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VIRTUAL PUBLIC HEARING

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SUPPLEMENTAL RULE ON EPA PROPOSAL

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STRENGTHENING TRANSPARENCY IN REGULATORY SCIENCE

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9:00 a.m. to 11:00 a.m.

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Tuesday, April 14, 2020

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21 REPORTED BY ASHLEIGH SIMMONS, CER

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1 MICHAEL HALPERN: Good morning everybody.
2 My name is Michael Halpern. I am the Deputy
3 Director of the Center for Science & Democracy
4 here at the Union of Concerned Scientists and we
5 are about to get started. Welcome to this virtual
6 public hearing hosted by the Union of Concerned
7 Scientists on Environmental Protection Agency's
8 proposed supplemental rule titled *Strengthening*
9 *transparency in Regulatory Science*. This session
10 is being recorded, and should post to the Union of
11 Concerned Scientists YouTube page shortly after it
12 ends.

13 We appreciate you taking the time to
14 provide public comments on the proposed
15 supplemental rule. Nearly one hundred people
16 registered to provide public comment today and so
17 it should be a full day.

18 We will begin hearing public comments
19 shortly. We do have some space at the end of this
20 session and at the end of the two -- the afternoon
21 and evening sessions. So, if you would like to
22 register to speak at the end of any of them,

1 please email ucsvph@gmail.com. We will do our
2 best to accommodate you. And that's ucsvph.com --
3 @gmail.com.

4 So first, I am going to turn it over to
5 Ken Kimmell, president of the Union of Concerned
6 Scientists. Ken, please go ahead.

7 KEN KIMMELL: Good morning everyone.
8 Michael, can you just verify that you can see me
9 and hear me?

10 MICHAEL HALPERN: I can hear you. I
11 cannot see you.

12 KEN KIMMELL: Okay. Let me start my
13 video. How about now?

14 MICHAEL HALPERN: Yes.

15 KEN KIMMELL: All set?

16 MICHAEL HALPERN: Yes.

17 KEN KIMMELL: Great. Good morning
18 everyone and welcome. Today the Union of
19 Concerned Scientists is hosting this hearing for a
20 simple reason, the Environmental Protection Agency
21 has refused to do so.

22 I know that it is quite unusual for a

1 non-governmental organization to hold a public
2 hearing on an agency's proposal. Of course,
3 usually the federal agency that is responsible for
4 hosting -- for a proposal is responsible for
5 hosting the public hearing, particularly on major
6 proposals, while a comment period is open.

7 Interest in this proposal remains very
8 strong. The original draft of this rule received
9 more than six hundred thousand public comments in
10 over a three-and-a-half-month time frame.

11 This supplemental rule that we are here
12 to talk about today significantly changes the
13 initial proposal, but the opportunity for public
14 input has been severely limited. Especially when
15 one considers just how sweeping this proposal is
16 and how different it is from the original draft.

17 For this proposal the EPA originally
18 called for a thirty-day window for public comments
19 with no public hearings at all. They recently
20 extended the public comment to sixty days with a
21 deadline May 18th, 2020, without any public
22 hearings. This is simply grossly insufficient.

1 During normal times the government
2 recommends a minimum sixty-day comment period even
3 for the simplest of proposals. These are not
4 normal times, and this is not a simple proposal.
5 Numerous science and public health organizations,
6 including UCS, urge the EPA to extend the public
7 comment period by at least sixty days, plus a
8 thirty-day period beyond the end of the declared
9 national public health emergency.

10 We also asked for virtual public
11 hearings. And unfortunately, the EPA has refused
12 those requests. We also invited EPA to send staff
13 today to listen to today's hearing and ask
14 questions to those providing comment. The EPA has
15 declined our invitation.

16 The COVID-19 crisis poses profound
17 challenges to our country and to the world. The
18 virus has disrupted all of our lives. Many of us
19 are working remotely while caring for children who
20 are out of school. Others are taking on the
21 crisis directly and working extra hours at great
22 risk, from healthcare workers to sanitation

1 workers. The public health organizations are
2 working overtime to provide scientific advice to
3 protect individuals and communities throughout the
4 country. Some people don't even have access to
5 technology. So, all of these conditions make it
6 extremely difficult for public comment.

7 So, I should say, it's enormously
8 impressive to me that more than a hundred people
9 have registered to speak today. This is a
10 testament to how many people realize just how
11 significant this proposal is to EPA's ability to
12 meet its mission and protect public health and the
13 environment. We heard from many more who don't
14 have the bandwidth today to provide comprehensive
15 feedback on the proposal due to other commitments
16 created by the pandemic.

17 I think we can all agree, especially in
18 light of the crisis we are in right now, that the
19 best science, the best data, and the best analysis
20 is not only important, it's literally a matter of
21 life and death.

22 So, I hope today that the comments will

1 shed light on this crucial question, does the
2 proposal that EPA has made advance or does it
3 undermine this imperative?

4 Today's public hearing, of course, is not
5 the only opportunity you have to provide public
6 comment. I encourage everyone to develop written
7 comments to respond directly to the proposal. UCS
8 has developed a guide to providing effective
9 public comments on this rule on its website.

10 We expect EPA to do its job and seek
11 feedback on its proposals. But when the agency
12 fails, as it has here, we will step in to make
13 sure that the agency receives as much feedback as
14 possible.

15 I look forward to hearing and reviewing
16 the public comments that are made today. Thank
17 you all for participating. And I would like to
18 turn it back to Michael.

19 MICHAEL HALPERN: Thanks, Ken. So, I
20 would like to provide folks with some background
21 information and briefly describe the proposed rule
22 on which we are taking comments today.

1 The EPA described the rule -- describes
2 the rule as follows: *This Supplemental Notice of*
3 *Proposed Rulemaking proposes that the scope of the*
4 *rulemaking apply to influential scientific*
5 *information as well as the significant regulatory*
6 *decisions. This notice proposes definitions and*
7 *clarifies the proposed rulemaking applies to data*
8 *and models underlying both pivotal science and*
9 *pivotal regulatory science. In this SNPRM, EPA is*
10 *also proposing a modified approach to the public*
11 *availability provisions for data and models that*
12 *would underly significant regulatory decisions and*
13 *an alternate approach.*

14 *Finally, EPA is taking comment on whether*
15 *to use its housekeeping authority independently or*
16 *in conjunction with appropriate environmental*
17 *statutory provisions as authority for taking this*
18 *action.*

19 For both oral and written comments, EPA
20 will only consider feedback that directly
21 addresses the supplemental proposal. Therefore,
22 please do your best to speak to the changes to the

1 rule that are made in the supplemental proposal.

2 Today's hearing will work as follows:

3 Members of the public pre-registered to speak, and
4 were assigned a speaking time. They were asked to
5 sign-in to the webinar at least twenty minutes
6 before their scheduled time, in case we run ahead
7 of schedule.

8 We are here today to hear your comments
9 on EPA's proposed supplemental rule. We will not
10 respond to questions from attendees or speakers.

11 In order to accommodate all speaker's
12 testimony is limited to four minutes. After your
13 name is called, we will ask you to proceed with
14 your testimony. The transcript from this public
15 hearing will be submitted to the docket, and a
16 recording will be made publicly available.

17 If you have any written comments or other
18 documents that you would like to submit for the
19 record, please email them to the email you
20 received on your confirmation form, which is
21 ucsvph@gmail.com.

22 If you are watching this broadcast, you

1 can also register to speak today at any of the
2 sessions and we will do our best to accommodate
3 you by emailing ucsvph@gmail.com and you will be
4 added to the queue.

5 We will make our best effort to ensure
6 that any comments spoken in languages other than
7 English will be translated into English in the
8 written transcript.

9 And if you have any additional comments
10 after today, please follow the instructions in the
11 Federal Register notice for this proposal, and
12 submit your comments by May 18th, 2020. Again,
13 UCS has provided a guide for people to make
14 effective comments on its website.

15 Today's hearing is broken into three
16 separate sessions which begin at 9:00 o'clock,
17 1:00 p.m. and 5:00 p.m. Eastern Daylight Time.
18 Each session is being streamed live through the
19 Union of Concerned Scientists YouTube channel, and
20 can also be viewed on the UCS website.

21 And finally, we do ask for patience with
22 this virtual hearing. People will have different

1 internet bandwidths and familiarity with the
2 technology. And if someone has technical
3 difficulties when it is their turn, we will move
4 on to the next speaker, and return to that person
5 who had technical difficulties later in the
6 session.

7 All right. So, we are going to get
8 started. I am going to turn it over to Jason
9 Jacobson, who will be running today's hearing.
10 Jason, please go ahead.

11 JASON JACOBSON: Thank you, Michael. As
12 a reminder, all attendees are automatically muted.
13 We will unmute you when it is your turn to speak.
14 If you wish to turn on your video, you may do so.

15 We will now begin our public comments.
16 The first speaker is James Goodwin, who will be
17 followed by Paul Billings and Andrew Rosenberg
18 after that.

19 And now I am going to turn it over to
20 James. James, are you ready?

21 JAMES GOODWIN: Yes, I am.

22 JASON JACOBSON: Go ahead.

1 JAMES GOODWIN: My name is James Goodwin.
2 And I am a senior policy analyst with the Center
3 for Progressive Reform. I thank the organizers
4 for holding this shadow public hearing. But I
5 also appeared today as a form of protest against
6 EPA for its unconscionable decision to continue
7 working on this dangerous rulemaking at all, let
8 alone in the middle of a massive global pandemic.

9 I appeared today because I am among the
10 few Americans fortunate enough to endure the
11 hardships brought on by COVID 19 and still be able
12 to participate in non-emergency government
13 processes such as these. I also feel obligated to
14 appear because as the father of two young
15 children, I am extremely troubled by the harm that
16 this rule might cause to them and others in their
17 generation. And I feel obligated to appear since
18 I have closely studied EPA's claimed legal basis
19 for this contemptible rulemaking, which I will
20 address now.

21 The failure of EPA to identify a
22 colorable legal basis for this rulemaking is

1 emblematic of the Trump administration's brazen
2 disregard for the rule of law.

