Congress of the United States

Washington, DC 20515

June 7, 2018

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20004

Dear Administrator Pruitt:

We write to express grave concerns about the Environmental Protection Agency's (EPA) proposed rule, published on April 30, 2018, titled Strengthening Transparency in Regulatory Science (Docket No. EPA-HQ-OA-2018-0259). Contrary to its name, the proposed rule would implement an opaque process allowing EPA to selectively suppress scientific evidence without accountability and in the process undermine bedrock environmental laws. We join nearly a thousand scientists[1] and many leading scientific organizations[2] in opposing this policy and urge you to withdraw the proposed rule.

The proposed rule suffers from significant procedural flaws including lack of supporting evidence, insufficient detail in the proposal itself, and conflicts with EPA's statutory obligations. The substance of the rule is also concerning. It appears to be targeted at excluding important public health studies while privileging industry-sponsored research. It also fails to adequately consider the costs of implementation and the potential privacy implications. Finally, the discretion it grants the Administrator to grant case-by-case exemptions completely undermines the stated goal of transparency.

Without any significant evidence supporting it, the proposed rule is a solution in search of a problem. The proposed rule fails to identify specific weaknesses in EPA's current scientific approach, which is grounded in peer review. Wendy Wagner, author of two of the studies EPA cites to rationalize the rule, said in response to the proposed rule: "They don't adopt any of our recommendations, and they go in a direction that's completely opposite, completely different."[3] The proposed rule also invokes policies from *Nature*, *Science*, and the *Proceedings of the National Academies of Science*, but each of these organizations has argued against the rule.[4] Additionally, EPA fails to cite any specific language providing authority for the rule and asks commenters where the authority may be found. Key issues including how data would be made available to the public and how private information would be protected are not addressed. This is a serious deficiency in a rule meant to increase access to data for the public.

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[1] https://s3.amazonaws.com/ucs-documents/science-and-democracy/secret-science-letter-4-23-2018.pdf
[2] https://blog.ucsusa.org/michael-halpern/a-list-of-scientific-organizations-that-have-supported-and-opposed-limiting-what-research-epa-can-use-to-make-decisions
[3] https://www.theatlantic.com/science/archive/2018/04/how-the-epas-new-secret-science-rule/558878/
[4] https://www.aaas.org/news/scientific-leaders-speak-out-epa-s-proposed-transparency-rule

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The proposed rule is inconsistent with EPA's statutory obligations to ground its actions on scientific evidence. The Toxic Substances Control Act (TSCA) and the Safe Drinking Water Act (SDWA) require that EPA use the "best available science." Courts have found this language to require that agencies "seek out and consider all existing scientific evidence" and not ignore existing data.[5] This standard would be impossible to meet under the proposed rule.

The proposed rule requires that data underlying EPA's regulatory actions be made publicly available to allow for independent validation. Such a standard could exclude studies that utilize confidential industry and health data that are vital to understanding the nature of chemical pollutants, the impacts of pollution, and the most effective ways to protect the environment and public health. One such piece of health research is the "Six Cities" study,[6] which followed more than 8,000 participants for nearly twenty years and was key in establishing a link between chronic air pollution exposure and increased mortality. The results of this study have stood up to extensive subsequent analysis, highlighting the strength of such research.[7] This is just one example of an entire class of studies that the rule would remove from consideration. Excluding such health studies would hobble EPA's ability to implement laws like the Clean Air Act, SDWA, and TSCA and to fulfill its mission to protect public health and the environment.

Attempting to comply with the publication requirement and health privacy laws would place enormous burdens on EPA and researchers. According to an internal EPA analysis of the HONEST Act, which had a similar data-publishing requirement, the EPA would have to spend more than $250 million annually to redact private health information before releasing study data to the public.[8] EPA failed to provide a cost-benefit analysis of the proposed rule, only stating that EPA shall implement the provisions "in a manner that minimizes cost." Even with careful redaction, there is still a possibility of study participants being identified due to the amount of information that would have to be revealed under the proposed rule for the purposes of reproducibility. The rule is costly and a threat to the privacy of Americans.

Concerns with the proposed rule are not limited to the public health community. Dr. Nancy Beck, Deputy Assistant Administrator of the Office of Chemical Safety and Pollution Prevention, has expressed reservations about the publishing requirements of the proposed rule for industry as well.[9] Industry representatives have expressed concerns about requiring public disclosure of data, such as Confidential Business Information, citing the potential for improper use of such data by competitors.[10]

In addition, the proposal to allow the EPA Administrator to grant exemptions on a case-by-case basis would enable the Administrator to interfere in the rulemaking process in an arbitrary and capricious manner. The Administrator is not required to present the reasoning behind such

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[5] *Ecology Ctr., Inc. v U.S. Forest Serv.*, 451 F.3d 1183, 1194 n.4 (10th Cir. 2006)

[6] *Dockery et al. 1993. An association between and mortality in six U.S. cities. New England J. Med. 329:1753-1759. doi: 10.1056/NEJM199312093292401.*

[7] https://www.healtheffects.org/system/files/Reanalysis-ExecSumm.pdf

[8] https://www.ucsusa.org/center-science-and-democracy/attacks-on-science/administrator-pruitt-ignores-epa-staff-analysis#.WujH-KQvxaR

[9] http://www.sciencemag.org/news/2018/04/trump-s-epa-wants-stamp-out-secret-science-internal-emails-show-it-harder-expected

[10] https://www.bna.com/pesticide-makers-back-n57982091585/

decisions. This waiver provision establishes an opaque process, completely at odds with the stated purpose of the rule, that would bring additional uncertainty to the regulatory process.

We support transparency and scientific integrity. However, the proposed rule will limit transparency and undermine the scientific integrity of EPA's rulemaking process. Given its numerous flaws and the lack of an underlying rationale, we urge you to withdraw the proposed rule.

Sincerely,

Diana DeGette
Member of Congress

Donald S. Beyer Jr.
Member of Congress

Paul Tonko
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Daniel W. Lipinski
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Mark DeSaulnier
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