

Senate hearing addresses the EPA proposed transparency rule

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A subcommittee of the Senate Committee on Environment and Public Works held a hearing on October 3 to gauge expert opinion on the Environmental Protection Agency's (EPA) "Strengthening Transparency in Regulatory Science" proposed rule. The proposed rule, issued by former EPA Administrator Scott Pruitt on April 24, directs the EPA to use "peer-reviewed information, standardized test methods, consistent data evaluation procedures, and good laboratory practices to ensure transparent, understandable, and reproducible scientific assessments." The proposed rule has faced controversy since its release, with critics arguing that the requirement for reproducibility and for studies to publish their data and models would prohibit the EPA from using peer-reviewed studies that are non-replicable or contain confidential health information in regulatory decisions.

Senators at the Subcommittee on Superfund, Waste Management, and Regulatory Oversight hearing considered testimony from three witnesses: Dr. Edward Calabrese from the University of Massachusetts at Amherst School of Public Health and Health Sciences, Dr. Robert Hahn from the Oxford University Smith School of Enterprise and the Environment, and Dr. Rush Holt, chief executive officer at the American Association for the Advancement of Science.

Dr. Calabrese and Dr. Hahn testified in favor of the proposed rule, while Dr. Holt testified against. In his statement, Dr. Calabrese labeled the rule a timely way of ensuring scientific and administrative accountability. "EPA's transparency proposal is excellent as far as it goes, but it needs to be expanded," Dr. Calabrese said.

Dr. Hahn echoed Dr. Calabrese's sentiments, saying the rule is a common-sense next step for the EPA. Dr. Hahn also asserted that Congress should consider a similar policy for other government agencies, which could be accomplished with something like the Honest and Open New EPA Science Treatment (HONEST) Act (H.R.1430/S.1794). The language of the EPA's proposed rule closely parallels the HONEST Act, which was introduced in both chambers of Congress last year by Representative Lamar Smith (R-TX-21) and Senator Mike Rounds (R-SD). The HONEST Act would prohibit the EPA from "proposing, finalizing, or disseminating a covered action unless all scientific and technical information relied on to support such action is the best available science, specifically identified, and publicly available in a manner sufficient for independent analysis and substantial reproduction of research results." The House passed H.R. 1430 on March 29, but the bill has not yet been considered in the Senate.

Responding to some criticism of the proposed rule at the hearing, Dr. Hahn argued that the rule would not nullify existing environmental regulations, disregard existing research, violate confidentiality protections, jeopardize privacy, or undermine the peer-review process.

Dr. Holt clashed with the other witnesses in his testimony, calling the proposed transparency rule an "insidious dodge" that is about reducing regulations, not about promoting transparent or sound science. "Contrary to the stated purpose of the rule, the rule would result in the exclusion of valid and important scientific findings from the regulatory process," Dr. Holt said.

Subcommittee members at the hearing appeared split along party lines in their statements and lines of questioning. Senator Rounds, chairman of the subcommittee, said that he has been concerned in the past that the broad discretion and lack of transparency at the EPA has led the agency to seek out science that determines a predetermined policy outcome. He expressed confidence in the proposed rule's ability to steer the EPA toward its intended mission of protecting human health and thanked the EPA for issuing the proposed rule.

Subcommittee Ranking Member Cory Booker (D-NJ) clashed with Chairman Rounds, saying the EPA's proposed rule mimics the same rhetoric employed by the tobacco industry to discredit studies that would lead to regulation on secondhand smoke, calling it "déjà vu, all over again."

The EPA earlier this year held a twelve-hour public hearing on the proposed rule on July 17. The public comment period on the proposed rule closed on August 16 and it currently awaits further action by Acting EPA Administrator Andrew Wheeler. The Trump administration's fall 2018 regulatory agenda, released October 16, listed the proposed rule under "long-term actions" with an expected completion date of January 2020, implying that the rule is not a top agency priority at the EPA.

Sources: The Atlantic Magazine; Environmental Protection Agency; eRulemaking Management Office; Library of Congress; U.S. Senate, Committee on Environment and Public Works.
