

Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 4/17/2018 4:25:14 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
CC: Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]; Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]; Beck, Nancy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=168ecb5184ac44de95a913297f353745-Beck, Nancy]
Subject: Updated Data Access Draft
Attachments: Data Access Draft - EPA - 4-17-18 - CLEAN.docx; Data Access Draft - EPA - 4-17-18 - TRACK CHANGES VERSION.docx

Attached version addressed comments from SP, OMB, and you all - Note that one has changes tracked and the other is clean. Thanks!

Clint Woods
Deputy Assistant Administrator
Office of Air and Radiation, U.S. EPA
202.564.6562

Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 4/12/2018 5:44:00 PM
To: Beck, Nancy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=168ecb5184ac44de95a913297f353745-Beck, Nancy]
Subject: Fwd:
Attachments: Data Access DRAFT NPRM 04-11-2018.docx; ATT00001.htm

Begin forwarded message:

Message

From: Block, Molly [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=60D0C681A16441A0B4FA16AA2DD4B9C5-BLOCK, MOLL]
Sent: 8/24/2018 8:45:56 PM
To: Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]
CC: Beck, Nancy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=168ecb5184ac44de95a913297f353745-Beck, Nancy]; Konkus, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=555471b2baa6419e8e141696f4577062-Konkus, Joh]; Grantham, Nancy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=12a3c2ed7158417fb0bb1b1b72a8cfb0-Grantham, Nancy]; Baptist, Erik [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=10fc1b085ee14c6cb61db378356a1eb9-Baptist, Er]; Bertrand, Charlotte [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f044d768e05842e1b75321ff6010e1b8-Bertrand, Charlotte]; Abboud, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6f5af791a1842f1adcc088cbf9ed3ce-Abboud, Mic]; Beach, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6b124299bb6f46a39aa5d84519f25d5d-Beach, Chri]
Subject: RE: Pesticide Studies Won E.P.A.'s Trust, Until Trump's Team Scorned 'Secret Science' - The New York Times

Deliberative Process / Ex. 5

From: Jackson, Ryan
Sent: Friday, August 24, 2018 4:17 PM
To: Block, Molly <block.molly@epa.gov>
Cc: Beck, Nancy <Beck.Nancy@epa.gov>; Konkus, John <konkus.john@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Baptist, Erik <Baptist.Erik@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>
Subject: Re: Pesticide Studies Won E.P.A.'s Trust, Until Trump's Team Scorned 'Secret Science' - The New York Times

Deliberative Process / Ex. 5

Ryan Jackson
Chief of Staff

J.J.C. - EPA

Personal Matters / Ex. 6

On Aug 24, 2018, at 4:00 PM, Block, Molly <block.molly@epa.gov> wrote:

Deliberative Process / Ex. 5

Sent: Friday, August 24, 2018 3:51 PM

To: Jackson, Ryan <jackson.ryan@epa.gov>

Cc: Block, Molly <block.molly@epa.gov>; Konkus, John <konkus.john@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Baptist, Erik <Baptist.Erik@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>

Subject: Re: Pesticide Studies Won E.P.A.'s Trust, Until Trump's Team Scorned 'Secret Science' - The New York Times

Deliberative Process / Ex. 5

Nancy B. Beck, Ph.D., DABT
Deputy Assistant Administrator
Office of Chemical Safety and Pollution Prevention
P: [202-564-1273](tel:202-564-1273)
M: [202-731-9910](tel:202-731-9910)
beck.nancy@epa.gov

On Aug 24, 2018, at 3:47 PM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

Deliberative Process / Ex. 5

Ryan Jackson
Chief of Staff
U.S. EPA

Personal Matters / Ex. 6

On Aug 24, 2018, at 3:34 PM, Block, Molly <block.molly@epa.gov> wrote:

Deliberative Process / Ex. 5

From: Block, Molly

Sent: Friday, August 24, 2018 3:24 PM

To: Beck, Nancy <Beck.Nancy@epa.gov>

Cc: Jackson, Ryan <jackson.ryan@epa.gov>; Konkus, John
<konkus.john@epa.gov>; Grantham, Nancy

<Grantham.Nancy@epa.gov>; Baptist, Erik <baptist.erik@epa.gov>;
Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>

Subject: RE: Pesticide Studies Won E.P.A.'s Trust, Until Trump's Team
Scorned 'Secret Science' - The New York Times

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Beck, Nancy
Sent: Friday, August 24, 2018 3:19 PM
To: Block, Molly <block.molly@epa.gov>
Cc: Jackson, Ryan <jackson.ryan@epa.gov>; Konkus, John <konkus.john@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Baptist, Erik <Baptist.Erik@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>
Subject: Re: Pesticide Studies Won E.P.A.'s Trust, Until Trump's Team Scorned 'Secret Science' - The New York Times

Deliberative Process / Ex. 5

Nancy B. Beck, Ph.D., DABT
Deputy Assistant Administrator
Office of Chemical Safety and Pollution Prevention
P: [202-564-1273](tel:202-564-1273)
M: [202-731-9910](tel:202-731-9910)
beck.nancy@epa.gov

On Aug 24, 2018, at 3:16 PM, Block, Molly <block.molly@epa.gov> wrote:

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Block, Molly
Sent: Friday, August 24, 2018 2:59 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>; Konkus, John <konkus.john@epa.gov>
Cc: Beck, Nancy <Beck.Nancy@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Baptist, Erik <baptist.erik@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>
Subject: RE: Pesticide Studies Won E.P.A.'s Trust, Until Trump's Team Scorned 'Secret Science' - The New York Times

Deliberative Process / Ex. 5

From: Jackson, Ryan
Sent: Friday, August 24, 2018 2:47 PM
To: Konkus, John <konkus.john@epa.gov>
Cc: Beck, Nancy <Beck.Nancy@epa.gov>; Block, Molly <block.molly@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Baptist, Erik <Baptist.Erik@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>
Subject: Re: Pesticide Studies Won E.P.A.'s Trust, Until Trump's Team Scorned 'Secret Science' - The New York Times

Deliberative Process / Ex. 5

Ryan Jackson
Chief of Staff

U.S. EPA
Personal Matters / Ex. 6

On Aug 24, 2018, at 2:43 PM, Konkus, John
<konkus.john@epa.gov> wrote:

Deliberative Process / Ex. 5

Sent from my iPhone

On Aug 24, 2018, at 2:41 PM, Jackson,
Ryan <jackson.ryan@epa.gov> wrote:

Deliberative Process / Ex. 5

Ryan Jackson
Chief of Staff
U.S. EPA

Personal Matters / Ex. 6

On Aug 24, 2018, at
2:38 PM, Beck, Nancy
<Beck.Nancy@epa.gov>
wrote:

Deliberative Process / Ex. 5

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Deliberative Process / Ex. 5

Nancy
B. Beck,
Ph.D.,
DABT
Deputy
Assista
nt
Admini
strator,
OCSPP
P: 202-
564-
1273
M: 202-
731-
9910
beck.nancy@epa.gov

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From:
Jackson
, Ryan
Sent:
Friday,
August
24,
2018
2:22
PM
To:
Block,
Molly
<block.molly@epa.gov>
Cc:
Grantham,
Nancy
<Grant.ham.Nancy@epa.gov>

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Konkus,
John
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Subject
: Re:
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'Secret
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' - The
New
York
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Deliberative Process / Ex. 5

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Ryan
Jackson
Chief of
Staff
U.S.
EPA

Personal Phone / Ex. 6

On Aug
24,
2018,
at 2:15
PM,
Block,
Molly
<block.molly@epa.gov>
wrote:

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Message

From: Jackson, Ryan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=38BC8E18791A47D88A279DB2FEC8BD60-JACKSON, RY]
Sent: 8/24/2018 7:45:37 PM
To: Block, Molly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=60d0c681a16441a0b4fa16aa2dd4b9c5-Block, Moll]
CC: Konkus, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=555471b2baa6419e8e141696f4577062-Konkus, Joh]; Beck, Nancy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=168ecb5184ac44de95a913297f353745-Beck, Nancy]; Grantham, Nancy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=12a3c2ed7158417fb0bb1b1b72a8cfb0-Grantham, Nancy]; Baptist, Erik [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=10fc1b085ee14c6cb61db378356a1eb9-Baptist, Er]; Bertrand, Charlotte [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f044d768e05842e1b75321ff6010e1b8-Bertrand, Charlotte]
Subject: Re: Pesticide Studies Won E.P.A.'s Trust, Until Trump's Team Scorned 'Secret Science' - The New York Times

Deliberative Process / Ex. 5

Ryan Jackson
Chief of Staff
U.S. EPA

Personal Email / Ex. 6

On Aug 24, 2018, at 2:59 PM, Block, Molly <block.molly@epa.gov> wrote:

Deliberative Process / Ex. 5

From: Jackson, Ryan
Sent: Friday, August 24, 2018 2:47 PM
To: Konkus, John <konkus.john@epa.gov>
Cc: Beck, Nancy <Beck.Nancy@epa.gov>; Block, Molly <block.molly@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Baptist, Erik <Baptist.Erik@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>

Subject: Re: Pesticide Studies Won E.P.A.'s Trust, Until Trump's Team Scorned 'Secret Science' - The New York Times

Deliberative Process / Ex. 5

Ryan Jackson
Chief of Staff
U.S. EPA

Personal Email / Ex. 6

On Aug 24, 2018, at 2:43 PM, Konkus, John <konkus.john@epa.gov> wrote:

Deliberative Process / Ex. 5

Sent from my iPhone

On Aug 24, 2018, at 2:41 PM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

Deliberative Process / Ex. 5

Ryan Jackson
Chief of Staff
U.S. EPA

Personal Matters / Ex. 6

On Aug 24, 2018, at 2:38 PM, Beck, Nancy <Beck.Nancy@epa.gov> wrote:

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Nancy B. Beck, Ph.D., DABT
Deputy Assistant Administrator, OCSPP
P: 202-564-1273

Personal Email / Ex. 6

beck.nancy@epa.gov

From: Jackson, Ryan
Sent: Friday, August 24, 2018 2:22 PM
To: Block, Molly <block.molly@epa.gov>
Cc: Grantham, Nancy <Grantham.Nancy@epa.gov>; Konkus, John <konkus.john@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>; Baptist, Erik <Baptist.Erik@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>
Subject: Re: Pesticide Studies Won E.P.A.'s Trust, Until Trump's Team Scorned 'Secret Science' - The New York Times

Deliberative Process / Ex. 5

Ryan Jackson
Chief of Staff
U.S. EPA

Deliberative Process / Ex. 5

On Aug 24, 2018, at 2:15 PM, Block, Molly
<block.molly@epa.gov> wrote:

Deliberative Process / Ex. 5

From: Jackson, Ryan
Sent: Friday, August 24, 2018 2:14 PM
To: Block, Molly
<block.molly@epa.gov>
Cc: Grantham, Nancy
<Grantham.Nancy@epa.gov>; Konkus,
John <konkus.john@epa.gov>; Beck,
Nancy <Beck.Nancy@epa.gov>; Baptist,
Erik <Baptist.Erik@epa.gov>; Bertrand,
Charlotte
<Bertrand.Charlotte@epa.gov>
Subject: Re: Pesticide Studies Won
E.P.A.'s Trust, Until Trump's Team
Scorned 'Secret Science' - The New York
Times

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Ryan Jackson
Chief of Staff
U.S. EPA

Personal Matters / Ex. 6

On Aug 24, 2018, at 1:36 PM, Block,
Molly <block.molly@epa.gov> wrote:

Ryan –

Deliberative Process / Ex. 5

Molly

From: Grantham, Nancy
Sent: Friday, August 24,
2018 1:33 PM
To: Jackson, Ryan

<jackson.ryan@epa.gov
>; Konkus, John
<konkus.john@epa.gov
>

Cc: Block, Molly
<block.molly@epa.gov>

Subject: RE: Pesticide
Studies Won E.P.A.'s
Trust, Until Trump's
Team Scorned 'Secret
Science' - The New York
Times

Looping molly who has
the info on this – we
did put folks on the
phone with eric lipton

**Nancy Grantham
Office of Public
Affairs
US Environmental
Protection
Agency
202-564-6879
(desk)
202-253-
7056 (mobile)**

From: Jackson, Ryan
Sent: Friday, August 24,
2018 12:53 PM
To: Konkus, John
<konkus.john@epa.gov
>; Grantham, Nancy
<Grantham.Nancy@epa
.gov>

Subject: Pesticide
Studies Won E.P.A.'s
Trust, Until Trump's
Team Scorned 'Secret
Science' - The New York
Times

Deliberative Process / Ex. 5

[https://www.nytimes.c
om/2018/08/24/busine
ss/epa-pesticides-](https://www.nytimes.com/2018/08/24/business/epa-pesticides-)

[studies-epidemiology.html?action=click&module=Top%20Stories&pgtype=Homepage](#)

Pesticide Studies Won E.P.A.'s Trust, Until Trump's Team Scorned 'Secret Science'

Backed by agrochemical companies, the current administration and Congress are moving to curb the role of human health studies in regulation.

Aug. 24, 2018



A strawberry field
in California's
Salinas Valley,
where a yearslong
study, funded in part
by the
Environmental
Protection Agency,
has linked pesticides
to ailments in
children of farm
workers. Carlos
Chavarría for The
New York Times

SALINAS, Calif. —
José Camacho once
worked the fields
here in the Salinas
Valley, known as
“the Salad Bowl of
the World” for its
abundance of lettuce

and vegetables. His wife still does.

But back in 2000, Mr. Camacho, who is 63, got an unusual phone call. He was asked if he wanted to work for a new project studying the effects of pesticides on the children of farm workers.

“This seemed really crazy,” he recalled saying at the time, since he barely spoke English. “A research study?”

The project, run by scientists from the University of California, Berkeley, and funded in part by the Environmental Protection Agency, is still going all these years later.

Known as Chamacos, Spanish for “children,” it has linked pesticides sprayed on fruit and vegetable crops with respiratory complications, developmental

disorders and lower
IQs among
children of farm
workers. State and
federal regulators
have cited its
findings to help
justify proposed
restrictions on
everything from
insecticides to
flame-retardant
chemicals.

But the Trump
administration
wants to restrict
how human studies
like Chamacos are
used in rule-making.
A government
proposal this year,
called Strengthening
Transparency in
Regulatory Science,
could stop them
from being used to
justify regulating
pesticides, lead and
pollutants like soot,
and undermine
foundational
research behind
national air-quality
rules. The E.P.A.,
which has funded
these kinds of
studies, is now
labeling many of

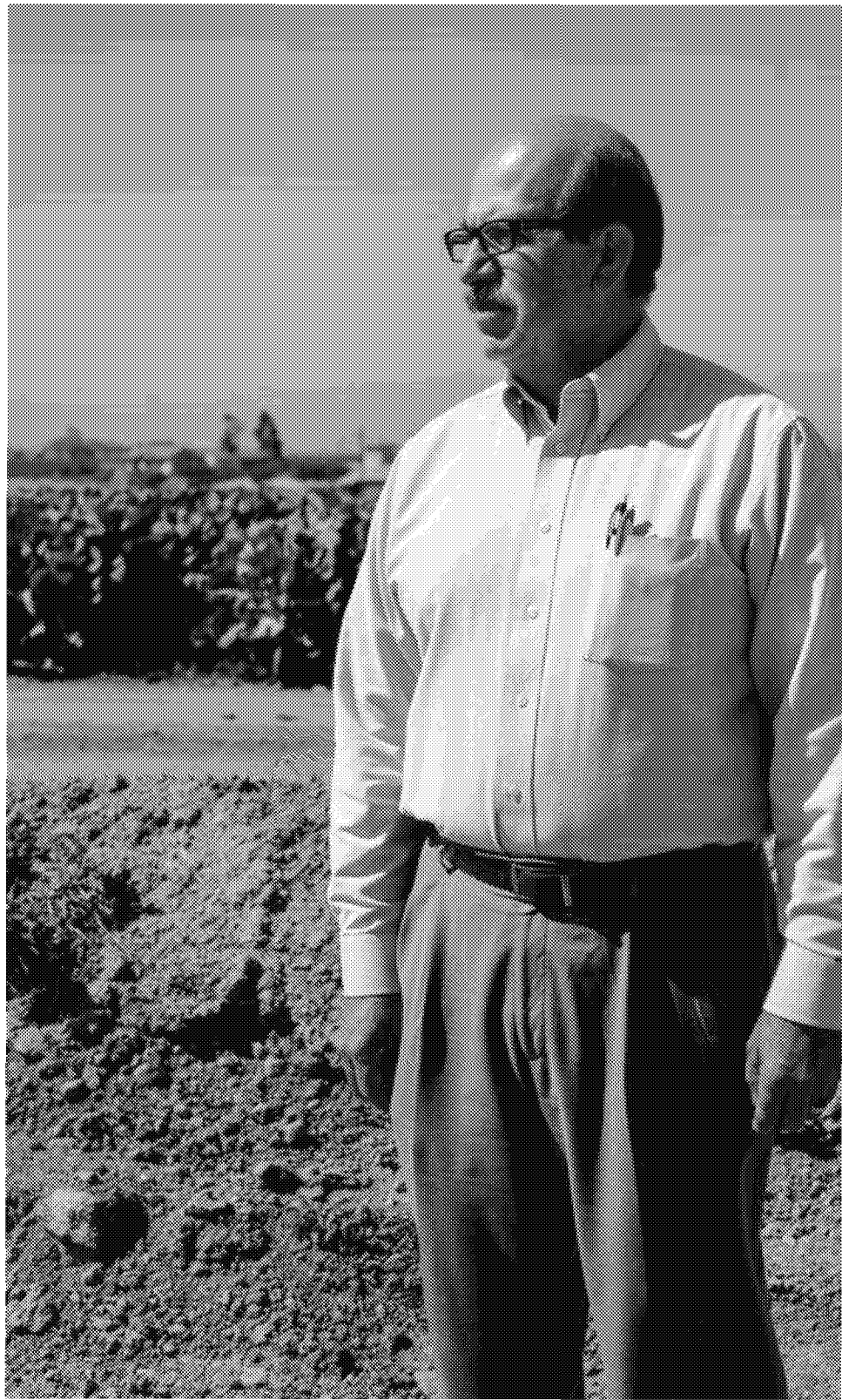
them “secret science.”

Studying disease trends in specific groups of people — a branch of medicine known as epidemiology — started to gain currency at the E.P.A. in recent years. These studies can be difficult because they require adjusting for all the various substances people are exposed to beyond pesticides. But researchers had amassed years of data from a wave of compelling chemical studies begun in the 1990s, giving regulators a new body of research to incorporate into their decision-making.

Under the Obama administration, the E.P.A., which had long favored tests on rats and other laboratory animals in its pesticide

regulation, began considering epidemiological studies more seriously. The agency leaned on this type of research in proposing to ban an insecticide called chlorpyrifos in late 2016, and has been repeatedly prodded to take action on the chemical by federal courts.

But weeks after Donald J. Trump was elected president, CropLife America, the main agrochemical trade group, petitioned the E.P.A. to “halt regulatory decisions that are highly influenced and/or determined by the results of epidemiological studies” unless universities were forced to share more of their data.



José Camacho was asked in 2000 to participate in the study, which tracks families as they go about their normal

lives. Such research was embraced by the E.P.A. during the Obama administration. Carlos Chavarria for The New York Times

Industry leaders aggressively challenged such studies in high-level meetings and emails with E.P.A. leaders, according to thousands of pages of documents obtained through Freedom of Information Act requests. One trade group invited a top E.P.A. official to meet with its Washington lobbyist last year, complaining that “carefully controlled” animal studies were giving way to “conclusions reflected in epidemiological papers.”

Gary W. Van Sickle, executive director of the California Specialty Crops Council,

wrote to the agency
last September that
“there have been
serious flaws with
E.P.A.’s conclusion
to use these data.”

The council,
representing
growers of crops as
diverse as carrots,
garlic, pears and
peppers, cited
“inappropriate use
of the
epidemiology.”

The E.P.A., whose
new leadership is
seeded with industry
veterans, has
responded. In a mid-
July assessment of
atrazine, a widely
used weed killer
long banned in
Europe, the agency
reviewed and
dismissed 12 recent
epidemiological
studies linking the
herbicide to such
ailments as
childhood leukemia
and Parkinson’s
disease. It echoed
the conclusions of
research funded by
Syngenta, atrazine’s
manufacturer,

finding the chemical
unlikely to cause
cancer.

Before scandals
forced Scott Pruitt
out last month as
head of the E.P.A.,
he proposed the
transparency
regulation. It would
ban many
epidemiological
studies, and other
outside research,
unless more data
behind the studies
was made public. In
doing so, he revived
a strategy advanced
for years by
congressional
Republicans and
corporate interests
like tobacco
companies.

“The era of secret
science at E.P.A. is
coming to an end,”
Mr. Pruitt
proclaimed at the
time. The agency’s
new acting
administrator,
Andrew R. Wheeler,
says he’s moving
forward with the
proposal, as the
agency re-evaluates

a class of widely
used insecticides,
called
organophosphates,
that have been the
subject of numerous
epidemiological
studies like
Chamacos.

Nancy B. Beck, a
chemical industry
veteran who is the
E.P.A.'s deputy
assistant
administrator, said
there was no attempt
to thwart
epidemiology,
adding that the
agency was
committed to "the
best available
science in the most
transparent
manner."

But academics and
state health officials
say universities are
being pressured to
release data that
would ultimately
divulge the
identities of study
participants, a
strategy once used
by tobacco
companies seeking
to undermine

research on the dangers of smoking. While participant data is shared with regulators in drug trials, academics fear that the E.P.A.'s proposal would additionally require divulging confidential personal information, potentially violating privacy regulations for federally funded research.



Ana Lilia Sanchez,
a farm worker and
the mother of a
participant in the
Salinas Valley

study, said her family took precautions to avoid pesticide contamination. Carlos Chavarría for The New York Times

“It is a naked attempt to use a false claim that something nefarious is going on with these studies in an effort to allow industry to challenge conclusions that are not in their favor,” said James Kelly, a manager of environmental surveillance at the Minnesota Department of Health.

A Wave of Studies, an Uneasy Industry

An advertisement in a Nebraska student newspaper was looking for people who wanted to “earn extra money.” Thirty-six college

student volunteers
and others from the
community who
responded were paid
\$460 to drink
gelatin capsules
filled with the
pesticide
chlorpyrifos, at up
to 300 times levels
the E.P.A.
considered safe,
without a full
discussion of the
risks.

Sponsored by Dow
Chemical, this
study, conducted in
1998, was one of the
last of its kind. That
year, the E.P.A.
banned the use of
studies exposing
people to pesticides,
and it continues to
severely restrict
them.

Epidemiology,
which has been used
to examine
everything from the
effects of climate
change to childhood
obesity, offered a
way to continue
studying disease
trends, amid new
legal requirements

to examine how
pesticides
particularly affect
infants and children.
And it could do so
by tracking people
during their normal
lives instead of
treating them as if
they were lab rats.
Chamacos and other
studies began
almost immediately,
although it took
decades to collect
sufficient data and
study how
participants changed
over time.

One study by
Columbia
University
researchers linked
an insecticide to
developmental
delays in toddlers.
Another, by
scientists at the
University of
California, Los
Angeles, connected
pesticides to
Parkinson's disease.
Academics at the
University of
Rochester found
that pesticides lower
sperm counts in
men, while

researchers from the Harvard School of Public Health found lower fertility in women.

By 2015, there was a growing body of research, often funded in part by the E.P.A. The agency decided that year to consult epidemiology more seriously in its evaluation of glyphosate, the world's most popular weed killer and the active ingredient in Monsanto's Roundup.

“This is a watershed event in our Program, and one which I feel particularly proud to be a part (go epi!!),” Carol Christensen, then an E.P.A. epidemiologist, wrote in a 2015 email to a colleague — using “epi” as shorthand for epidemiology. “In the 35 year history of our program, this

will be the FIRST
time epi studies are
actively considered
in the decision
making.”

Yet even then, there
was friction over
what to make of
studies aiming to
determine whether
glyphosate causes
cancer.

One E.P.A. division,
the Office of
Research and
Development,
closely examined
epidemiological
research and came
to believe either that
glyphosate was
likely to cause
cancer or that there
was at least some
evidence suggesting
a problem. But
another division, the
Office of Pesticide
Programs, was
dismissive of
epidemiological
studies and
determined that
glyphosate was not
a carcinogen, a view
that prevailed at the
E.P.A., according to
interviews, emails

and an internal memo obtained by The New York Times. Those involved in the agency's debates on epidemiology spoke on the condition of anonymity because the discussions weren't public.

Monsanto said in a statement that "we cannot speak to the internal E.P.A. discussions" but emphasized the agency's ultimate finding that glyphosate was not likely to cause cancer.

The cancer question received renewed attention this month when a California jury awarded \$289 million to a groundskeeper who alleged that the chemical had sickened him. In his closing argument, the plaintiff's attorney, R. Brent Wisner, called epidemiology one of "the three pillars of

cancer science” that
the case relied on.

At the E.P.A., the
debate swung in
favor of
epidemiology.
While such studies
are often complex
and can be of
varying quality, the
agency was
reluctant in the past
to give them as
much weight as lab
experiments on
animals. But by the
Obama
administration’s
final months, the
agency moved for
the first time to ban
a pesticide largely
because of
epidemiological
research.

The pesticide,
chlorpyrifos, was
the same one
ingested years
earlier by unwitting
Nebraskans. It is
applied to crops like
apples, oranges and
strawberries to
combat insects like
spider mites and
sap-sucking bugs.

In California alone, chlorpyrifos was sprayed on 640,000 acres in 2016, according to state data. And research from Salinas, and the Chamacos study, became a central element in the E.P.A.'s recommendation.

“There is a breadth of information available on the potential adverse neurodevelopmental effects in infants and children as a result of prenatal exposure to chlorpyrifos,” the agency concluded in 2016, also citing epidemiological research from Columbia University and the Icahn School of Medicine at Mount Sinai.

The pesticide industry's reaction was loud and intense.

Monsanto, in emails with the E.P.A., was

dismissive of
critical
epidemiological
research related to
Roundup, writing
that “such studies
are well known to
be prone to a
number of biases.”



A Trump
administration
proposal would
prevent the E.P.A.
from using many
epidemiological
studies, like the one
in Salinas, unless
more data behind
them was made
public. Carlos
Chavarría for The
New York Times

Dow Chemical said in reports submitted to the E.P.A. that “the evidence from these studies is insufficient” and called chlorpyrifos a “proven first-line of defense” against new pest outbreaks.