3 The original proposal laughably gestures
4 at EPA's various authorizing statutes as legal
5 authority. The ridicule this claim engendered
6 appears to have spurred one of the most
7 significant aspects of the supplemental proposal.
8 Namely, the new claim that this rulemaking is
9 authorized by the federal housekeeping statute.
10 This argument has two critical flaws though.

11 First, the federal housekeeping statute
12 doesn't apply to the EPA, only executive
13 departments. Second, even if the statute did
14 apply to EPA, it would not supply the legal basis
15 for something like this rulemaking.

16 EPA acknowledges that it is not an
17 executive department, but argues that it was
18 nonetheless brought within the scope of the
19 federal housekeeping statute through
20 Reorganization Plan Number 3 of 1970, which
21 created the agency.

22 The essay appended to my oral

1 presentation explains in greater detail why this
2 argument should be rejected. For now, I will
3 emphasize two points. One, Reorganization Plan
4 Number 3 conspicuously makes no mention of the
5 federal housekeeping statute. Instead EPA has
6 left to infer the transfer of that authority to a
7 vague catch-all provision. In essence, then the
8 agency claims Congress implicitly intended for EPA
9 to be considered a department, but just hasn't
10 gotten around to officially declaring it.

11 Two, while Congress has updated the list
12 of executive departments several times since 1970,
13 it has never included the EPA. Most recently it
14 did so with the Department of Homeland Security
15 which, like EPA, was pieced together from several
16 existing agencies.

17 Even if the federal housekeeping statute
18 did apply to EPA, it would not supply the
19 authority for something as radical and
20 controversial as this rulemaking. While the
21 appended essay addresses this argument in greater
22 detail, I will emphasize two points now.

1 One, the censored science rule is a far
2 cry from the kind of modest and noncontroversial
3 internal operating procedures that Congress
4 envisioned with the federal housekeeping statute.
5 To wit: the original censored science proposal is
6 so controversial it attracted over six hundred
7 thousand public comments.

8 Two, even the Supreme Court case that EPA
9 cites to support this argument that the rulemaking
10 is covered by the federal housekeeping statute,
11 *Chrysler Corp. versus Brown*, makes clear that the
12 censored science rule exceeds the modest authority
13 that the law provides. Among other things, the
14 Court in *Chrysler Corp.* was troubled by how the
15 rule at issue affected the relationship between
16 the government and private sector entities.

17 Significantly, the operative function of
18 the censored science rule is to affect the
19 relationship between EPA and members of the
20 public.

21 Specifically, it would fundamentally
22 alter how the public participates in the

1 development of new rules by limiting the kinds of
2 views that they can share on a scientific basis
3 per those rules.

4 Today you will hear many reasons for why
5 the EPA should abandon the censored science rule.
6 As I have explained, the lack of a legal basis for
7 the rule provides one more reason. Thank you for
8 your attention.

9 JASON JACOBSON: Thank you, James. The
10 next speaker will be Paul Billings, followed by
11 Andrew Rosenberg and Chris Frey.

12 Paul, are you ready to speak?

13 PAUL BILLINGS: Yes. I am trying to
14 start my video but it won't let me. Okay.

15 JASON JACOBSON: There you go. We can
16 hear and see you.

17 PAUL BILLINGS: Good morning. I am Paul
18 Billings, national senior vice president of public
19 policy at the American Lung Association. The
20 American Lung Association is the nation's oldest
21 voluntary health agency. Today I am speaking on
22 behalf of the nearly thirty-seven million

1 Americans with lung diseases, including asthma,
2 lung cancer, and COPD. And everyone who wants to
3 breathe clean, healthy air.

4 We want to thank the Union of Concerned
5 Scientists for convening this hearing as the
6 nation struggles with the COVID-19 pandemic.

7 Every day the news reminds us of how
8 important lung health is for all of us. The
9 American Lung Association and fifteen other health
10 and medical organizations have asked EPA for a
11 sixty-day extension to the comment and for EPA to
12 convene three public hearings. We reiterate our
13 request for at least sixty additional days to
14 comment and for EPA to convene public hearings.

15 The American Lung Association opposes the
16 proposed rule and we urge EPA to withdraw it.
17 Make no mistake, this proposal is not an effort to
18 strengthen transparency or improve regulatory
19 science. The proposal is an effort to exclude
20 important studies whose conclusions, especially
21 the studies that show that particulate air
22 pollution causes premature death, are

1 inconvenient.

2 Later this morning we expect EPA
3 administrator Andy Wheeler to announce that EPA is
4 not strengthening the National Ambient Air Quality
5 Standards for particulate matter. There is a
6 strong insistent body of scientific evidence that
7 supports strengthening the PM Standards. EPA
8 should use this science to inform its policy
9 decisions. It should not arbitrarily exclude
10 studies or cherry pick studies.

11 Like the original proposal, a
12 supplemental notice predicate is that studies that
13 rely on confidential research participant data
14 will be excluded from consideration or use to
15 inform regulations or influential scientific --
16 scientific information. To be clear, studies that
17 link air pollution with premature death would be
18 excluded or diminished as the agency develop its
19 regulations or influential scientific information.
20 The administrator has the sole discretion to
21 permit a study to be considered or be given full
22 weight, but that is the exception under the

1 proposed framework.

2 In our written comments we will discuss
3 our specific concerns with the supplemental's
4 approach to the tiered access approach and the
5 diminished in consideration approach. I'd like to
6 spend my remaining time to share some of the
7 history of this issue.

8 In January 1993 then EPA administrator
9 Bill Reilly released the landmark paper, the
10 Respiratory Health Effects of Passive Smoking:
11 Lung Cancer and Other Disorders. The paper
12 confirmed what we at the American Lung Association
13 knew, that second-hand smoke harms health. That
14 second-hand smoke kills. It sounds like common
15 sense today. In fact, my adult daughters can't
16 really even imagine a world that didn't think
17 second-hand smoke was harmful. But the tobacco
18 industry attacked in an attempt to make it
19 controversial. The tobacco industry pulled out
20 all of the stops to try to undermine and
21 marginalize this report. They sued, they ran
22 extensive PR campaigns, set up or funded front

1 groups, and their lobbyists blanketed Capitol
2 Hill.

3 They were terrified that we were going to
4 get laws and ordinances passed to protect the
5 public from second-hand smoke, including in all
6 work sites, restaurants, bars, and other public
7 places.

8 We know from discovery in later
9 litigation that a tobacco industry lawyer, Chris
10 Horner, wrote a memo to R.J. Reynolds seeking a
11 second approach that would include the
12 construction of explicit policy hurdles that EPA
13 must follow. And to address process as opposed to
14 scientific substance.

15 They wanted to create a process to limit
16 the use of science that was inconvenient or lead
17 to policies that could cut into their profits.
18 The memo used the same terms, transparency, sound
19 science, calls for reproducible science the
20 language the EPA is now using in its proposed
21 rule.

22 The goal of the strategy as described by

1 Mr. Horner was to help R.J. Reynolds having to
2 undo the agency's work after the fact. The memo
3 references EPA's pending proposal to set the first
4 PM 2.5 standards and strengthen the ozone max as
5 well. The goal was and is to censor science.

6 Make no mistake, the tobacco industry and
7 polluters want to undermine science to stall
8 public health safeguards. In addition to the
9 specific limitations, this version of the EPA
10 regulations, it may also have a chilling effect on
11 research.

12 Many studies rely on patient volunteers,
13 individuals who agree to share their most personal
14 information with ethical researchers. NIH just
15 announced a new study to see if patients to
16 determine how many adults in the United States,
17 without a confirmed history of infection, actually
18 have the SARS COV-2 virus. Patients will sign up
19 but they will have the expectation that their
20 confidentiality will be protected. When patients
21 fear their confidential information will be
22 compromised, or the tobacco industry or some other

1 corporate interest will attempt to manipulate
2 their information to support efforts that could
3 result in say more exposure to second-hand smoke,
4 it may stifle or reduce participation in studies.
5 This could have far-reaching negative consequences
6 for public health and the environment.

7 The supplemental proposal will censor
8 science, together with efforts to discount or
9 exclude benefits from pollution reductions and
10 other rulemakings. This appears to be a
11 coordinated effort by EPA to ignore science that
12 is inconvenient to its regulatory rollback agenda.
13 We strongly oppose the supplemental proposal and
14 we urge EPA to withdraw it. Thank you to UCS for
15 convening this public hearing.

16 JASON JACOBSON: Thank you for your
17 comments, Paul. The next speaker will be Andrew
18 Rosenberg, followed by Chris Frey and Jennifer
19 McPartland after that.

20 Andrew, go ahead.

21 ANDREW ROSENBERG: Thank you very much.
22 Thank you for the opportunity to comment on the

1 EPA's supplemental notice of proposed rulemaking
2 to the 2018 strengthening transparency and
3 regulatory science rule.

4 I am Dr. Andrew Rosenberg, director of
5 the Center for Science and Democracy at the Union
6 of Concerned Scientists. So, I have over thirty
7 years' experience as a scientist and with
8 regulatory decision making.

9 This supplemental rule sharpens the way
10 in which this proposal would substitute political
11 judgment and criteria for scientific method and
12 best practice. It will do nothing to increase the
13 transparency of the agency's decision making.
14 Instead it clarifies that scientific evidence is a
15 lesser importance than nullifying regulated
16 industry and scoring political points.

17 By instituting completely non-scientific
18 criteria of public availability of underlying data
19 to weight scientific evidence, EPA's so-called
20 transparency rule will severely restrict the
21 agency's ability to protect public health and
22 safety.

1 Under this proposal, not only will
2 critical studies be ignored for no other reason
3 than the inability to make all of the underlying
4 data public because of personal or business
5 privacy concerns, the administrator will have the
6 authority to waive this requirement on a case by
7 case basis with no specified reason. This makes a
8 mockery of the process of relying on the best
9 scientific evidence as required by statutory
10 mandate for all of EPA's regulatory efforts.

