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BLOG

EPA, Science, and Transparency in Rulemaking

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On April 24, 2018, Environmental Protection Agency (EPA) Administrator Scott Pruitt signed a proposed rule titled "Strengthening Transparency in Regulatory Science." The proposed rule requires EPA to use the "best available science" in all its actions but, significantly, bars the agency from utilizing studies that cannot be released publicly "in a manner that is sufficient for independent analysis and substantial reproduction of research results." Specifically, the proposed rule states, "When EPA develops significant regulations using public resources, including regulations for which the public is likely to bear the cost of compliance, EPA should ensure that the data and models underlying scientific studies that are pivotal to the regulatory action are available to the public."

Pruitt and other proponents of the policy change, including Representative Lamar Smith (R-TX), who chairs the House Science, Space, and Technology Committee, and Senator Mike Rounds (R-SD), describe the proposed rule as an advance in regulatory transparency. Pruitt states in the EPA news release associated with the proposed rule: "The era of secret science at EPA is coming to an end. The ability to test, authenticate, and reproduce scientific findings is vital for the integrity of rulemaking process. Americans deserve to assess the legitimacy of the science underpinning EPA decisions that may impact their lives." Chairman Smith has attempted to pass legislation in a vein similar to the proposed rule, including the Honest and Open New EPA Science Treatment (HONEST) Act (H.R. 1430), which passed the House in March 2017 but has failed to move forward in the Senate. Smith said of the proposed policy change, "It's likely that in the past, the data did not justify all regulations. Today, Administrator Pruitt rightfully is changing business as usual and putting a stop to hidden agendas."

Opponents of the proposed rule, including former EPA Administrator Gina McCarthy and Senator Tom Carper (D-DE), argue that it will effectively block EPA from its long-standing reliance on peer-reviewed studies, including studies on the harmful human health effects of air pollution and pesticides, as such research often involves confidential medical information or proprietary information that cannot be made publicly available. Further, opponents assert that researchers will have difficulty recruiting study participants if the rule is enacted as proposed, as individuals would not wish their personal and medical histories to be exposed to public scrutiny. In recognition of potential privacy and confidentiality concerns, in the proposal EPA solicits public comment on how the privacy and confidentiality of research participants, research data, and business information could be protected.

The proposed rule will be subject to a 30-day comment period. It is expected to face legal challenges if finalized.

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