A month after taking over the E.P.A., Mr. Pruitt acted. He disregarded agency scientists and rejected the proposed chlorpyrifos ban, later calling for “a new day, a new future, for a common-sense approach to environmental protection.”

View From the Field

Ana Lilia Sanchez, 50, has worked in the fields in Salinas more than half her life, and one of her daughters has been a Chamacos study participant.

Ms. Sanchez has learned to watch for drifting droplets or the whir of a helicopter spraying overhead.

“Sometimes when we feel it, or we hear it, we start talking about it,” she said recently, sitting with her 5-month-old granddaughter at her home on a Salinas cul-de-sac. “Why wouldn’t they tell us, you know, to get out of here, to not come today?” she asked. “Women, they cover themselves, but men are working in short sleeves, so they are more exposed.”

Insecticides like chlorpyrifos are organophosphates, from the same chemical family as nerve agents like sarin and Novichok, the Russian-developed compound linked to recent attacks in Britain. While the

safety of
insecticides is
extensively tested,
long-term health
impacts, or even
how far pesticides
drift, are the subject
of continuing
disagreement.

Ms. Sanchez
showers after work,
before touching her
granddaughter.

“I also put my
clothes aside,” she
said. “We separate
the clothes we use
when we’re
working, both my
husband and I, and
wash them
separately so they’re
not contaminated.”

While some human
studies examine
potential harm from
pesticide residue
found on fruits and
vegetables, the
Chamacos project is
more personal,
following hundreds
of children in the
heart of where
American food is
grown. California
has the nation’s

largest agricultural
industry and uses
more than 200
million pounds of
pesticides annually.



Brenda Eskenazi,
the director of the

Salinas Valley
project, said that
“well-controlled
epidemiologic
studies” were
essential for
understanding “how
things affect human
health.” Carlos
Chavarría for The
New York Times

For locals,
pesticides are part of
life. “It’s a big
difference from
when I was
working,” Mr.
Camacho said,
while standing in a
strawberry field
framed on three
sides by distant
hills. Men and
women were bent
over nearby, pulling
weeds. “My
supervisor would
say: ‘That’s not
dangerous. Just keep
working.’ There was
no information.”

Chamacos is built
on an unsettling
premise: What
happens to children
of pregnant mothers
certain to have
pesticides in their

bloodstreams? The E.P.A. and other government agencies have spent millions of dollars funding Chamacos.

Half the Chamacos children have been tracked since before birth. Researchers have collected 350,000 samples of blood, urine, breast milk and even household dust and spent nearly two decades studying maturing children. They perform neurodevelopmental and physical assessments and study factors like diet and school performance. After nearly two decades, the study's data appears in more than 160 academic papers.

During a visit to the Chamacos office in Salinas, Brenda Eskenazi, the director of the project and a professor of epidemiology at

Berkeley, was testing out brain monitoring equipment, wearing what looked like a black swim cap strewn with knobs and wiring. She has long been fascinated with cognitive development, going back to when she saw a Woodstock reveler — one having a bad acid trip — dive into pavement.

“Why did he do that?” Ms. Eskenazi remembers wondering at the time. “What was he thinking? What’s going on in that brain?”

“Any science is imperfect,” she said, but stressed that “well-controlled epidemiologic studies” were essential for understanding “how things affect human health.” She added, “Otherwise you’re just making huge assumptions that a

rodent is the same
as a human.”

A Bitter Debate

The day after Mr.
Pruitt made his
March 2017
decision to reject a
ban on chlorpyrifos,
he hosted top
executives from one
of the nation’s
largest farming and
pesticide trade
organizations for a
closed-door
conversation.

Near the top of the
meeting agenda was
“Epidemiology
Study Policy” in the
aftermath of the
“chlorpyrifos
matter,” according
to internal records.



McKinnon
Elementary School
in Salinas. The
pesticide industry
contends that
epidemiological
studies are prone to
biases and not as
reliable as testing on
lab animals. Carlos
Chavarría for The
New York Times

“There are no
guideposts, if you
will, for what is a
legitimate, useful
epidemiology study
and what is not,”
Jay Vroom,
CropLife America’s
president, said in an
interview,

explaining what he had told agency officials at this and other meetings.

In a subsequent letter to the E.P.A., a CropLife America lobbyist said the agency was relying on a “shortsighted approach,” and the group submitted formal proposals to curb the embrace of epidemiology the E.P.A. undertook under the Obama administration.

Mr. Pruitt responded with his proposal, made this past spring, to ban epidemiological and other studies that did not make study details public, including at least some information on study participants.

Academics have resisted previous requests to review their data, notably at Columbia University. In a 2016 letter to the

agency, a university official wrote that it could not provide “extensive individual level data to E.P.A. in a way that ensures the confidentiality” of “our research subjects.”

David Michaels, an epidemiologist at George Washington University’s School of Public Health and head of the Occupational Safety and Health Administration during the Obama administration, said Mr. Pruitt’s plan was not about transparency but about discrediting studies that made pesticides look bad.

“The underlying justification for this ‘transparency’ proposal is a caricature of how science really works,” Mr. Michaels said at a recent hearing. “The cynical approach proposed by E.P.A.

can be best
described as
'weaponized
transparency.'”

It is no coincidence,
he said, that the
term “secret
science” was also
used in the 1970s
when the tobacco
industry was trying
to forestall critical
research about
smoking.

Researchers have
had wins. This
month, a federal
appeals court
ordered the E.P.A.
to ban chlorpyrifos,
citing findings from
human studies. The
Trump
administration is
mulling whether to
appeal.

But epidemiologists
are unsettled. In
mid-July, after
nearly two decades
of work on
Chamacos, the
E.P.A. emailed Ms.
Eskenazi requesting
“the original data”
from her research,
citing “uncertainty

around
neurodevelopmental
effects associated”
with pesticides she
has studied. The
agency made a
similar request to
Columbia.

Ms. Eskenazi,
worried about her
study participants’
privacy, alerted
university lawyers.
She is now
concerned that the
E.P.A. may try to
undermine her
study’s repeated
findings that some
pesticides may be
harming children.

“I knew this was
going to come
sooner or later,” she
said. “And here it
is.”

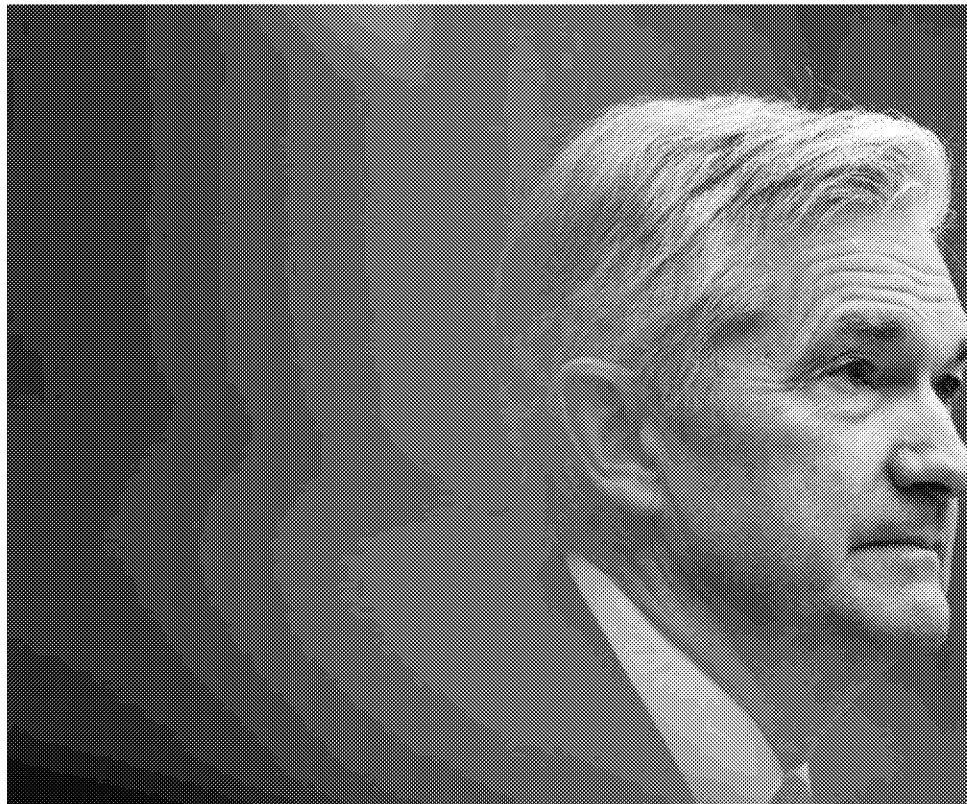
Danny Hakim
reported from
Salinas, and Eric
Lipton from
Washington.

The All-New DealBook

**Our columnist
Andrew Ross**

**Sorkin and his
Times colleagues
help you make
sense of major
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who shape them.**

**More in
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Erin Schaff for The
New York Times

**Editors'
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RIDGE TIMES THE RANSOM COUNTY GAZETTE AND THE SARGENT COUNTY TELLER THE RAPID CITY JOURNAL THE RAPPAHANNO
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Ryan Jackson
Chief of Staff
U.S. EPA
202-564-6999

Message

From: Bolen, Brittany [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31E872A691114372B5A6A88482A66E48-BOLEN, BRIT]
Sent: 3/9/2018 8:10:09 PM
To: Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]; Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]; Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]; Leopold, Matt [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4e5cdf09a3924dada6d322c6794cc4fa-Leopold, Ma]
CC: Beck, Nancy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=168ecb5184ac44de95a913297f353745-Beck, Nancy]; Feeley, Drew (Robert) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=abae82aa36da4d3383eae19a8efa683c-Feeley, Rob]; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]
Subject: RE: ATTORNEY-CLIENT, ATTORNEY WORK PRODUCT
Attachments: OGC comments (legal) REDLINE 3.8.18 ry edits cw bb.docx

Deliberative Process / Ex. 5

Brittany

From: Jackson, Ryan
Sent: Wednesday, March 7, 2018 6:30 PM
To: Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Leopold, Matt <Leopold.Matt@epa.gov>
Cc: Bolen, Brittany <bolen.brittany@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>; Feeley, Drew (Robert) <Feeley.Drew@epa.gov>; Woods, Clint <woods.clint@epa.gov>
Subject: RE: ATTORNEY-CLIENT, ATTORNEY WORK PRODUCT

Deliberative Process / Ex. 5

From: Yamada, Richard (Yujiro)
Sent: Wednesday, March 7, 2018 5:49 PM
To: Schwab, Justin <Schwab.Justin@epa.gov>; Leopold, Matt <Leopold.Matt@epa.gov>
Cc: Bolen, Brittany <bolen.brittany@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>; Feeley, Drew (Robert) <Feeley.Drew@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Woods, Clint <woods.clint@epa.gov>
Subject: ATTORNEY-CLIENT, ATTORNEY WORK PRODUCT

(This email contains deliberative and pre-decisional matters)

Deliberative Process / Ex. 5

Richard Yamada
Deputy Assistant Administrator
Office of Research and Development
U.S. Environmental Protection Agency

Phone: Personal Matters / Ex. 6
yamada.richard@epa.gov

Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 5/15/2018 8:02:19 PM
To: Beck, Nancy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=168ecb5184ac44de95a913297f353745-Beck, Nancy]
Subject: Fwd: SAB - Transparency Review
Attachments: epa2018_0856.pdf; ATT00001.htm

Flag: Flag for follow up

Begin forwarded message:

From: woods.clint@epa.gov
Date: May 15, 2018 at 2:58:56 PM EDT
To: Leopold.Matt@epa.gov, bolen.brittany@epa.gov, Schwab.Justin@epa.gov,
yamada.richard@epa.gov, Feeley.Drew@epa.gov
Subject: **SAB - Transparency Review**

Per our conversation earlier - See attached.

From: Bowman, Liz [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C3D4D94D3E4B4B1F80904056703EBC80-BOWMAN, ELI]
Sent: 4/24/2018 5:31:09 PM
To: Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]; Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]; Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]; Beck, Nancy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=168ecb5184ac44de95a913297f353745-Beck, Nancy]
Subject: FW: Smith: Open data and protecting privacy — we can do both

Deliberative Process / Ex. 5

From: Science Space and Tech Committee Press SST Press [mailto:SSTPress@mail.house.gov]
Sent: Tuesday, April 24, 2018 1:19 PM
To: McDonald, Thea <Thea.McDonald@mail.house.gov>; VerVelde, Brandon <Brandon.VerVelde@mail.house.gov>
Subject: Smith: Open data and protecting privacy — we can do both



Open data and protecting privacy — we can do both

By Rep. Lamar Smith
April 19, 2018

After EPA Administrator Scott Pruitt announced that he will implement a policy to make our government more accountable to the American people, we've seen massive media coverage misrepresenting the potential effects of such a policy.

Regrettably, the EPA is able to make rules and regulations based on data that not even rule-makers at the agency have seen. It's time to change that.

We all want clean air and clean water, both today and for future generations. It is the EPA's mission to ensure that happens. We all also agree that the best available science should underlie EPA's rules and regulations.

I have long worked to implement a policy that requires the EPA to base its rules on science that is publicly available. Opponents disagree – they prefer to keep this data hidden. But if we do that, how could we – scientists, policymakers and American citizens – confirm that the regulations that dramatically impact our lives are based on the best available science? If all we can see are studies' conclusions, we don't know whether those conclusions are based on sound science.

Those who oppose making the data public claim it will expose personal information. But confidential patient data and other personal information should and can be kept private. Making data publicly available, as I've advocated in the Honest and Open New EPA Science Treatment Act (HONEST Act), does not mean making confidential information available to anyone with a keyboard.

In fact, there are several ways to make data public without revealing any confidential information. Redacting personally identifying information is one option that agencies across the federal government have used for years. Where redaction would limit the quality of datasets for individuals who wish to see the data underlying a study, access could be granted after they agree to keep the data confidential.

Much of the data that is currently available already requires those requesting datasets to fulfill contractual obligations, preventing them from disseminating confidential patient information. While the HONEST Act's opponents ignore these facts, others in the scientific community recognize the importance of access to data.

The Association of American Universities (AAU) and the Association of Public Land-Grant Universities (APLU) recently provided recommendations for agencies implementing the Obama administration's public access requirements. The AAU and APLU highlight the "growing demand among scholars and the public to have broader access to each other's data" and recommend that the minimum standard be "data that are essential to understanding and reproducing peer reviewed publications ... to be accessible for re-analysis," while adhering to rules protecting personal information.

Those in the scientific community who support disclosing data while protecting confidential information should also support the HONEST Act, which furthers the same goals.

Many opponents of open data have wrongly concluded that requiring new regulations to be based on "publicly available" data will disqualify studies from being considered. A recent article alleges that such a policy would "force the EPA to ignore" studies based on confidential health information. This argument is fraudulent. The reality is that the EPA will consider these studies when they adhere to the publicly available standard.

Open access to science is a goal that furthers public debate and benefits the American people. So the HONEST Act is receiving unfounded criticism from those who know that the data may not justify the regulations.

The American people have a right to understand why and how regulatory decisions are made.

Read the full op-ed [here](#).

Message

From: Schwab, Justin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EED0F609C0944CC2BBDB05DF3A10AADB-SCHWAB, JUS]
Sent: 4/19/2018 5:13:39 PM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]; Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]; Leopold, Matt [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4e5cdf09a3924dada6d322c6794cc4fa-Leopold, Ma]; Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]; Beck, Nancy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=168ecb5184ac44de95a913297f353745-Beck, Nancy]
Subject: RE: DOJ feedback on Data Access NPRM
Attachments: EDIT 04182017 Data Access Draft - EPA - 4-17-18 - CLEAN.docx

Attorney Client / Ex. 5

From: Woods, Clint
Sent: Thursday, April 19, 2018 11:53 AM
To: Bolen, Brittany <bolen.brittany@epa.gov>; Leopold, Matt <Leopold.Matt@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>
Subject: RE: DOJ feedback on Data Access NPRM

Deliberative Process / Ex. 5

From: Bolen, Brittany
Sent: Thursday, April 19, 2018 11:13 AM
To: Leopold, Matt <Leopold.Matt@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>
Subject: DOJ feedback on Data Access NPRM
Importance: High

Deliberative Process / Ex. 5

From: Laity, Jim A. EOP/OMB [Personal Matters / Ex. 6]
Sent: Thursday, April 19, 2018 11:07 AM
To: Bolen, Brittany <bolen.brittany@epa.gov>
Cc: Palmieri, Rosario A. EOP/OMB [Personal Matters / Ex. 6]; Schwab, Margo EOP/OMB <[Personal Matters / Ex. 6]@epa.gov>
Subject: Review of Strengthening Transparency and Validity in Regulatory Science NPRM

Brittany: [Deliberative Process / Ex. 5]

Deliberative Process / Ex. 5

Jim Laity
Chief, Natural Resources and Environment Branch
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street
Washington, DC 20503

Personal Matters / Ex. 6

Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 4/25/2018 3:14:15 PM
To: Bowman, Liz [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c3d4d94d3e4b4b1f80904056703ebc80-Bowman, Eli]
CC: Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]; Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]; Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]; Beck, Nancy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=168ecb5184ac44de95a913297f353745-Beck, Nancy]; Wilcox, Jahan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=88fd588e97d3405d869bcae98d391984-Wilcox, Jah]
Subject: Re: From Washington Post

Deliberative Process / Ex. 5

From: Stromberg, Stephen [mailto:Stephen.Stromberg@washpost.com]
Sent: Wednesday, April 25, 2018 10:35 AM
To: Bowman, Liz <Bowman.Liz@epa.gov>
Cc: Wilcox, Jahan <wilcox.jahan@epa.gov>
Subject: RE: From Washington Post

Thanks, Liz. By "The Agency's offices should be guided by this policy to the maximum extent practicable", do you mean that it would not be an iron-clad requirement? That is, if there were no other way to quantify the health effects of air pollution on human beings, the EPA would consider studies that rely on, say, confidential patient information?

Thanks.

Best,
Steve

Steve Stromberg
The Washington Post
Office: (202) 334-6370
Cell: (310) 770-6646

From: Bowman, Liz [mailto:Bowman.Liz@epa.gov]
Sent: Tuesday, April 24, 2018 6:12 PM
To: Stromberg, Stephen <Stephen.Stromberg@washpost.com>
Cc: Wilcox, Jahan <wilcox.jahan@epa.gov>
Subject: FW: From Washington Post

With regard to the biomass decision, EU to this day recognizes biomass as a carbon neutral form of energy production. California and other states in the North East also recognize that biomass is a carbon neutral form of energy production in their state renewable portfolio standards.

On the proposed science transparency policy: The Agency's offices should be guided by this policy to the maximum extent practicable during ongoing regulatory action, even where such research has already been generated, solicited, or obtained.

EO 13777 on reg reform calls on task forces to identify for repeal/replace/modify existing "regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard for reproducibility."

Proposed rule also requests comment on:

- EPA seeks comment on the effective date of a rule as well as on whether the Agency should seek to phase-in the requirements for certain significant regulatory actions or seek to prioritize specific actions.
- For regulatory programs, like the National Ambient Air Quality Standards program, in which future significant regulatory actions may be based on the administrative record from previous reviews - particularly where the governing statute requires repeated review on a fixed, date-certain cycle -EPA seeks comment on the manner in which this proposed rule should apply to that previous record.
- EPA also solicits comments on whether and how the proposed rule should apply to dose response data and models underlying pivotal regulatory science if those data and models were developed prior to the effective date.
- In addition, EPA seeks comment on how the prospective or retrospective application of the provisions for dose response data and models or pivotal regulatory science could inadvertently introduce bias regarding the timeliness and quality of the scientific information available.

Thank you – Liz

From: Stromberg, Stephen [<mailto:Stephen.Stromberg@washpost.com>]

Sent: Tuesday, April 24, 2018 1:08 PM

To: Bowman, Liz <Bowman.Liz@epa.gov>

Subject: RE: From Washington Post

Hi Liz,

I had planned on filing this afternoon – at 4 – but I can probably push to tomorrow if that helps.

Thanks.

Best,
Steve

Steve Stromberg

The Washington Post
Office: (202) 334-6370
Cell: (310) 770-6646

From: Bowman, Liz [<mailto:Bowman.Liz@epa.gov>]
Sent: Tuesday, April 24, 2018 1:08 PM
To: Stromberg, Stephen <Stephen.Stromberg@washpost.com>; Wilcox, Jahan <wilcox.jahan@epa.gov>
Subject: RE: From Washington Post

[EXTERNAL EMAIL]

Hi Stephen – What is your deadline on this?

From: Stromberg, Stephen [<mailto:Stephen.Stromberg@washpost.com>]
Sent: Tuesday, April 24, 2018 1:07 PM
To: Bowman, Liz <Bowman.Liz@epa.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>
Subject: From Washington Post

Hi Liz and Jahan,

I'm working on an editorial today about Administrator Pruitt's Monday biomass decision and today's secret science decision. The first ratifies a mistake the Europeans made years ago in how to account for emissions from biomass. The second would throw out long-established research and make it difficult/impossible for scientifically valid work to be included in EPA decisions. Any response?

Thanks.

Best,
Steve

Steve Stromberg
The Washington Post
Office: (202) 334-6370
Cell: (310) 770-6646

Message

From: Jackson, Ryan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=38BC8E18791A47D88A279DB2FEC8BD60-JACKSON, RY]
Sent: 2/21/2018 8:18:15 PM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]; Feeley, Drew (Robert) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=abae82aa36da4d3383eae19a8efa683c-Feeley, Rob]; Beck, Nancy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=168ecb5184ac44de95a913297f353745-Beck, Nancy]; Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]
CC: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]; Dickerson, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d0440d9f06994021827e0d0119126799-Dickerson,]
Subject: RE: latest version

Great. Aaron, can you help send around a calendar invite?

From: Woods, Clint
Sent: Wednesday, February 21, 2018 3:00 PM
To: Feeley, Drew (Robert) <Feeley.Drew@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>
Cc: Bolen, Brittany <bolen.brittany@epa.gov>
Subject: RE: latest version

Later is better from my end -- Thanks!

Clint Woods
Deputy Assistant Administrator
Office of Air and Radiation, U.S. EPA

Personal Matters / Ex. 6

From: Feeley, Drew (Robert)
Sent: Wednesday, February 21, 2018 2:52 PM
To: Beck, Nancy <Beck.Nancy@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>
Cc: Woods, Clint <woods.clint@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>
Subject: RE: latest version

Those times work for me.

Thanks,
Drew

From: Beck, Nancy
Sent: Wednesday, February 21, 2018 2:41 PM
To: Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>
Cc: Woods, Clint <woods.clint@epa.gov>; Feeley, Drew (Robert) <Feeley.Drew@epa.gov>; Bolen, Brittany

<bolen.brittany@epa.gov>

Subject: RE: latest version

I'm at OMB til 3:30 then have a CEQ meeting at 4:30-5:30 so I was just going to stay over there. Perhaps I can find a spot to dial in or can do it at 6pm tomorrow...

Nancy B. Beck, Ph.D., DABT
Deputy Assistant Administrator, OCSPP

Personal Matters / Ex. 6

beck.nancy@epa.gov

From: Yamada, Richard (Yujiro)
Sent: Wednesday, February 21, 2018 2:29 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>
Cc: Beck, Nancy <Beck.Nancy@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Feeley, Drew (Robert) <Feeley.Drew@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>
Subject: Re: latest version

How about tomorrow afternoon between 4 to 6? I know Clint will have to call in and I know Nancy is swamped - thanks much, Richard

Sent from my iPhone

On Feb 21, 2018, at 2:26 PM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

Thank you all for this. Can we meet about this this week?

From: Yamada, Richard (Yujiro)
Sent: Wednesday, February 21, 2018 1:10 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>
Subject: Fwd: latest version

Please see attached - apologies for slight delay

Sent from my iPhone

Begin forwarded message:

From: "Feeley, Drew (Robert)" <Feeley.Drew@epa.gov>
Date: February 21, 2018 at 1:05:57 PM EST
To: "Yamada, Richard (Yujiro)" <yamada.richard@epa.gov>
Cc: "Bolen, Brittany" <bolen.brittany@epa.gov>
Subject: RE: latest version

Hi Richard – Per our call, attached is the most recent draft of the directive. It is a cleaned up version that is easier to read. If you want the one with track changes for reference, I can send that too, but it's hard to read.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Yamada, Richard (Yujiro)
Sent: Tuesday, February 20, 2018 10:37 PM
To: Feeley, Drew (Robert) <Feeley.Drew@epa.gov>
Cc: Bolen, Brittany <bolen.brittany@epa.gov>
Subject: Fwd: latest version

Deliberative Process / Ex. 5

Thanks much, Richard

Sent from my iPhone

Begin forwarded message:

From: "Beck, Nancy" <Beck.Nancy@epa.gov>
Date: February 20, 2018 at 9:24:58 PM EST
To: "Woods, Clint" <woods.clint@epa.gov>, "Yamada, Richard (Yujiro)" <yamada.richard@epa.gov>
Subject: RE: latest version

Deliberative Process / Ex. 5

Nancy B. Beck, Ph.D., DABT
Deputy Assistant Administrator, OCSPP

Personal Matters / Ex. 6

Beck.Nancy@epa.gov

From: Woods, Clint
Sent: Tuesday, February 20, 2018 7:21 PM
To: Beck, Nancy <Beck.Nancy@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>
Subject: RE: latest version

Deliberative Process / Ex. 5

From: Beck, Nancy
Sent: Tuesday, February 20, 2018 7:07 PM
To: Yamada, Richard (Yujiro) <yamada.richard@epa.gov>
Cc: Woods, Clint <woods.clint@epa.gov>
Subject: RE: latest version

Thanks!

Nancy B. Beck, Ph.D., DABT
Deputy Assistant Administrator, OCSPP
P: 202-564-1273
M: 202-731-9910
beck.nancy@epa.gov

From: Yamada, Richard (Yujiro)
Sent: Tuesday, February 20, 2018 7:06 PM
To: Beck, Nancy <Beck.Nancy@epa.gov>
Cc: Woods, Clint <woods.clint@epa.gov>
Subject: Re: latest version

I believe this is latest - thanks

<https://www.congress.gov/115/bills/hr1430/BILLS-115hr1430rfs.pdf>

Sent from my iPhone

On Feb 20, 2018, at 6:48 PM, Beck, Nancy <Beck.Nancy@epa.gov> wrote:

Do either of you have the most recent version of the secret science bill?

Thanks.