11 These requirements for best scientific
12 evidence cannot be waived away by a specious rule
13 under supposed authority of the Housekeeping Act.
14 This is not housekeeping. It is deconstruction of
15 the agency's mission in a manner that is both
16 arbitrary and capricious.

17 The scientific studies most directly
18 targeted for exclusion by this rule are those
19 analyzing medical information of individuals to
20 understand population level effects. At no time
21 in recent history, because of COVID-19, have we
22 more clearly seen the importance of these

1 epidemiological analyses, yet these are the very
2 studies this rule would cause EPA to ignore.

3 Under no circumstances is the best or
4 strongest evidence dependent upon public
5 availability of underlying data to the degree
6 required by this supplemental rule. Rather the
7 best evidence depends on the methods, procedures,
8 study, design, and execution, and the analytical
9 approach.

10 As a reviewer for numerous journals and
11 for regulatory science for multiple federal
12 agencies, that is what I rely on, not the
13 underlying unanalyzed data. The only purpose for
14 making the raw data is raw data -- available for
15 health studies, is to give industry interests a
16 new opportunity to spin the science to meet
17 desired regulatory outcomes. This is an old trick
18 in the tobacco industry's playbook adopted by
19 other unscrupulous actors.

20 Further evidence of the arbitrary and
21 capricious nature of the rule is the requirement
22 for reanalysis. Such a requirement redo the

1 calculations of all studies and perform pointless
2 sensitivity analyses is not based on good
3 scientific practice and only seeks to paralyze the
4 agents who make work.

5 As with all other aspects of this rule,
6 the agency has not provided analysis of what
7 problem they are trying to solve. There is no
8 analysis of the impacts on public health and
9 safety nor of the cost of implementation. How can
10 the EPA proceed without such detailed analyses?

11 Because this rule is clarified by the
12 supplemental notice would ostensibly apply to all
13 of the science the EPA would utilize from within
14 and outside the agency. It will completely
15 undermine the agency's fundamental mission. EPA,
16 if you are listening, I urge you to immediately
17 withdraw this proposal and stop this travesty.
18 Thank you very much.

19 JASON JACOBSON: Thank you, Andrew
20 Rosenberg. The next speaker will be Chris Frey,
21 followed by Jennifer McPartland and Representative
22 Paul Tonko.

1 CHRIS FREY: Okay. Thank you. Yeah, I
2 am Chris Frey. I am a distinguished university
3 professor at North Carolina State University. I
4 am a past chair of the EPA Clean Air Scientific
5 Advisory Committee, a past member of the EPA
6 Science Advisory Board, and the EPA Fit for
7 Scientific Advisory Panel.

8 As a researcher in environmental
9 engineering I have published over a hundred and
10 thirty peer-reviewed journal papers. These
11 comments are my own.

12 The EPA is proposing in the supplemental,
13 new procedures for how science should be conducted
14 within the agency without the benefit of a great
15 many things.

16 One is the rigorous identification of
17 what is the problem to be solved. Second is,
18 without rigorous diagnosis of how to solve an
19 actual problem, if any. Third is lack of rigorous
20 interaction with scientists internal to the EPA,
21 such as EPA career staff, and external to the EPA,
22 such as via its scientific advisory boards,

1 including the ones I mentioned that I have served
2 on, without development, demonstration, and
3 evaluation of alternative approaches prior to
4 arriving at proposals for a regulation. Without
5 detailed evaluation of whether and, if so, how the
6 proposed rule would conflict with existing
7 statutes, such as the Clean Air Act in the case of
8 the National Ambient Air Quality Standards.
9 Without due consideration of alternative methods
10 for changing internal practices to the extent that
11 such practices merit changes, such as the
12 development of internal working documents, white
13 papers or guidance rather than a regulation.

14 Without development of experience with
15 the proposed measures by testing them prior to
16 attempting to codify them into a regulation
17 without engagement of program offices, such as the
18 EPA Science and Technology Policy Council, to
19 assess how the proposal would affect development
20 of regulations across all environmental media
21 throughout the agency. Without a background
22 information document containing model case

1 studies, such as commonly provided in the
2 development of many environmental regulations, it
3 illustrates how the proposed rule would be applied
4 in multiple context, the implications of the rule
5 for the time and effort to conduct scientific
6 analysis, and for the cost, not just to EPA but to
7 stakeholders who produce scientific information.

8 And I think most egregiously, without
9 seeking input from the National Academy of Science
10 on a proposed rule that has sweeping implications
11 for how science should be developed and used in
12 regulatory decision making.

13 In the past EPA has sought input from the
14 academy in advance of making large changes to its
15 scientific enterprise, such as the famous 1983 Red
16 Book report on Risk Assessment in the Federal
17 Government and many others.

18 EPA should address each and every one of
19 these deficiencies. The fact of the lack of due
20 diligence by EPA is a confusing proposal that
21 appears to be a solution in search of a problem
22 and that will create problems potentially far

1 worse than the solutions it claims to provide.

2 For example, in the supplemental, the
3 definition of terminology remains confusing with
4 the term reproducible being used in a manner that
5 directly contradicts the proper definition on the
6 very same page of the Federal Register notice. It
7 is clear that this proposal lacks input from the
8 actual scientific community.

9 Given the origins of this proposal was
10 some members of Congress, EPA should convince the
11 public that this proposal is not nearly a
12 politically motivated subterfuge aimed at
13 excluding scientific evidence that would support
14 health protective standards. Thank you.

15 JASON JACOBSON: Thank you, Chris Frey.
16 Next up we have Jennifer McPartland, followed by
17 Representative Paul Tonko and John Bachmann after
18 that.

19 Jennifer McPartland, you may go ahead.

20 JENNIFER MCPARTLAND: Great. Thank you.
21 I am just starting my video here. All right.

22 Good morning. My name is Jennifer

1 McPartland. And I am a senior scientist in the
2 health program at Environmental Defense Fund.

3 EPA's supplemental censored science
4 proposal continues to dismiss the agency's core
5 mission, protection of human health and the
6 environment.

7 Under the guise of transparency, the
8 proposal would severely constrain the agency's use
9 of best available science in violation of many of
10 its statutes. If finalized, the rule will erode
11 critical public health protections. And with
12 them, the scientific integrity and public trust of
13 the agency.

14 The fundamental premise of the proposal
15 remains unchanged, to restrict EPA's use of
16 critical scientific studies unless the data
17 underlying those studies are publicly available.
18 The data underlying many scientific studies are
19 not publicly available and cannot be made publicly
20 available.

21 For example, research involving human
22 subjects often rely on medical or other personal

1 information, information that researchers cannot
2 make public for legal, ethical, and practical
3 reasons. Additionally, advances in data science
4 have made it increasingly more challenging to
5 effectively de identify study subjects to protect
6 their privacy. These are among the key studies we
7 rely on to ensure our water is safe to drink, our
8 air safe to breathe, and our land is safe for our
9 children to play.

10 The supplemental proposal puts forward
11 two new significant expansions. First, the
12 proposal would now apply to all data and models,
13 not just dose response data and models. And
14 second, the proposal would apply to influential
15 scientific information in addition to significant
16 regulations.

17 With these sweeping expansions, EPA's
18 unwarranted, burdensome proposal would apply to
19 all scientific information the agency considers
20 across its most important scientific outputs.

21 The supplemental proposal introduces
22 troubling so-called alternative options for how

1 the agency would treat studies without publicly
2 available underlying data. These options
3 providing tiered access to underlying study data
4 or assigning lesser weight to studies without
5 publicly available underlying data still threaten
6 the agency's use of best available science.

7 Moreover, EPA fails to provide even a
8 modicum of analysis of how these options would
9 actually be implemented, their associated costs,
10 which would be significant, and their impacts on
11 the scientific community, agency activities, and
12 public health decision making.

13 The supplemental proposal continues to
14 completely disregard established effective
15 mechanisms used to vet scientific research,
16 including peer review and consensus and findings
17 across multiple studies. The EPA provides no
18 explanation or justification showing that this
19 proposal would improve upon these established
20 mechanisms.

21 The supplemental proposal also continues
22 to raise several troubling concepts that are

1 contrary to scientific best practices and chemical
2 assessment, as discussed extensively in the
3 Seminole National Academy's report, Science and
4 Decisions.

5 Specifically, the proposed rule ignores
6 the report's conclusions that thresholds are the
7 effects -- or chemical exposures are the exception
8 rather than the rule given biological and exposure
9 variability across a population. The proposal
10 also gives more value to studies that employ a
11 variety of dose response models and can be
12 misleading. Multiple bad analyses does not make a
13 study more credible.

14 Americans need and expect EPA to use the
15 best available science. Right now, key
16 organizations and institutes across the country
17 are grappling with how best to respond to the
18 COVID-19 crisis, including the EPA. Several
19 groups, including Congress, have raised serious
20 concerns around how the censored science proposal
21 might impair EPA's use of critical studies to help
22 address the current situation and its future use

1 of studies to improve preparedness.

2 EDF supports meaningful transparency in
3 science and the ongoing efforts in the scientific
4 community to provide that transparency. But this
5 proposal is not about transparency, it is about
6 political interests, roll back public health and
7 environmental protections.

8 Finally, I would like to express dismay
9 at EPA's decision to proceed with this proposal in
10 the midst of an unprecedented health crisis that
11 prevents key public health experts from engaging
12 in this process. EDF strongly recommends that EPA
13 withdraw the proposed rule. Thank you.

14 JASON JACOBSON: Thank you, Jennifer
15 McPartland. Next up we have Representative Paul
16 Tonko, followed by John Bachmann and Molly Rauch
17 after that.

18 PAUL TONKO: Okay. Thank you, Jason.
19 Can you hear me?

20 JASON JACOBSON: We can you hear you.

21 PAUL TONKO: And can you see me?

22 JASON JACOBSON: I am starting your video

1 right now. You should be able to start your
2 video.

3 PAUL TONKO: Okay. Are we -- do you see
4 me?

5 JASON JACOBSON: Yes. Go ahead.

6 PAUL TONKO: Thank you. Thank you,
7 Jason. And thank you to UCS for the opportunity
8 to bring us all together. And it is an honor to
9 join with so many of the environmental groups and
10 environmental advocates that are so concerned
11 about this issue. It's an honor to join with you.

