

**U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY
SUBCOMMITTEE ON ENVIRONMENT**

HEARING CHARTER

Ensuring Open Science at EPA

Tuesday, February 11, 2014
10:00 a.m. – 12:00 p.m.
2318 Rayburn House Office Building

PURPOSE

The Subcommittee on Environment will hold a hearing entitled *Ensuring Open Science at EPA* on Tuesday, February 11, 2014 in Room 2318 of the Rayburn House Office Building. The purpose of this hearing is to examine options to improve the transparency and reproducibility of regulatory science used by the Environmental Protection Agency (EPA) and to receive testimony on the *Secret Science Reform Act of 2014* (H.R. 4012), to prohibit EPA from proposing, finalizing, or disseminating regulations or assessments based upon scientific information unless such information is specifically identified and publically available in a manner sufficient for independent analysis and reproducibility.

WITNESS LIST

- **The Honorable John Graham**, Dean, School of Public and Environmental Affairs, Indiana University
- **Dr. Louis Anthony Cox, Jr.**, Chief Sciences Officer, Next Health Technologies, Clinical Professor, Biostatistics and Informatics, Colorado Health Sciences Center, and President, Cox Associates
- **Dr. Ellen Silbergeld**, Professor, Bloomberg School of Public Health, Johns Hopkins University
- **Mr. Raymond Keating**, Chief Economist, Small Business & Entrepreneurship Council

BACKGROUND

Science has been central to EPA's mission and functions since its establishment in 1970. The Agency's recent Scientific Integrity Policy describes science as "the backbone of the EPA's decision-making."¹ Efforts to encourage and guarantee open scientific research and assessment at the Environmental Protection Agency are based in a number of historical, legal, and administrative origins.

¹ http://www.epa.gov/osa/pdfs/epa_scientific_integrity_policy_20120115.pdf.

In 1983, then-Administrator William Ruckelshaus wrote a memo to all EPA employees dictating that the agency should operate as though it were “in a fishbowl.” The memo stressed the importance of being as open as possible, while also providing the fullest possible public participation in decision-making.² EPA Administrator Gina McCarthy echoed this priority in her confirmation hearing, stating: “The rule of law, along with sound science and transparency, is one of EPA’s core values and, if I am confirmed, it will continue to guide all EPA actions.”³ Similarly, she stated that, “EPA is committed to transparency with regard to the scientific bases of agency decision-making.”⁴ The importance of science to EPA’s regulatory decisions is a critical component of several environmental laws, including the Environmental Research, Development, and Demonstration Authorization Act, the Clean Air Act, the Clean Water Act, and the Safe Drinking Water Act.

Recent EPA and White House scientific integrity, regulatory, and open access policies indicate further support for open science. Executive Order 13563 requires that regulations “be based upon the best available science.”⁵ Similarly, President Obama’s March 2009 Scientific Integrity Memo states that “[t]o the extent permitted by law, there should be transparency in the preparation, identification, and use of scientific and technological information in policymaking.”⁶

Following up on this direction, the White House Office of Science and Technology Policy (OSTP) Memo from December 2010 states that, “agencies should expand and promote access to scientific information by making it available online in open formats. Where appropriate, this should include data and models underlying regulatory proposals and policy decisions.”⁷ OSTP also issued a Memorandum last year on “Increasing Access to the results of Federally Funded Scientific Research,” in which the President’s Science Advisor, John Holdren, explained: “The Administration is committed to ensuring that, to the greatest extent and with the fewest constraints possible... the direct results of federally funded scientific research are made available to and useful for the public, industry, and the scientific community... Such results include peer-reviewed publications and digital data.”⁸

In order to provide Agency-specific guidelines emanating from the Administration’s Scientific Integrity Memos, EPA’s Scientific Integrity Policy issued in 2012 states: “Scientific research and analysis comprise the foundation of all major EPA policy decisions. Therefore, the Agency should maintain vigilance toward ensuring that scientific research and results are presented openly and with integrity, accuracy, timeliness, and the full public scrutiny demanded when developing sound, high-quality environmental science.”⁹

² <http://www2.epa.gov/aboutepa/ruckelshaus-takes-steps-improve-flow-agency-information-fishbowl-policy#memo>.

³ http://www.epw.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_id=d71fd4b6-ce77-3a98-46a0-fb02b0cae0ed

⁴ Ibid.

⁵ <http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf>

⁶ <http://www.whitehouse.gov/the-press-office/memorandum-heads-executive-departments-and-agencies-3-9-09>

⁷ <http://www.whitehouse.gov/sites/default/files/microsites/ostp/scientific-integrity-memo-12172010.pdf>.

⁸ http://www.whitehouse.gov/sites/default/files/microsites/ostp/ostp_public_access_memo_2013.pdf.

⁹ http://www.epa.gov/osa/pdfs/epa_scientific_integrity_policy_20120115.pdf.