Nancy B. Beck, Ph.D., DABT
Deputy Assistant Administrator, OCSPP

Personal Matters / Ex. 6

beck.nancy@epa.gov

From: Yamada, Richard (Yujiro)
Sent: Thursday, February 15, 2018 6:13 PM
To: Beck, Nancy <Beck.Nancy@epa.gov>; Woods, Clint <woods.clint@epa.gov>
Cc: Schwab, Justin <Schwab.Justin@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Feeley, Drew (Robert) <Feeley.Drew@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>
Subject: latest version

(this email contains deliberative and pre-decisional information)

Hi Guys,

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks much,

Richard

Richard Yamada
Deputy Assistant Administrator
Office of Research and Development
U.S. Environmental Protection Agency

Phone Personal Matters / Ex. 6
yamada.richard@epa.gov

Message

From: Schwab, Justin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EED0F609C0944CC2BBDB05DF3A10AADB-SCHWAB, JUS]
Sent: 4/25/2018 3:02:59 PM
To: Bowman, Liz [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c3d4d94d3e4b4b1f80904056703ebc80-Bowman, Eli]
CC: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]; Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]; Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]; Beck, Nancy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=168ecb5184ac44de95a913297f353745-Beck, Nancy]; Wilcox, Jahan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=88fd588e97d3405d869bcae98d391984-Wilcox, Jah]
Subject: Re: From Washington Post

Attorney Work Product / Ex. 5

Sent from my iPhone

On Apr 25, 2018, at 10:41 AM, Bowman, Liz <Bowman.Liz@epa.gov> wrote:

Can you all help here?

From: Stromberg, Stephen [<mailto:Stephen.Stromberg@washpost.com>]
Sent: Wednesday, April 25, 2018 10:35 AM
To: Bowman, Liz <Bowman.Liz@epa.gov>
Cc: Wilcox, Jahan <wilcox.jahan@epa.gov>
Subject: RE: From Washington Post

Thanks, Liz. By "The Agency's offices should be guided by this policy to the maximum extent practicable", do you mean that it would not be an iron-clad requirement? That is, if there were no other way to quantify the health effects of air pollution on human beings, the EPA would consider studies that rely on, say, confidential patient information?

Thanks.

Best,
Steve

Steve Stromberg
The Washington Post
Office: (202) 334-6370
Cell: (310) 770-6646

From: Bowman, Liz [<mailto:Bowman.Liz@epa.gov>]
Sent: Tuesday, April 24, 2018 6:12 PM
To: Stromberg, Stephen <Stephen.Stromberg@washpost.com>

Cc: Wilcox, Jahan <wilcox.jahan@epa.gov>

Subject: FW: From Washington Post

With regard to the biomass decision, EU to this day recognizes biomass as a carbon neutral form of energy production. California and other states in the North East also recognize that biomass is a carbon neutral form of energy production in their state renewable portfolio standards.

On the proposed science transparency policy: The Agency's offices should be guided by this policy to the maximum extent practicable during ongoing regulatory action, even where such research has already been generated, solicited, or obtained.

EO 13777 on reg reform calls on task forces to identify for repeal/replace/modify existing "regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard for reproducibility."

Proposed rule also requests comment on:

- EPA seeks comment on the effective date of a rule as well as on whether the Agency should seek to phase-in the requirements for certain significant regulatory actions or seek to prioritize specific actions.
- For regulatory programs, like the National Ambient Air Quality Standards program, in which future significant regulatory actions may be based on the administrative record from previous reviews - particularly where the governing statute requires repeated review on a fixed, date-certain cycle -EPA seeks comment on the manner in which this proposed rule should apply to that previous record.
- EPA also solicits comments on whether and how the proposed rule should apply to dose response data and models underlying pivotal regulatory science if those data and models were developed prior to the effective date.
- In addition, EPA seeks comment on how the prospective or retrospective application of the provisions for dose response data and models or pivotal regulatory science could inadvertently introduce bias regarding the timeliness and quality of the scientific information available.

Thank you – Liz

From: Stromberg, Stephen [<mailto:Stephen.Stromberg@washpost.com>]

Sent: Tuesday, April 24, 2018 1:08 PM

To: Bowman, Liz <Bowman.Liz@epa.gov>

Subject: RE: From Washington Post

Hi Liz,

I had planned on filing this afternoon – at 4 – but I can probably push to tomorrow if that helps.

Thanks.

Best,
Steve

Steve Stromberg
The Washington Post
Office: (202) 334-6370
Cell: (310) 770-6646

From: Bowman, Liz [<mailto:Bowman.Liz@epa.gov>]
Sent: Tuesday, April 24, 2018 1:08 PM
To: Stromberg, Stephen <Stephen.Stromberg@washpost.com>; Wilcox, Jahan <wilcox.jahan@epa.gov>
Subject: RE: From Washington Post

[EXTERNAL EMAIL]

Hi Stephen – What is your deadline on this?

From: Stromberg, Stephen [<mailto:Stephen.Stromberg@washpost.com>]
Sent: Tuesday, April 24, 2018 1:07 PM
To: Bowman, Liz <Bowman.Liz@epa.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>
Subject: From Washington Post

Hi Liz and Jahan,

I'm working on an editorial today about Administrator Pruitt's Monday biomass decision and today's secret science decision. The first ratifies a mistake the Europeans made years ago in how to account for emissions from biomass. The second would throw out long-established research and make it difficult/impossible for scientifically valid work to be included in EPA decisions. Any response?

Thanks.

Best,
Steve

Steve Stromberg
The Washington Post
Office: (202) 334-6370
Cell: (310) 770-6646

Appointment

From: Block, Molly [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=60D0C681A16441A0B4FA16AA2DD4B9C5-BLOCK, MOLL]
Sent: 6/18/2018 6:15:28 PM
To: Bolen, Derrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1ffc58b0468c4deca51a8bad735b7d95-Bolen, Derr]; Dickerson, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d0440d9f06994021827e0d0119126799-Dickerson,]; Baptist, Erik [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=10fc1b085ee14c6cb61db378356a1eb9-Baptist, Er]; Beck, Nancy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=168ecb5184ac44de95a913297f353745-Beck, Nancy]; Wilcox, Jahan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=88fd588e97d3405d869bcae98d391984-Wilcox, Jah]; Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]
CC: Keigwin, Richard [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=151baabb6a2246a3a312f12a706c0a05-Richard P Keigwin Jr]; Bertrand, Charlotte [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f044d768e05842e1b75321ff6010e1b8-Bertrand, Charlotte]; Lowit, Anna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1d3428a2c0b84d5099124a0460babd53-Anna B. Lowit]
Subject: NYTimes Background Call
Attachments: 2016_11_29 CropLife Petition re Epi Data EPA-HQ-OPP-2009-0316-0026.pdf; 2016_12_28 EPA OPP Epidemiology and Pesticides EPA-HQ-OPP-2008-0316-DRAFT-0075.pdf
Location: 3130 WCJ East
Start: 6/18/2018 8:30:00 PM
End: 6/18/2018 9:00:00 PM
Show Time As: Tentative

Personal Matters / Ex. 6

From: Eric Lipton [mailto:lipton@nytimes.com]
Sent: Thursday, June 14, 2018 5:04 PM
To: Block, Molly <block.molly@epa.gov>
Subject: Speaking with someone Monday about epidemiology and pesticide decisions

I wanted to talk with someone at EPA about how epidemiology is used in pesticide decisions. I have read the attached document.

I wanted to ask questions like

1) How useful is epidemiology in pesticide decisions and why is it important, if you thin it is

2) CropLife in Nov. 2016, see below, filed a petition asking EPA to “halt regulatory decisions that are highly influenced/determined by results of epidemiological studies that do not meet well-defined data quality standards, and that are not integrated into the health risk assessment in a transparent, well-defined manner.” Any interim or final registration review decision for Phosmet could potentially be impacted by EPA consideration of the epidemiological studies identified in the CLA petition. What ended up happening with this

3) How would the Strengthening Transparency in Regulatory Science proposal impact, if at all, your ability to use epidemiology in pesticide decisions, and if not, why not.

4) I also have questions about organophosphates, including making sure I understand what the 10X debate is about, and what the timeline is for reevaluating this class of pesticides and where the agency stands on health impacts and potential use of epi studies for this effort.

I really hope we can discuss all of this without just getting formal written responses to these questions. Let me know if we can have this conversation on Monday. It could be a mix of on the record and on background.

This is a case where the story is not yet drafted and we want your input in advance to help influence the story.

Thanks in advance

Eric

Eric Lipton

The New York Times

Washington Bureau

202 862 0448 office

202 370 7951 mobile

lipton@nytimes.com

Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 2/21/2018 12:21:18 AM
To: Beck, Nancy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=168ecb5184ac44de95a913297f353745-Beck, Nancy]; Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]
Subject: RE: latest version
Attachments: data_access_memo V4 (002) cw 2-20.docx

Deliberative Process / Ex. 5

From: Beck, Nancy
Sent: Tuesday, February 20, 2018 7:07 PM
To: Yamada, Richard (Yujiro) <yamada.richard@epa.gov>
Cc: Woods, Clint <woods.clint@epa.gov>
Subject: RE: latest version

Thanks!

Nancy B. Beck, Ph.D., DABT
Deputy Assistant Administrator, OCSPP
P: 202-564-1273
M: Personal Matters / Ex. 6
beck.nancy@epa.gov

From: Yamada, Richard (Yujiro)
Sent: Tuesday, February 20, 2018 7:06 PM
To: Beck, Nancy <Beck.Nancy@epa.gov>
Cc: Woods, Clint <woods.clint@epa.gov>
Subject: Re: latest version

I believe this is latest - thanks

<https://www.congress.gov/115/bills/hr1430/BILLS-115hr1430rfs.pdf>

Sent from my iPhone

On Feb 20, 2018, at 6:48 PM, Beck, Nancy <Beck.Nancy@epa.gov> wrote:

Do either of you have the most recent version of the secret science bill?

Thanks.

Nancy B. Beck, Ph.D., DABT
Deputy Assistant Administrator, OCSPP
P: 202-564-1273
M: Personal Matters / Ex. 6

beck.nancy@epa.gov

From: Yamada, Richard (Yujiro)

Sent: Thursday, February 15, 2018 6:13 PM

To: Beck, Nancy <Beck.Nancy@epa.gov>; Woods, Clint <woods.clint@epa.gov>

Cc: Schwab, Justin <Schwab.Justin@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Feeley, Drew (Robert) <Feeley.Drew@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>

Subject: latest version

(this email contains deliberative and pre-decisional information)

Deliberative Process / Ex. 5

Thanks much,

Richard

Richard Yamada
Deputy Assistant Administrator
Office of Research and Development
U.S. Environmental Protection Agency

Phone: 202-564-1727
yamada.richard@epa.gov

Message

From: Schwab, Justin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EED0F609C0944CC2BBDB05DF3A10AADB-SCHWAB, JUS]
Sent: 4/24/2018 9:38:13 PM
To: Beck, Nancy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=168ecb5184ac44de95a913297f353745-Beck, Nancy]; Bowman, Liz [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c3d4d94d3e4b4b1f80904056703ebc80-Bowman, Eli]; Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]; Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]; Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]
CC: Wilcox, Jahan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=88fd588e97d3405d869bcae98d391984-Wilcox, Jah]
Subject: RE: 'secret science' proposal

Deliberative Process / Ex. 5

**ATTORNEY CLIENT COMMUNICATIONS
DELIBERATIVE**

First, we can direct them to the proposal itself.

Page 11 of the PDF: "This proposed regulation is intended to apply prospectively to final regulations that are determined to be 'significant regulatory actions' pursuant to E.O. 12866. The Agency's offices should be guided by this policy to the maximum extent practicable during ongoing regulatory action, even where such research has already been generated, solicited, or obtained."

Attorney Client / Ex. 5

From: Beck, Nancy
Sent: Tuesday, April 24, 2018 5:29 PM
To: Bowman, Liz <Bowman.Liz@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>
Cc: Wilcox, Jahan <wilcox.jahan@epa.gov>
Subject: RE: 'secret science' proposal

Looping in Justin

Nancy B. Beck, Ph.D., DABT
Deputy Assistant Administrator, OCSPP
P: 202-564-1273

M: **Personal Matters / Ex. 6**

beck.nancy@epa.gov

From: Bowman, Liz

Sent: Tuesday, April 24, 2018 5:17 PM

To: Bolen, Brittany <bolen.brittany@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>

Cc: Wilcox, Jahan <wilcox.jahan@epa.gov>

Subject: FW: 'secret science' proposal

This is a good question, and one I am sure we will get from others – can this new proposal affect regulations retroactively?

Thank you, Liz

From: Richard.Valdmanis@thomsonreuters.com [<mailto:Richard.Valdmanis@thomsonreuters.com>]

Sent: Tuesday, April 24, 2018 4:45 PM

To: Bowman, Liz <Bowman.Liz@epa.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>

Cc: timothy.gardner@thomsonreuters.com; valerie.volcovici@thomsonreuters.com

Subject: 'secret science' proposal

Liz, Jahan – This may be a very silly question, but I have to ask. Could today's proposed change to the types of research EPA can consider in rule-making be used to rescind existing rules and regulations? In other words, could it be applied retroactively? Or is it specifically for future action?

Thanks kindly,

Rich

Message

From: Laity, Jim A. EOP/OMB [Personal Matters / Ex. 6]
Sent: 4/24/2018 3:03:41 AM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]; Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]; Beck, Nancy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=168ecb5184ac44de95a913297f353745-Beck, Nancy]; Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]; Leopold, Matt [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4e5cdf09a3924dada6d322c6794cc4fa-Leopold, Ma]; Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]; Nickerson, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=148f2c1c05b54f358e29c59b841664aa-Wnicker]
CC: J [Personal Matters / Ex. 6] [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ec269b1b62f14ed187c0115b1eb24e3f-James_H_Kim]; Palmieri, Rosario A. EOP/OMB [Personal Matters / Ex. 6]; Schwab, Margo EOP/OMB [Personal Matters / Ex. 6]; Hickey, Mike J. EOP/OMB [Personal Matters / Ex. 6]; Mancini, Dominic J. EOP/OMB [Personal Matters / Ex. 6]; Rao, Neomi J. EOP/OMB [Personal Matters / Ex. 6]
Subject: OIRA Concluding Review of EPA NPRM entitled Strengthening Transparency in Regulatory Science
Attachments: Data Access Draft 4-23-18_OIRA Conclusion Version Clean.docx

Clint: OIRA is concluding review of the attached final draft of the NPRM entitled "Strengthening Transparency in Regulatory Science" with a finding of consistent with change. Thank you for working to address interagency comments on a tight schedule. This email constitutes the "official" conclusion of our review; please upload a clean formatted version into ROCIS at your convenience tomorrow so that we can record the conclusion of review in our recordkeeping system; you do not need to wait for this step to be completed to sign and release to the public.

Please call if you have any questions.

Jim Laity
Chief, Natural Resources and Environment Branch
Office of Information and Regulatory Affairs
Office of Management and Budget

[Personal Matters / Ex. 6]

PS: [Deliberative Process / Ex. 5]
[Deliberative Process / Ex. 5]

[Deliberative Process / Ex. 5] This version will be available to the public once the NPRM is published, pursuant to our disclosure procedures under EO 12866.

Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 4/24/2018 1:58:10 AM
To: Schwab, Margo EOP/OMB [EOP / Ex. 6]
CC: James H Kim [EOP / Ex. 6]; Palmieri, Rosario A. EOP/OMB [EOP / Ex. 6]; Laity, Jim A. EOP/OMB [EOP / Ex. 6]; Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]; Szabo, Aaron L. EOP/CEQ [EOP / Ex. 6]; Moran, John S. EOP/WHO [EOP / Ex. 6]; Bremberg, Andrew P. EOP/WHO [EOP / Ex. 6]; Herz, James P. EOP/OMB [EOP / Ex. 6]; Brooke, Francis J. EOP/OVP [EOP / Ex. 6]; jonathan.brightbill@usdoj.gov; Beck, Nancy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=168ecb5184ac44de95a913297f353745-Beck, Nancy]; Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]; Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]; David.Gualtieri@usdoj.gov; eric.t.gormsen@usdoj.gov [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=aefcd454ba3e46cabf84a79129583e64-eric.t.gormsen@usdoj.gov]; Neumayr, Mary B. EOP/CEQ [EOP / Ex. 6]; Hickey, Mike J. EOP/OMB [EOP / Ex. 6]; Leopold, Matt [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4e5cdf09a3924dada6d322c6794cc4fa-Leopold, Ma]
Subject: Re: EPA NPRM Call Regulatory Science
Attachments: EPA Response to OIRA- Data Access Draft 4-23-18_ OMB response final 9.45.docx; ATT00001.htm
Flag: Flag for follow up

Should be attached - Thanks!

On Apr 23, 2018, at 9:06 PM, Schwab, Margo EOP/OMB <[Personal Email / Ex. 6]> wrote:

Will you be able to send a final version tonight?

Sent from my iPhone

On Apr 23, 2018, at 9:00 PM, Woods, Clint <woods.clint@epa.gov> wrote:

Deliberative Process / Ex. 5

On Apr 23, 2018, at 8:28 PM, Schwab, Margo EOP/OMB <[Personal Email / Ex. 6]> wrote:

Deliberative Process / Ex. 5

From: Woods, Clint <woods.clint@epa.gov>
Sent: Monday, April 23, 2018 5:45 PM
To: Kim, Jim H. EOP/OMB <[Personal Email / Ex. 6]>; Palmieri, Rosario A. EOP/OMB <[Personal Email / Ex. 6]>; Laity, Jim A. EOP/OMB <[Personal Email / Ex. 6]>; Bolen, Brittany <bolen.brittany@epa.gov>; Szabo, Aaron L. EOP/CEQ <[Personal Email / Ex. 6]>; Moran, John S. EOP/WHO <[Personal Email / Ex. 6]>; Bremberg, Andrew P. EOP/WHO <[Personal Email / Ex. 6]>; Herz, James P. EOP/OMB <[Personal Email / Ex. 6]>; Brooke, Francis J. EOP/OVP <[Personal Email / Ex. 6]>; Beck, Nancy <Beck.Nancy@epa.gov>; Schwab, Margo EOP/OMB <[Personal Email / Ex. 6]>; Schwab, Justin <Schwab.Justin@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; David.Guaitieri@usdoj.gov; [Personal Email / Ex. 6]; Neumayr, Mary B. EOP/CEQ <[Personal Email / Ex. 6]>; Hickey, Mike J. EOP/OMB <[Personal Email / Ex. 6]>; Leopold, Matt <Leopold.Matt@epa.gov>
Subject: RE: EPA NPRM Call Regulatory Science

All,

Deliberative Process / Ex. 5

Clint Woods
Deputy Assistant Administrator
Office of Air and Radiation, U.S. EPA
202.564.6562

From: Kim, Jim H. EOP/OMB [mailto:[Personal Email / Ex. 6]]
Sent: Monday, April 23, 2018 2:16 PM
To: Palmieri, Rosario A. EOP/OMB <[Personal Email / Ex. 6]>; Laity, Jim A. EOP/OMB <[Personal Email / Ex. 6]>; Bolen, Brittany <bolen.brittany@epa.gov>; Szabo, Aaron L. EOP/CEQ <[Personal Email / Ex. 6]>; Moran, John S. EOP/WHO <[Personal Email / Ex. 6]>; Bremberg, Andrew P. EOP/WHO <[Personal Email / Ex. 6]>; Herz, James P. EOP/OMB <[Personal Email / Ex. 6]>; Brooke, Francis J. EOP/OVP <[Personal Email / Ex. 6]>; Beck, Nancy <Beck.Nancy@epa.gov>; Schwab, Margo EOP/OMB <[Personal Email / Ex. 6]>; Schwab, Justin <Schwab.Justin@epa.gov>; Yamada, Richard (Yujiro) <[Personal Email / Ex. 6]>; Woods, Clint <woods.clint@epa.gov>; [Personal Email / Ex. 6]; Neumayr, Mary B. EOP/CEQ <[Personal Email / Ex. 6]>; Hickey, Mike J. EOP/OMB <[Personal Email / Ex. 6]>
Subject: RE: EPA NPRM Call Regulatory Science

Dear Interagency Reviewers:

Deliberative Process / Ex. 5

Jim

From: Kim, Jim H. EOP/OMB
Sent: Monday, April 23, 2018 10:59 AM
To: Palmieri, Rosario A. EOP/OMB [Personal Matters / Ex. 6]; Laity, Jim A. EOP/OMB [Personal Matters / Ex. 6]; 'Bolen, Brittany' <bolen.brittany@epa.gov>; Szabo, Aaron L. EOP/CEQ [Personal Matters / Ex. 6]; Moran, John S. EOP/WHO [Personal Matters / Ex. 6]; Bremberg, Andrew P. EOP/WHC [Personal Matters / Ex. 6]; Herz, James P. EOP/OMB [Personal Matters / Ex. 6]; Brooke, Francis J. EOP/OVP [Personal Matters / Ex. 6]; Beck, Nancy <Beck.Nancy@epa.gov>; Schwab, Margo EOP/OMB [Personal Matters / Ex. 6]; 'schwab.justin@epa.gov' <schwab.justin@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; woods.clint@epa.gov [Personal Matters / Ex. 6]; Neumayr, Mary B. EOP/CEQ [Personal Matters / Ex. 6]
Subject: RE: EPA NPRM Call Regulatory Science

Hi all,

Deliberative Process / Ex. 5

Thanks,
Jim

-----Original Appointment-----

From: Palmieri, Rosario A. EOP/OMB
Sent: Monday, April 23, 2018 8:58 AM
To: Palmieri, Rosario A. EOP/OMB; Laity, Jim A. EOP/OMB; 'Bolen, Brittany'; Szabo, Aaron L. EOP/CEQ; Moran, John S. EOP/WHO; Bremberg, Andrew P. EOP/WHO; Herz, James P. EOP/OMB; Brooke, Francis J. EOP/OVP; [Personal Matters / Ex. 6]; Beck, Nancy; Schwab, Margo EOP/OMB; 'schwab.justin@epa.gov'; Kim, Jim H. EOP/OMB; Yamada, Richard (Yujiro); woods.clint@epa.gov; [Personal Matters / Ex. 6]; Neumayr, Mary B. EOP/CEQ
Subject: EPA NPRM Call Regulatory Science
When: Monday, April 23, 2018 11:00 AM-12:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Dial-In [Personal Matters / Ex. 6]

<EPA Response to OIRA- Data Access Draft 4-23-18_ OMB response.docx>

Message

From: Schwab, Margo EOP/OMB [Personal Matters / Ex. 6]
Sent: 4/24/2018 12:27:57 AM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]; [Personal Matters / Ex. 6] [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ec269b1b62f14ed187c0115b1eb24e3f-James_H_Kim]; Palmieri, Rosario A. EOP/OMB [Personal Matters / Ex. 6]; Laity, Jim A. EOP/OMB [Personal Matters / Ex. 6]; Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]; Szabo, Aaron L. EOP/CEQ [Personal Matters / Ex. 6]; Moran, John S. EOP/WHO [Personal Matters / Ex. 6]; Bremberg, Andrew P. EOP/WHO [Personal Matters / Ex. 6]; Herz, James P. EOP/OMB [Personal Matters / Ex. 6]; Brooke, Francis J. EOP/OVP [Personal Matters / Ex. 6]; [Personal Matters / Ex. 6] Beck, Nancy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=168ecb5184ac44de95a913297f353745-Beck, Nancy]; Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]; Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]; David.Gualtieri@usdoj.gov; eric.t.gormsen@usdoj.gov [/o=ExchangeLabs/ou=Exchange [Personal Matters / Ex. 6] Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=aefcd454ba3e46cabf84a79129583e64-eric.t.gormsen@usdoj.gov]; Neumayr, Mary B. EOP/CEQ [Mary.B.Neumayr@ceq.eop.gov]; Hickey, Mike J. EOP/OMB [Personal Matters / Ex. 6]; Leopold, Matt [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4e5cdf09a3924dada6d322c6794cc4fa-Leopold, Ma]
Subject: RE: EPA NPRM Call Regulatory Science
Attachments: EPA Response to OIRA- Data Access Draft 4-23-18_ OMB response.docx
Flag: Flag for follow up

We are almost there.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Woods, Clint <woods.clint@epa.gov>

Sent: Monday, April 23, 2018 5:45 PM

To: Kim, Jim H. EOP/OMB [Personal Matters / Ex. 6]; Palmieri, Rosario A. EOP/OMB [Personal Matters / Ex. 6]; Laity, Jim A. EOP/OMB [Personal Matters / Ex. 6]; Bolen, Brittany <bolen.brittany@epa.gov>; Szabo, Aaron L. EOP/CEQ [Personal Matters / Ex. 6]; Moran, John S. EOP/WHO [Personal Matters / Ex. 6]; Bremberg, Andrew P. EOP/WHO [Personal Matters / Ex. 6]; Herz, James P. EOP/OMB [Personal Matters / Ex. 6]; Brooke,

Francis J. EOP/OVP <[Personal Matters / Ex. 6]>; jonathan.brightbill@usdoj.gov; Beck, Nancy
<Beck.Nancy@epa.gov>; Schwab, Margo EOP/OMB <[Personal Matters / Ex. 6]>; Schwab, Justin
<Schwab.Justin@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; [Personal Matters / Ex. 6]
[Personal Matters / Ex. 6] Neumayr, Mary B. EOP/CEQ [Personal Matters / Ex. 6]; Hickey, Mike J. EOP/OMB
[Personal Matters / Ex. 6]; Leopold, Matt <Leopold.Matt@epa.gov>
Subject: RE: EPA NPRM Call Regulatory Science

All,

Thanks again for your time and attention on this matter [Deliberative Process / Ex. 5]
[Deliberative Process / Ex. 5]

Clint Woods
Deputy Assistant Administrator
Office of Air and Radiation, U.S. EPA
[Personal Matters / Ex. 6]

From: Kim, Jim H. EOP/OMB [mailto:[Personal Matters / Ex. 6]]
Sent: Monday, April 23, 2018 2:16 PM
To: Palmieri, Rosario A. EOP/OMB <[Personal Matters / Ex. 6]>; Laity, Jim A. EOP/OMB <[Personal Matters / Ex. 6]>;
Bolen, Brittany <bolen.brittany@epa.gov>; Szabo, Aaron L. EOP/CEQ <[Personal Matters / Ex. 6]>; Moran, John S.
EOP/WHO <[Personal Matters / Ex. 6]>; Bremberg, Andrew P. EOP/WHO <[Personal Matters / Ex. 6]>;
Herz, James P. EOP/OMB <[Personal Matters / Ex. 6]>; Brooke, Francis J. EOP/OVP <[Personal Matters / Ex. 6]>;
[Personal Matters / Ex. 6] Beck, Nancy <Beck.Nancy@epa.gov>; Schwab, Margo EOP/OMB
[Personal Matters / Ex. 6]; Schwab, Justin <Schwab.Justin@epa.gov>; Yamada, Richard (Yujiro)
<yamada.richard@epa.gov>; Woods, Clint <woods.clint@epa.gov>; [Personal Matters / Ex. 6]
[Personal Matters / Ex. 6] Neumayr, Mary B. EOP/CEQ <[Personal Matters / Ex. 6]>; Hickey, Mike J. EOP/OMB
[Personal Matters / Ex. 6]
Subject: RE: EPA NPRM Call Regulatory Science

Dear Interagency Reviewers:

Here are: [Deliberative Process / Ex. 5]
[Deliberative Process / Ex. 5] Please let us know ASAP if you have any
further comments

Jim

From: Kim, Jim H. EOP/OMB
Sent: Monday, April 23, 2018 10:59 AM
To: Palmieri, Rosario A. EOP/OMB <[Personal Matters / Ex. 6]>; Laity, Jim A. EOP/OMB <[Personal Matters / Ex. 6]>;
'Bolen, Brittany' <bolen.brittany@epa.gov>; Szabo, Aaron L. EOP/CEQ <[Personal Matters / Ex. 6]>; Moran, John S.
EOP/WHO <[Personal Matters / Ex. 6]>; Bremberg, Andrew P. EOP/WHO <[Personal Matters / Ex. 6]>;
Herz, James P. EOP/OMB <[Personal Matters / Ex. 6]>; Brooke, Francis J. EOP/OVP <[Personal Matters / Ex. 6]>;
[Personal Matters / Ex. 6] Beck, Nancy <Beck.Nancy@epa.gov>; Schwab, Margo EOP/OMB
[Personal Matters / Ex. 6]; 'schwab.justin@epa.gov' <schwab.justin@epa.gov>; Yamada, Richard (Yujiro)
<yamada.richard@epa.gov>; woods.clint@epa.gov; [Personal Matters / Ex. 6] Neumayr,
Mary B. EOP/CEQ <[Personal Matters / Ex. 6]>
Subject: RE: EPA NPRM Call Regulatory Science

Hi all,

Please find attached some **Deliberative Process / Ex. 5**

Thanks,
Jim

-----Original Appointment-----

From: Palmieri, Rosario A. EOP/OMB

Sent: Monday, April 23, 2018 8:58 AM

To: Palmieri, Rosario A. EOP/OMB; Laity, Jim A. EOP/OMB; 'Bolen, Brittany'; Szabo, Aaron L. EOP/CEQ; Moran, John S. EOP/WHO; Bremberg, Andrew P. EOP/WHO; Herz, James P. EOP/OMB; Brooke, Francis J. EOP/OVP; jonathan.brightbill@usdoj.gov; Beck, Nancy; Schwab, Margo EOP/OMB; 'schwab.justin@epa.gov'; Kim, Jim H. EOP/OMB; Yamada, Richard (Yujiro); woods.clint@epa.gov; David.Gualtieri@usdoj.gov; Eric.T.Gormsen@usdoj.gov; Neumayr, Mary B. EOP/CEQ

Subject: EPA NPRM Call Regulatory Science

When: Monday, April 23, 2018 11:00 AM-12:00 PM (UTC-05:00) Eastern Time (US & Canada).