12 So, I am Paul Tonko. I represent New
13 York's 20th Congressional District. As Energy and
14 Commerce on Environment and Climate Change
15 Subcommittee Chair, I want to express great
16 concerns about the Environmental Protection
17 Agency's proposed rule supplemental published on
18 March 3rd, 2020 entitled strengthening
19 transparency in regulatory science.

20 Nearly two years ago I testified at EPA's
21 public hearing strongly urging EPA to withdraw the
22 earlier iteration of this selective science rule.

1 That rule would have allowed EPA to selectively
2 exclude studies with conclusions they found
3 unfavorable. I was joined by over one hundred
4 members of Congress, a thousand scientists, and
5 the leading scientific advocacy organizations in
6 America in condemning this outrageous act.
7 Clearly, EPA did not heed our call.

8 The path they chose given this blowback
9 was to release a supplemental rule that
10 effectively does the same thing. This
11 supplemental allows EPA to prioritize studies, and
12 not just for rulemaking, for all EPA activities.
13 Let me repeat that, for all EPA activities.

14 They must have known this would be
15 problematic because they are trying to get this
16 rule adopted in the dark of night. EPA is rushing
17 the rule with a shortened comment period, no
18 public hearing, and during a pandemic. This is
19 shameful behavior and I am glad UCS is giving us
20 the opportunity to act.

21 EPA's new proposal, like the one before
22 it, would severely limit the types of research

1 that EPA could take into account when developing
2 policies. It has been cloaked in arguments about
3 transparency. But let's all admit here that this
4 argument is bunk. This has nothing to do with
5 transparency. They even admit in this rule text
6 that EPA is looking for industry stakeholders to
7 be able to reanalyze studies. Why would an
8 industry stakeholder ever reanalyze a study unless
9 it wanted its conclusions reversed?

10 This is a thinly veiled campaign, a
11 thinly veiled campaign to limit serious and highly
12 credible scientific research that supports
13 critical regulatory action. Why would a science-
14 driven public agency undertake such a radical
15 departure from existing and widely accepted
16 scientific standards?

17 EPA presents no evidence at all that peer
18 reviewed, a system that has literally built
19 American scientific might, is failing. In fact,
20 only two out of ten thousand papers are retracted
21 in the United States. The system is strong, the
22 system is fair, and the system leads to positive

1 scientific and public health outcomes. Today's
2 proposal and its false claims about transparency
3 are consistent with that pattern, a fact that was
4 put on full display when the administration
5 realized its broad approach would hurt regulating
6 industries too since many EPA chemical reviews
7 relied upon confidential business information. To
8 get around this, the rule would give the EPA
9 administrator complete discretion to deprioritize
10 studies, essentially guaranteeing that public
11 interest will always matter more than science.
12 That's why I refer to this policy as selective
13 science.

14 This proposed rule will be used to erode
15 landmark advancements -- achievements in public
16 health and environmental safety. For example, we
17 know the Clean Power Plan would have led to
18 reductions in pollution that were predicted to
19 prevent some three -- thirty-six hundred premature
20 deaths, ninety thousand asthma attacks in
21 children, and three hundred thousand missed school
22 and work days each year. Many of these health

1 benefits were partially determined by landmark
2 clean air studies like the Harvard Six City study.
3 This is equivalent to telling CDC they can't use
4 health data when fighting Corona virus. It is
5 both insane and dangerous.

6 So, eighty-six of my house colleagues
7 stand with me on this, as do countless everyday
8 Americans. They are all aware of the reality
9 here, that this is not about transparency. This
10 is not about protecting human health or protecting
11 our environment. This emperor simply has no
12 clothes. I must again ask EPA to put science and
13 public interest ahead of political and special
14 interests and withdraw this rule based on its
15 negative impacts on science, and its negative
16 impacts on our public health.

17 With that, I thank you for the
18 opportunity. And thank you again for bringing us
19 together.

20 JASON JACOBSON: Thank you,
21 Representative Tonko. Next up, we have John
22 Bachmann, followed by Molly Rauch and Vijay Limaye

1 after that.

2 John, go ahead.

3 JOHN BACHMANN: Okay. I'm starting the
4 video. Am I there?

5 JASON JACOBSON: Yes. We can hear and
6 see you.

7 JOHN BACHMAN: Okay. Look, we are just
8 eight days before the fiftieth anniversary of the
9 first Earth Day and I have some questions. First,
10 why is EPA in such a hurry to finish a rule -- no,
11 I'm sorry. Why is EPA proposing to regulate
12 science and rolling back regulations on pollution?
13 Why is EPA in such a hurry to finish a rule for
14 which there is not only no legislative mandate,
15 but if actually adopted and implemented would
16 cause the agency to violate many of its statutory
17 mandates? Why do EPA's political leaders pretend
18 that they actually care about science, and
19 external science advice, or transparency in
20 developing policy when again and again their own
21 actions show otherwise?

22 A fair review of the supplemental

1 proposal must conclude that it would expand
2 greatly the problems, cost, and wasted effort
3 inherent in the original while continuing to
4 weaken regulations and assessments by walling off
5 access to many important scientific studies. Most
6 importantly, EPA has still not demonstrated either
7 the need for nor the benefits of regulating
8 science, much less the cost.

9 A statement in the draft SAB report still
10 stands. In general, the SAB finds that the EPA
11 has not fully identified the problem to be
12 addressed by the proposed rule.

13 Absolutely. The agency has not
14 demonstrated the need for this proposed
15 regulation. In the past, EPA has shown the
16 flexibility to handle significant data issues,
17 including reanalysis when they were risen. I
18 played a role in promoting some of these in the
19 fine particle stance. EPA can continue to use its
20 existing procedures as it moves toward improving
21 the transparency which we all would like, along
22 with other federal agencies. The agency can

1 better address evolving scientific information
2 related to dose response issues by issuing
3 guidance without trying to crack the fixed
4 regulation that would make the need for reanalysis
5 more important than any other criterion for
6 evaluating the scientific literature used for
7 regulatory decision making.

8 The supplemental proposal offers several
9 unattractive choices in the guise of trying to
10 recognize the overwhelming objection from the
11 scientific community on the original rule,
12 publicly available tiered access versus restricted
13 access, including studies completed before the
14 rule or not.

15 The second most favored option is try to
16 give an appearance of being reasonable. To quote
17 one CASAC chair, bologna. Because EPA has done no
18 assessment of cost and benefits of the proposal
19 and options. I looked at a single set of
20 important studies that play a major role in the
21 current review of the science and policy for fine
22 particulate air pollution standards. My purpose

1 was to determine what studies might essentially be
2 excluded under the core rule options in 30.5.

3 Like the famous Six City and ACS
4 programs, these are cohort epidemiology studies of
5 fine particles and mortality. What Chris Frey
6 calls soot. It's generally not possible to
7 provide unfettered access to the personal
8 information needed for reanalysis. EPA's
9 assessment lists over forty such studies. Under
10 the first option, I found that at least thirty of
11 these would be excluded from consideration, just
12 as in the original proposal.

13 Under the alternative, at least twenty-
14 five would be downgraded to lower consideration
15 solely on the basis of data availability. More
16 consideration or weight are not that different
17 from exclusion.

18 Finally, EPA's leaders' true disregard
19 for science is obvious in their actions, like
20 shortening SAB and CASAC terms, dumping scientists
21 who have EPA funding but not industry consultants,
22 cutting EPA's research budget, unilaterally

1 dissolving the expert panels long used in air
2 standards reviews. Failing to consult with SAB
3 before the 2018 transparency proposal and waiting
4 nearly a year to respond to SAB's request to
5 review the rule with a polite no. SAB went ahead
6 and did it.

7 Bottom line, this rule with fail. It
8 will lose in Court. Dump it, EPA. Thank you.

9 JASON JACOBSON: Thank you, John
10 Bachmann. Next up we have Molly Rauch, followed
11 by Vijay Lamaye and Deborah Wallace after that.

12 Just one second, Molly.

13 MOLLY RAUCH: Good morning.

14 JASON JACOBSON: Okay. Molly, go ahead.

15 MOLLY RAUCH: Good morning. Can you hear
16 me?

17 JASON JACOBSON: We can hear and see you.

18 MOLLY RAUCH: Good morning. I am Molly
19 Rauch, public health policy director for Moms
20 Clean Air Force. Thank you so much to the Union
21 of Concerned Scientists for hosting this hearing
22 today.

1 I am here on behalf of more than one
2 million Moms Clean Air Force members to oppose
3 this proposal and the supplemental which would
4 prevent relevant peer-reviewed public health
5 research from being considered when the agency is
6 setting life-saving pollutions standards. Moms
7 have been speaking out by the thousands against
8 this proposal since it was first introduced and
9 the supplemental has resolved none of our initial
10 concerns.

11 The censored science proposal at issue
12 today would force the EPA staff to ignore studies
13 that use private datasets. This when much of the
14 research on the health effects of pollution relies
15 on data that needs to be kept private. Things
16 like birth dates, home addresses, and medical
17 diagnosis. It's precisely this kind of private
18 data that has informed some of the most important
19 large scale and groundbreaking research on the
20 health impacts of pollution. In fact, it's the
21 same type of data that underlies the research that
22 told us that second-hand smoke was unsafe. And as

1 parents, we rely on this type of research to
2 protect our children from pollutants and other
3 health harms.

4 The censored science proposal is the
5 cornerstone in a large-scale attack on health
6 science at EPA. And specifically, the scientific
7 process of Clean Air Act rulemaking. We have seen
8 this so far most clearly with the science advisory
9 process for the National Ambient Air Quality
10 Standards. Some of the changes we have seen, as
11 discussed by Dr. Bachmann, include disbanding --
12 disbanding advisory panels, lessen scientific
13 review without adequate expertise, barring EPA
14 funded scientists from serving on advisory panels,
15 while creating no equivalent limits on the
16 appointment of industry funded scientists, and so
17 on.