Developed in response to Office of Management and Budget (OMB) guidelines issued following provisions of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106-554; H.R. 5658), EPA's *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity, of Information Disseminated by the Environmental Protection Agency* state that the Agency is "committed to providing public access to environmental information" and that, in order to fulfill its mission, "EPA must rely upon information of appropriate quality for each decision we make." EPA also notes the limitations of these guidelines, stating that they "provide non-binding policy and procedural guidance, and are therefore not intended to create legal rights, impose legally binding requirements or obligations on EPA or the public when applied in particular situations, or change or impact the status of information we disseminate, nor to contravene any other legal requirements that may apply to particular agency determinations or other actions."¹⁰

OMB Circular A-110 also indicates that the federal government has a right to data produced under certain federally-funded research awards. In 1999, following an amendment to the Omnibus Appropriations Act for FY1999 (often referred to as the "Shelby Amendment" as the amendment was sponsored by Senator Richard Shelby) OMB revised this circular to "ensure that all data produced under an award will be made available to the public through the procedures established under the Freedom of Information Act."¹¹

ADDITIONAL READING

- Bipartisan Policy Center, Science for Policy Project, *Improving the Use of Science in Regulatory Policy*. August 2009. Available at: <http://bipartisanpolicy.org/sites/default/files/BPC%20Science%20Report%20fnl.pdf>
- Office of Science and Technology Policy, Memorandum for the Heads of Executive Departments and Agencies, February 2013. Available at: http://www.whitehouse.gov/sites/default/files/microsites/ostp/ostp_public_access_memo_2013.pdf
- Committee on Science, Space, and Technology, *Strengthening Transparency and Accountability within the Environmental Protection Agency*, November 14, 2013. Available at: <http://science.house.gov/hearing/full-committee-hearing-strengthening-transparency-and-accountability-within-environmental>
- Committee on Science, Space, and Technology, *Scientific Integrity & Transparency*, March 5, 2013. Available at: <http://science.house.gov/hearing/subcommittee-research-scientific-integrity-transparency>
- Committee on Science, Space, and Technology, *Fostering Quality Science at EPA: Perspectives on Common Sense Reform – Day II*, February 3, 2012. Available at: <http://science.house.gov/hearing/energy-and-environment-subcommittee-hearing-fostering-quality-science-epa-perspectives-0>

¹⁰ http://www.epa.gov/quality/informationguidelines/documents/EPA_InfoQualityGuidelines.pdf.

¹¹ <http://www.whitehouse.gov/sites/default/files/omb/fedreg/a110-finalnotice.html>

- Committee on Science, Space, and Technology, *EPA's Impact on Jobs and Energy Affordability: Understanding the Real Costs and Benefits of Environmental Regulations*, June 6, 2012. Available at: <http://science.house.gov/hearing/subcommittee-energy-and-environment-hearing-epa%E2%80%99s-impact-jobs-and-energy-affordability>

113TH CONGRESS
2D SESSION

H. R. 4012

To prohibit the Environmental Protection Agency from proposing, finalizing, or disseminating regulations or assessments based upon science that is not transparent or reproducible.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 6, 2014

Mr. SCHWEIKERT (for himself, Mr. SMITH of Texas, Mr. HALL, Mr. BROUN of Georgia, Mr. CULBERSON, Mr. BRIDENSTINE, Mrs. LUMMIS, Mr. ROHRBACHER, Mr. COLLINS of New York, Mr. BURGESS, Mr. OLSON, Mr. CRAMER, Mr. BUCSHON, Mr. HULTGREN, Mr. NEUGEBAUER, Mr. PALAZZO, Mr. BROOKS of Alabama, Mr. SALMON, and Mr. FRANKS of Arizona) introduced the following bill; which was referred to the Committee on Science, Space, and Technology

A BILL

To prohibit the Environmental Protection Agency from proposing, finalizing, or disseminating regulations or assessments based upon science that is not transparent or reproducible.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Secret Science Reform
5 Act of 2014”.

1 **SEC. 2. DATA TRANSPARENCY.**

2 Section 6(b) of the Environmental Research, Devel-
3 opment, and Demonstration Authorization Act of 1978
4 (42 U.S.C. 4363 note) is amended to read as follows:

5 “(b)(1) The Administrator shall not propose, finalize,
6 or disseminate a covered action unless all scientific and
7 technical information relied on to support such covered ac-
8 tion is—

9 “(A) specifically identified; and

10 “(B) publicly available in a manner that is suf-
11 ficient for independent analysis and substantial re-
12 production of research results.

13 “(2) Nothing in the subsection shall be construed as
14 requiring the public dissemination of information the dis-
15 closure of which is prohibited by law.

16 “(3) In this subsection—

17 “(A) the term ‘covered action’ means a risk, ex-
18 posure, or hazard assessment, criteria document,
19 standard, limitation, regulation, regulatory impact
20 analysis, or guidance; and

21 “(B) the term ‘scientific and technical informa-
22 tion’ includes—

23 “(i) materials, data, and associated proto-
24 cols necessary to understand, assess, and ex-
25 tend conclusions;

1 “(ii) computer codes and models involved
2 in the creation and analysis of such informa-
3 tion;

4 “(iii) recorded factual materials; and

5 “(iv) detailed descriptions of how to access
6 and use such information.”.

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