Where: Dial-In: **Personal Matters / Ex. 6**

Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 5/15/2018 8:59:31 PM
To: Beck, Nancy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=168ecb5184ac44de95a913297f353745-Beck, Nancy]
Subject: Strengthening Transparency in Regulatory Science 04-24-2018.pdf
Attachments: Strengthening Transparency in Regulatory Science 04-24-2018.pdf; ATT00001.txt

See footnote 10 of signed copy. Omission of link on FRN version.

Message

From: Beck, Nancy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=168ECB5184AC44DE95A913297F353745-BECK, NANCY]
Sent: 7/16/2018 4:02:17 PM
To: Baptist, Erik [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=10fc1b085ee14c6cb61db378356a1eb9-Baptist, Er]; Bertrand, Charlotte [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f044d768e05842e1b75321ff6010e1b8-Bertrand, Charlotte]
Subject: FW: Legislation
Attachments: Chemical Assessment Improvement Act HR blank.pdf

Nancy B. Beck, Ph.D., DABT
Deputy Assistant Administrator, OCSPP
P: 202-564-1273
M: 202-731-9910
beck.nancy@epa.gov

From: Ringel, Aaron
Sent: Monday, July 16, 2018 9:12 AM
To: Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>
Cc: Moody, Christina <Moody.Christina@epa.gov>; Williams, Thea <Williams.Thea@epa.gov>; Rodrick, Christian <rodrick.christian@epa.gov>; Thundiyil, Karen <Thundiyil.Karen@epa.gov>; Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>
Subject: FW: Legislation

Richard/Clint/Nancy,

Want to make sure you saw the attached bill that House Science is planning to mark up this Wednesday. Makes significant changes to IRIS.

-Aaron

From: Traynham, Ben [<mailto:Ben.Traynham@mail.house.gov>]
Sent: Friday, July 13, 2018 5:17 PM
To: Ringel, Aaron <ringel.aaron@epa.gov>
Subject: Legislation

Hi Aaron,

Attached is draft legislation we plan to mark up next Wednesday. Thanks, and have a great weekend!

Ben

Ben Traynham
Counsel | Subcommittee on Environment
Committee on Science, Space, and Technology
2321 Rayburn House Office Building

202-225-6371

Message

From: Beck, Nancy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=168ECB5184AC44DE95A913297F353745-BECK, NANCY]
Sent: 4/24/2018 9:24:37 PM
To: Wise, Louise [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cf7be035da4b45a3a7d45c84c9f4b4a3-LWise]; Bertrand, Charlotte [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f044d768e05842e1b75321ff6010e1b8-Bertrand, Charlotte]; Morris, Jeff [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=55c34872e6ea40cab78be910aec63321-Morris, Jeff]; Hartman, Mark [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7eeb1ab7c7a74b40bf9bfded67e7fafd-Mark A Hartman]; Keigwin, Richard [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=151baabb6a2246a3a312f12a706c0a05-Richard P Keigwin Jr]; Layne, Arnold [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=83398e5d5e614599a1a7de6d13e7448b-Layne, Arnold]; Messina, Edward [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=95521fbf4e34496a879e364faf7e5aa8-Messina, Edward]; Barone, Stan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a4f8618acbba418da24c110f3123a2af-Barone, Stan]; Graves, Inza [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2f0a44fd15454f408707da35bec4b77a-IGraves]
CC: Bolen, Derrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1ffc58b0468c4deca51a8bad735b7d95-Bolen, Derr]; Hanley, Mary [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=58e0d3d52d424d45ae88e4386ae4f8dd-Hanley, Mary]; Keller, Kaitlin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d7a6b15adfd745c6ada1c121dec27ac4-Keller, Kai]
Subject: Strengthening Transparency in Regulatory Science
Attachments: Strenthening Transparency in Regulatory Science 04-24-2018.pdf

FYI—Please see attached.

Today, the Administrator signed the proposed rule “Strengthening Transparency in Regulatory Science.” I thought everyone would be interested in reading the document themselves, rather than just relying on other interpretations.

In this notice, EPA solicits comment on this proposal and how it can best be promulgated and implemented in light of existing law and prior Federal policies that already require increasing public access to data and influential scientific information used to inform federal regulation.

Please let me know if you have questions.

Nancy

Nancy B. Beck, Ph.D., DABT
Deputy Assistant Administrator, OCSPP

Personal Matters / Ex. 6

beck.nancy@epa.gov



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

March 29, 2017

H.R. 1430 **Honest and Open New EPA Science Treatment (HONEST) Act of 2017**

As passed by the U.S. House of Representatives on March 29, 2017

SUMMARY

H.R. 1430 would amend the Environmental Research, Development, and Demonstration Authorization Act of 1978 to prohibit the Environmental Protection Agency (EPA) from proposing, finalizing, or disseminating a “covered action” unless all scientific and technical information relied on to support that action is publicly available online in a manner that is sufficient for independent analysis and substantial reproduction of research results. Covered actions would include assessments of risks, exposure, or hazards; documents specifying criteria, guidance, standards, or limitations; and regulations and regulatory impact statements.

Although H.R. 1430 would not require the EPA to disseminate any scientific or technical information that it relies on to support covered actions, the act would not prohibit the agency from doing so. Whether the EPA would choose to disseminate such information would determine the cost of implementing H.R. 1430.

Based on information from the EPA and other federal agencies, as well as organizations and researchers in the scientific community that publish in peer-reviewed journals, CBO estimates that the agency could spend between a few million dollars per year to more than one hundred million dollars per year over the 2018-2022 period to ensure that data and other information underlying studies are publicly available in a format sufficient to allow others to substantially reproduce the results of studies. That range reflects the uncertainty about the number of studies the EPA would choose to rely on to support covered actions, the extent to which the agency would invest in data infrastructure to make researchers’ data and models available to others, and in the number of covered actions the agency would issue in future years. The range also reflects the uncertainty in the extent to which the research community would tailor their data management activities to comply with the requirements of the act and how quickly those changes might occur.

EPA officials have explained to CBO that the agency would implement H.R. 1430 with minimal funding and generally would not disseminate information for the scientific studies that it uses to support covered actions. That approach to implementing the legislation

would significantly reduce the number of studies that the agency relies on when issuing or proposing covered actions for the first few years following enactment of the legislation. In total, CBO estimates the EPA would spend about \$5 million over the 2018-2022 period; such spending would be subject to the availability of appropriated funds.

Enacting H.R. 1430 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting the legislation would not increase net direct spending and on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 1430 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

This legislation would direct the EPA to implement H.R. 1430 using up to \$1 million a year from amounts authorized to be appropriated for other activities under current law.

H.R. 1430 would not authorize additional appropriations to implement the requirements of the act, but CBO estimates that implementing the legislation would cost about \$5 million over the 2018-2022 period.

BASIS OF ESTIMATE

Based on information from officials at the EPA about how the agency would implement the legislation, CBO expects that the agency would choose to rely only on studies that already meet the act's requirements at the outset of undertaking covered actions. That manner of implementing the act would significantly cut the number of studies used to support the EPA's actions for the first few years following enactment. Under such an approach, CBO expects that the agency would use existing data infrastructure and would incur small administrative costs to verify that the data of selected studies are publicly available, as required by the legislation.

Under current law, the EPA typically spends about \$500 million each year to support research and development activities, including assessments to determine the potential risk to public health from environmental contaminants. The number of studies involved in supporting covered actions depends on the complexity of the issue being addressed. For example, when addressing a recent issue with flaring at petroleum refineries, the EPA relied on a dozen scientific studies. In contrast, when reviewing the National Ambient Air Quality Standards, the agency relied on thousands of scientific studies. In total, the agency

relies on about 50,000 scientific studies annually to perform its mission—although some of those studies are used more than once from year to year.

While the published manuscripts of scientific studies that the EPA cites to support covered actions are generally available online in publicly accessible journals, the availability of the underlying data, models, code, and other materials necessary for independent reproduction of results varies significantly in terms of quality, detail, and format. Many journals currently require authors to publish their data in online repositories or, at minimum, require that authors develop data management plans and agree to make their data available upon request. Compliance with those data management guidelines varies and enforcement is limited. Federal regulations require that all data from research funded by federal agencies be publicly available and stored in digital repositories. CBO estimates that the majority of the studies the EPA relies on each year comply with the data management requirements of their respective journals and repositories, but those requirements would not satisfy the level of detail specified by this legislation.

If the EPA continued to rely on as many scientific studies as it has used in recent years to support its covered actions, then CBO estimates that the agency would need to spend at least \$100 million dollars per year to upgrade the format and availability of those studies' data to the level required by H.R. 1430. If the EPA chose to make the data available in the specified manner so as to enable the use of additional studies, CBO estimates that the agency would need to spend, on average, \$10,000 per scientific study. That estimate is based on information from the EPA's Office of Research and Development and other federal agencies, as well as feedback from organizations and researchers in the scientific community that publish in peer-reviewed journals. Such spending would cover the costs of obtaining all of the underlying data used in a study, reviewing the data to address any confidentiality concerns, formatting the data for public access, providing access to the computer codes and models used in the study's analysis, and providing descriptions and documentation on how to access the data. Activities could entail corresponding and negotiating with study authors and publishers and processing data to construct, maintain, and store study-related information.

PAY-AS-YOU-GO CONSIDERATIONS: None.

INCREASE IN LONG-TERM DIRECT SPENDING AND DEFICITS

CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

H.R. 1430 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. Organizations, such as universities or research centers, that produce scientific studies used by the EPA to support covered actions might incur costs to make those studies, and underlying data, available to the public in an online format. However, those costs would result from participation in a voluntary federal program and would not stem from a mandate under UMRA. Researchers coordinating with the EPA could receive federal funds to defray the costs of making information publicly available.

ESTIMATE PREPARED BY:

Federal Costs: Jon Sperl

Impact on State, Local, and Tribal Governments: Jon Sperl

Impact on the Private Sector: Amy Petz

ESTIMATE APPROVED BY:

H. Samuel Papenfuss

Deputy Assistant Director for Budget Analysis



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

March 11, 2015

H.R. 1030 **Secret Science Reform Act of 2015**

*As ordered reported by the House Committee on Science, Space, and Technology
on March 3, 2015*

SUMMARY

H.R. 1030 would amend the Environmental Research, Development, and Demonstration Authorization Act of 1978 to prohibit the Environmental Protection Agency (EPA) from proposing, finalizing, or disseminating a “covered action” unless all scientific and technical information used to support that action is publicly available in a manner that is sufficient for independent analysis and substantial reproduction of research results. Covered actions would include assessments of risks, exposure, or hazards; documents specifying criteria, guidance, standards, or limitations; and regulations and regulatory impact statements.

Although H.R. 1030 would not require EPA to disseminate any scientific or technical information that it relies on to support covered actions, the bill would not prohibit EPA from doing so. Based on information from EPA, CBO expects that EPA would spend \$250 million annually over the next few years to ensure the transparency of information and data supporting some covered actions.

Enacting H.R. 1030 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. H.R. 1030 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

This legislation would direct EPA to implement H.R. 1030 using up to \$1 million a year from amounts authorized to be appropriated for other activities under current law. Although H.R. 1030 would not authorize additional appropriations to implement the requirements of the bill, CBO estimates that implementing H.R. 1030 would cost about \$250 million a year for the next few years, subject to appropriation of the necessary amounts. Costs in later years would probably decline gradually from that level. The

additional discretionary spending would cover the costs of expanding the scope of EPA studies and related activities such as data collection and database construction for all of the information necessary to meet the legislation's requirements.

BASIS OF ESTIMATE

Under current law, EPA typically spends about \$500 million each year to support research and development activities, including assessments to determine the potential risk to public health from environmental contaminants. The number of studies involved in supporting covered actions depends on the complexity of the issue being addressed. For example, when addressing a recent issue with flaring at petroleum refineries, EPA relied on a dozen scientific studies. In contrast, when reviewing the National Ambient Air Quality Standards, the agency relied on thousands of scientific studies. In total, the agency relies on about 50,000 scientific studies annually to perform its mission—although some of those studies are used more than once from year to year.

The costs of implementing H.R. 1030 are uncertain because it is not clear how EPA would meet the bill's requirements. Depending on their size and scope, the new activities called for by the bill would cost between \$10,000 and \$30,000 for each scientific study used by the agency. If EPA continued to rely on as many scientific studies as it has used in recent years, while increasing the collection and dissemination of all the technical information used in such studies as directed by H.R. 1030, then implementing the bill would cost at least several hundred million dollars a year. However, EPA could instead rely on significantly fewer studies each year in support of its mission, and limit its spending on data collection and database construction activities to a relatively small expansion of existing study-related activity; in that scenario, implementing the bill would be much less costly.

Thus, the costs of implementing H.R. 1030 would ultimately depend on how EPA adapts to the bill's requirements. (It would also depend on the availability of appropriated funds to conduct the additional data collection and database construction activities and related coordination and reporting activities under the legislation.) CBO expects that EPA would modify its practices, at least to some extent, and would base its future work on fewer scientific studies, and especially those studies that have easily accessible or transparent data. Any such modification of EPA practices would also have to take into consideration the concern that the quality of the agency's work could be compromised if that work relies on a significantly smaller collection of scientific studies; we expect that the agency would seek to reduce its reliance on numerous studies without sacrificing the quality of the agency's covered actions related to research and development.

On balance—recognizing the significant uncertainty regarding EPA’s potential actions under the bill—CBO expects that the agency would probably cut the number of studies it relies on by about one-half and that the agency would aim to limit the costs of new activities required by the bill, such as data collection, correspondence and coordination with study authors, construction of a database to house necessary information, and public dissemination of such information. As a result, CBO estimates the incremental costs to the agency would be around \$250 million a year initially, subject to appropriation of the necessary amounts. In our assessment that figure lies near the middle of a broad range of possible outcomes under H.R. 1030. CBO expects that the additional costs to implement the legislation would decline over time as EPA became more adept and efficient at working with authors and researchers to ensure that the data used to support studies are provided in a standardized and replicable form.

PAY-AS-YOU-GO CONSIDERATIONS: None.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

H.R. 1030 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

ESTIMATE PREPARED BY:

Federal Costs: Susanne S. Mehlman
Impact on State, Local, and Tribal Governments: Jon Sperl
Impact on the Private Sector: Amy Petz

ESTIMATE APPROVED BY:

Peter H. Fontaine
Assistant Director for Budget Analysis

Message

From: Interagency Working Group on Open Science [Personal Matters / Ex. 6]
on behalf of Knezek, Patricia M. (HQ-DH000)[Federal Government Detailee] [Personal Matters / Ex. 6]
Sent: 6/29/2018 5:45:54 PM
To: [Personal Matters / Ex. 6]
Subject: FW: Open Science papers
Attachments: EU_integrated_advice_opspp_recommendations.pdf; LERU-Open-Science-and-its-role-in-universities.pdf

Hi, All,

Attached are the two papers Yi Pei mentioned yesterday, as well as links to them.

Best – Pat

From: "Pei, Yi EOP/OMB" <[Personal Matters / Ex. 6]>
Date: Friday, June 29, 2018 at 1:35 PM
To: "Knezek, Patricia M. (HQ-DH000)[Federal Government Detailee]" <[Personal Matters / Ex. 6]>
Subject: Open Science papers

Hi Pat,

Attached are the two papers I mentioned in yesterday's IWGOS meeting. [Deliberative Process / Ex. 5]

[Deliberative Process / Ex. 5]

[Deliberative Process / Ex. 5]

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Yi

Liuyi (Yi) Pei, Ph.D.
Science & Space Branch
Office of Management and Budget

T: [Personal Matters / Ex. 6]

#####

Message

From: Interagency Working Group on Open Science [Personal Matters / Ex. 6]
on behalf of Knezek, Patricia M. (HQ-DH000)[Federal Government Detailee] [Personal Matters / Ex. 6]
Sent: 7/31/2018 1:19:17 PM
To: [Personal Matters / Ex. 6]
Subject: FW: Proposed EPA rule on open data / transparency
Attachments: EPA Proposed Rule Docket EPA-HQ-OA-2018-0259 NASEM Comment.pdf

FYI.

Pat

From: "Barbier, Louis M. (HQ-AE000)" <[Personal Matters / Ex. 6]>
Date: Tuesday, July 31, 2018 at 7:24 AM
To: "Knezek, Patricia M. (HQ-DH000)[Federal Government Detailee]" <[Personal Matters / Ex. 6]>
Subject: Proposed EPA rule on open data / transparency

Pat,

I think the IWGOS members might like to see the letter from the National Academy Presidents to the EPA. I've attached it here.

Louis

Louis M Barbier, PhD
Associate Chief Scientist,
Office of the Chief Scientist
NASA Headquarters
Tel: 202 – 358 – 1421
Cell: [Personal Matters / Ex. 6]
Email: [Personal Matters / Ex. 6]
Twitter: [Personal Matters / Ex. 6]

#####

Message

From: Interagency Working Group on Open Science [Personal Matters / Ex. 6]
on behalf of Knezek, Patricia [Personal Matters / Ex. 6]
Sent: 6/25/2018 4:05:47 PM
To: IWGOS@LISTSERV.NSF.GOV
Subject: Fw: REQUEST FOR INPUT: G7 questionnaire
Attachments: OSWGsurvey_UScontribution.docx

Hi, All,

Please see the forwarded message from our colleague, Mangala Sharma, about the U.S. response to the G7 Survey. The document is attached to this email.

Best - Pat

Patricia Knezek, Ph.D.
Senior Advisor
Directorate of Mathematical & Physical Sciences
(on detail to the NASA Astrophysics Division from 01/08/18 - 01/05/19)
National Science Foundation

[Personal Matters / Ex. 6]

From: Sharma, Mangala
Sent: Monday, June 25, 2018 11:57 AM
To: Knezek, Patricia; Knezek, Patricia M. (HQ-DH000)[Federal Government Detailee]
Cc: Keiser, Rebecca Lynn
Subject: Re: REQUEST FOR INPUT: G7 questionnaire

Dear Pat,

We were very pleased to receive responses to the G7 Open Science survey from about 10 federal agencies, and thank them for their time and input.

We consolidated the agency inputs into a US contribution, and sent it to OSTP for EOP review. OSTP has concurred on the attached document. Could you please share it with the IWGOS?

Again, thank you all for working with us on this!
Mangala

___ *** ___

Mangala Sharma, PhD
Program Director
Office of International Science and Engineering / Office of the Director
National Science Foundation
Phone: [Personal Matters / Ex. 6] Email: [Personal Matters / Ex. 6]

From: "Knezek, Patricia" <[Personal Matters / Ex. 6]>
Date: Monday, May 21, 2018 at 1:41 PM

To: **Personal Matters / Ex. 6**
Cc: "Sharma, Mangala" **Personal Matters / Ex. 6**, "Knezek, Patricia" <**Personal Matters / Ex. 6**>
Subject: REQUEST FOR INPUT: G7 questionnaire

Hi, All,

On behalf of Dr. Rebecca L. Keiser, Head, Office of International Science and Engineering at the National Science Foundation, I am passing along a request:

OSTP received the attached questionnaire on open science from our Japanese colleagues that is part of the work of the G7 Open Science Working Group.

Deliberative Process / Ex. 5
Deliberative Process / Ex. 5 Therefore, please send your agency's inputs to the questionnaire by Friday, June 1, to Mangala Sharma, **Personal Matters / Ex. 6** NSF will consolidate them. It is fine to input any agency-specific practices for each question. **Deliberative Process / Ex. 5**
Deliberative Process / Ex. 5

A few agencies have already received a request from Dr. Kaiser, so for them apologies for the duplication. We will have time for discussion of this on the agenda for this Thursday's meeting, and Dr. Kaiser hopes to call in to answer any questions. The agenda will be sent out later today with other meeting materials.

All the best - Pat

Patricia Knezek, Ph.D.
Senior Advisor
Directorate of Mathematical & Physical Sciences
(on detail to the NASA Astrophysics Division from 01/08/18 - 01/05/19)
National Science Foundation

Personal Matters / Ex. 6

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Open Science Follow-up Survey for G7 Science Ministers' Meeting
Response from the UNITED STATES

At the G7 Science Ministers' Meeting in Italy this September, G7 Ministers encouraged the Open Science Working Group (OS WG) to follow up actions taken by G7 members according to the WG's recommendations and to collect good practices, in order to report to the next G7 Science Ministers' Meeting, under the adopted G7 SCIENCE MINISTERS' COMMUNIQUÉ. In particular, the OS WG is expected to deepen its efforts on the following topics: the incentives for openness of the research ecosystem, including the role of research indicators and metrics relevant to open science; and the infrastructures and standards for optimal use of research data. According to these backgrounds, we hereby conduct a follow-up survey, especially by updating the policies and collecting good practices of each country.

Please answer to the questions below. Attaching reference documents and information are highly appreciated.

Q1: Overview of National Framework of Policies and Programs supporting Open Science Paradigms

Please describe an overview of governmental policies and programs to promote Open Science Paradigms. It is strongly encouraged to include the purposes, targets and goals (ex: what social impacts are expected?) of such policies and programs as well as information of how (ex: set an article in the law) you position them in the national STI framework of your country.

If there are any challenges to respond as one response at the government-wide level, in view of your country's policy situation for open science paradigms,

- (1) please explain the details of the country's situation
- (2) and if possible, please describe policies and programs of the ministries/departments and government agencies to promote open science paradigms in your country.

- You can expand the comment box below for longer responses.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Q2: Examples of Incentives and rewards for researchers to Promote Open Science Paradigms

In Annex 4 of the Communiqué, recommendations are stated for each G7 nation, to engage with research stakeholders to identify and implement enhancements to research evaluation and reward systems that take into consideration the Open Science activities carried out by researchers and research institutions. Accordingly, please show and explain your country's examples of incentives and rewards for researchers to promote Open Science relevant to following topics 2A, 2B, 2C, 2D and 2E. Multiple topics can be selected for each example, if appropriate. Please make sure that your description of a content section clarifies how the selected topic(s) are applicable to the corresponding cases.

2A: Recognizing Open Science practices during evaluation of research funding proposals, and research outcomes.

2B: Recognizing and rewarding research productivity and impact that reflect open science activities by researchers during career advancement reviews.

2C: Including credit for service activities such as reviewing, evaluating, and curation and management of research data.

2D: Developing metrics of Open Science practices.

2E: Other than above

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Please describe any budget measurements and/or frameworks (rules, standards, organizations, or any) established for the examples (2A-2E) if you have, and also what they (budget and framework) achieved and what impacts they have on governmental policies, R & D, industry, citizen, education and so on.

- You can expand the comment box below for longer responses.

Deliberative Process / Ex. 5

Please describe any practices, if you have, for utilizing research indicator and/or metrics relevant for evaluation of Open Science activities and their impact on policy, research, industry and/or citizen sectors.

- You can expand the comment box below for longer responses.

Deliberative Process / Ex. 5

Q3: Examples of Infrastructures and Standards for an Optimal Use of Research Data

Each G7 nation is recommended to work to promote the development of practices and the use of technologies and infrastructures in the research community that foster Open Science principles and data sharing. Please show and explain your country's examples of cases, developments, and/or approaches relevant to the following items.

Multiple topics can be selected for each example, if appropriate. Please make sure that your description of a content section clarifies how the selected topic(s) are applicable to the corresponding cases.