18 If this EPA truly wanted to take more
19 care with analysis and with considering science,
20 we would not be seeing this kind of wholesale
21 disregard for science in every other aspect of the
22 NAAQS work. Indeed, Administrator Wheeler is

1 likely at any moment this morning to propose an
2 update to the particulate pollution matter that
3 refuses to tighten the standard.

4 And that current standard clearly allows
5 for thousands of premature deaths and other health
6 problems, thereby ignoring the best available
7 science.

8 So, this rule attempts to solve a problem
9 that does not exist. The EPA already has the
10 capacity to evaluate the strength of studies. The
11 process laid out is simply unnecessary. It would
12 be a huge waste of time and a waste of resources.
13 And as UCS experts have pointed out, this would
14 provide the benefit of basically an arithmetic
15 check. But it would also sideline crucial
16 epidemiological research.

17 In the proposed supplemental the EPA
18 administrator has the sole authority to exempt
19 studies from this blanket censorship process.
20 Putting this option in the administrator's hands
21 means that this is not a scientific process, this
22 is a political process. So, in the guise of

1 transparency, this rule attempts to shield heavy
2 industry from responsibility for lethal pollution.

3 Right now, the country is facing an
4 unprecedented global health crisis in the Corona
5 virus. People's lives are up-ended all across the
6 country. And we are relying on the scientific
7 expertise of health researchers more than ever.
8 We are seeing first hand in real time how strong
9 science helps us make the best decisions we can
10 for the health of our children, our families, and
11 our communities.

12 If we have learned anything in the last
13 weeks, it's that we must listen to scientists and
14 learn everything we can about threats to our
15 communities to make the best decisions. This is
16 really no time to engage in a stealth operation
17 aimed at censoring the scientific underpinnings of
18 our nation's health regulations.

19 Moms Clean Air Force strongly opposes the
20 censored science proposal and supplemental and we
21 urge EPA to withdraw it. And I want to again say
22 thank you to the Union of Concerned Scientists for

1 the (inaudible) rule. Thank you.

2 JASON JACOBSON: Thank you, Molly. The
3 next speaker will be Vijay Limaye, followed by
4 Deborah Wallace and Beto Lugo-Martinez after that.

5 Vijay, go ahead.

6 VIJAY LIMAYE: Hello. My name is Vijay
7 Limaye. And I want to thank the Union of
8 Concerned Scientists for organizing this virtual
9 public hearing today. I am trained as a PhD
10 environmental epidemiologist. I am also a former
11 EPA scientist focusing on better understanding the
12 harmful health effects of air pollution.

13 At the EPA I worked on air pollution and
14 health science data and policy. I now work as a
15 scientist at the National Resources Defense
16 Council, NRDC. With regards to the supplemental
17 proposed rule, it includes a number of glaring and
18 foundational deficiencies. And there is a
19 significant absence of any attempt by EPA to
20 assess the major risks associated with actually
21 implementing this proposal.

22 I am concerned by EPA's lack of

1 justification for this sweeping reach of the
2 supplemental proposal, which is all-encompassing
3 compared to even the original proposed rule. EPA
4 now says that its science censorship rule would
5 apply to any data and models used by the agency to
6 craft its regulations. The change is significant.
7 And it is an expansion of the net cast in the
8 original proposal, which was limited to dose
9 response data and models. And this change could
10 weaken a wider range of current pollution controls
11 all across this country. But that major change in
12 scope was never justified in the proposal.

13 Moreover, this proposal is poorly
14 conceived at a fundamental level. And as you have
15 heard this morning, attempts to address a problem
16 that simply does not exist. EPA has not in the
17 original proposed rule or in this supplemental
18 proposal adequately identified any particular
19 problem to be addressed by this unprecedented
20 agency action.

21 The concern was identified earlier by
22 EPA's own scientific advisory board. This was

1 months ago in regards to the original proposal.
2 But the agency did not address that concern in the
3 supplemental proposal. EPA has not meaningfully
4 engaged with the scientific advisory board in
5 assembling its supplemental proposal. And in the
6 supplemental proposal, EPA has not responded in
7 any meaningful way to the major questions and
8 concerns identified by the SAB about this rushed
9 effort.

10 EPA has historically relied upon
11 thousands of high-quality public health studies
12 for decades in order to understand how
13 environmental contaminants like air pollution
14 affect human health. This approach based on the
15 careful parsing of the best available scientific
16 evidence, data that has been thoroughly reanalyzed
17 and validated, has delivered profound health and
18 economic benefits to the American public over the
19 past fifty years to the tune of two trillion
20 dollars by the agency's own estimate.

21 The monumental achievements of the Clean
22 Air Act propel and strengthen by expert

1 application of epidemiology, toxicology, and
2 interdisciplinary environmental health science
3 should speak for themselves. Any attempt at this
4 point to unsettle the agency's proven process and
5 cast doubt on the integrity of overwhelming and
6 thoroughly validated health evidence is simply not
7 justified.

8 The supplemental proposal lacks any
9 reasonable legal or scientific rationale. The
10 recently finalized Integrated Science Assessment
11 for Fine Particulate Matter, Soot Air Pollution
12 demonstrates that the existing scientific review
13 processes are fully functioning to capture and
14 characterize the best available science as
15 mandated by law.

16 In working to survey the available
17 literature and identifying health effects caused
18 by exposure to harmful air pollution, I know that
19 the EPA staffers carefully review and follow the
20 federal privacy protections, data integrity laws,
21 and the agency's already high bar for
22 consideration of scientific evidence. Thoughtful

1 attention is already paid to critically assessing
2 the quality of each study's methods and results,
3 including the quality of underlying data from
4 which conclusions are made about causal effects.

5 And no decision at EPA is made on a basis
6 of a single study alone. Rather, scientists work
7 for years to painstakingly assemble and assess the
8 evidence. This approach is working. But the
9 supplemental proposal would up-end it by enabling
10 political meddling in the agency's work.

11 EPA now proposes to prioritize its
12 consideration of certain scientific studies over
13 others without any clear criteria or transparent
14 publicly accountable process. That's a recipe for
15 bias and chaos in future EPA rulemaking because
16 there is no clear explanation for how such
17 important decisions will be made or implemented.

18 The supplemental rule proposes to give
19 EPA the expansive new authority and the
20 administrator to ignore the rules own
21 unprecedented restrictions and make exceptions to
22 allow for handpicked studies to be considered in

1 the agency's work. Moreover, administrator would
2 not need to provide any robust explanation for
3 such a drastic intervention.

4 In summary, the agency has not adequately
5 shown the need for this proposed regulation. To
6 the contrary, this defective supplemental proposal
7 would ignite cascading waves of unnecessary,
8 unworkable, and hugely expensive implementation
9 issues. It would also directly enable selective
10 interference in the science --

11 JASON JACOBSON: And that is time. Thank
12 you, Vijay. Next, we have Deborah Wallace,
13 followed by Beto Lugo-Martinez. And Patrice
14 McDermott after that.

15 DEBORAH WALLACE: Well, I have no video.
16 So, it is just going to be audio.

17 JASON JACOBSON: That is just fine. Go
18 right ahead then.

19 DEBORAH WALLACE: Okay. My name is
20 Deborah Wallace. I got my PhD in ecology in 1971.
21 And have served in industry, government, academia,
22 and the non-private sector. I have authored and

1 co-authored many peer-reviewed publications.

2 As a member of the environment section of
3 the American Public Health Association, I am
4 circulating a letter to Andrew Wheeler asking for
5 rescinding of this rule. It has about a hundred
6 signatures to date of environmental and public
7 health scientists, doctors and nurses. The letter
8 points out flaws in the rule that are not yet
9 widely discussed. For example, one of the
10 important tools in environmental health analysis
11 is the meta-analysis. By excluding so many
12 studies because of this raw data rule, there may
13 not be enough admitted studies to support meta-
14 analysis.

15 Secondly, the rule would create a massive
16 database on a website inviting hacking by parties
17 with commercial interests in lackness of standards
18 and by hackers who are either pranksters or use
19 ransomware. Hackers could falsify data and
20 analyses, erase data and analyses, and reidentify
21 individuals. Hacking has become one of the most
22 expensive and disruptive crimes. Hacking by

1 corporations is so common that the Cyber
2 Infrastructure Agency of Homeland Security gives
3 it a class by itself.

4 Another point, the rule opens policy and
5 standard setting processes to quote reanalysis,
6 alternative models, and independent validation.
7 including by well-funded consultants and direct
8 employees of the regulated industries, thus the
9 rule shows no recognition of the influence of
10 conflicts of interests on scientific results and
11 provides no assurance of testing and correcting
12 for conflict of interests. Indeed, it invites
13 distortion of science by conflicts of interest.
14 There is a large literature on conflicts of
15 interest that documents the bias they introduce
16 into results and conclusions.

17 Another point, the rule fails to
18 recognize the social science of informed consent,
19 and a broad informed consent, which indicates that
20 fewer volunteers would participate in
21 environmental health research if they knew that
22 their data would be posted and would be available

1 to for-profit industries. Privacy is very
2 important to volunteers.

3 The new 2017 common rule with which EPA
4 must comply requires use of the broad informed
5 consent form for studies that would post data.
6 Certain classes of potential volunteers,
7 especially members of minority groups and people
8 concerned about privacy, would shy away from
9 giving broad consent. Thus, the rule would
10 severely impair development of science. And there
11 are papers out there in the literature about this.

12 This rule usurps the debate function of
13 the larger scientific community in deciding what
14 is influential and highly influential scientific
15 information, what science is appropriate to
16 support this scientific information and regulatory
17 standards, and the methods for making these
18 decisions.

19 The rule ignores the evolution of this
20 debate and the knowledge of this important
21 function of the scientific community that we gain
22 from the disciplines of philosophy of science,

1 history of science, and sociology of science.
2 There are at least half a dozen journals in
3 sociology that explore the sociology of science
4 and how we come to know what we know through the
5 interactions within the scientific community.

