the concept that animates this rule. Between 2014 and 2017, when I was the Ranking Member of the House Science, Space, and Technology Committee, the Committee approved three separate bills that were designed to legislatively implement the policies of the "Strengthening Transparency" rule. None of these bills received a vote in the Senate, perhaps because their devastating impact on the use of science in environmental policymaking was widely understood. It was only in early 2018, after it had become clear that Congress had no intention of placing these arbitrary restrictions into statute,

[1] Environmental Protection Agency, "Strengthening Transparency in Regulatory Science," Published in the Federal Register on March 18, 2020, https://www.govinfo.gov/content/pkg/FR-2020-03-18/pdf/2020-05012.pdf

that EPA initiated its effort to unilaterally implement the policy through Agency rulemaking.[2] Now that Congress has thrice rejected this dangerous idea, the Agency is taking it upon itself to undermine longstanding environmental protections and eviscerate its ability to create new health-based standards.

The defects of the "Strengthening Transparency" rule have been well documented. By establishing an arbitrary requirement that the Agency cannot consider scientific studies in its rulemaking unless the data and models underlying the studies are made "publicly available in a manner sufficient for independent validation," the rule would exclude essential environmental and public health research, including landmark studies on air pollution and chemical toxicity.[3] Without any scientific basis, the rule would demand that scientists violate long-established procedures – both legal and institutional – that protect individual privacy, and then exploit their inability to do so by using it as an excuse to disregard their research and weaken the environmental regulations that rely on it. As I told the Agency during a Committee hearing in November 2019, the rule "warps the noble goal of transparency into a misleading, black-or-white test of the legitimacy of individual studies" and uses a capricious standard to "eliminate many foundational public health studies from consideration, effectively gutting health-protective regulations that keep our air and water clean."[4]

Since that hearing, my views have been echoed by EPA's own Science Advisory Board (SAB). In a draft report on the proposed rule released in December 2019, the SAB wrote that "the proposed rule could be viewed as a license to politicize the scientific evaluation required under the statute based on administratively determined criteria for what is practicable."[5] The SAB also wrote that the proposed rule's case-by-case waiver authority for the Administrator "could easily have the effect of politicizing science."[6]

Rather than correcting these flaws – or better yet, abandoning the rule entirely – EPA developed an SNPRM that would be even more destructive to the Agency's ability to fulfill its mission. The Committee's preliminary analysis has identified critical problems with the SNPRM:

The SNPRM Expands the Scope of the Rule to Encompass Even More Science and Even More Agency Activities: The April 2018 proposed rule required that "dose response data and models underlying pivotal regulatory science" should be made "publicly available in a manner sufficient for independent validation."[7] This scope already constituted a sweeping assault on the Agency's

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[2] Scott Waldman and Niina Heikkinen, "Trump's EPA wants to stamp out 'secret science.' Internal emails show it is harder than expected," E&E News, April 20, 2018, https://www.sciencemag.org/news/2018/04/trump-s-epa-wants-stamp-out-secret-science-internal-emails-show-it-harder-expected.

[3] Environmental Protection Agency, "Strengthening Transparency in Regulatory Science," Published in the Federal Register on April 30, 2018, https://www.govinfo.gov/content/pkg/FR-2018-04-30/pdf/2018-09078.pdf.

[4] House Committee on Science, Space, and Technology, "Strengthening Transparency or Silencing Silence? The Future of Science in EPA Rulemaking," November 13, 2019, https://science.house.gov/hearings/strengthening-transparency-or-silencing-science-the-future-of-science-in-epa-rulemaking.

[5] EPA Science Advisory Board, "Science Advisory Board (SAB) Consideration of the Scientific and Technical Basis of EPA's Proposed Rule Titled *Strengthening Transparency in Regulatory Science*," Draft Report, October 16, 2019, accessed here: https://www.eenews.net/assets/2020/01/02/document_gw_05.pdf.

[6] *Id.*

[7] Environmental Protection Agency, "Strengthening Transparency in Regulatory Science," Published in the Federal Register on April 30, 2018, https://www.govinfo.gov/content/pkg/FR-2018-04-30/pdf/2018-09078.pdf.

ability to consider the best available science. Yet the SNPRM actually expands the breadth of the rule in three fundamental ways that would undermine the role of science to an even greater degree. First, the supplemental would extend the rule beyond dose response data and models to include all data and models, including information such as "bioaccumulation data," "data on environmental releases," and "exposure estimates."[8] Second, the supplemental would introduce the category of "influential scientific information" (ISI) alongside significant regulatory actions as another category of Agency activities subject to the rule.[9] With this expansion, vast areas of EPA scientific activity would newly fall under the rule's restrictions that had not previously been subject to it. Foundational Agency scientific products such as Integrated Science Assessments, Integrated Risk Information System (IRIS) toxicological reviews, and evaluations of the carcinogenic potential of chemicals such as glyphosate could thus be distorted by the exclusion of certain scientific studies from consideration.[10] Finally, the SNPRM would explicitly apply the rule retroactively to data and models underlying scientific studies "regardless of when the data and models were generated."[11] Under this approach, landmark studies such as the Harvard Six Cities air pollution study could be excluded from EPA rulemaking, inevitably weakening longstanding environmental protections.

The Administrator's Inappropriate Exemption Authority Prevails: The supplemental retains, and expands upon, the Administrator's authority to exempt a study from the requirements imposed by the rule. This exemption power grants unprecedented authority to the Administrator – a political appointee in a position rarely ever occupied by a scientist – to determine what research is considered in rulemaking. The SNPRM adds a new justification for exemption: the fact that older studies might have been conducted under different standards, practices, and technological capabilities that might have hindered the collection of underlying data. Instead of backing off the widely criticized discretion given to the Administrator in shaping EPA's use of science, the Agency doubles down, providing further justification for this ill-conceived provision.