3A: Actions if any, towards use of data management plans as part of new research projects, and

other approaches, as important instruments to ensure data quality along the whole data life cycle, data preservation and access.

3B: Any major activities for development of common interfaces and data standards, including software whenever appropriate.

3C: Actions to support development of plans and approaches for maximizing the accessibility, long-term preservation and reproducibility of research data and results, while protecting privacy, confidentiality, national security, and intellectual property.

3D: Other than above

- Please answer one or more appropriate example(s). If needed, please add extra answer box(es).
- You can expand the comment box below for longer responses.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Also please provide information about your country's research data infrastructure initiatives. This information will help future communication and forum between G7 members for fostering global coordination of research data infrastructures.

- You can expand the comment box below for longer responses.

Deliberative Process / Ex. 5

Q4: Any Other Good Practices That Would Be Worthwhile Sharing

Please provide any information (current status, experiences, and/or ongoing plans) of your country which helps promote open science, research data sharing — e.g. formulating codes of conduct for researchers; workforce development on data management skills (education and training) and encouraging best practice in the use of research indicators and metrics for the evaluation of research.

- You can expand the comment box below for longer responses.

Deliberative Process / Ex. 5

Message

From: Blancato, Jerry [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=232DE363DADB4CD9961900E10F56FDDF-BLANCATO, JERRY]
Sent: 6/19/2018 6:14:25 PM
To: Dowd, Sean [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d87cd3e243474635b0a6ecd01fe325d2-Dowd, Sean]
Subject: FW: DMP comparison chart
Attachments: Agency_SideBySide.xlsx

Sean,

The request we talked about earlier. Tom's note below after the first sentence deals with other, but related stuff, while I pinch hit for him at IWGOS meeting.

But the key here is the attached spread sheet.

Jerry
919-541-2854

From: Sinks, Tom
Sent: Tuesday, June 19, 2018 10:07 AM
To: Blancato, Jerry <Blancato.Jerry@epa.gov>; Teichman, Kevin <Teichman.Kevin@epa.gov>; Leopard, Matthew (OEI) <Leopard.Matthew@epa.gov>
Cc: Sinks, Tom <Sinks.Tom@epa.gov>
Subject: FW: DMP comparison chart

Can you take a look at the xlsx and determine if any EPA updates are needed. Once done please forward directly to Andrew Mendoza (OSTP) with a cc to me.

Jerry – Andrew may ask about this next week at IWGOS. Also, a couple IWGOS updates for next week ...

- GAO did contact EPA about beta testing their questionnaire on Agency responses to public access. We were unavailable on the date they were looking for so they sought input from other agencies. We did not see the questionnaire.
- EPA has written a Report to Congress updating the hill on implementation of our Plan to Increase Access to EPA funded Research. The report was sent to OMB which cleared it last week without comment. As of today it is in final sign-off in OCFO. Hopefully it will have been delivered to Congress by the time IWGOS meets. We will post the RtC on our website.
- As of today, 179,800 public comments have been sent into the docket on EPA's proposed rule - Transparency in Regulatory Science. EPA will hold a public hearing at our headquarters on July 17th. Public comments close on August 16th.

From: Interagency Working Group on Open Science [<mailto:IWGOS@LISTSERV.NSF.GOV>] On Behalf Of Mendoza, Andrew G. EOP/OSTP
Sent: Friday, June 15, 2018 11:27 AM
To: IWGOS@LISTSERV.NSF.GOV
Subject: FW: DMP comparison chart

Dear IWGOS Members,

Thank you everyone for your responsiveness to my request for information regarding grant terms and conditions. I really appreciate how quickly everyone responded.

On another note, one of items that has come up recently at our meetings are the comparisons of agency data management plans. As you may remember, we distributed the attached agency DMP comparison chart at the last IWGOS meeting. With the Working Group's plans moving forward, it would be helpful if all agencies could update the information on the chart so that it reflects their current guidance or requirements. If additional columns are needed to accommodate other types of instruction/information, please feel free to add them and we can consolidate on the back end. To start, I have added two columns with Jerry's recommendation regarding maximum page length and whether the DMPs (or any portion of them) are made public.

If possible, please submit your agency's update before the end of next week.

Thank you so much!

Andrew G. Mendoza
Legal Counsel and Policy Advisor
The White House | Office of Science and Technology Policy

Personal Matters / Ex. 6

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Message

From: Nickerson, William [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=148F2C1C05B54F358E29C59B841664AA-WNICKER]
Sent: 4/26/2018 2:19:57 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: FW: SIGNED: Strengthening Transparency in Regulatory Science

Can we talk about this at ops please before we reply

From: Grantham, Nancy
Sent: Thursday, April 26, 2018 10:19 AM
To: Bowman, Liz <Bowman.Liz@epa.gov>
Cc: Block, Molly <block.molly@epa.gov>; Letendre, Daisy <letendre.daisy@epa.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>; Konkus, John <konkus.john@epa.gov>; Nickerson, William <Nickerson.William@epa.gov>; Germann, Sandy <Germann.Sandy@epa.gov>
Subject: Re: SIGNED: Strengthening Transparency in Regulatory Science

Op - is there a suggested place on your pages? Thx ng

Sent from my iPhone

On Apr 26, 2018, at 10:15 AM, Bowman, Liz <Bowman.Liz@epa.gov> wrote:

Yes, that would be great. Can we put it on the appropriate place on the website?

From: Grantham, Nancy
Sent: Thursday, April 26, 2018 10:14 AM
To: Block, Molly <block.molly@epa.gov>; Letendre, Daisy <letendre.daisy@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>; Konkus, John <konkus.john@epa.gov>
Cc: Nickerson, William <Nickerson.William@epa.gov>; Germann, Sandy <Germann.Sandy@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>
Subject: Fwd: SIGNED: Strengthening Transparency in Regulatory Science

Folks are looking for a link
on line for this - and op is saying we don't have yet - do we want to post this pdf someplace so we can link Tom it?

Thx ng

Sent from my iPhone

Begin forwarded message:

From: "Johnson, Laura-S" <Johnson.Laura-S@epa.gov>
To: "Jackson, Ryan" <jackson.ryan@epa.gov>, "Bowman, Liz" <Bowman.Liz@epa.gov>, "Lyons, Troy" <lyons.troy@epa.gov>, "Bennett, Tate" <Bennett.Tate@epa.gov>, "White, Elizabeth" <white.elizabeth@epa.gov>, "Bodine, Susan" <bodine.susan@epa.gov>, "Minoli, Kevin" <Minoli.Kevin@epa.gov>, "Leopold, Matt" <Leopold.Matt@epa.gov>, "Bowman, Liz" <Bowman.Liz@epa.gov>, "Wheeler, Andrew"

<wheeler.andrew@epa.gov>, "Bolen, Brittany" <bolen.brittany@epa.gov>, "Orme-Zavaleta, Jennifer" <Orme-Zavaleta.Jennifer@epa.gov>, "Yamada, Richard (Yujiro)" <yamada.richard@epa.gov>

Cc: "Wooden-Aguilar, Helena" <Wooden-Aguilar.Helena@epa.gov>, "Grantham, Nancy" <Grantham.Nancy@epa.gov>, "Richardson, RobinH" <Richardson.RobinH@epa.gov>, "Hope, Brian" <Hope.Brian@epa.gov>, "Fonseca, Silvina" <Fonseca.Silvina@epa.gov>, "Hewitt, James" <hewitt.james@epa.gov>, "Abboud, Michael" <abboud.michael@epa.gov>, "Wilcox, Jahan" <wilcox.jahan@epa.gov>, "Gaines, Cynthia" <Gaines.Cynthia@epa.gov>, "Nickerson, William" <Nickerson.William@epa.gov>, "Lovell, Will (William)" <lovell.william@epa.gov>, "Kime, Robin" <Kime.Robin@epa.gov>, "Maguire, Kelly" <Maguire.Kelly@epa.gov>, "Blackburn, Elizabeth" <Blackburn.Elizabeth@epa.gov>

Subject: SIGNED: Strengthening Transparency in Regulatory Science

Good afternoon

Today, the Administrator signed the proposed rule "Strengthening Transparency in Regulatory Science."

This proposed regulation is intended to strengthen the transparency of EPA regulatory science. The proposed regulation provides that when EPA develops regulations, including regulations for which the public is likely to bear the cost of compliance, with regard to those scientific studies that are pivotal to the action being taken, EPA should ensure that the data underlying those are publicly available in a manner sufficient for independent validation.

In this notice, EPA solicits comment on this proposal and how it can best be promulgated and implemented in light of existing law and prior Federal policies that already require increasing public access to data and influential scientific information used to inform federal regulation.

Attached is the signed and dated proposed rule. For your convenience, please go to p. 19 for the Administrator's signature.

Please contact me if you have any questions.

Sincerely,
Laura

Laura S. Johnson | U.S. Environmental Protection Agency
Special Assistant, Office of the Administrator | Cell (202) 819-4941
Office (202) 566-1273 | johnson.laura-s@epa.gov

Message

From: Lovell, Will (William) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3B150BB6ADE640F68D744FADCB83A73E-LOVELL, WIL]
Sent: 3/19/2018 9:13:08 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: FW: Science Transparency Notice BP
Attachments: 180320!_Science Transparency bb.docx; FR Notice on Data Access Guidelines_3.19.2018_clean.docx

Forwarding

From: Lovell, Will (William)
Sent: Monday, March 19, 2018 5:07 PM
To: Ferguson, Lincoln <ferguson.lincoln@epa.gov>; Ford, Hayley <ford.hayley@epa.gov>
Subject: RE: Science Transparency Notice BP

We made a few edits. Please see attached. Thank you!

From: Lovell, Will (William)
Sent: Monday, March 19, 2018 4:20 PM
To: Ferguson, Lincoln <ferguson.lincoln@epa.gov>; Ford, Hayley <ford.hayley@epa.gov>
Subject: Science Transparency Notice BP

Lincoln and Hayley,

Please find attached a briefing paper for the 10:45 am meeting tomorrow on the Science Transparency Notice. I am also attaching the most recent version of the notice in case that is helpful.

Regards,

Will Lovell
Policy Advisor, Office of Policy
U.S. Environmental Protection Agency
(202) 564-5713
Lovell.William@epa.gov

From: McGartland, Al [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5FE25FC1DF634F9798675527E0070429-AMCGARTL]
Sent: 5/11/2018 6:41:48 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: Re: Many mocked this Scott Pruitt proposal. They should have read it first. - The Washington Post

Personal Matters / Ex. 6

Maybe you saw the editorial by Ioannidis? He is known for his work showing that replication of current science is a big problem. Nonetheless he comes down hard on the proposal.

So you know the other side:

EDITORIAL

All science should inform policy and regulation

John P. A. Ioannidis



- Published: May 3, 2018
- <https://doi.org/10.1371/journal.pmed.1002576>

Ioannidis JPA (2018) All science should inform policy and regulation. PLoS Med 15(5): e1002576. <https://doi.org/10.1371/journal.pmed.1002576>

Not all scientific information is created equal. Large differences exist across topics on how much is known, and with what degree of certainty. Some questions are more difficult to answer, and some research tools are more reliable than others. Not all methods can be applied to answer every question. Credibility depends [1] on how large and rigorous studies are, how well researchers have contained conflicts of interest (financial or other), and how successfully the study design and analysis have limited bias, properly accounting for the complexity inherent in each scientific question. Coordinated efforts among scientists instead of furtive competition help improve the odds of success. Transparency with full sharing of data, protocols and computer codes improves trust in research findings. Re-analysis of data by independent teams adds to that trust and replication in new studies further enhances it.

Scientific findings vary in their credibility. Some findings are beyond reasonable doubt. For example, we have extremely strong evidence that the tobacco pandemic is devastating; that the MMR vaccine is generally safe; that climate change is happening; and that air pollution is a major health hazard. Conversely, our evidence base is notoriously weak on most dietary advice one might hope to give about specific nutrients [2]. Within a given discipline, evidence may be strong for some findings but weak for others. E.g., we have strong evidence for some medical interventions, modest evidence for others, and dismally biased evidence for many.

Our society will benefit from using the best available science for governmental regulation and policy. One can only applaud when governments want to support the best possible science, invest in it, find ways to reduce biases, and provide incentives that bolster transparency, reproducibility, and the application of best methods to address questions that matter. However, perceived perfection is not a characteristic of science, but of dogma. Even the strongest science may have imperfections. In using scientific information for decision-making, it is essential to examine evidence in its totality, recognize its relative strengths and weaknesses, and make the best judgment based on what is available.

Making scientific data, methods, protocols, software, and scripts widely available is an exciting, worthy aspiration [3–5]. Government-based regulatory and funding incentives can be instrumental in making this happen at large scale. However, we should recognize that most of the raw data from past studies are not publicly available. In a random sample of the biomedical literature (2000–2014) [6], none of 268 papers shared all of their raw data. Only one shared a full research protocol. The proportion of studies that have had all their raw data independently re-analyzed is probably less than one in a thousand. The number of studies that have been exactly replicated in new investigations is quite larger, but still a minority in most fields. A new standard currently proposed for the Environmental Protection Agency [7] aims to ban the use of scientific studies for regulatory purposes unless all their raw data are widely available in public and can be reproduced. If the proposed rule is approved, science will be practically eliminated from all decision-making processes. Regulation would then depend uniquely on opinion and whim.

Past collected and analyzed information can and should still be used for decision-making, taking into account any relevant imperfections. While fully transparent and reproducible information should certainly be valued more highly, studies with weaknesses can still offer insights. Some deficiencies may be unavoidable. For example, researchers cannot ethically randomize people to harmful exposures in order to tackle confounding, nor violate informed consent agreements that prohibit open sharing of private data from past studies. Instead of violating ethics, we should focus more on future efforts, informed by what we have learned in the past. When avoidable weaknesses are identified, we can improve rigor, transparency and reproducibility (and, eventually, credibility) for future studies.

Successful examples of rigorous, reproducible research can be used as templates for other fields that are struggling with suboptimal research practices. For example, the pivotal research on the health effects of air pollution is particularly strong. The Six Cities [8] and American Cancer Society [9] studies are exemplary large-scale investigations, with careful application of methods, detailed scrutiny of measurements, replication of findings, and, importantly, detailed re-analysis of results and assessment of their robustness by entirely independent investigators [10]. The re-analysis and sensitivity analyses were conducted by the Health Effects Institute that was funded by stakeholders some of whom may have desired to see opposite conclusions. It would be wonderful, if in the future the same rigorous re-analysis and replication standards could become the standard for all important areas of research that can inform policy.

In the USA and elsewhere, governments are major funders of research and their regulatory mandates provide powerful incentives for best science. Making widely applicable, reproducible research practices and sharing the default option for research (with sparse exceptions, when appropriately justified) will strengthen scientific investigation and maximize its benefits to society at large. Governments can bolster their legacy through such initiatives and scientists would be broadly supportive of such a transformative vision to promote a standard of openness in science.

The opposite scenario, of simply ignoring science that has not yet attained such standards, is a nightmare. On the one hand, we would see governments discarding science at massive scale because of perceived imperfections and impurities. Perhaps worse, we would see scientists respond by becoming politically entrenched dogmatic advocates, falsely believing that they defend science. Even well-intentioned academics, perceiving an attack on science, may be tempted to take an unproductive, hand-waving defensive position: “we have no problem with reproducibility”, “everything is fine”, “science is making progress”. Certainly, science is

making progress; with 20 million smart people working in and co-authoring scientific work and with major funding investment, it would be horrible if no progress were made. The issue is how we can accelerate progress. To do this, instead of hiding trash under the carpet, we should make the best use of past work and materialize bigger and better plans for the future. Science is facing a major transformation nowadays, with exponentially more data and far more scientists working on them than ever. Financial and other conflicts are major threats. Many analyses are becoming black boxes and reproducibility problems are widely documented across many fields. Most of the effects pursued by current investigations are of modest size, nowhere close to the huge harms of tobacco or the huge benefits of childhood vaccinations. Many fields lack the high reproducibility standards that are already used in fields such as air pollution and climate change. The scientific enterprise faces great challenges and great opportunities and we need the best research practices in order to succeed [11].

While scientists can work to improve science, governments and regulators can also do better. Most governments around the world have largely neglected the need to support reproducible research practices. Moreover, they have not used science as much as they should. This is particularly worrisome when the evidence is strong, yet governments have not acted forcefully enough. It is a scandal that we continue to allow companies to make money from selling tobacco products, despite expecting about 1 billion tobacco-related deaths in the next 100 years, a Holocaust equivalent of lost lives repeated every year. It is a scandal that the response of governments to climate change and pollution has not been more decisive. It is a scandal that we don't have higher standards for drugs, biologics, and devices. It is a scandal that people die from measles in the 21st century. Current governments have plenty of room to improve over the mediocre performance of their predecessors. They can do this by using, not discarding, science.

References

1. **1.**Ioannidis JPA. Why most published research findings are false. PLoS Med. 2005;2(8):e124.
pmid:[16060722](#)
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 - [PubMed/NCBI](#)
 - [Google Scholar](#)
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3. **3.**Munafò MR, Bishop DV, Button KS, Chambers C, Nosek B, Percie du Sert N, et al. A manifesto for reproducible science. Nature Human Beh. 2017;1:0021.
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pmid:[25334033](#)
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 - [PubMed/NCBI](#)
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5. **5.**Nosek BA, Alter G, Banks GC, Borsboom D, Bowman SD, Breckler SJ, et al. Promoting an open research culture. Science 2015;348(6242):1422–5. pmid:[26113702](#)

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 - [PubMed/NCBI](#)
 - [Google Scholar](#)
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 - [PubMed/NCBI](#)
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7. **7.**Proposed rule. Strengthening transparency in regulatory science.
In: <https://www.gpo.gov/fdsys/pkg/FR-2018-04-30/pdf/2018-09078.pdf>, last accessed April 27, 2018.
8. **8.**Dockery DW, Pope CA 3rd, Xu X, Spengler JD, Ware JH, Fay ME, et al. An association between air pollution and mortality in six U.S. cities. N Engl J Med. 1993;329(24):1753–9. pmid:[8179653](#)
- [View Article](#)
 - [PubMed/NCBI](#)
 - [Google Scholar](#)
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- [View Article](#)
 - [PubMed/NCBI](#)
 - [Google Scholar](#)
10. **10.**Krewski D, Burnett R, Goldberg MS, Hoover K, Siemiatycki J, Jerrett M, et al. Reanalysis of the Harvard Six Cities study and the American Cancer Society study of particulate air pollution and mortality. Health Eff Inst Special Rep 2000;July. pmid:[12959828](#)
- [View Article](#)
 - [PubMed/NCBI](#)
 - [Google Scholar](#)
11. **11.**Ioannidis JPA. Meta-research: why research on research matters. PLoS Biol. 2018;16(3):e2005468. pmid:[29534060](#)
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On May 11, 2018, at 9:43 AM, Bolen, Brittany <bolen.brittany@epa.gov> wrote:

https://www.washingtonpost.com/opinions/many-mocked-this-scott-pruitt-proposal-they-should-have-read-it-first/2018/05/10/31baba9a-53c2-11e8-abd8-265bd07a9859_story.html

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Message

From: St. John, Joseph [StJohnJ@ag.louisiana.gov]
Sent: 8/15/2018 2:30:15 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]; Staff_OSA [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=be69b6688a614ca39759d52ca5716ef3-OSA]
Subject: Comment of 11 State Attorneys General ISO EPA's Proposal to Strengthen Transparency in Regulatory Science
Attachments: 2018.08.15 Comment Letter re Transparency in Science (FINAL FOR FILING).pdf

Ms. Bolen and Mr. Sinks:

On behalf of the Attorneys General of Louisiana, Alabama, Arkansas, Indiana, Kansas, Nebraska, Oklahoma, South Carolina, Texas, Utah, and Wisconsin, please see the attached comment in support of EPA's Proposal to Strengthen Transparency in Regulatory Science. An electronic copy was submitted on regulations.gov, and a hardcopy with attached exhibits is being sent to EPA's docket center.

Best regards,
Scott St. John



Joseph Scott St. John

Deputy Solicitor General
Office of Attorney General Jeff Landry
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From: no-reply@regulations.gov [mailto:no-reply@regulations.gov]
Sent: Wednesday, August 15, 2018 9:24 AM
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Agency: Environmental Protection Agency (EPA)
Document Type: Rulemaking

Title: Strengthening Transparency in Regulatory Science

Document ID: EPA-HQ-OA-2018-0259-0001

Comment:

On behalf of the Attorneys General of Louisiana, Alabama, Arkansas, Indiana, Kansas, Nebraska, Oklahoma, South Carolina, Texas, Utah, and Wisconsin, please see the attached comment in support of EPA's Proposal to Strengthen Transparency in Regulatory Science. A hardcopy with attached exhibits is being sent to EPA's docket center.

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Government Agency: Office of the Louisiana Attorney General

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DEPARTMENT OF JUSTICE
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Jeff Landry
Attorney General

August 15, 2018

Via Electronic Submission and Federal Express

Andrew Wheeler, Acting Administrator
Environmental Protection Agency
EPA Docket Center
WJC West Building, Room 3334
1301 Constitution Avenue, NW
Washington, DC 20004

Re: **Comments of the Attorneys General of Louisiana, Alabama, Arkansas, Indiana, Kansas, Nebraska, Oklahoma, South Carolina, Texas, Utah, and Wisconsin on EPA's Proposal to Strengthen Transparency in Regulatory Science; 83 Fed. Reg. 18,768 (April 30, 2018);
Docket ID No. EPA-HQ-OA-2018-0259**

Dear Administrator Wheeler:

The undersigned Attorneys General, as the chief legal officers of our States, write to express support for the Environmental Protection Agency's ("EPA") April 30, 2018, proposal to adopt a regulation to provide much-needed transparency regarding the scientific research and data on which the agency bases its regulatory actions ("the Proposed Rule").*

GENERAL COMMENT

The citizens of our States and the industry stakeholders so crucial to our States' economies bear the cost of regulatory compliance. Accordingly, the science on which those regulations are based should be high quality and available to the public. Public disclosures should be sufficient to permit independent validation and analysis of the data, methodology, computational code, and conclusions. Transparency of this sort not only comports most fully with the public participation in rulemaking contemplated by the Administrative Procedure Act, but is a bedrock principle for establishing public confidence in actions taken by the EPA.

The Proposed Rule addresses the troubling erosion of credibility of published scientific literature. EPA is obliged to rely upon the best available science in its regulatory actions. *See, e.g.*, Exec. Order No. 13,783, 82 Fed. Reg. 16,093 (Mar. 31, 2017); Exec. Order No. 13,563, 76 Fed. Reg. 3,821 (Jan. 21, 2011). However, absent open sharing of underlying data, methodology, and computational code, the credibility of the science is open to question. Moreover, reproducibility can be rendered impossible, further crippling the credibility of the research.

As reported in *Science*, reproducibility in scientific work is important to providing confidence in the conclusions reached, but a “troubling proportion” of peer-reviewed studies are not reproducible.¹ *Science* thus revisited the criteria for publication with the aim of increasing confidence in the studies it publishes. Similarly, a recent article in *Nature* identified lack of replication and lack of data sharing as “threats” to reproducible science.² Open and transparent sharing of the methodology applied, the data acquired, and the process of methodology implementation, data analysis and outcome interpretation was identified as the remedy. The type of open science called for in these publications—laying bare both content and process—is precisely what is achieved through the Proposed Rule.

SPECIFIC COMMENT 1: There is strong evidence that publication in a peer reviewed journal is not sufficient to ensure a study reflects valid, reproducible science.

Concern with the quality of published science goes back to at least 2005, when a study of 45 highly-cited articles in *New England Journal of Medicine*, *JAMA*, and *Lancet* concluded that at least 7 articles (16%) were contradicted by subsequent research and another 7 articles (16%) claimed stronger effects than were supported by subsequent research.³ A widely-read essay published later that year suggested that most published research findings are false.⁴ Consistent with that suggestion, Bayer Healthcare disclosed in 2011 that 43 (65%) of the company’s attempts to reproduce 67 published studies resulted in inconsistent data.⁵ In 2012, Amgen, Inc., similarly disclosed that it was only able to reproduce 6 (11%) of 53 studies that the company attempted to confirm.⁶

Consistent with the Bayer and Amgen disclosures, recent estimates for irreproducibility in preclinical and biomedical research range as high as 90% of that research, even for articles published in high-quality journals.^{7, 8, 9} The problem does not appear to be limited to particular fields. For example, a recent survey of 804 ecologists and evolutionary biologists found that questionable research practices were widespread, with 64% of surveyed researchers reporting they had at least once failed to report results because they were not statistically significant (“cherry picking”); 42% reporting they had collected more data after inspecting whether results were statistically significant (a form of “p-hacking”); and 51% acknowledging they had reported an unexpected finding as though it was hypothesized from the start.¹⁰ In short, a large fraction of the surveyed researchers admitted to manipulating their results. Not surprisingly, a 2016 survey by the journal *Nature* found that lack of reproducibility is a widespread concern among scientists.^{11, 12}

SPECIFIC COMMENT 2: There is strong evidence of widespread, outcome-altering errors in the computational code underlying many scientific studies.

* Each publication cited herein is attached as an exhibit to the hardcopy of this comment.

¹ M. McNutt, *Editorial: Reproducibility*, 343 *SCIENCE* 229 (2014).

² M. R. Munafo et al., *A Manifesto for Reproducible Science*, 1 *NATURE HUM. BEHAVIOR* 21 (2017).

³ J. P. A. Ioannidis, *Contradicted and Initially Stronger Effects in Highly Cited Clinical Research*, 294(2) *JAMA* 218 (2005).

⁴ J. P. A. Ioannidis, *Why Most Published Research Findings Are False*, 2(8) *PLOS MED.* e124 (2005).

⁵ F. Prinz et al., *Correspondence: Believe It or Not: How Much Can We Rely on Published Data on Potential Drug Targets*, 10 *NATURE REV. DRUG DISCOV.* 712 (2011).

⁶ C. G. Begley & L. M. Ellis, *Comment: Drug Development: Raise Standards for Preclinical Cancer Research*, 483 *NATURE* 531 (2012).

⁷ C. G. Begley & J. P. A. Ioannidis, *Reproducibility in Science*, 116 *CIRC. RES.* 126 (2015).

⁸ L. P. Freedman et al., *The Economics of Reproducibility in Preclinical Research*, 13(6) *PLOS BIOLOGY* e1002165 (2015).

⁹ V. E. Johnson, *Revised Standards for Statistical Evidence*, 110(48) *PNAS* 19313 (2013).