6 Thus, the proposed supplement would lead
7 to failure of EPA to fulfil its functions of
8 protecting the environment and environmental
9 public health through subversion of environmental
10 science and environmental health science by undue
11 influence of regulated industries, and to
12 strangulation of science both at the level of
13 consideration of the studies used for policy and
14 regulation, and at the level of producing science
15 based on volunteers.

16 Thank you very much for allowing me to
17 introduce these ideas.

18 JASON JACOBSON: Thank you, Deborah.
19 Next, we have Beto Lugo-Martinez, followed by Cam
20 Wejert-Depue. And after that is Patrice
21 McDermott.

22 BETO LUGO-MARTINEZ: Hi. Good morning.

1 This is Beto Lugo-Martinez. I am based out of
2 Kansas City. And I have a short comment letter
3 that I put together. And I want to thank UCS for
4 putting -- actually putting this virtual meeting
5 together in spite of not having open public
6 comment, you know, availability with the EPA or
7 their agency.

8 So, a little bit of background of my
9 organization or it's -- my organization is called
10 CleanAirNow. It's an environmental justice
11 organization in Kansas City. We work on the front
12 lines of environmental racism in communities fence
13 line to industries, which have recently been given
14 a green light to increase pollution during this --
15 during the current pandemic.

16 Our communities here are already
17 struggling. Not just our community, but large
18 communities around the country already struggled
19 to survive. The COVID pandemic is making the
20 usual challenges even more difficult to overcome.
21 Decisions made about health and environment should
22 be based on the best available science period.

1 The deceptively titled, *Strengthening*
2 *Transparency in Regulatory Science* proposal does
3 just little -- does just the opposite by keeping
4 highly respected peer-reviewed scientific studies
5 from informing government decisions on public
6 health and environmental protection.

7 As its misleading name suggest, this
8 rule's intent and effect is to exclude from
9 consideration scientific studies that examine the
10 health impacts of environmental contamination and
11 toxic chemicals that meet all scientific validity
12 and rigor simply because they rely upon non-public
13 data such as confidential medical information.
14 These studies are possible because the researchers
15 promise to protect communities, protect
16 confidentiality of patients or subject matter
17 participants.

18 Environmental justice frontline
19 communities although always overlooked by
20 Environmental Enforcement agencies have finally
21 found a way to use scientific facts to redirect
22 decisions that affect public and environmental

1 health. And one of these examples is through
2 community based participatory research, the CBPR.

3 Communities have found a way to engage in
4 a conversation with industry and environmental
5 regulators and the people who make the laws. We
6 are using data, quantifiable data and other
7 evidence-based information to engage in the
8 conversation to really protect the communities'
9 best interest. Now that communities have a way to
10 engage in the conversation, beyond simply
11 providing personal stories, now the government is
12 trying to take this away from us.

13 It is hypocrisy. Before we were called
14 vigilantes and emotional and too soft. Now that
15 we are providing factual, hard science the
16 government wants to exclude science and pick and
17 choose when a rule does or doesn't apply. That is
18 the opposite of a transparent process, excluding
19 specific studies that make it harder to use
20 science to put new safeguards in place.

21 When science-based facts are not taken
22 into account into any permitting or land use

1 decisions or enforcement actions, our community
2 members suffer the most.

3 This proposal echoes tactics the fossil
4 fuel, Big Ag, and chemical industries to evaluate
5 science. It exemplifies this administration's
6 abandonment of public protections entirely and has
7 made access to the commons a free for all for the
8 highest bidders. Showing the public once again it
9 prioritizes profits over people.

10 I am outraged that we are even having
11 this conversation in the middle of a pandemic.
12 The situation around COVID is a perfect example,
13 while the White House may at times attempt to
14 redirect our actions to appease economic
15 interests, ultimately governors and community
16 leaders are looking to our healthcare
17 professionals, our researchers and scientists who
18 guide the decisions towards an outcome that is
19 most suited to protect the general public. More
20 than ever we should be listening to what science
21 is telling us about our health. We should not be
22 restricting the use of science in decision making.

1 Excluding science-based facts will
2 adversely and disproportionately affect public
3 health and impact communities of color, we should
4 be prioritizing our ability to protect our air,
5 water, climate and health. It is a critical time
6 to embrace science-based protections for community
7 health and keeping communities safe from chemical
8 toxicants. Thank you. Thank you for the
9 opportunity to speak today.

10 JASON JACOBSON: Thank you, Beto. Next,
11 we have Cam Wejert-Depue, followed by Patrice
12 McDermott and Michael Buza after that.

13 Cam, go ahead when you are ready.

14 CAM WEJERT-DEPUE: Great. Can you hear
15 me?

16 JASON JACOBSON: We can.

17 CAM WEJERT-DEPUE: Great. Good morning
18 everyone. Thank you for giving me the time to
19 speak today on such an important issue. My name
20 is Cam Wejert-Depue. I work for the American Lung
21 Association's Healthy Air Campaign. Known as the
22 nation's oldest voluntary health agency, the

1 American Lung Association's primary mission is to
2 save lives, particularly by improving lung health
3 and preventing lung disease.

4 The American Lung Association strongly
5 opposes the EPA's so-called strengthening
6 transparency and regulatory science proposal.
7 Under this proposal many key studies that show the
8 impact of air pollution on health will be
9 downplayed or excluded. This proposal would not
10 strengthen or clarify transparency within science
11 or improve regulatory science. As I will discuss,
12 this proposal would lead to the exclusion of
13 critical studies within the rulemaking process and
14 the agency more broadly. This includes studies
15 that show that particulate matter air pollution
16 causes premature death and elevated risks of
17 respiratory illnesses. In fact, I would like to
18 highlight two particularly important studies that
19 this proposal would deem as not transparent and
20 therefore could exclude from the EPA's rulemaking
21 process.

22 First, in 1993 researchers at Harvard

1 University published a landmark air pollution
2 study showing that particulate matter air
3 pollution was linked to premature death. The
4 Harvard Six Cities Study tracked the health of
5 eight thousand, one hundred and eleven adults and
6 fourteen thousand children in six small cities in
7 the United States beginning in the 1970's. The
8 results found that people in the cities with
9 cleaner air were living two to three years longer
10 than those living in cities with dirtier air. The
11 findings added that residents in the city with the
12 dirtiest air, in Steubenville, Ohio, were twenty-
13 six percent more likely to die prematurely than
14 were citizens of the cleanest city in Portage,
15 Wisconsin. Another finding that stood out to
16 researchers from the study was that the culprit
17 was particulate matter and not sulfur dioxide as
18 they had thought. Industry and their allies in
19 Congress challenged the findings of this study and
20 other similarly important studies.

21 Instead of blocking the studies as this
22 proposal would do, EPA took a logical step and

1 referred the study to an independent third party
2 to The Health Effects Institute for a deep dive
3 review. There, autonomous reviewers examined the
4 data and developed a report that confirmed their
5 original findings.

6 In addition to the Harvard Six City
7 Study, the American Cancer Society's Cancer
8 Prevention Study two, which began in 1982, was a
9 landmark piece of research that revealed some of
10 the many risks to human health through breathing
11 air pollution. Private health and medical data
12 was used from hundreds of thousands of
13 participants and shed light on the need to clean
14 up emissions from power plants, diesel engines,
15 and many other pollution sources in order to
16 protect our public health.

17 These two studies with decades old
18 patient data and others in the long list of
19 studies that found evidence of harm from
20 industrial emissions appear to be targets of this
21 proposed rule.

22 Once published, these studies raised

1 alarms in the public health community about the
2 increased likelihood of respiratory illnesses and
3 premature deaths due to air pollutants like
4 particulate matter, as well as the
5 disproportionate effect of poor air quality on the
6 most vulnerable communities. In response,
7 industry used this same messaging developed by the
8 tobacco industry to challenge the transparency of
9 public health science. The same arguments used in
10 this proposal.

11 Moreover, EPA's rushed process around
12 this proposal, while missing adequate reviews, all
13 highlight a key problem with this rule. It will
14 not improve the use of science at EPA.
15 Restricting the use of studies like the Harvard
16 Six City Studies and the American Cancer Society
17 would falsely downplay the impact of air pollution
18 on health. It is essential to use the best public
19 health science when it comes to making decisions
20 about our public health.

21 On behalf of the millions of Americans
22 who struggle with poor air quality and personally

1 suffer from the impacts, I urge the EPA to
2 withdraw this proposal. Thank you.

3 JASON JACOBSON: Thank you, Cam. Next,
4 we have Patrice McDermott, followed by Michael
5 Buza. And after that is Dr. Bernie Goldstein.

6 Patrice, one moment. Patrice, go ahead.

7 PATRICE MCDERMOTT: Thank you. My name
8 is Patrice McDermott. And I am director of
9 Government Information Watch. And I have worked
10 in the area of transparency and accountability for
11 approximately forty years. My remarks today are
12 intended to address those issues.

13 What the EPA is proposing is not
14 transparency, nor is it transparent science. It
15 has long been an underlying principle of advocates
16 for government transparency and accountability.

17 The trust in government is dependent on
18 both the openness of government policies, rules,
19 or practices, and certainty that privacy-protected
20 information, PPI, will be held confidential when
21 it is given to government agencies.

22 We have become increasingly aware

1 moreover of the near impossibility of anonymizing
2 personally identifiable information even with
3 tiered access to independent validation when such
4 validation includes the information necessary --
5 quote, necessary to understand, assess, and
6 reanalyze findings by entities outside of the
7 agency.

8 In the proposed rule, EPA reserves the
9 right to itself to place less weight on the
10 studies to the point of entirely disregarding them
11 if the data and models underline pivotal
12 regulatory science are not made available in full
13 to EPA. Are not, quote, unquote, transparent by
14 which EPA means that the underlying raw data is
15 made publicly available in a manner sufficient for
16 independent evaluation. Such raw data includes
17 medical records and other PPI that are required to
18 be held confidential.

