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The Honorable E. Scott Pruitt
Administrator
United States Environmental Protection Agency

Re: Request for Extension of Comment Period for the Advanced Notice of Proposed Rulemaking for Increasing Consistency and Transparency in Considering Costs and Benefits in the Rulemaking Process, Docket Number EPA-HQ-OA-2018-0107

Dear Administrator Pruitt,

We write to request that the Environmental Protection Agency (EPA) extend the comment period for the advanced notice of proposed rulemaking entitled “Increasing Consistency and Transparency in Considering Costs and Benefits in the Rulemaking Process,” Docket Number EPA-HQ-OA-2018-0107 (hereinafter “Cost-Benefit Analysis Rule”) by a minimum of 60 additional days (for a total comment period lasting a minimum of 90 days) so that members of the public have adequate time to review this complex rulemaking and to offer meaningful feedback on it. We further request that the EPA conduct at least one public hearing for the purposes of receiving feedback on this rulemaking.

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First, given the highly technical matters implicated by the Cost-Benefit Analysis Rule, as well as its potential to significantly alter the manner in which the EPA carries out its statutory mandates to protect people and the environment against unacceptable risks of harm, the initial 30-day comment period offered by the EPA is plainly insufficient. To illustrate this point, consider Question (1)(c) under Subsection II.B. of the notice, which asks “To what extent should standard benefit-cost analysis principles (e.g., setting a standard to maximize net benefits) guide the selection of specific statutorily required metrics and thresholds (e.g., ‘reasonableness’) against which to measure the effects of a proposed regulation?” The U.S. Supreme Court has wrestled with variations of this one question as it applies to the EPA’s authorizing statutes on no less than four occasions in last 30 years.¹

¹ See *Michigan v. Environmental Prot. Agency*, 135 S. Ct. 2699 (2015); *Environmental Protection Agency v. EME Homer City Generation*, 134 S. Ct. 1584 (2014); *Entergy Corp. v. Riverkeeper*, 556 U.S. 208 (2009); *Whitman v. American Trucking Ass’ns*, 531 U.S. 457 (2001).

A review of these cases reveals how extraordinarily complicated the resolution of this question can be with respect to just statutory provision. Yet, the Cost-Benefit Analysis Rule's request for comments would have members of the public apply this kind of analysis to potentially dozens of statutory standards that have not been authoritatively resolved in the courts. And this is just one question out of the more than a dozen that the Cost-Benefit Analysis Rule requests comment on.

In this light, the abnormally short comment period of only 30 days suggests at best that the EPA does not fully understand or appreciate the complexity of the Cost-Benefit Analysis Rule. At worst, it suggests that the agency is committed to ramming this rulemaking through despite the public's legitimate concerns.

Second, a comment extension would help to rectify the alarming participatory imbalance that has already marked the development of the Cost-Benefit Analysis Rule. According to the Background section of the Cost-Benefit Analysis Rule, the rulemaking was inspired by industry comments that the EPA had solicited in accordance with Executive Order 13777. The implementation of this notice and comment process by the EPA was noteworthy for its distinct lack of transparency and lack of meaningful public participation. For example, the EPA has never disclosed any of the reports it was required to produce in response to Executive Order. In addition, the EPA only provided a 30-day comment period. This comment period ended on May 15, 2017, just 10 days before the initial report was due. Most troubling of all, an investigative article by the *New York Times* and *Pro Publica* detailed the clear conflicts of interest that existed among the members of the EPA's Executive Order 13777 Task Force, with some having close financial ties to those industries that were lobbying the agency to weaken or eliminate rules they opposed.²

More recently, officials at the White House Office of Information and Regulatory Affairs (OIRA) denied members of a public interest organization to weigh in on the Cost-Benefit Analysis Rule while it was undergoing interagency review there. This refusal to allow a meeting for public interest advocates came despite the fact that OIRA had already held three separate meetings with representatives from various regulated industries.³

To this point, industry groups have received an unfair advantage with respect to their ability to influence the substance of the Cost-Benefit Analysis Rule. Neither an extension of the comment period nor a public hearing would fully redress these previous instances of procedural unfairness. At the least, however, it would offer the public interest community a better opportunity to make its views of the Cost-Benefit Analysis Rule known to agency decision-makers.

Third, the EPA recently granted a similar comment period extension and an opportunity for public hearing for its "Strengthening Transparency in Regulatory Science" Rule, Docket

² Danielle Ivory & Robert Faturechi, *The Deep Industry Ties of Trump's Deregulation Teams*, N.Y. TIMES, July 12, 2017, at A1, available at https://www.nytimes.com/2017/07/11/business/the-deep-industry-ties-of-trumpsderegulation-teams.html?_r=1.

³ Maxine Joselow, *White House Approves Regulatory Overhaul, Shuts Out NRDC*, E&E NEWS PM, June 6, 2016, <https://www.eenews.net/stories/1060083691/> (last visited June 18, 2018).

Number EPA-HQ-OA-2018-0259. That rulemaking is sufficiently analogous to the Cost-Benefit Analysis Rule that no principled basis exists for justifying disparate treatment for the Cost-Benefit Analysis Rule. Both rules would propose to introduce massive complex overhauls of the EPA's decision-making process for its pending rulemakings. And the comment periods for both rules came after troubling instances of procedural irregularities that inhibited meaningful participation by members of the public.

The EPA did the right thing with respect to its "Strengthening Transparency in Regulatory Science" Rule by granting a comment period extension and an opportunity for a public hearing. The EPA should now follow suit with respect to its Cost-Benefit Analysis Rule.

For the three reasons discussed above, we request that you extend the public comment period for the Cost-Benefit Analysis Rule by a minimum of an additional 60 days (for a total of a minimum of a 90-day comment period) and that you grant an opportunity for a public hearing on the Cost-Benefit Analysis Rule.

Sincerely,

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