¹⁰ H. Fraser et al., *Questionable Research Practices in Ecology and Evolution*, Open Science Framework (Preprint March 21, 2018).

¹¹ M. Baker, *Is There a Reproducibility Crisis?*, 533 *NATURE* 452 (2016).

¹² Editorial, *Reality Check on Reproducibility*, 533 *NATURE* 437 (2016).

Outcome-altering errors in computational code have been suggested as a significant contributor to the replication crisis.¹³ High profile retractions, technical comments, and corrections because of coding errors include papers in prominent journals such as *Science*, *PNAS*, the *Journal of Molecular Biology*, *Ecology Letters*, *Journal of Mammalogy*, *Journal of the American College of Cardiology*, *Hypertension*, and *American Economic Review*.¹⁴ Such outcome-altering errors can arise from the simplest mistakes. For example, five retractions were based on a flipped minus sign.¹⁵ Perhaps most famously, a 2010 study by Harvard University economists Carmen Reinhart and Kenneth Rogoff was undermined by errors in the authors' spreadsheet.¹⁶ ¹⁷ The Reinhart-Rogoff study had significant public policy consequences, yet the errors went undetected until a graduate student sought and reviewed the authors' working spreadsheet.^{18, 19}

SPECIFIC COMMENT 3: The Proposed Rule is consistent with the publication requirements of major scientific journals, which were adopted specifically to address the reproducibility crisis.

In its commentary accompanying the Proposed Rule, the EPA noted that its policies and the policies of open-science advocates “are informed by the policies recently adopted by some major scientific journals, spurred in some part by the ‘replication crisis.’” 83 Fed. Reg. at 18770. The EPA cited the policies of *PNAS*, *PLOS One*, *Science*, and *Nature* as examples. *Id.* at 18770 & n.11. Those policies were specifically intended to address the inability of researchers to properly assess results in the absence of underlying data and methodology. The journal *Nature* explained:

Over the past year, *Nature* has published a string of articles that highlight failures in the reliability and reproducibility of published research The problems arise in laboratories, but journals such as this one compound them when they fail to exert sufficient scrutiny over the results that they publish, and ***when they do not publish enough information for other researchers to assess results properly.***

From next month, *Nature* and the *Nature* research journals will introduce editorial measures to address the problem by improving the consistency and quality of reporting in life-sciences articles. ***To ease the interpretation and improve the reliability of published results we will more systematically ensure that key methodological details are reported,*** and we will give more space to methods sections. We will examine statistics more closely and ***encourage authors to be transparent, for example by including their raw data.***²⁰

More recently, the editors of *Nature* recognized that—despite the adoption of transparency policies—resolution of the reproducibility crisis “is far from complete.”²¹ They accordingly encouraged “funders, researchers and journals to keep up the pressure towards the openness of complete data sets and any source code required to use them.”²² Although public disclosure of data, methodology, and computational code

¹³ D. A. W. Soergel, *Rampant Software Errors May Undermine Scientific Results*, 3 F1000RESEARCH 303 (2015).

¹⁴ G. Wilson et al., *Best Practices for Scientific Computing*, 12(1) PLOS BIOLOGY e1001745 (2014).

¹⁵ Z. Merali, *Why Scientific Programming Does Not Compute*, 467 NATURE 775 (2010).

¹⁶ C. M. Reinhart & K. Rogoff, *Growth in a Time of Debt*, *American Economic Review: Papers and Proceedings* 100 (2010) at 573.

¹⁷ T. Herndon et al., *Does High Public Debt Consistently Stifle Economic Growth? A Critique of Reinhart and Rogoff*, Political Economy Working Paper Series No. 322 (2013).

¹⁸ R. Alexander, *Reinhart, Rogoff . . . and Herndon: The Student Who Caught Out the Profs*, BBC News (Apr. 20, 2013).

¹⁹ P. Coy, *FAQ: Reinhart, Rogoff, and the Excel Error that Changed History*, Bloomberg News (Apr. 18, 2013).

²⁰ Announcement, *Reducing Our Irreproducibility*, 496 NATURE 398 (2013).

²¹ Announcement, *Transparency Upgrade for Nature Journals*, 543 NATURE 288 (2017).

²² Editorial, *Not-So-Open Data*, 546 NATURE 327 (2017).

may not be *sufficient* to ensure that scientific claims are valid, public disclosure is absolutely *necessary* for confidence in the validity those claims.^{23, 24, 25, 26}

SPECIFIC COMMENT 4: Pre-publication peer review is not an adequate substitute for public availability of data, methodology, and computational code.

In response to the Proposed Rule, some commenters have suggested the Proposed Rule is an attempt to remove valid and relevant scientific evidence from the rule-making process. But that begs the question: in the light of overwhelming evidence that a significant portion of studies published in prominent peer reviewed journals are not reproducible, it is dubious to claim that any particular research is valid and relevant unless—at a minimum—other researchers and the public have access to the underlying data, methodology, and computational code.

More to the point, empirical evidence indicates that peer reviewers routinely fail to identify even major errors.²⁷ And peer review in less prominent journals may often occur in name only.²⁸ In short, the best available metascience—science about science—indicates that pre-publication peer review is not adequate to ensure the validity of published scientific claims.

SPECIFIC COMMENT 5: Promises to share data with qualified researchers are not an adequate substitute for public disclosure of data, methodology, and computational code.

Promises to provide other researchers with access to data, methodology, or computational code are not an adequate substitute for public availability. Such promises often go unfulfilled.²⁹ In an attempt to quantify the problem, researchers from Memorial Sloan-Kettering Cancer Center sought data from the corresponding authors of ten articles that were subject to a data sharing requirement.³⁰ Two of the authors could not be contacted. Of the remaining eight authors, four replied that sharing their data was not possible, three did not respond, and one asked for further details regarding the request. Despite a follow-up contact reminding the authors of their data sharing obligation, the Sloan-Kettering researchers received only a single data set of the ten originally sought.

Significantly, many uncredentialed members of the public are capable of reviewing and identifying errors in data, methodology, and computational code. The Reinhart-Rogoff errors, *supra*, were identified by a graduate student. Other serious, basic errors in high-profile studies have been identified by undergraduates.³¹ If undoubtedly qualified Sloan-Kettering researchers were generally unable to obtain data, there is little reason to believe other researchers—formally qualified or otherwise—will be able to do so. When the EPA decides to regulate, the public is entitled to more than empty promises that data supports that decision.

²³ G. Santori, *Correspondence: Journals Should Drive Data Reproducibility*, 535 NATURE 355 (2017).

²⁴ S. M. Easterbrook, *Open Code for Open Science?*, 7 NATURE GEOSCI. 779 (2014).

²⁵ G. J. Lithgow et al., *Comment: A Long Journey to Reproducible Results*, 548 NATURE 387 (2017).

²⁶ J. S. Mogil & M. R. Macleod, *Comment: No Publication Without Replication*, 542 NATURE 409 (2017).

²⁷ S. Schroter et al., *What Errors Do Peer Reviewers Detect, and Does Training Improve Their Ability to Detect Them?*, 101 J. R. SOC. MED. 507 (2008).

²⁸ J. Bohannon, *Who's Afraid of Peer Review?*, 342 SCIENCE 60 (2013).

²⁹ D. G. Roche, *Evaluating Science's Open Data Policy*, 357 SCIENCE 654 (2017).

³⁰ C. J. Savage & A. J. Vickers, *Empirical Study of Data Sharing by Authors Publishing in PLoS Journals*, 4(9) PLOS ONE e7078 (2009).

³¹ R. Nuzzo, *Fooling Ourselves*, 526 NATURE 182 (2015).

SPECIFIC COMMENT 6: The Proposed Rule is supported by and arguably required by the Administrative Procedure Act.

The Administrative Procedure Act (“APA”), 5 U.S.C. § 500 et seq., prohibits agency action, findings, and conclusions that are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. *See* 5 U.S.C. § 706(1). In view of the overwhelming evidence that (i) a very high percentage of published studies are not reproducible, (ii) pre-publication peer review is not sufficient to ensure that a study lacks major errors, and (iii) pre-publication peer review is not sufficient to ensure that the computational code underlying a study lacks major errors, we respectfully submit that the Proposed Rule is *necessary* and arguably *required* by the APA. Indeed, an agency action based on a study without fully disclosed data, methodology, and computational code is arguably so lacking in reasoned foundation as to be arbitrary and capricious.

SPECIFIC COMMENT 7: The Proposed Rule should apply to all agency actions that are based on science.

The replication crisis and public confidence rationales that underlie the Proposed Rule suggest that data, methodology, and computational code should be disclosed for all science relied upon to support agency actions. As a first step, the phrase “dose response data and models” should be replaced with “data and models, including dose response data and models” throughout the Proposed Rule.

SPECIFIC COMMENT 8: EPA should identify all studies (or other regulatory science) it will rely upon at the time it proposes any regulation.

In order to meaningfully comment on proposed agency action, the public should be informed of the detailed scientific basis for that action when the action is proposed. Accordingly, Proposed Section 30.4 should be amended to provide:

EPA shall clearly identify all studies (or other regulatory science) relied upon to support ~~when it takes any final agency action.~~ When EPA proposes any agency action, EPA ~~should~~ shall make all such studies (or other regulatory science) available to the public to the extent practicable.

SPECIFIC COMMENT 9: The proposed rule should not include exceptions that are not required by statute or the Executive Branch’s inherent powers.

In view of the widespread problems with replicating even peer-reviewed studies published in prominent journals, the EPA should minimize exceptions to the disclosure requirements set forth in the Proposed Rule. Courts have frequently rejected attempts to withhold information based on claims to privacy, etc., unless protections are specifically provided by law. *See, e.g., Johnson v. Dovey*, 2011 U.S. Dist. LEXIS 128577, at *6-7 (E.D. Cal. Nov. 7, 2011) (rejecting vague assertion of privacy rights: “CDCR’s objections are not specific in any way, and are thus insufficient to assert a privilege.”); *see also Donovan v. Nat’l Bank of Alaska*, 696 F.2d 678 (9th Cir. 1983) (“The bank cannot refuse to comply with the subpoena as a whole on the basis of its vague allegations that it might be required . . . to produce records in violation of the Financial Privacy Act.”). EPA should similarly reject such claims to “privacy, confidentiality, [and] confidential business information” vis-à-vis data and models, unless those claims are clearly supported by law or the Executive Branch’s inherent powers. Accordingly:

(a) EPA should amend the second sentence of Section 30.5 to provide that

Where the Agency is making data or models publicly available, it shall do so in a fashion that is consistent with law, ~~protects privacy, confidentiality, confidential business information,~~ and is sensitive to national and homeland security.

(b) EPA should amend the penultimate sentence of Section 30.5 to provide that

The agency shall make all reasonable efforts to explore methodologies, technologies, and institutional arrangements for making such data available before it concludes that doing so in a manner consistent with law and ~~protection of privacy, confidentiality,~~ national and homeland security is not possible.

Further, in view of the evidence that even studies published in prominent journals are often false or overstate results, the EPA should carefully consider the weight given to studies, data, and models that are not disclosed for review by the public and other researchers, even where non-disclosure is required by law.

SPECIFIC COMMENT 10: In view of the replication crisis, the EPA should re-evaluate existing regulations using the standards set forth in the Proposed Rule.

In the commentary accompanying the Proposed Rule, the EPA states that the Proposed Rule “is intended to apply prospectively . . .” 83 Fed. Reg. at 18771. In view of the overwhelming evidence that (i) a very high percentage of published studies are not reproducible, (ii) peer review is not sufficient to ensure that a study lacks major errors, and (iii) peer review is not sufficient to ensure that the computational code underlying many studies lacks major errors, we submit that the EPA should establish a plan to review the scientific basis for existing regulations under the standards of the Proposed Rule.

SPECIFIC COMMENT 11: The EPA should not delay implementation of this rule unless required to do so by statute.

Certain commenters claim the EPA has not complied with specific statutory obligations. We take no position on the EPA’s statutory obligations, but we encourage the EPA to carefully comply with applicable procedural requirements so as to minimize the risk of dilatory litigation.

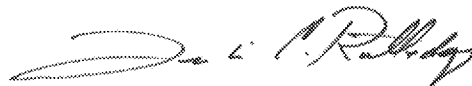
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The Proposed Rule makes great inroads towards the EPA’s ensuring public confidence in the regulations it enacts. We support making critical scientific data available in a way that is both timely and transparent to stakeholders and the public at large. To that end, we fully support the Proposed Rule. We appreciate your consideration of this comment and look forward to the prompt enactment of this important regulation.

Sincerely,



Jeff Landry
Louisiana Attorney General



Leslie Rutledge
Arkansas Attorney General



Steve Marshall
Alabama Attorney General



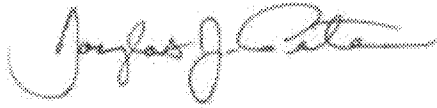
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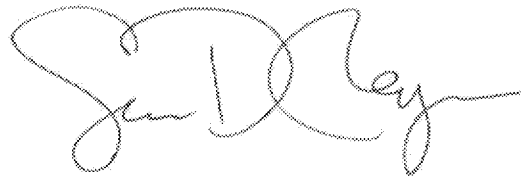
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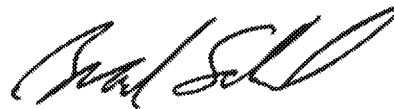
Ken Paxton
Texas Attorney General



Mike Hunter
Oklahoma Attorney General



Sean Reyes
Utah Attorney General



Brad D. Schimel
Wisconsin Attorney General

cc: Brittany Bolen, Office of Policy (via email)
Tom Sinks, Office of the Science Advisor (via email)

Message

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on behalf of EPA Press Office [press@epa.gov]
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Subject: EPA Administrator Pruitt Proposes Rule To Strengthen Science Used In EPA Regulations



U.S. ENVIRONMENTAL PROTECTION AGENCY
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EPA Administrator Pruitt Proposes Rule To Strengthen Science Used In EPA Regulations

WASHINGTON (April 24, 2018) - Today, U.S. Environmental Protection Agency (EPA) Administrator Scott Pruitt signed a proposed rule to strengthen the science used in regulations issued by EPA. The rule will ensure that the regulatory science underlying Agency actions is fully transparent, and that underlying scientific information is publicly available in a manner sufficient for independent validation.

“The era of secret science at EPA is coming to an end,” **said EPA Administrator Scott Pruitt.** “The ability to test, authenticate, and reproduce scientific findings is vital for the integrity of rulemaking process. Americans deserve to assess the legitimacy of the science underpinning EPA decisions that may impact their lives.”

This proposed rule is in line with the scientific community’s moves toward increased data sharing to address the “replication crisis”—a growing recognition that a significant proportion of published research may not be reproducible. The proposal is consistent with data access requirements for major scientific journals like *Science*, *Nature*, and *Proceedings of the National Academy of Sciences* as well as recommendations from the Bipartisan Policy Center’s *Science for Policy Project* and the Administrative Conference of the United States’ *Science in the Administrative Process Project*.

The proposed rule builds upon President Trump’s executive orders on regulatory reform and energy independence:

- » **Executive Order 13777**, issued in March 2017, provides that regulatory reform efforts shall attempt to identify “those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard of reproducibility.”
- » **Executive Order 13783**, also issued in March 2017, provides that “It is the policy of the United States that necessary and appropriate environmental regulations comply with the law, are of greater benefit than cost, when permissible, achieve environmental improvements for the American people, and are developed through transparent processes that employ the best available peer-reviewed science and economics.”

Chairman Lamar Smith (R-TX): “Administrator Pruitt’s announcement ensures that data will be secret no more. For too long, the EPA has issued rules and regulations based on data that has been withheld from the American people. It’s likely that in the past, the data did not justify all regulations. Today, Administrator Pruitt rightfully is changing business as usual and putting a stop to hidden agendas.”

Senator Mike Rounds (R-SD): “Sound, reliable science is vital to helping us make important policy decisions that impact the health of American families and their livelihoods. Inserting new levels of transparency in the EPA rulemaking process will help make the agency more accountable to the American people and help everyone understand the impact of EPA’s decisions. Today’s directive is a significant step toward making sure these decisions are not made behind closed doors with information accessible only to those writing the regulations, but rather in the full view of those who will be affected.”

Dr. Edward J. Calabrese, Professor, Environmental Health Sciences, University of Massachusetts: “The proposal represents a major scientific step forward by recognizing the widespread occurrence of non-linear dose responses in toxicology and epidemiology for chemicals and radiation and the need to incorporate such data in the risk assessment process.”

Dr. Louis Anthony (Tony) Cox, President, Cox Associates; Member, National Academy of Engineering; and Editor-in-Chief of the Journal *Risk Analysis*: “I believe that transparency and independent reproducibility of analyses and conclusions are bedrock principles of sound science. Some commentators have expressed concerns that making the data behind policy conclusions and recommendations accessible and transparent might threaten the privacy of individuals. But this concern can be fully met by applying current privacy-protection techniques for data analysis. These techniques have been developed and used successfully for years at the Census Bureau and elsewhere. Thus, we can have the scientific benefits of accessible data while protecting individual privacy.”

Dr. Jason Scott Johnston, Director, Olin Law and Economics Program, University of Virginia School of Law: “EPA’s proposed rule, Strengthening Transparency in Regulatory

Science, is badly needed “Best practice among peer-edited scientific journals is to require that data and statistical routines used in published papers be posted online and/or made publicly available. To apply the same standards to research that EPA says justify regulations affecting billions of dollars in economic activity and millions of human lives is essential for those regulations to truly be scientifically based.”

Bruno Pigott, Commissioner of the Indiana Department of Environmental Management (IDEM): “IDEM supports transparency in rulemaking. Good, sound science leads to better regulations.”

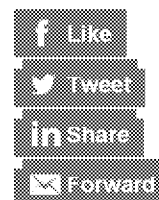
Dr. George Wolff, Principal Scientist, Air Improvement Resource, Inc., and former Chairman of EPA’s Clean Air Scientific Advisory Committee (1992 - 1996): “In the development of regulations based on environmental studies, numerous subjective assumptions and choices must be made regarding the selection of data and models that have a profound impact on the strength of any statistical associations and even whether the associations are positive or negative. The appropriateness of the assumptions and choices are not adequately evaluated in the standard peer review process. That is why it is essential that the data and models be placed in the public domain for a more rigorous evaluation by qualified experts. The proposed regulation, Strengthening Transparency in Regulatory Science, will provide an opportunity for such evaluations.”

###

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To: McGartland, Al [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5fe25fc1df634f9798675527e0070429-AMcGartl]; Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: Re: FRN for Data Access Guidelines hopefully with edits
Attachments: FR Notice on Data Access Guidelines_3.13.2018_CLEAN (McGartland, Al) (McGartland, Al).docx

Flag: Follow up

Deliberative Process / Ex. 5

From: McGartland, Al
Sent: Wednesday, March 14, 2018 9:07 AM
To: McGartland, Al
Subject: Re: FRN for Data Access Guidelines hopefully with edits

From: Bolen, Brittany
Sent: Wednesday, March 14, 2018 7:29 AM
To: McGartland, Al
Subject: FRN for Data Access Guidelines

Al - as discussed, attached is the latest version of the guidelines we're soliciting comment on. Appreciate your review. Unless I hear any major objections, I'm planning send this over for OIRA review today.
Thanks,
Brittany

From: McGartland, Al [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5FE25FC1DF634F9798675527E0070429-AMCGARTL]
Sent: 7/24/2018 2:18:59 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
CC: Lovell, Will (William) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3b150bb6ade640f68d744fadcb83a73e-Lovell, Wil]
Subject: Fw: Academies Pan Draft Science Transparency Rule, Offer To Advise EPA (comments attached)
Attachments: Natl Academies on Science Transparency proposal.pdf

Purely fyi.

Conclusion: "The potential negative consequences for EPA's ability to take needed regulatory action require more careful examination. We strongly encourage EPA to seek objective, expert guidance on the complexities of this rule and how it would be implemented. As independent and trusted advisers to the nation, the National Academies would be pleased to assist you in this effort."

Academies Pan Draft Science Transparency Rule, Offer To Advise EPA

July 23, 2018

The presidents of the National Academies, the nation's top scientific institutions, are strongly criticizing EPA's proposed rule mandating use of publicly available research to justify its regulations, charging that while the agency is seeking to cite their advice to justify the measure, it fails to adequately consider potential consequences.

"Although these earlier reports can serve as a valuable resource to help inform decisions about some elements of the proposed rule, they were not designed to address the full breadth of the issues raised by the proposed rule," the presidents of the National Academy of Sciences, the National Academy of Engineering and the National Academy of Medicine write in their July 16 comments. *The letter is available on InsideEPA.com. (Doc. ID: 213635)*

They also charge that EPA has failed to address a host of implementation concerns, such as exemptions to the policy and the risks of releasing data, and offers its help in advising the agency. "The potential impacts of the proposed rule ... will depend on many aspects of the rule's implementation that are not described in detail," the comments state.

EPA's proposed rule calls for barring the use of science where the underlying data and models are not publicly available, while allowing the administrator latitude in determining what exceptions to the rule may be made.

The measure drew strong criticism earlier this week when environmentalists renewed their calls for the administration to withdraw the proposal and start over. But industry officials renewed their support even as they detailed a series of changes they hope the agency will make.

The academies' comments raise a series of concerns targeting the rule's criteria and the lack of processes to make objective and transparent decisions about which studies will be included in scientific analyses used to inform federal regulations; approaches for evaluating the data and models used to characterize the dose-response relationships underlying federal regulations; and approaches for protecting the confidentiality of certain kinds of data while balancing the need to make data publicly available.

The letter acknowledges EPA's references to several of its reports in the agency's *Federal Register* notice announcing the proposed rule's availability for public comment. But the Academies say that the proposed rule's "scope, complexities, and potential serious implications for regulatory science and action clearly warrant additional thorough, independent, objective, and context-specific evaluation and analysis."

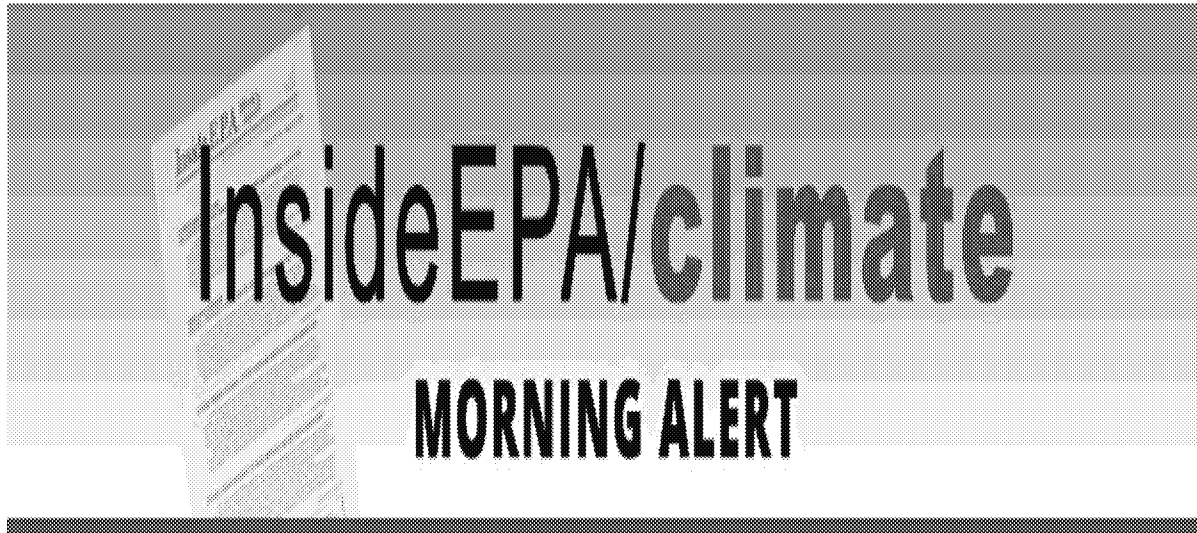
Among its cited reports, the officials point to two 2017 studies produced on federal statistics, arguing that "[t]here are several differences in the confidential microdata collected from individuals and businesses by federal statistical agencies ... and results from the kinds of studies that are within the scope of the EPA proposed rule. ... What works well in the federal statistical environment may not translate effectively to EPA, where stakeholders might be strongly motivated to discount study results that run counter to their regulatory preferences."

"EPA's proposed rule ignores the inherent risks involved in data disclosure, the everchanging risk landscape, and the efforts needed to mitigate those risks" including cybersecurity and the possibility of privacy breaches, the letter says.

It warns that the proposal's affects need "more careful examination," and urges the agency "to seek objective, expert guidance on the complexities of this rule and how it would be implemented. As independent and trusted advisers to the nation, the National Academies would be pleased to assist you in this effort."

The officials touch on the concern about the administrator's exemption authority as well, arguing that "It is critical for EPA to define what 'reasonable effort' would be required to make data publicly available before an exemption is granted. Decisions about exemptions should be based on formal agency guidance and not according to criteria established by a single EPA employee."

From: InsideEPA/climate [insideepa-alerts@iwpnews.com]
Sent: 4/25/2018 11:45:59 AM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: The Morning Headlines from InsideEPA/climate -- April 25, 2018



April 25, 2018

Latest News

Honda Details Proposed Vehicle GHG 'Flexibilities' While Retaining Goals

American Honda Motor Co. says regulators should extend until 2025 several flexibilities under EPA's current greenhouse gas standards for model year 2022-2025 passenger vehicles that expire after 2021, while retaining the overall emissions standards in order to preserve a national set of rules that is joined by California.

Facing Legal Hurdles, EPA's 'Secret Science' Plan Punts On Key Issues

EPA Administrator Scott Pruitt has signed a long-promised plan barring the agency's use of any information in decision-making that is not publicly available, but the proposed rule punts on a host of tricky legal and implementation issues, including statutory mandates to use the best available science and how to address confidential trade secrets and medically protected data.

EPA Urges Local Officials To Adopt Pre-Disaster Climate Adaptation Plans

EPA is urging local government officials to adopt "worst-case" climate adaptation plans to limit damage from future natural disasters, a stance that appears to be at odds with the Trump administration's general resistance to acknowledging and addressing climate change and its adverse impacts.

Climate Beat

Technology: Oil, electricity firms join new CCS lobbying group

The new Energy Advance Center includes oil and gas majors BP and Chevron, as well as utility giant Southern Company and other companies with interest in the climate mitigation technology.