The SNPRM Could Impact All Existing and Future Regulations: The Agency claims that the rule would not apply to existing regulations.[12] This is completely and willfully misleading. EPA is fully aware that it is entitled to open up any regulation at any time for reconsideration; that any individual, company, or interest group can petition EPA to open up an existing regulation; and that many regulations are subject to statutory deadlines for reconsideration. Any of these processes would result in a new rule, and any science considered in crafting the rule would be restricted by the SNPRM's requirements.

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[8] Environmental Protection Agency, "Strengthening Transparency in Regulatory Science," Published in the Federal Register on March 18, 2020, https://www.govinfo.gov/content/pkg/FR-2020-03-18/pdf/2020-05012.pdf

[9] *Id.*

[10] Environmental Protection Agency, "Science Inventory," accessed March 11, 2020, https://cfpub.epa.gov/si/si_public_pr_agenda_archive.cfm.

[11] Environmental Protection Agency, "Strengthening Transparency in Regulatory Science," Published in the Federal Register on March 18, 2020, https://www.govinfo.gov/content/pkg/FR-2020-03-18/pdf/2020-05012.pdf

[12] "The New York Times' Several Glaring Inaccuracies 'That's Fit To Print'," EPA News Releases, November 12, 2019, accessed here: https://www.epa.gov/newsreleases/new-york-times-several-glaring-inaccuracies-thats-fit-print ; *See also:* House Committee on Science, Space, and Technology, "Strengthening Transparency or Silencing Silence? The Future of Science in EPA Rulemaking," November 13, 2019, https://science.house.gov/hearings/strengthening-transparency-or-silencing-science-the-future-of-science-in-epa-rulemaking.

In the days following the SNPRM's publication on EPA's website, the scientific community's response was swift and scathing. This outrage has not subsided over the two years since the rule's initial introduction; rarely has the scientific community been as singularly united as it has been in opposition to the "Strengthening Transparency" rule. When the proposed rule was published in April 2018, nearly 600,000 public comments flooded the Agency in response, with the overwhelming majority in opposition. Scientific and public health leaders as diverse as the President of the National Academy of Sciences, the editors of five prominent scientific journals including *Science* and *Nature*, the American Lung Association, the American Medical Association and the Michael J. Fox Foundation for Parkinson's Research publicly criticized the rule as a threat to the use of science in environmental policymaking. The community is clearly not satisfied that the SNPRM alleviates their concerns. A spokeswoman from the American Thoracic Society said that it is "worse than the first, and still a bad idea."[13] It is frustrating that EPA did not take seriously the hundreds of thousands of comments it received, retaining and enhancing the most toxic aspects of a rule that is antithetical to its values and legal obligations.

This letter should not be considered a comprehensive analysis of the multitude of problems with the SNPRM published on March 18. The 11-page notice contains a wealth of complicated scientific, legal, and technical problems that the Committee and the public must have time to assess. This rule, if finalized, would fundamentally upend how the Agency operates, from conducting risk assessments to issuing environmental and health regulations. It is critical that the Agency provide sufficient time and opportunity for stakeholders, policymakers, and the public to examine the SNPRM and offer informed feedback during the public comment period. I am concerned that the Agency has not yet committed to do so. As such:

- I request that EPA extend the public comment period so the public has time to fully analyze the SNPRM. In 2018, the comment period for the 7-page proposed rule was 109 days. It is unacceptable for EPA to offer less than a third of the time for a document that is four pages longer with a great deal more detail. Furthermore, the scientific community and the American public are currently experiencing massive disruption due to the ongoing public health crisis. The comment period must be extended in order to ensure interested parties have the opportunity to fully review the rule amidst this personal and professional turmoil.

- In addition to the extension of the public comment period, I request that EPA hold at least three public hearings across the country – in Washington, DC, Chicago, Illinois, and Portland, Oregon – to allow the public to provide oral comments on this impactful rule. These public hearings should take place once public health authorities determine that the risk of COVID-19 transmission has decreased to the point that public gatherings are no longer discouraged.

- Lastly, I request that EPA provide a briefing to Committee staff on the SNPRM. Last fall, EPA staff in the Office of Congressional and Intergovernmental Relations offered to set up a briefing on the SNPRM "as soon as it is made public."[14] At that time, Agency staff

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[13] "EPA's Revised Transparency Rule – 'Worse than the First'," NewsWise, March 9, 2020, accessed here: https://www.newswise.com/articles/epa-s-revised-transparency-rule-worse-than-the-first

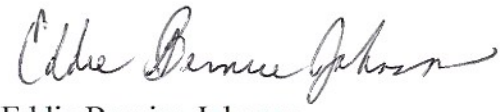
[14] Email from EPA OCIR to Science Committee staff, September 30, 2019.

offered to send Dr. Jennifer Orme-Zavaleta, Mr. David Dunlap, and relevant staff from the Office of Research and Development.[15] Please contact my staff to set up this briefing to take place by March 27.

It is incomprehensible to me why EPA has doubled down on a rule that undermines its ability to protect human health and the environment and has inspired outrage across the scientific community. I urge EPA to accept my requests for an extended public comment period and public hearings so the Agency has another chance to correct these glaring legal, scientific, and technical problems before finalizing the rule. If you have any questions, please contact Sara Palasits or Josh Schneider on the Committee staff at (202) 225-6375.

Thank you for your attention to this matter.

Sincerely,



Eddie Bernice Johnson
Chairwoman
Committee on Science, Space, and Technology

[15] Email from EPA OCIR to Science Committee staff, October 7, 2019.