19 At the same time, EPA would be required
20 to, quote, give explicit consideration to a long
21 list of models that could be prepared by outside
22 stakeholders. The rule also proposes an

1 exclusionary test that eliminates individual
2 studies based solely on whether the data is
3 transparent. There is, however, no clear mandate
4 that the models prepared by outside stakeholders
5 be held to this standard. Worse, both the meaning
6 of the exclusionary test itself and the decision
7 to exempt a particular study from the requirement
8 of public availability are explicitly left
9 entirely to the discretion of the administrator to
10 apply on a case by case basis. This is not
11 transparency.

12 The following principles and
13 recommendations are drawn from Rena Steinzor and
14 Wendy E. Wagner with permission. Transparent
15 science should make publicly available a conflict
16 of interest disclosure statement if the study was
17 privately sponsored, as well as the underlying
18 contract governing that research in order to
19 ensure that researcher's independence to determine
20 study design and report's results was preserved.
21 A clear statement of the methods for data
22 collection and analysis used in the study to allow

1 for scrutiny, and even replication of the study.
2 And all of the underlying data, presumably in
3 digital form, that is not original specimens, et
4 cetera. A proposal for a proposal for --
5 transparent science, should one apply the same
6 standards to all scientific research and analyses
7 used by the agency. Particularly research that is
8 not published and that has escaped rigorous peer
9 review.

10 Require that a list of all excluded
11 research be shared with the public as decisions
12 are made. Such disclosure could be accomplished
13 by listing excluded or presumptively excluded
14 information on a dedicated website in the course
15 of a rulemaking agency decision. And three, be
16 applied to all technical analyses prepared by the
17 agency.

18 As this proposed rule neither conforms
19 with the principles above, nor meets the
20 requirements for a proposal for real transparent
21 science, I urge that it be withdrawn in its
22 entirety. Thank you.

1 JASON JACOBSON: Thank you, Patrice.

2 Next up we have Michael Buza, followed by Dr.
3 Bernie Goldstein, and Tricia Dellolacono after
4 that.

5 MICHAEL BUZA: Hello.

6 JASON JACOBSON: Mike, go ahead.

7 MICHAEL BUZA: Yes. Can you hear me?

8 JASON JACOBSON: We can hear you.

9 MICHAEL BUZA: Okay. My name is Mike
10 Buza. I am currently the chair of the Nepessing
11 Group of the Sierra Club. I have also worked
12 forty years in the past -- I am retired now, but
13 worked forty years in the past in healthcare
14 service in a variety of roles, including fourteen
15 years as an administrator. My comments are as
16 follows:

17 The EPA proposed rule to supplemental
18 strengthening transparency in regulatory science
19 appears to ignore the real-life world of doing
20 research. The new rules would require scientists
21 to disclose all raw data, including confidential
22 medical records, before the agency could consider

1 an academic study's conclusions. These new
2 proposed rules appear to ignore the HIPAA rules
3 and state confidentiality laws that clinicians and
4 medical researchers must live on. Any violation
5 of the HIPAA or state confidentiality laws can
6 result in stiff fines and loss of professional
7 licenses.

8 In essence, the researchers could ruin
9 their career to release their findings. All
10 persons who have access to medical records are
11 required to have annual training on HIPAA rules
12 and state regulations on confidentiality so there
13 is no room for denial of the laws and regulations.

14 The EPA has proposed supplemental
15 rules -- a supplemental rule to strengthening
16 transparency and regulatory science would make it
17 virtually impossible to conduct research to ensure
18 the environmental safety of the public, which the
19 EPA is supposed to protect. To follow EPA rules
20 and state confidentiality laws would require
21 obtaining release of information from all subjects
22 in the study. If a number of persons refuse to

1 sign the release, this could put into question the
2 reliability of the data. Also most likely limit
3 the number of subjects in the study. Again,
4 putting into question the reliability of data.

5 It appears that the current EPA rules is
6 to make it impossible to conduct research to
7 protect the citizens of the United States.

8 I would like to conclude by thanking the
9 UCS for providing me this opportunity to speak.
10 Thank you very much.

11 JASON JACOBSON: Thank you, Michael.
12 Next, we have Dr. Bernie Goldstein, followed by
13 Tricia Dellolacono, and Ben Levitan after that.

14 Dr. Goldstein, go ahead.

15 BERNIE GOLDSTEIN: First, my deepest
16 thanks for the Union of Concerned Scientists for
17 their hard work in putting on this hearing. I
18 will focus my remarks on fine particulates and
19 biomedical causability.

20 I have an influential scientific model
21 which I wish were wrong. It predicts that I am
22 the oldest person at this hearing with fifty-four

1 years of experience and the longest tenure in
2 performing what I personally believe to be highly
3 pivotal and scientifically influential
4 environmental post studies, all two hundred of
5 them.

6 Science is a web. Just untangling one
7 part of the web from another by artificial
8 definitions is impossible. For fine particulates,
9 it was Sidney Laskin in the 1940s who first showed
10 that they penetrated deeply into the lung and were
11 more toxic than coarse particles. But a fine
12 particle standard could not be set under the 1970
13 Clean Air Act until much, much later. Many
14 confirmatory approaches and laboratory animals
15 were needed and not all initially supporting the
16 Laskin (phonetic) findings. Also needed was a
17 robust monitor to measure fine particles, which
18 took years and also much controversy. But without
19 these studies, we could have not had either the
20 Harvard Six City Study nor the American Cancer
21 Society Study. These are the poster children for
22 the alleged need for transparency.

1 There are thousands of studies that have
2 since confirmed the Harvard findings. Again, not
3 unanimously. Let me emphasize that none of the
4 studies that I have already referred to fit the
5 supplement's definition of replication or
6 reanalysis, which seems to be its major impact.
7 They think this new term called reproduction --
8 the definition is given in the supplemental,
9 mostly hand waiving -- hand waving or not
10 applicable to environmental epidemiology. One
11 approach we do use in science, while imperfect, is
12 to look at citations as a relevant indicator of
13 influential science.

14 I will speak to biological causability,
15 which is almost uniformly a factor in EPA's
16 description of the scientific analysis underlining
17 regulation. As much of the studies related to
18 biological causability that are cited by EPA, are
19 not dose response models, they would clearly be
20 affected by the new supplement. As defined in the
21 December 2019 particulate ISA, biological
22 causability is part of the weight of evidence

1 analysis that considers the totality of the health
2 effects evidence, including consistency and
3 coherence of effects described in experimental and
4 observational health studies. Each of the six
5 health effects chapters contains a section on
6 biological causability.

7 Basically, there is -- not only do they
8 have additional references, I counted about twenty
9 percent more in the chapter on cardiovascular
10 facts, they also reference in the biological
11 causability sections the previous ISA, which
12 presumably references the previous ISA before
13 that, are all of these scientific and influential
14 since they have all been incorporated into the
15 findings that EPA uses.

16 Again, not always complete agreements. I
17 have mentioned it is not surprising that is not
18 complete agreement given the complexity and
19 inherent challenges. But that is the crucial
20 point, without a clear definition the
21 administrator is free to cherry pick which studies
22 he or she wishes to go on.

1 Finally, these decisions points and new
2 definitions should be added to the many aspects of
3 this overall proposal that should have been
4 reviewed by EPA's congressional mandated
5 scientific advisory board. Thank you.

6 JASON JACOBSON: Thank you, Dr.
7 Goldstein. Next up we have Trisha Dellolacono,
8 followed by Ben Levitan, and Dr. Rick Bein after
9 that.

10 Trisha, go ahead.

11 TRISHA DELLOLACONO: Hello. My name is
12 Trisha Dellolacono. And I am the national field
13 manager for Moms Clean Air Force. We are a
14 community of over one million moms and dads united
15 against air pollution to protect our children's
16 health. I'm also a mom to four young children.
17 My family is currently practicing physical
18 distancing in our home in New Jersey due to our
19 public health crisis.

20 I am grateful to the Union of Concerned
21 Scientists for organizing this public virtual
22 hearing today. I joined this hearing this morning

1 to speak out in opposition to Administrator
2 Wheeler's attempts to censor science in the name
3 of transparency.

4 Right now, we are facing an unprecedented
5 public health crisis. The American families are
6 relying on the scientific expertise of health
7 researchers to protect us now more than ever. We
8 are seeing how strong science helps us make the
9 best decisions we can for the health of our
10 children, our families and our communities.

11 As the Corona virus crisis worsens across
12 the country, the EPA should be making a special
13 effort to listen to the voices of scientists and
14 public health experts to make decisions that will
15 protect our health in the face of this pandemic
16 and not make us sicker.

17 This proposal put forth by the Trump
18 administration constrains and undermines
19 scientific integrity from the sound voice of
20 scientists. This is an attack while the country
21 is grappling with global pandemic.

22 The EPA's censored science proposal would

1 prevent relevant, peer-reviewed public health
2 research from being considered when the agency is
3 setting life-saving pollution standards.

4 Moms Clean Air Force members across the
5 country have been speaking out by the thousands
6 against this proposal since it was first
7 introduced three years ago. The latest revision
8 to the proposal is just as problematic as when it
9 was first introduced. And we remain deeply
10 concerned about the implications protecting
11 children from pollution.

12 Science keeps our families safe. And the
13 Trump EPA wants to cast it aside to benefit
14 industry polluters. American families depend on
15 EPA's consideration of high-quality science to
16 protect us from the impacts of air pollution and
17 toxic chemicals. This proposal would exclude
18 certain types of public health research from
19 consideration, placing the health of our children
20 at risk. Limiting the scientific information, the
21 EPA can use to identify public health threats and
22 protect us from pollution is reckless and

1 dangerous. Not only does this proposal compel EPA
2 to subject high-quality research to extreme,
3 unnecessary, and untenable levels of disclosure,
4 but it also includes loopholes that would allow
5 the administration to exempt the industry from
6 having to disclose details of its own studies.

7 American families depend on the EPA and
8 high-quality science to protect families like mine
9 from the impacts of air pollution and toxic
10 chemicals. This proposal puts the protection in
11 jeopardy, placing the health of our children at
12 risk.

13 This proposal would also significantly
14 limit the research and data that EPA can use to
15 make informed policy decisions under major public
16 health and environmental laws.