Loose Change: Inhofe, other GOP senators call for Pruitt hearing

In today's news roundup: Sen. Jim Inhofe (R-OK) says "a couple of us on the committee think it's appropriate to have a hearing in so far as any accusation having to do with his office is concerned."

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Sent: 4/26/2018 2:01:42 PM
To: Kime, Robin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7ef7b76087a6475b80fc984ac2dd4497-RKime]; Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: RE: Edits requested: HAC late Polling Question - Rep Cole
Attachments: Cole_Use of Science wl.docx

I don't believe OCFO incorporated information from the science transparency proposal signed yesterday. Please find attached a revised response with information from the press release.

From: Kime, Robin
Sent: Thursday, April 26, 2018 8:54 AM
To: Bolen, Brittany <bolen.brittany@epa.gov>
Cc: Lovell, Will (William) <lovell.william@epa.gov>
Subject: Edits requested: HAC late Polling Question - Rep Cole

Hi

OCFO staff drafted the attached response and asked AO to have us make edits as warranted this morning.

From: Ripley, Laura
Sent: Wednesday, April 25, 2018 9:45 PM
To: Quarles, Michael <Quarles.Michael@epa.gov>; McCluney, Lance <McCluney.Lance@epa.gov>; Benton, Michael <benton.michael@epa.gov>
Cc: Grams, Bradley <grams.bradley@epa.gov>; Delmonico, Lisa <delmonico.lisa@epa.gov>; Volin, Phyllis <Volin.Phyllis@epa.gov>; Bailey, JosephE <Bailey.JosephE@epa.gov>
Subject: HAC late Polling Question - Rep Cole

Michael(s) and Lance:

I drafted this from the FY 2018 HAC QFRs. Of course I don't really know what OP is doing with regulations. I also pulled from one of their FY19 Fact sheets.

Not sure if you can let us know if this is still true. I hope so.

Thanks!

--Laura

*Laura Ripley
Office of Budget
Ph: (202) 564-1582
Work Cell: (202) 774-0358*

**FY 2019 CONGRESSIONAL HEARING
“USE” OF SCIENCE IN THE AGENCY**

Question: The Congressman also may ask about the new reports coming out about the “use” of science in the agency. This is not an attack, but more of a chance for the Administrator to set the record straight of why this moved happen.

Answer:

- On April 24, I signed a proposed rule to strengthen the science used in regulations issued by EPA. The rule will ensure that the regulatory science underlying Agency actions is fully transparent, and that underlying scientific information is publicly available in a manner sufficient for independent validation.
- This rule puts an end to the era of secret science at EPA.
- The ability to test, authenticate, and reproduce scientific findings is vital for the integrity of rulemaking process.
- Americans deserve to assess the legitimacy of the science underpinning EPA decisions that may impact their lives.
- The proposed rule is consistent with President Trump’s executive orders on regulatory reform and energy independence, data access requirements for major scientific journals, and EPA’s own internal guidelines for promoting sound science that have not always been followed in the past.

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From: InsideEPA.com [insideepa-alerts@iwpnews.com]
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To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: The Morning Headlines from InsideEPA.com -- June 21, 2018



REDEFINING EPA: Overhauling an agency and its mission -- Complete coverage

June 21, 2018

Latest News

Pruitt's Scandals Complicate Path For EPA Waste, International Nominees

Ongoing concerns about EPA Administrator Scott Pruitt's ethics scandals, the agency's limited responses to oversight requests and other issues will make it difficult for President Donald Trump's nominees to head the

agency's waste and international affairs offices to gain Senate approval, Democratic senators told a June 20 environment committee hearing.

Reversing Course, Inhofe Defends Pruitt, Calling Accusations 'Lies'

Sen. James Inhofe (R-OK) is strongly defending EPA Administrator Scott Pruitt against numerous allegations of unethical conduct, calling them "outrageous lies," an apparent reversal from a week ago when the senator said he was upset by Pruitt's missteps and suggested the administrator might need to step down.

Major Glider Manufacturer Blames Layoffs On EPA's Stalled Repeal Proposal

One of the country's largest manufacturers of high-emitting "glider" trucks is blaming EPA's failure, so far, to scrap Obama-era production limits on the vehicles for layoffs at the company, a situation that highlights the Trump EPA's incomplete deregulatory efforts and which could play into political efforts to speed action on the repeal rule.

ATSDR Seeks To Downplay Effect Of PFAS Risk Levels Stricter Than EPA's

A federal health agency has released its much-anticipated draft toxicological profile for perfluorinated chemicals that recommends risk values more conservative than EPA's, but the agency is downplaying potential health concerns from exposures above its limits, cautioning the public not to read its levels as cleanup or health effects standards.

EPA Drops Plan For CWA Spill Rule Despite Settlement To Consider Policy

EPA is proposing to formally drop plans for a Clean Water Act (CWA) rule to prevent or contain industrial chemical spills by claiming that current policies already cover all the requirements that a comprehensive spill policy would include, drawing fire from environmentalists who had a settlement with EPA to consider pursuing the new rule.

Daily Feed

EPA issues TSCA new chemicals submission guide

EPA's guidance seeks to advise industry on how to ensure speedy review and approvals of their new chemicals submissions.

New York sues manufacturers over firefighting foam contamination

The state says the suit is the first to target manufacturers of firefighting foam containing perfluorinated chemicals.

EPA sends ozone NAAQS 'good neighbor' rule for OMB review

The agency's pending proposed rule could potentially find that EPA does not need to take additional regulatory steps to help states attain the 2008 ozone national ambient air quality standard.

Quote-Unquote: Covering NEPA, secret science and a plan to reorganize EPA

CEQ begins its long-awaited NEPA rethink, Colorado opts to adopt California vehicle rules, and the Heritage Foundation's approach for revamping EPA.

Ewire: Bipartisan group forms to push carbon tax

In today's Ewire: Co-chaired by former Sens. Trent Lott (R-MS) and John Breaux (D-LA), Americans for Carbon Dividends is hoping to break decades of GOP resistance to carbon controls.

Texas business group launches new suit over Obama-era CWA rule

The suit seeks to block not only the 2015 rule but any future rule from asserting authority over waters known as Texas coastal prairie wetlands.

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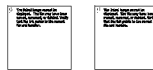
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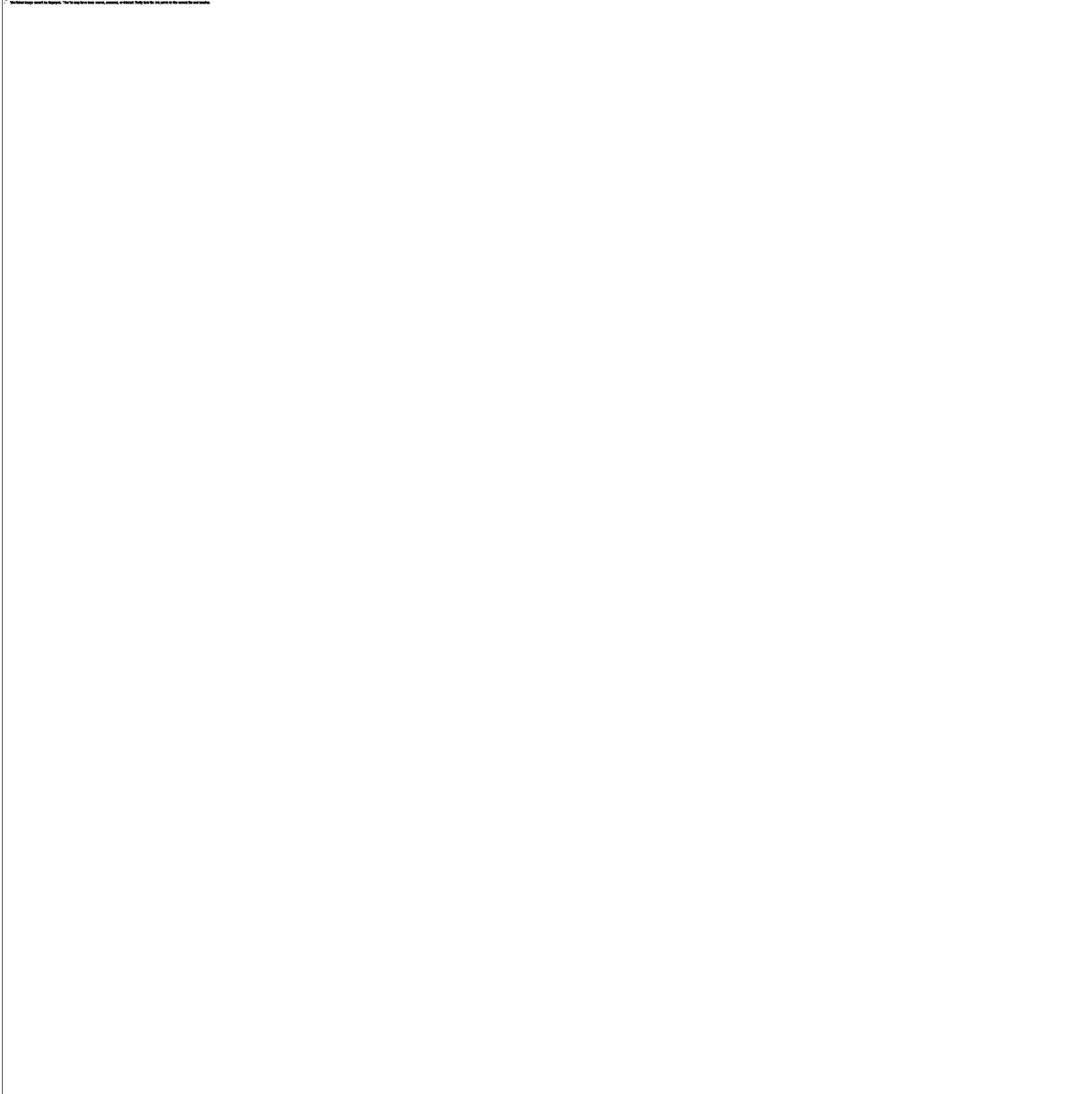
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Subject: The Morning Headlines from InsideEPA.com -- June 20, 2018



REDEFINING EPA: Overhauling an agency and its mission -- Complete coverage

June 20, 2018

Latest News

EPA Raises Early Defenses Against Likely Suit Over Ash Program Approval

EPA is raising early legal defenses against environmentalists' promised legal challenge to the agency's approval of Oklahoma's first-of-its-kind coal ash disposal permit program, with EPA downplaying as irrelevant

environmentalists' claims that the Sooner State lacks the resources to adequately implement its new permitting regime.

Observers Brace For Trump Reorganization Plan With EPA Impact Unclear

The Trump administration is expected to release as soon as June 21 a broad plan for reorganizing the federal government, though some observers doubt the plan will spur broad proposed changes at EPA, such as closing of regional offices, despite calls from some to do so.

CEQ Issues Advance Notice For Sweeping Update Of NEPA Regulations

The White House Council on Environmental Quality (CEQ) is publishing an advance notice of proposed rulemaking (ANPR) on a long-anticipated and potentially sweeping update of its National Environmental Policy Act (NEPA) implementing rules, opening the door to just the second amendment to the rules in 40 years.

Court Rejects Coal Lease NEPA Review Suit But Outlines Paths Forward

A federal appeals court panel is rejecting a long-running lawsuit seeking to force the Bureau of Land Management (BLM) to conduct a broad National Environmental Policy Act (NEPA) review to consider the climate impacts of its coal leasing program, but two of the three judges are outlining other options environmentalists can use to force such analysis.

'Secret Science' Policy's Impact On Pending NAAQS Review May Be Muted

EPA Administrator Scott Pruitt's proposed rule barring the agency from using confidential data in rulemakings might not have as dramatic an impact on pending national ambient air quality standards (NAAQS) as many fear because some of the most influential air pollution studies relevant to those reviews rely on publicly available data, sources say.

Inspector General Details Broad Review Of EPA Programs In Annual Plan

EPA's Office of Inspector General (OIG) is laying out a broad agenda for the remainder of fiscal year 2018 that ranges from reviews of the agency's regulatory oversight on key media and research programs to internal staffing and management as well as previously announced inquiries into Administrator Scott Pruitt's controversial security, spending and hiring.

Daily Feed

Top EPA union official announces retirement

John O'Grady is a long-time union representative of EPA employees who has been a public spokesman for many career staff concerned about the Trump administration.

Colorado to join backers of California vehicle GHG rules

Colorado will join a dozen states that have embraced California's vehicle GHG limits, just as the Trump administration is readying a plan roll back current standards and target states' ability to enforce their own rules.

Environmentalists detail issues in Superfund financial rule suit

Environmental groups suing over EPA's decision to drop a planned Superfund rule are questioning whether the agency's action is contrary to the administrative record and the law.

Ewire: EPA shifts grant reviews from public affairs office

In today's Ewire: As of last month, EPA requires regional administrators or assistant administrators of program offices to sign off on grants, replacing its old policy of reviews by a political aide in the public affairs office.

Auto industry-focused publication calls for Pruitt to resign

A "serious industry deserves a serious regulator, a public servant of proven integrity who lives by at least a baseline standard of propriety. Scott Pruitt is none of those things," *Automotive News* says in an editorial.

D.C. Circuit schedules argument in SO2 NAAQS designations suit

The U.S. Court of Appeals for the District of Columbia Circuit will hear oral argument Sept. 11 in consolidated litigation over EPA's 2010 sulfur dioxide air standard attainment designations.

Read all the latest EPA news, analysis and documents →

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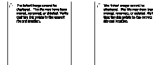
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E&E NEWS PM

AN E&E NEWS PUBLICATION

E&E NEWS PM — Fri., June 29, 2018



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1. CLEAN WATER ACT:

White House beefs up WOTUS repeal

The Trump administration is arguing that the Obama administration's Clean Water Rule did not successfully align itself with the vision of Supreme Court Justice Anthony Kennedy in defining which wetlands and small waterways are covered by the Clean Water Act.

THIS AFTERNOON'S STORIES

2. FUEL ECONOMY:

Appeals court slams White House for delaying higher penalties

3. EPA:

Advisory board wants to review 'secret science' proposal

4. NATIONAL PARKS:

Senators propose up to \$6.5B for upkeep

5. AIR POLLUTION:

EPA proposes using CSAPR to meet 'good neighbor' obligations

6. COAL:

W.Va. labor battle site back on historic register

UPCOMING HEARINGS AND MARKUPS

7. CALENDAR:

Activity for June 25 - July 1, 2018

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CC: Lovell, Will (William) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3b150bb6ade640f68d744fadcb83a73e-Lovell, Wil]; Kime, Robin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7ef7b76087a6475b80fc984ac2dd4497-RKime]
Subject: E&E article on ANPRM -- requests for longer comment period

EPA

Groups want more time to comment on cost-benefit proposal

Maxine Joselow, E&E News reporter

Published: Tuesday, June 12, 2018



EPA headquarters in Washington. Claudine Hellmuth/E&E News

Public interest groups are calling for EPA to extend the comment period on a controversial proposal to alter the way it considers costs and benefits in rulemaking.

The agency will take comments on the proposal for 30 days, according to a [notice](#) set for publication in tomorrow's *Federal Register*.

The plan, titled "Increasing Consistency and Transparency in Considering Costs and Benefits in the Rulemaking Process," is still in the early stages of the rulemaking process. It's an advanced notice of proposed rulemaking, rather than a proposed rule.

But public interest groups are sounding the alarm that the plan reflects a de-emphasis on the benefits of rules, and they're urging EPA to extend the comment period to 60 days or more.

"Just looking at the advanced notice of proposed rulemaking, EPA has opened an enormous Pandora's box with this," said James Goodwin, senior policy analyst with the Center for Progressive Reform. "For their benefit as well as the public's, they really need to allow for a longer comment period so folks can digest this stuff and assemble a set of comments."

Goodwin noted the Natural Resources Defense Council was disinvited from a meeting about the proposal with the White House Office of Information and Regulatory Affairs, even though the office had previously met with three industry groups (*E&E News PM*, June 6).

"The public interest community is already at a disadvantage with this because we were never granted meetings with OIRA," he said. "So at the very least, they need to extend the public comment period so that we can give our side of the story."

Yogin Kothari, Washington representative with the Union of Concerned Scientists' Center for Science and Democracy, said his group was weighing a formal request to lengthen the comment period.

"When you're trying to make these big policy changes at an agency so vital to public health, it's really important to provide for as much stakeholder input as possible," Kothari said. "And I think what we've seen with this EPA is them trying to rush things through without them being vetted."

He added, "I think we would want a minimum of 60 days, even with the advanced notice of proposed rulemaking. For organizations that have resource constraints, it's difficult to turn comments around as quickly as possible."

Precedent

While the Administrative Procedure Act doesn't spell out a minimum period for public comments, there's a precedent for EPA extending the period when it gets an earful from concerned stakeholders.

Last year, for instance, the agency extended the deadline for commenting on its proposed rollback of the Clean Power Plan by 32 days (*E&E News PM*, Nov. 8, 2017).

More recently, EPA added more than two months to the comment period for its "secret science" proposal after receiving a barrage of requests (*Greenwire*, May 24).

Those requests came from environmental and public health organizations as well as dozens of Democratic lawmakers. Rep. Paul Tonko (D-N.Y.) and 64 other House Democrats had asked for at least a two-month extension, while Sen. Sheldon Whitehouse (D-R.I.) and 19 other senators had urged the same in their own letter to EPA Administrator Scott Pruitt.

"At the EPA, Scott Pruitt is executing industry's wish list to the letter," Whitehouse said in a statement to E&E News. "Rushing this proposal through is another example of prioritizing the voices of his polluting benefactors. And if this proposal to ignore the benefits of key environmental protections goes into effect, it will lead to serious consequences for Americans' health and environment."

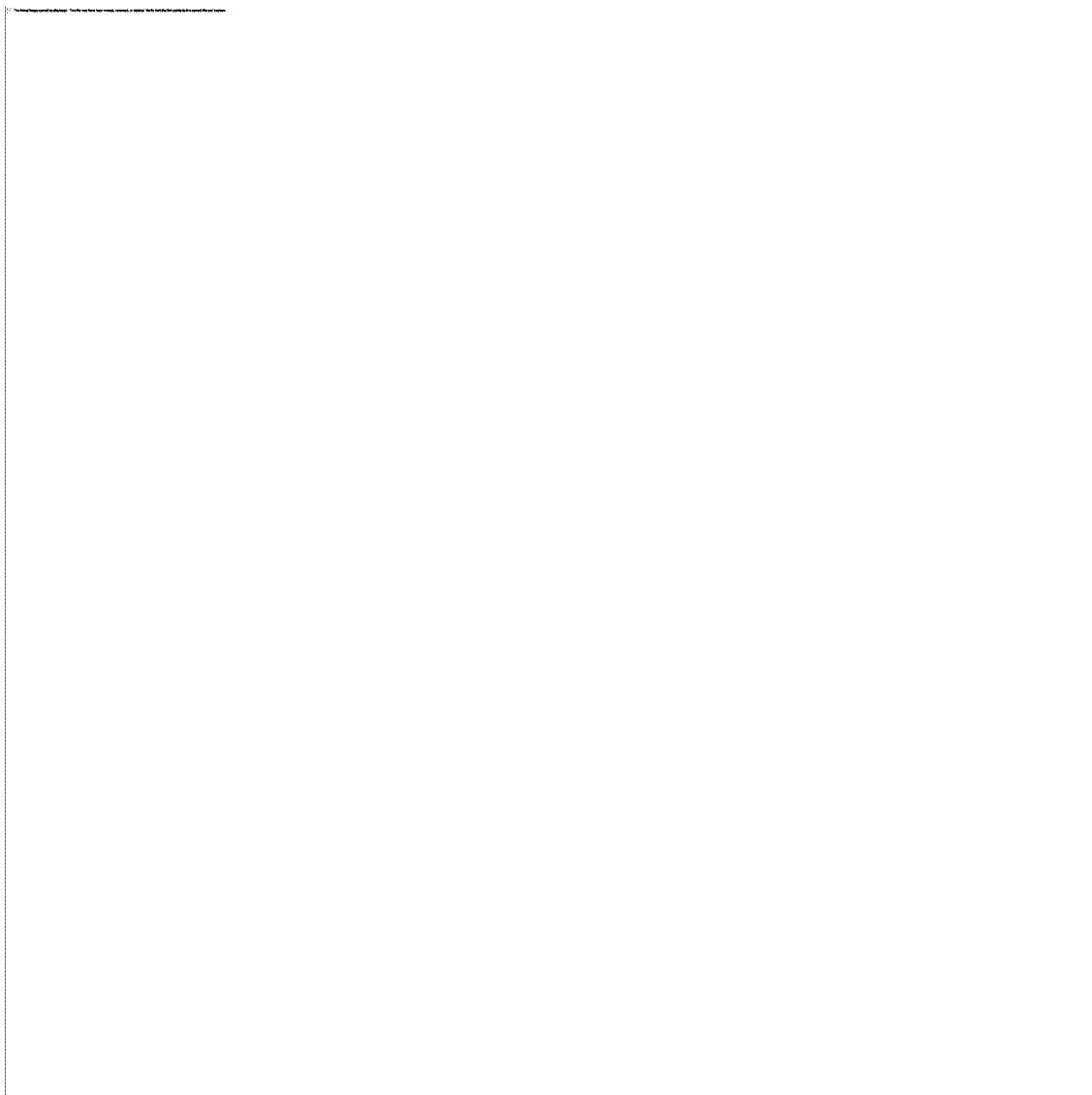
Separately, Sens. Tom Carper (D-Del.) and Rob Portman (R-Ohio) are asking the Government Accountability Office to "conduct a comprehensive evaluation of the security and efficacy of the means by which federal agencies receive comments on proposed rulemakings." Rep. Trey Gowdy (R-S.C.), chairman of the House Oversight and Government Reform Committee, yesterday joined their request.

Message

From: ECOS [ecos=ecos.org@mail214.atl171.mcdlv.net]
on behalf of ECOS [ecos@ecos.org]
Sent: 4/27/2018 8:21:21 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: Pruitt Testifies on Hill and Proposes Science Rule, States Make Strides, & More

ECOSWIRE | Vol. 20 No. 17

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ECOSWIRE

Friday, April 27, 2018

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Pruitt Testifies at Two Closely Watched Hearings on Capitol Hill

U.S. EPA Administrator Scott Pruitt testified yesterday at two hearings in the House of Representatives to respond to questions surrounding agency funding and policy as well as personal ethics. Appearing before the Appropriations Interior, Environment, & Related Agencies Subcommittee and the Energy & Commerce Environment Subcommittee on the agency's FY19 budget, Pruitt defended himself against criticism regarding certain management and spending practices. He also touched on policy issues including the new proposed rule to strengthen science used in regulations (see related story) and the suite of [FY18 Brownfields Grants](#) announced this week.

In addition, Pruitt addressed actions on the horizon, noting that EPA soon will announce a Waters of the U.S. replacement rule and proposed revisions to EPA's light-duty vehicle greenhouse gas standards. In response to a lawmaker's question about coal combustion residuals, Pruitt noted that few states have filed state coal ash implementation plans pursuant to the new federal policy but that the program is still nascent and EPA is working with several states to assist in their development of permit program applications.

Pruitt's written testimony included a listing of his top priorities: enhancing drinking water and wastewater infrastructure; accelerating the remediation and revitalization of the most contaminated land; improving air quality through reductions in the number of areas not in attainment with the National Ambient Air Quality Standards; and meeting all the statutory deadlines outlined in the amended Toxic Substances Control Act. In addition, the testimony notes support for flexibility for states to address priorities and for cooperative federalism activities through the multipurpose grants program.

The testimony also includes an EPA proposal to increase compliance assistance through new voluntary oil and chemical facility compliance assistance fees allowing EPA to conduct walkthroughs and provide recommendations to facilities. It further notes that while EPA's budget request does not include plans to close Regional offices, the agency will continue "to prioritize efforts that save taxpayer dollars through space consolidation...." [McAleer/Graves/Parisien]

Pruitt Signs Proposed Rule to Eliminate 'Secret Science'

U.S. EPA Administrator Scott Pruitt signed Tuesday a proposed rule to eliminate "secret science" used in regulations issued by the agency. According to EPA, the rule seeks to ensure that all regulatory science underlying EPA actions is fully transparent, publicly available, and sufficient for independent validation. EPA says the rule aligns with the scientific community's push for increased data sharing and reproducible research.

The proposed rule has drawn mixed reviews, with opponents arguing that it skirts statutory mandates to use the best available science and address confidential trade secrets. Some express concern as to whether the policy will prevent use of studies that rely on confidential business information (CBI) or limit EPA's access to health studies, which are subject to patient confidentiality requirements. While the rule does not specifically address these points, it states that the agency believes "that concerns about access to confidential or private information can, in many cases, be addressed through the application of solutions commonly in use across some parts of the [f]ederal government."

EPA soon will accept public comment on a number of the proposed rule's provisions, including authorities to address implementation issues (including CBI) and what criteria the agency should use to justify any exceptions. [Longworth]

U.S. EPA Announces First WIFIA Loan to King County, Washington

Last week, U.S. EPA issued its first loan under the Water Infrastructure Finance and Innovation Act (WIFIA) to King County, Washington.

The loan will help finance the Georgetown Wet Weather Treatment Station, which will collect and treat up to 70 million gallons of wastewater and stormwater per day. During heavy rains the combined sewer pipes spill into the Duwamish River, which drains into Puget Sound. The estimated project cost is \$275 million, and the WIFIA loan will finance nearly half of it.

For more information about the WIFIA program and the Georgetown Wet Weather Treatment Station, click [here](#). [Piper]

State News You Can Use

[Groundbreaking Ceremony Marks Progress under North Carolina State Water Plan](#)

[Pennsylvania, Federal Agencies Settle with Natural Gas Company over Air Violations](#)

[Texas Hosts Hurricane Prep Workshop](#)

[Iowa Introduces Streamlined Public Notice of Air Quality Permits](#)

Need-to-Know News in Air & Environmental Justice

U.S. EPA Announces Funding to Reduce Emissions from Diesel Engines Nationwide

Area of Focus: Air

On April 24, U.S. EPA announced the availability of grant funding to modernize the nation's diesel fleet by retrofitting or replacing vehicles with cleaner, more efficient diesel engines. EPA anticipates awarding approximately \$40 million in Diesel Emission Reduction Program (DERA) grant funding to eligible applicants, subject to the availability of funds.

EPA anticipates awarding between 20 and 80 assistance agreements to projects that significantly reduce diesel emissions and exposure, especially from fleets operating at goods movements facilities in areas designated as having poor air quality. Priority for funding will be given to projects that engage and benefit local communities and applicants that demonstrate their ability to promote and continue efforts to reduce emissions after the project has ended.

