



Submitted Via Email

November 1, 2022

Dr. Kathryn Guyton
Study Director
National Academies of Science Engineering and Medicine
Board on Environmental Studies and Toxicology
500 Fifth St., N.W.
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RE: Limiting Meaningful Public Participation in the October 12th Meeting of the NASEM Committee to Review the 2022 Draft IRIS Formaldehyde Assessment

Dear Dr. Guyton,

On behalf of the American Chemistry Council (“ACC”) Formaldehyde Panel (“Panel”), I am writing to bring to your immediate attention to the numerous deficiencies in the October 12th open session of the National Academies of Sciences, Engineering and Medicine (“NASEM”) Committee (“Committee”) to review EPA's 2022 draft formaldehyde assessment (“2022 draft assessment”). These deficiencies severely hampered the public’s ability to meaningfully engage with the committee and convey critically important information on the scientific flaws in the 2022 draft assessment.

The Panel requests that NASEM fully rectify these deficiencies, several of which represent practices which appear inconsistent with Section 15 of the Federal Advisory Committee Act (“FACA”), in subsequent open sessions of the committee. In addition, the Panel reiterates its September 20, 2022, request that NASEM convene a public information gathering session and at least four hours of public comment to facilitate the committee’s consideration of the breadth of scientific information submitted through public comments.¹

In managing NASEM committees, including the committee to review the EPA draft assessment, NASEM should strive to be as inclusive as possible. In particular, NASEM should make every effort to maximize transparency and public participation in NASEM committee meetings by providing timely, accessible and accurate information on opportunities to provide oral and written comments to the committee. For the October 12th meeting, however, the public was left in the dark until the day of the meeting on numerous key aspects including:

¹ ACC Formaldehyde Panel Letter to NASEM On Information Gathering Session, September 20, 2022: <https://www.americanchemistry.com/content/download/11908/file/Letter-to-NASEM-on-Information-Gathering-Session.pdf>



- Public speakers were denied the opportunity to use slide presentations, which is typically expected to facilitate communication of information in a virtual format. In contrast, EPA scientists were permitted to use slide presentations and in fact heavily relied upon them. NASEM committee members raised multiple questions based on what was conveyed in the slides;
- NASEM committee members and key EPA staff met in-person, yet all public speakers were disadvantaged because they were limited to providing oral comments virtually and only via audio;
- Public speakers presented in alphabetical order, regardless of when speakers registered. Thus, some speakers understandably may have assumed they would not be speaking, given that NASEM had allotted only 30 minutes for each speaker to present for no more than a mere 3 minutes;
- NASEM opted to extend the public session from 5:30 pm to 6:00 pm to accommodate the significant number of public presenters but failed to communicate that plan in advance, resulting in several speakers not being able to participate or not having their microphones opened during the public meeting. While we appreciate that NASEM provided some time beyond the scheduled 30 minutes, it was not designed to solicit meaningful public input;
- All public commenters were relegated to the very end of a full day meeting, after the committee had met for many hours, and with no time allotted for engagement by the committee with public speakers. Engagement with these knowledgeable speakers appeared to be discouraged, in stark contrast to the more than 30 minutes dedicated to questions-and-answers with the EPA presenters;
- NASEM arbitrarily excluded several speakers based on their organizations or other factors; and
- NASEM directed registered public commenters, verbally and in writing on the day of the meeting, to not comment on certain topics, including concerns around balance, independence, and transparency of the committee. As ACC has previously noted,² the process for soliciting public comment on the committee composition was significantly limited and these directives are inconsistent with FACA requirements.³ Furthermore, NASEM's limitations on public participation related to the October 12th meeting are inconsistent with FACA requirements.⁴

² <https://www.americanchemistry.com/industry-groups/formaldehyde/resources/formaldehyde-panel-extension-request-to-nasem>; <https://www.americanchemistry.com/industry-groups/formaldehyde/resources/response-to-nasem-on-extension-denial>; <https://www.americanchemistry.com/industry-groups/formaldehyde/resources/nasem-committee-procedural-comment>; <https://www.americanchemistry.com/industry-groups/formaldehyde/resources/nasem-committee-composition-comment>.

³ Under Section 15(b)(1) of FACA NASEM must “provide a reasonable opportunity to comment on such appointments...”, including in some cases “in the period immediately following the appointments.” As we noted in prior communications, NASEM’s actions have raised serious questions as to if it is “make[ing] its best efforts to ensure that... the committee membership is fairly balanced” and “the final report of the Academy will be the result of the Academy’s independent judgment.”

⁴ Section 15(b)(3) of FACA requires NASEM to “ensure that meetings of the committee to gather data from individuals who are not officials, agents, or employees of the Academy are open to the public” and to “make available to the public... written materials presented to the committee by individuals who are not officials, agents, or employees of the Academy.”

In sum, the October 12th open session of the committee meeting did not provide a meaningful opportunity for public comments. Public input, especially on issues that are at the crux of the committee's task, serves a vital role in assisting the committee in its work and deliberations by offering important scientific perspectives and interpretations. Public engagement also bolsters public confidence in the committee's deliberations and the objectivity of its decisions. Despite these limitations, seventeen public speakers, including authors of key studies, members of the 2010-2011 NASEM committee, representatives from key affected industries, and former senior government officials, identified critical scientific, methodological, and procedural concerns with the draft assessment. The committee would benefit from additional opportunities to explore these issues more fully in the near future.

We request and look forward to future open sessions of the committee that do not repeat the deficiencies so apparent in the October 12th public meeting. Should you have any questions regarding this submission, I can be reached at sahar_osman-sypher@amerianchemistry.com.

Sincerely,



Sahar Osman-Sypher
Senior Director
Chemical Products & Technology Division
American Chemistry Council
On Behalf of the ACC Formaldehyde Panel

cc: Marcia McNutt (NASEM), Audrey Mosley (NASEM), Elizabeth Eide (NASEM),
Clifford Duke (BEST), Jonathan Samet (NASEM Committee Chair)