17 Moms Clean Air Force members are highly
18 familiar with the impact that pollution has on
19 people and the devastating health impacts of
20 pollution. EPA's job is to protect human health
21 and the environment and not to pretend pollution
22 doesn't harm people. Moms Clean Air Force members

1 are highly familiar with the impact that pollution
2 has on people -- sorry.

3 My own family was exposed to a toxic
4 chemical after a horrifying accident in my
5 community that left us breathing polluted air and
6 poisoned my family. As a mom who has witnessed
7 her children's health deteriorate due to polluted
8 air they were breathing, I know personally what it
9 is like to rely on scientific studies and sound
10 science whose data informed us during that
11 horrifying time. And again, during this Corona
12 virus pandemic my family is relying on sound
13 science to keep us safe.

14 On behalf of my family and the Moms Clean
15 Air Force one million members, I strongly urge EPA
16 to withdraw this dangerous proposal for the health
17 and safety of our children. Thank you.

18 JASON JACOBSON: Thank you, Tricia.
19 Next, we have Ben Levitan, followed by Dr. Rick
20 Bein, and Theodore Brown after that.

21 Ben, please go ahead.

22 BEN LEVITAN: Good morning. My name is

1 Ben Levitan. And I am a senior attorney on the
2 U.S. Clean Air Team at Environmental Defense Fund.
3 On behalf of our more than 2.5 million members and
4 supporters, EDF urges EPA to withdraw its reckless
5 and unlawful proposal to censor the science that
6 protects public health and the environment.

7 This supplemental notice greatly expands
8 the reach of the original proposal, severely
9 limiting EPA's use of the best available science
10 to protect public health. Like the original
11 proposal, the supplemental notice fails to remedy
12 any problem, is not consistent with scientific
13 practice, and inflicts grave harm on our
14 communities, especially the most vulnerable.

15 If implemented, it would bar EPA from
16 considering the best scientific evidence when
17 making decisions about our health and environment,
18 which would undermine bedrock protections that
19 have saved millions of lives.

20 EPA's supplemental proposal fails to
21 address the fatal deficiencies that EDF and others
22 raised in comments on the original proposal while

1 creating additional problems. This supplemental
2 proposal also underscores EPA's lack of legal
3 authority to issue this deeply harmful rule.

4 EPA now asserts for the first time that
5 an obscure federal law known as the Housekeeping
6 Statute authorizes this sweeping attack on health
7 science. This novel legal theory flouts the plain
8 language and history of this statute, both of
9 which make clear that EPA is not an executive
10 department with housekeeping authorities.

11 Even if EPA were an executive department,
12 the censored science rule is clearly substantive
13 and would profoundly affect EPA's implementation
14 of multiple environmental laws. It is therefore
15 beyond the housekeeping powers granted by the
16 statute for any agency.

17 In addition, today's virtual public
18 hearing by no means excused EPA's unlawful failure
19 to hold its own public hearing. Section 307(d) of
20 the Clean Air Act requires EPA to hold a public
21 hearing for the supplemental proposal, as the
22 agency did for the original proposal in 2018. The

1 original proposal easily met the criteria for
2 public hearing requirements. And the supplemental
3 proposal only expands the scope of the action and
4 heightens the necessity for public input.

5 While we greatly appreciate today's
6 opportunity to express some of our many concerns,
7 EPA's refusal to hold a public hearing remains
8 unlawful and undermines the public's ability to
9 weigh in on this harmful and consequential action.

10 Finally, EPA's decision to expand its
11 attack on public health science during a national
12 health crisis is dangerous and unconscionable.
13 Our nation's healthcare and medical professionals
14 are courageously working on the front lines of
15 this crisis saving lives imperiled by COVID-19
16 while risking their own.

17 These experts' input on the supplemental
18 proposal is critical, but they cannot and should
19 not have to divert their attention from our
20 national crisis to meet EPA's arbitrary comment
21 deadline. Neither should citizens be demanded to
22 address this outrageous attack on public health

1 while grieving the illness and deaths of their
2 loved ones, juggling remote work, home schooling,
3 and child care. And confronting financial, mental
4 health, and other personal challenges.

5 It's unacceptable to endanger the public
6 health and welfare with this supplemental proposal
7 at any time, but it is even worse during a period
8 of unprecedented confusion and peril for the
9 nation.

10 For these reasons and others that we will
11 include in written comments, EDF call on
12 Administrator Wheeler to immediately withdraw this
13 proposal. Thank you.

14 JASON JACOBSON: Thank you, Ben. At this
15 time, we are going to take a short break. We have
16 had a couple of speakers that haven't been able to
17 connect and we want to make sure that we ensure
18 consistency with the schedule that has been
19 posted. So, at this time we will take a short
20 pause until 10:45. And we will pick it up then
21 with Dr. Rick Bein. Thank you.

22 (Whereupon, a recess was taken.)

1 JASON JACOBSON: Okay. We are going to
2 resume the virtual public hearing at this time.
3 Next up we have Dr. Rick Bein.

4 Dr. Bein, go ahead when you are ready.

5 RICK BEIN: I don't have the video yet.

6 JASON JACOBSON: We can see you.

7 RICK BEIN: Okay. I am Rick Bein,
8 Professor Emeritus Department of Geography at
9 IUPUI, better known as Indianapolis University
10 Purdue University at Indianapolis. My area of
11 focus is environmental conservation and a number
12 of other disciplines.

13 The action by EPA clearly reflects the
14 self-interest to ignore science. The action --
15 this action reflects the attitude of the Trump
16 administration making the EPA a puppet. The
17 original mission of the EPA has become negated.
18 Whatever science limits big business, science is
19 recorded -- is ignored. Ecological concepts of
20 population dynamics would show that periodic
21 pandemics occur. Many history of these things as
22 civilizations have collapsed. Diseases including

1 bubonic plague, Spanish flu, SARS is some more
2 recent ones, but many, many times in the past.

3 We have much writings where people like
4 Rachel Carson, Thomas Malthus, Jared Diamond
5 talking about the problem of this disease or
6 diseases coming from time to time. This is the
7 kind of thing that is being ignored and is a
8 serious problem and because of the lack of peer
9 review and transparency. That's all I have to
10 say. Thank you.

11 JASON JACOBSON: Thank you, Dr. Bein.
12 Next up we have Theodore Brown.

13 Theodore, you can go ahead when you are
14 ready.

15 THEODORE BROWN: Okay. Is my video up?

16 JASON JACOBSON: It is.

17 THEODORE BROWN: Okay. Thank you for the
18 opportunity to speak today. I spent a long career
19 as a research scientist and as director of the
20 Beckman Institute, a large interdisciplinary
21 research center at the University of Illinois,
22 Urbana-Champaign. And I have also written on

1 science's role as a source of authority and
2 expertise in society. The all-encompassing
3 supplemental notice, Strengthening Transparency in
4 Regulatory Science, is frightening in its obvious
5 motivations and the dangerous directions in which
6 it takes us.

7 The proposed new rules nod toward the
8 idea that fully public data and analyses should
9 override results that are not fully public, for
10 whatever reason and that we can thus be assured of
11 policy outcomes more closely aligned with the
12 public interest. While others have spoken here
13 this morning very eloquently on how the proposed
14 restrictions will cripple effective rule-making,
15 when results of relevance and reliability are cast
16 aside even though they may be the most important
17 or the only feasible source of useful data.

18 The proposal reeks of tipping the scale
19 towards narrow interest. Somewhat like the moves
20 we've seen on both the national and local levels
21 to restrict access to voting by introducing
22 artificial and arbitrary obstacles.

1 It couldn't have come at a worse time.
2 We have a very serious problem in front of us. We
3 can ill afford such tactics in this world
4 challenged by the changes wrought by global
5 warming and now the Corona virus pandemic. Now
6 more than ever, we must listen closely to what
7 science can tell us. Policy and action will mean
8 increasingly based upon or it should be
9 increasingly based upon scientific results coming
10 from powerful and reliable models in a constant
11 state of evolution as the models themselves
12 improve and as the inputs change. The
13 supplemental proposal would place such work in
14 limbo.

15 In other words, it doesn't take advantage
16 -- in fact, it denies the efficacy of advances in
17 computational science and other ways of creating
18 reliable and complex models to help us solve these
19 countless problems.

20 Science is at its best when it serves as
21 an open forum to aid and analysis and policy
22 formation. The new rules would make it much

1 easier to block consideration, and I emphasize the
2 word block, of relevant data and model results.
3 We can no longer fail to act while the damage is
4 being done. And then only then make policy for
5 mitigating it.

6 As the agency charged with protecting an
7 increasingly besieged environment, the EPA must be
8 free to draw upon the best that science can offer
9 society. Many who've spoken today have made clear
10 that the notion of transparency that drives this
11 proposed change is deeply flawed. It takes us
12 away from practices worthy of a free democracy, of
13 considering all the evidence in forming rules and
14 policies. Now our challenge is how to block the
15 adoption of such a perversely wrong move. Thank
16 you.

17 JASON JACOBSON: Thank you, Theodore. I
18 will now turn it over to Michael Halpern from the
19 Union of Concerned Scientists.

20 MICHAEL HALPERN: We have one or two more
21 people we are expecting to log on in the next few
22 minutes. So, we are going to take one more break

1 for about five to six minutes and see if they show
2 up. So, again, we will be on a brief break for
3 five minutes or so.

4 (Whereupon, a recess was taken.)

5 JASON JACOBSON: This concludes the
6 morning session. The recording of this session
7 should be available on the YouTube page of the
8 Union of Concerned Scientists shortly. The
9 afternoon session will begin at 1:00 p.m. and the
10 evening session at 5:00 p.m. Eastern time. Thank
11 you.

12 (Whereupon, the 9:00 a.m. session was
13 concluded.)

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C E R T I F I C A T E

I, Ashleigh Simmons, Reporter, do hereby certify that I was authorized to and did report the Virtual Public hearing for the Union of Concerned Scientists; and that the transcript is a true and correct transcription of the testimony given by the participants.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

Dated this 28th day of April, 2020.



Ashleigh Simmons
Professional Reporter

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