February [X], 2019

*Via email to John.M.Mulvaney@omb.eop.gov*

The Honorable Mick Mulvaney

Director

Office of Management and Budget

725 17th Street NW

Washington, DC 20503

RE: Request for 45-Day Extension of Timeframes to Comment on Certain Notices and Proposed Rules and to Attend Certain Public Hearings Due to the Partial Government Shutdown

Director Mulvaney:

The undersigned organizations request that the Office of Management and Budget and the agencies copied on this letter extend the timeframes for commenting on certain notices and proposed rules and for attending certain public hearings listed in the attached Appendix. The Appendix lists notices and proposed rules related to environmental measures with comment periods that either closed during the shutdown or were noticed during the shutdown. The Appendix also lists public hearings related to environmental issues that were scheduled during the shutdown. Due to the 35-day partial government shutdown that occurred from midnight EST on December 22, 2018 until January 25, 2019, we request extensions of at least 45 days, and ideally 60 days, for comment periods and hearing schedules listed in the Appendix, to begin as of Monday, January 28, 2019.

Under the Administrative Procedure Act (“APA”), each of the copied agencies are required to engage the public in the rulemaking process, and it is essential that sufficient time is provided for public comments.[[1]](#footnote-1) To make the notices, proposed rules and public hearings listed in the Appendix effective, members of the public must be given access and enough time to evaluate all the information, much of which is technical in nature, and to draft constructive comments. Additional input will lead to greater public understanding of certain rules or decisions and will assist the agencies in fully analyzing the potential effects of the proposed rules.

Due to the disruption of the partial government shutdown, the opportunity for meaningful public participation has been limited and, in some instances, prevented. The hindrance of public involvement has occurred for a variety of reasons, including agency staff being unable to answer questions, provide information, and assist the public during the comment period; public difficulty in accessing information on disabled government websites; public confusion about the impact of the shutdown; government malfunction in receiving and review of comments; and intermittent operation of the website regulations.gov. Due to these encumbrances, the federal government has not effectively engaged the public in the rulemaking process during the partial government shutdown, including for the notices, proposed rules and public hearings listed in the Appendix.

In addition to APA compliance, the Office of the Federal Register set forth procedures to comply with the Antideficiency Act during a government shutdown; these procedures provide that only “documents directly related to the performance of governmental functions necessary to address imminent threats to the safety of human life or protection of property” be published.[[2]](#footnote-2) Thus, for any notices, proposed rules or public hearings that were not necessary to address imminent threats to safety or protection of property and yet were still noticed during the government shutdown, the comment periods and public hearings should be re-noticed with an extension of the timeframe for public participation.

In conclusion, because of the shutdown, the copied agencies must comply with the APA and the Antideficiency Act. The copied agencies must provide adequate time and access to government resources for the public to review and comment substantively on notices and proposed rules and/or to participate in public hearings. For these reasons, the undersigned organizations request that the Office of Management and Budget and the copied agencies extend the public comment period and hearing schedules listed in the Appendix by at least 45 days, and ideally 60 days, to begin as of the date the government reopened on January 28, 2019.

In no event, however, should the copied agencies fail to meet statutorily- or judicially-imposed deadlines. If providing the full opportunity for public comment discussed in this letter would make it impossible to meet such deadlines, the relevant agency must provide the maximum feasible comment period and engage in additional outreach to ensure that all stakeholders are aware of the opportunity for comment and the deadline for providing input.

Thank you for your consideration of our request. We welcome discussing this matter with you or your staff at any time and we look forward to hearing from you.

Sincerely,

Oceana

[INSERT SIGN ON ORGANIZATIONS HERE]

cc:

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1. Administrative Procedure Act, 5 U.S.C. § 553(c) (2012) (“After notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation.”). [↑](#footnote-ref-1)
2. Office of the Federal Register, Publication Procedures for Federal Register Documents During a Funding Hiatus, 78 Fed. Reg. 59,974 (Sept. 30, 2013). [↑](#footnote-ref-2)