

Comments on Proposed Rule “Strengthening Transparency in Regulatory Science”

Docket No. EPA-HQ-2018-0259

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July 17, 2018

Good morning. My name is Laura Kate Bender and I am the national director of advocacy of the American Lung Association’s Healthy Air Campaign. The Lung Association’s mission is to save lives by improving lung health and preventing lung disease. We strongly oppose EPA’s so-called “Strengthening Transparency in Regulatory Science” proposal. Today you will hear from many representatives of the public health and medical community, including some of my colleagues, about the ways this proposal would undermine human health. I’d like to take a few minutes to highlight the lack of transparency in EPA’s work on this rule that got us to this point.

The administration has attempted to rush this rule forward at every turn, consistently sacrificing expert analysis and public input along the way. This is a sweeping proposal that will impact a wide range of public health safeguards – essentially affecting *every future decision at EPA*. And yet EPA’s process in issuing it has been haphazard, rushed, and anything but transparent.

First, back in April, then-administrator Scott Pruitt prematurely announced the proposal while it was still undergoing interagency review at the White House Office of Management and Budget. Then, when media inquired about this discrepancy, OMB actually back-dated the clearance by several days. If this date is accurate, it means that OMB only reviewed the proposal for 48 hours. That’s a staggeringly tight timeline for such a sweeping rule.

In a similar vein, EPA initially only allowed a thirty-day comment period with no public hearing. The Lung Association was among the organizations who requested sixty additional days and a hearing. We greatly appreciate the additional time and today’s public hearing. That additional time is crucial, particularly because EPA has failed to complete a regulatory impact analysis that explains the impacts of the proposal, putting the burden on commenters to do so instead.

EPA ignored another important opportunity for review when it failed to consult the agency’s own Science Advisory Board. The SAB, which includes appointed members from this administration, voted at its May meeting to request to review the proposal. In a letter to EPA last month, they said that they were only made aware of the rule through press and when it was published in the Federal Register, and that “SAB members had no information regarding the timeline for finalizing the rule and the proposed rule was not identified as a major action in either of the Spring 2017 or Fall 2017 semi-annual Regulatory Agendas.” The SAB said unequivocally that “the proposed rule merits review by the Board.”

We strongly encourage the agency to move forward with the SAB review of this proposal. To refuse their request to do so would be unprecedented and in direct contradiction to the agency’s stated claim of wanting the best science to inform its decision-making.

EPA rushed out this proposal after a completely inadequate review process – and it shows. The proposal falls short in several key ways.

First, EPA fails to provide any evidence that the changes outlined in the rule are needed. EPA's existing approach toward science, with its detailed review and deliberation of the research, is already transparent and has worked well for decades. First, independent scientists review the studies prior to publication by recognized journals. Then, independent and EPA staff scientists review them again, and question every aspect of the research in depth. And they do these reviews in wide-open processes, including publication, public hearings and comment periods.

EPA does not acknowledge the rigor of this process in its proposal. Instead, it attempts to justify this rule by claiming that the agency is following in the footsteps of scientific journals. But last month, several scientific journals issued a joint statement highlighting their concerns with EPA's announcement, and pointed out that even though many peer reviewed publications have recently adopted transparency policies, they are still able to assess and use studies for which the underlying data cannot be made public.

Second, EPA fails to define its requirement that studies must be "replicable." Does EPA mean that the agency couldn't consider a study that looked at the health impacts of a one-time event, like a major oil spill, for example? The SAB also raised questions about EPA's failure to define this and other terms.

Finally, EPA did not explain how the agency would implement the rule. The proposal offers no process for public hearing or even consultation with the SAB over implementation. What process would EPA use to review and assess the existing research and revisions? What guidance would the Administrator receive to avoid arbitrary decision-making over the fate of this research? And where would the massive staff time and resources that EPA would need for such a massive additional workload come from?

EPA's rushed process, its inadequate review, its false attempt to claim that this policy is supported by scientific journals, and its many unanswered questions about how its proposal would work all underscore a core problem with this rule: it will not improve the use of science at EPA. It will not make the agency's science-based rules more transparent. It seeks to solve a problem that does not exist, and in doing so, it will permanently damage EPA's ability to do its job to protect the public.

On behalf of the millions of people with lung disease that we serve, who will be hurt by the weaker pollution protections that would result from this proposal, we urge EPA to withdraw this rule to censor science. Thank you.