Project proposals are due **June 5**. [Poole]

U.S. EPA Environmental Justice FY2017 Progress Report Notes ECOS Publication

Area of Focus: Environmental Justice

On April 19, U.S. EPA issued its Environmental Justice FY2017 Progress Report. Marking the 25th anniversary of the establishment of the Office of Environmental Justice, the FY2017 report highlights EPA's ongoing environmental justice work focused on demonstrating tangible results in minority, low-income, tribal and indigenous communities.

The report focuses on the themes of delivering environmental results; cooperative federalism; rule of law and fair process; and building community capacity and engagement.

Notably, the report cites the ECOS Green Report on State Approaches to Community Engagement and Equity Considerations in Permitting as an example of cooperative

federalism and best practices regarding community involvement and equity in state permitting programs. [Poole]

U.S. EPA Launches Mobile App for EJSCREEN

Area of Focus: Environmental Justice

On April 24, U.S. EPA launched its [mobile version of EJSCREEN](#), the agency's nationally acclaimed environmental justice screening and mapping tool. This new version makes accessing EJSCREEN easier for those working on the ground in communities.

The mobile version offers most of the same key functions and features as the full online version, but does so in a more compact and accessible layout. Some of the features included are the ability to select locations; access reports; and map environmental, demographic and EJ indicators. [Poole]

Career Opportunities

Massachusetts DEP Seeks Deputy Director, Municipal Services

The Massachusetts Department of Environmental Protection's Bureau of Water Resources seeks applicants for the position of Deputy Director, Municipal Services. The position entails the identification of priority areas for investment of Clean Water and Drinking Water State Revolving Fund financing.

For more information, see [here](#). [Parisien]

Upcoming Events

ECOS Calls

ERIS on Research Needs

In an effort to prioritize states' research needs, ECOS and affiliate Environmental Research Institute of the States is conducting media-specific calls to gather information to inform future planning and contribute to the development of the U.S. EPA Office of Research and Development (ORD) Strategic Research Action Plan.

The water and air-focused calls were held this week. The remaining two calls are scheduled as follows:

- **Waste - April 30: 2-3 p.m. Eastern**
<http://epawebconferencing.acms.com/ecoswastecommittee/>
- **Cross-Media - May 3: 3-4 p.m. Eastern**
<http://epawebconferencing.acms.com/ecoscrossmediacall/>

The call-in number for both calls is (866) 299-3188, with access code (202) 564-6669.

ECOS members and state staff are invited to participate in the calls, and are asked to be prepared to answer the following questions: Are states' priorities the same or different from those identified in the [2016 ERIS survey of state research needs](#)? What emerging issues/challenges should ORD consider in its next Action Plan?

As the calls are held, PowerPoint presentations will be posted on ECOS' website [here](#). States are encouraged to provide comments after the calls to further inform strategic research planning. Please send comments to [Sarah Grace Longworth](#) of ECOS by **May**

11. [Longsworth]

ERIS on State Science Contacts

ERIS will host its bimonthly State Science Contacts call on **May 4 at 11 a.m. Eastern**. The purpose of these calls is to share relevant information on science and research, receive input from states on state science needs, and provide state perspective on various research activities.

An agenda for the call will be sent next week. If you are interested in participating, email [Sarah Grace Longsworth](#) of ECOS. [Longsworth]

Webinars

U.S. EPA on Emerging Sensor Technologies Report

U.S. EPA's Air and Energy National Research Program will host two webinar sessions to update stakeholders on its Emerging Sensor Technologies 2014-2018 Progress Report. The identical sessions will be held on **April 30 at 8:30-11:30 a.m. Eastern and 1:30-4:30 p.m. Eastern**, and will summarize general findings across a broad base of the agency's air sensor research activities over the past several years.

The first two hours of each session will feature presentations by EPA Sensor Performance Evaluation and Application Research team members on topics such as sensor evaluations, data analytics, ammonia detection, citizen science, and detection of select emission sources. The final portion of each session will be a question and answer period.

To register, see [here](#). [Longsworth]

U.S. EPA on Lead Exposure Modeling and Research

U.S. EPA will host its monthly Tools and Resources webinar on **April 30 at 3–4 p.m. Eastern** to discuss multimedia modeling of lead exposure in children and water lead monitoring research to inform public health decisions. Specifically, EPA's Office of Research and Development (ORD) will highlight its innovative exposure-dose modeling approach to better understand the relationship between drinking water lead concentrations and children's blood lead levels considering exposures from water, soil, dust, food, and air. ORD will then discuss the future data needs to apply the approach at state and local levels, and will report on water lead monitoring research relevant to state priorities.

To register, see [here](#). [Longworth]

ITRC on Bioavailability of Contaminants in Soil

The Interstate Technology & Regulatory Council (ITRC) will hold an online training course on Bioavailability of Contaminants in Soil: Considerations for Human Health Risk Assessment on **May 3 at 1-3:15 p.m. Eastern**.

The basis for this training course is the ITRC guidance: Bioavailability of Contaminants in Soil: Considerations for Human Health Risk Assessment (BCS-1). This guidance describes the general concepts of the bioavailability of contaminants in soil, reviews the state of the science, and discusses how to incorporate bioavailability into the human health risk assessment process. Training course participants will learn to apply the decision-making process to determine when a site-specific bioavailability assessment may be appropriate; consider factors that affect arsenic, lead, and PAH bioavailability; select appropriate methods to evaluate soil bioavailability; and use tools to develop site-specific soil bioavailability estimates and incorporate them into human health risk assessment

Learn more and register [here](#). [Bodi]

E-Enterprise Facility Integration Project Team on Opportunities for Involvement

The E-Enterprise Facility Integration Team Co-Chairs will host a webinar on **May 8 at 1-2:30 p.m. Eastern** to report on the team's Phase II accomplishments and plans for Phase III, which is about to begin. Co-Chairs Ron Evans and Susan Joan Smiley (U.S. EPA), Joshua Kalfas (Oklahoma), and Ben Way (Wyoming DEQ) will lead webinar presentations and answer any questions related to the Facility work.

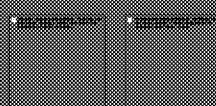
The Facility Integration Team is currently seeking states, tribes and local governments to partner in Phase III. Partnership opportunities will be discussed on the webinar.

Register [here](#) and learn more [here](#). [McAleer]

U.S. EPA on Business Innovations in Reducing Food Waste

U.S. EPA will host a webinar on **May 17 at 10-11:30 a.m. Eastern** to highlight business innovations to reduce food loss and waste. Presenters include three [Food Loss and Waste 2030 Champions](#) who are leading the way in helping the country reach its 50 percent food loss and waste reduction goal. Speakers from each company will share best practices, tools, and resources to prevent food from going to waste. They will address how shifts in company culture have changed operations as well as the critical role of food waste measurement in achieving their goals.

Register [here](#). [Longsworth]



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Message

From: POLITICO Pro Energy [politicoemail@politicopro.com]
Sent: 5/4/2018 9:43:09 AM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: Morning Energy: Heightened vetting for Pruitt-related FOIAs — EPA narrows air permitting guidelines — Coolant industry: Global warming industry is so cool it's hot

By Kelsey Tamborrino | 05/04/2018 05:41 AM EDT

With help from Anthony Adragna, Eric Wolff and Emily Holden

ALL FOIA ONE, ONE FOIA ALL: You may need to have a little patience if you're waiting for EPA to ship over any documents about Administrator Scott Pruitt's activities. Freedom of Information Act requests that relate to Pruitt get an extra layer of vetting before they are released to the public, new internal emails obtained by POLITICO show. Top aides to the administrator, including chief of staff Ryan Jackson, perform the "awareness reviews" on all or most document requests related to Pruitt — on top of the reviews done by career experts. And that is contributing to the slow flow of information released under records requests at EPA, Pro's Alex Guillén reports.

The new vetting processes described in the emails are done before the agency releases essentially any documents involving the administrator. And the emails show Pruitt's political appointees chastising career employees who released documents in accordance with FOIA without letting them screen the records first.

In one exchange from last August, Jackson and Liz Bowman — the head of EPA's Office of Public Affairs who announced on Thursday she was stepping down — expressed concern about documents related to comments Pruitt made on CNBC disputing that carbon dioxide from human activities was the primary cause of climate change. "Why did Kevin Bogardus from E&E all of a sudden get a response to a FOIA today, without any awareness from our FOIA office?" Bowman wrote on Aug. 2, adding later that the deadline wasn't until the end of the month.

ME readers will recall from February that EPA has been flooded with FOIA requests under Pruitt, forcing many groups to sue for the release of documents. But the new emails, which EPA gave to the Natural Resources Defense Council following legal action, shed new light on the cloud of secrecy that surrounds the agency.

While Obama-era EPA officials said the agency sometimes used awareness reviews during their time at the agency when career staff thought documents would generate a lot of interest, FOIA experts say the extra vetting of documents appears to be on the rise under Pruitt. "This does look like the most burdensome review process that I've seen documented," said Nate Jones, director of the FOIA Project at George Washington University's National Security Archive. Read more.

HAPPY FRIDAY! I'm your host Kelsey Tamborrino, and the American Petroleum Institute's Khary Cauthen correctly guessed that Roger Taney — who was nominated for Treasury secretary — was rejected by the Senate, 18-28, in 1834. Not all hope was lost, however, as Taney went on to become a Supreme Court justice. For today: Who was the only member of the Continental Congress to sign all four of the great state papers? Bonus points if you can name all four papers. Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](https://twitter.com/kelseytam), [@Morning_Energy](https://twitter.com/Morning_Energy) and [@POLITICOPro](https://twitter.com/POLITICOPro).

EPA NARROWS GUIDELINES: EPA will alter its interpretation of when related facilities are considered a single source for air permitting purposes in a way that could ease their permitting requirements, Alex reports.

The April 30 memo was sent by EPA air chief Bill Wehrum concerning the so-called common control designation, which says plants located near each other should be aggregated for permitting purposes and subject to stricter standards if they are operated by the same entity. Under the new guidance, that will include entities that can "dictate decisions of the other that could affect the applicability of, or compliance with, relevant air pollution regulatory requirements." The memo concerns a Pennsylvania landfill and nearby biogas processing facility that are owned by different companies. Read more.

ADD ADELSON'S NAME TO THE LIST: Yet another high-profile political ally emerged Thursday to have helped Pruitt arrange an international trip: GOP mega-donor Sheldon Adelson. According to new documents obtained by The Washington Post, Adelson arranged parts of Pruitt's canceled trip to Israel — where he was in part scheduled to unveil an agreement with Water-Gen, an Israeli water purification company championed by Adelson. Read the full report here.

MORE INFO PLEASE: Four senior House Energy and Commerce Democrats — Frank Pallone, Paul Tonko, Diana DeGette and Kathy Castor — sent a letter to Pruitt Thursday asking for the names of three people Steven Hart — a lobbyist who was also married to the EPA chief's landlord — recommended for slots on the agency's Scientific Advisory Board. "Despite your earlier claims that J. Steven Hart had no clients with business before EPA, it is now clear that Mr. Hart did represent clients with business before your agency and, in fact, lobbied you on their behalf," they wrote.

MORE TIME PLEASE: Sixty-four Democrats signed onto a letter to Pruitt calling for a 90-day comment period on a his recent "secret science" proposal to ban the use of studies that don't publicly disclose all their data. "Given the large response from scientists and stakeholders before the rule was officially proposed, a comment period of 30 days will not allow for meaningful engagement from stakeholders," the letter states. Read it here.

'NOT OKAY': Interior's inspector general found a male National Park Service regional office official made unwanted sexual advances toward a female employee on consecutive days that she told him were "not okay." The official retired before a scheduled interview and stopped responding to the IG. Read the report here.

CLOVIS OUT ... AGAIN: Sam Clovis, a former Trump campaign aide who had been serving as the Agriculture Department's liaison to the White House, is departing the department and will return home to Iowa, a USDA official confirmed to POLITICO's Liz Crampton. The president had previously nominated him to be USDA undersecretary for research, education and economics, where he faced backlash for his lack of science credentials and ultimately withdrew his name from consideration for that position in November. Greens had also particularly focused on Clovis for his comments that he did not believe in man-made climate change. Read more.

COOLANT INDUSTRY: GLOBAL WARMING INDUSTRY IS SO COOL IT'S HOT: The White House now has evidence that a global warming treaty limiting coolants would generate thousands of new jobs, and now it must decide whether to send the treaty to the Senate for ratification. A report released Thursday by the Air Conditioning Heating and Refrigeration Institute and the Alliance for Responsible Atmospheric Policy said that the amendment to the Montreal Protocol limiting use of hydrofluorocarbons, a greenhouse gas, would help American manufacturers who produce the bulk of the world's supply of advanced coolants. Ratifying the treaty would produce 33,000 additional jobs and an extra \$12.5 billion of annual manufacturing output.

The report is considered critical to help presidential aides persuade President Donald Trump to advance the treaty to the Senate, despite the president's aversion to multilateral treaties, his predecessor's accomplishments, and anything involving global warming. "U.S. ratification of the Kigali Amendment is good for American jobs, good for the economy, and crucial for maintaining U.S. leadership across the globe," said John Hurst, Chairman of The Alliance, and Vice President of Lennox International. He added, "Over 30 countries have ratified the amendment. America cannot afford to be on the sideline. America must continue to lead."

ZINKE HIRES GOP ADVISER FOR NPS: Interior Secretary Ryan Zinke hired Chuck Laudner, a Iowa Republican political consultant who was an adviser to Trump's campaign, for a position with the National Park Service, an Interior spokeswoman confirmed to Pro's Ben Lefevre. Laudner previously worked with Rick Santorum's presidential campaign in Iowa in 2012 and was executive director for the Iowa Republican Party from 2007-08. Interior hired Laudner "a few weeks ago," spokeswoman Heather Swift said, though she did not say what job he had taken.

MAY THE FOURTH BE WITH YOU: Zinke teased out some "Star Wars" related news on Thursday. In a video featuring the secretary walking alongside motorized BB-8 and R2-D2 toys, the droid rolls over an Interior logo. Zinke tweeted the video with a message: "Tomorrow is a big day. More to come. #MayTheFourthBeWithYou." See it.

BLANKENSHIP ATTACKS McCONNELL'S "CHINA FAMILY": West Virginia GOP Senate hopeful Don Blankenship released another ad on Thursday attacking Majority Leader Mitch McConnell. This time, the spot claims "Swamp Captain Mitch McConnell has created millions of jobs for China people." The ad, which POLITICO's Alex Isenstadt reports on here, is expected to start airing today. It closes with a shot of Blankenship holding two young children, one on each arm as he pronounces, "I will beat Joe Manchin and ditch cocaine Mitch for the sake of the kids." The ad arrives days ahead of the state's May 8 primary.

FOIA WHAT IT'S WORTH: The Montana-based Western Values Project filed a FOIA request to EPA in an effort to make public any communication about Zinke. The request includes all communications between select EPA employees that contain "Zinke," "RZ" or "Interior Secretary" and comes in response to a report in The Atlantic that alleges an EPA press employee planted stories about Zinke in order to distract from his boss. EPA spokesman Jahan Wilcox in a statement to the Atlantic called the allegations "categorically false."

CLIMATE LAWMAKERS REBUT CARBON LEGISLATION: The Citizens' Climate Lobby released a rebuttal to Rep. Steve Scalise's concurrent resolution, H. Con. Res. 119 (115), which expresses the sense of Congress that a carbon tax would be detrimental to the U.S. economy. The climate lobby refutes the resolution, claiming that if done correctly, a tax or fee on carbon could boost the economy. Read the rebuttal here and the bill text here.

MAIL CALL! BIOFUELS WRITE TO EPA ON STRATEGY: A coalition of Midwest biofuels associations sent a letter Thursday to EPA asking it to move administrative time and staff away from Renewable Fuel Standard exemptions and instead toward approvals for cellulosic ethanol. "The discrepancy between the way EPA is handling RFS exemptions and cellulosic ethanol pathway approvals tells you everything you need to know about how this EPA is treating the RFS," said Iowa Renewable Fuels Association Executive Director Monte Shaw in a statement. Read the letter.

— **The Business Council for Sustainable Energy**, a coalition of companies and trade associations, wrote to members of Congress on Thursday, asking that they reauthorize energy title programs in the farm bill, H.R. 2 (115). "It is essential that a healthy, robust bipartisan energy title continue as part of new comprehensive agriculture legislation," writes the group's president, Lisa Jacobson. The letter also lays out potential improvements to the programs. Read it here.

— **Congressional Western Caucus Chairman Paul Gosar led 18 lawmakers** in a letter requesting Pruitt reverse course and proceed with an intention to withdraw the Obama-era EPA's preemptive veto of the Pebble Limited Partnership mining project under Section 404(c) of the Clean Water Act. They write that EPA's January decision not to overturn the preemptive vote "has sowed tumult for interested parties."

VW'S WINTERKORN CHARGED: Former Volkswagen AG leader Martin Winterkorn was charged with conspiracy and wire fraud in connection with the company's long-running emissions cheating scheme, according to an indictment unsealed Thursday by the Justice Department. The indictment, issued by a federal

grand jury sitting in the Eastern District of Michigan, charged Winterkorn with four counts of violating federal law. The first count charges that he conspired with other senior executives and Volkswagen employees to defraud customers, the United States and violate the Clean Air Act by making false representations about the company's supposedly "clean diesel" vehicles. The other three counts concern wire fraud tied to the scheme. More from Pro's Lauren Gardner [here](#).

GOING OUT WEST: New Mexico Sen. [Martin Heinrich](#) delivers a keynote address today at the [Outdoor Economics Conference](#), and he's [expected to discuss](#) his legislation to establish the White Sands National Monument as a national park, as well as discuss the outdoor recreation industry in the region. Watch it live [here](#).

REPORT: GRID RESILIENCY IN THE FACE OF NUCLEAR CLOSURES: A new IHS Markit report released Thursday examines the effect of five nuclear closures in the PJM Interconnection, finding the closures will reduce annual net benefits for consumers from PJM grid-based electricity by about \$8 billion per year over 2013-2016. That "translates into a consumer net benefit per kilowatt-hour of PJM nuclear generation of about 3 cents per kWh," the report found. The report was prepared for Nuclear Matters, an industry-funded organization. Read it [here](#).

MOVER, SHAKER: The Joseph Rainey Center for Public Policy, a think tank focused on sustainable politics and inclusive governance, has named Sarah Hunt its founding CEO. Hunt previously was director at the Center for Innovation and Technology at the American Legislative Exchange Council.

HITTING THE ROADMAP: The Delta Institute released a "Coal Plant Redevelopment Roadmap" on Thursday to provide insight into coal-impacted municipalities and their transition processes. Modules in the roadmap will show economic and environmental impacts, as well as provide information on engagement strategies for such communities, among other topics. See it [here](#).

ON THE POD: NPR's podcast, Embedded, released a new episode Thursday on coal in Buchanan County, Va. Listen [here](#).

QUICK HITS

- Continental Resources' Harold Hamm credits OPEC for boosting oil prices, [Reuters](#).
- Pruitt reimbursed himself \$65,000 from Oklahoma attorney general campaign, [CNN](#).
- Texas officials ignore dioxin spread in Houston waterways, [Associated Press](#).
- Gassy earthquakes near Istanbul may pose new risks to region, [The New York Times](#).

HAPPENING TODAY

9:00 a.m. — The International Energy Agency [webinar](#) on "Outlook for Offshore Energy."

THAT'S ALL FOR ME!

To view online:

<https://subscriber.politicopro.com/newsletters/morning-energy/2018/05/heightened-vetting-for-pruitt-related-foias-203960>

Stories from POLITICO Pro

EPA's top spokesperson to depart [Back](#)

By Emily Holden | 05/03/2018 11:26 AM EDT

EPA's top spokeswoman is leaving the agency, the latest in a string of departures by key staffers amid the swarm of investigations into Administrator Scott Pruitt's potential ethical [lapses](#).

The exit of Liz Bowman comes after Pruitt's lead security agent, Pasquale "Nino" Perrotta, and EPA's Superfund task force head and adviser Albert "Kell" Kelly both [quit](#) earlier this week. Perrotta has cited negative media attention as contributing to his decision. His role in Pruitt's [security spending](#) was under review by the agency's inspector general, and he was interviewed by House Oversight Committee staffers on Wednesday.

EPA also confirmed Kelly was leaving because he attracted controversy over being banned from the banking industry.

Bowman, who will join Iowa Republican Sen. Joni Ernst's staff, has been associate administrator for public affairs since shortly after Pruitt was confirmed in early 2017. She was previously director of issue and advocacy communications for the American Chemistry Council.

"I leave extremely thankful for the opportunity to serve the Trump administration and Administrator Pruitt," Bowman said. "Being a member of the EPA team has allowed me to further my skills, learn from my mistakes and make lifelong friendships. It has also provided me the opportunity to develop a new, and deep, respect for the public servants who serve the American people, day in and day out, to ensure that we all have access to clean air, land and water."

EPA chief of staff Ryan Jackson said Bowman "has been an invaluable lead of our public affairs office during this past year."

"I congratulate her on pursuing great and new opportunities on Capitol Hill where we'll continue to work with her, just in a different capacity," he said.

Bowman's last day at EPA is May 11.

Daniel Lippman contributed to this report.

To view online [click here](#).

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Critics pound EPA chief after he disputes human role in climate change [Back](#)

By Alex Guillén | 03/09/2017 12:04 PM EDT

EPA Administrator Scott Pruitt said Thursday that carbon dioxide emitted by human activity is not the primary driver of climate change, a conclusion out of step with mainstream climate science that drew immediate condemnation from Democrats and environmentalists.

"I think that measuring with precision human activity on the climate is something very challenging to do, and there's tremendous disagreement about the degree of impact," Pruitt said on CNBC. "So, no, I would not agree that it's a primary contributor to the global warming that we see." He also called for continued study of the issue.

That is a stronger position than Pruitt took during his confirmation hearing, when he said that the degree of human contribution to climate change is "subject to more debate."

Democrats rushed to condemn Pruitt's remarks.

"This is just nuts: EPA chief Scott Pruitt just claimed carbon not causing climate change," Sen. Brian Schatz (D-Hawaii) tweeted a few minutes after the interview aired. "We Senate D's will be a check on his crazy views."

Most scientists agree that greenhouse gases emitted by human activity like burning fossil fuels is the primary driver of climate change. That includes Pruitt's own agency, which says that human-emitted CO2 "is the primary greenhouse gas that is contributing to recent climate change."

One prominent environmentalist suggested Pruitt should be impeached.

"Pruitt misled Congress about his willingness to do a core part of his job," Sierra Club Executive Director Michael Brune wrote on Twitter. "Contradicting science + law should mean removal from office now."

Pruitt also acknowledged on his CNBC appearance that the Supreme Court has ruled on the matter and that the Obama administration issued an "endangerment finding" concluding greenhouse gases are a threatening pollutant.

But, he added, "nowhere in the continuum, nowhere in the equation, has Congress spoken. The legislative branch has not addressed this issue at all."

Pruitt was slated to speak at the CERAWEEK oil industry conference in Houston later Thursday. He said on CNBC that he would bring a "pro-growth, pro-jobs and pro-environment" message to the conference.

To view online [click here](#).

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EPA narrows guidelines for aggregating sources for air permitting [Back](#)

By Alex Guillén | 05/03/2018 05:59 PM EDT

EPA will alter its interpretation of when related facilities are considered a single source for air permitting purposes in a way that could ease their permitting requirements.

Permitting rules say that plants located near each other should be aggregated for permitting purposes if they are operated by the same entity, known as "common control." In that case, the facilities' emissions can be aggregated and be subject to more stringent permitting requirements than if treated separately.

In an April 30 [memo](#) concerning a common control designation for a Pennsylvania landfill and nearby biogas processing facility that are owned by different companies, EPA air chief Bill Wehrum revised the agency's interpretation so that facilities meet the definition if one entity has "the power or authority ... to dictate decisions of the other that could affect the applicability of, or compliance with, relevant air pollution regulatory requirements."

A dependent relationship should not necessarily mean common control, he added. Facilities can be "economically or operationally interconnected" without being able to direct the other.

In the immediate case of the Pennsylvania landfill and processing plant, Wehrum concluded that the two are not commonly controlled because the landfill could otherwise meet methane emissions limits by burning off biogas and because the processing plant hopes to secure other sources of biogas.

WHAT'S NEXT: Ultimately, EPA's reasoning is only a recommendation. Pennsylvania regulators have the final say on whether these particular facilities fall under "common control."

To view online [click here](#).

[Back](#)

Sam Clovis is leaving USDA [Back](#)

By Liz Crampton | 05/03/2018 08:16 PM EDT

Sam Clovis, the former Trump campaign aide who had been serving as USDA's liaison to the White House, is leaving the Agriculture Department and will return home to Iowa, a USDA official confirmed Thursday evening.

Clovis' last day is Friday. A "goodbye party" was being held for him on Thursday night, according to a source attending the party.

Clovis had served as a co-chairman and policy adviser on the Trump campaign and later led the USDA beachhead team for the Trump transition, but ran into trouble when President Donald Trump nominated him to be USDA undersecretary for research, education and economics.

Clovis withdrew his name from consideration in November — before the Senate Agriculture Committee could hold a confirmation hearing — after facing a torrent of criticism from Senate Democrats and environmental advocates. Clovis drew fire for his skepticism of climate science, past comments on issues like race and gender, and what critics on the left said was his lack of scientific credentials that are legally required for the position, which would also have had him serve as the department's chief scientist.

Clovis had endured criticism for months, but his withdrawal came shortly after he was swept up in special counsel Robert Mueller's probe of Russian interference in the 2016 campaign and the Trump campaign's alleged ties to Russian interests. While serving on the campaign, Clovis had supervised George Papadopoulos, a Trump campaign foreign policy adviser who struck a plea deal on charges he lied to FBI investigators about his communications with Russia-linked contacts. Clovis' withdrawal followed shortly after news of Papadopoulos' plea deal.

More recently, Clovis had been posted to the Natural Resources Conservation Service to provide guidance.

"Dr. Clovis was one of the first people through the door at USDA in January 2017, and we are grateful for his time here," a USDA spokesman said. "He is a good man and a patriot who for decades has served his country admirably. While we are sad Dr. Clovis is leaving USDA, we wish him well on his future endeavors back home in Iowa."

Daniel Lippman contributed to this report.

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Zinke hires Iowa political consultant for Interior parks job [Back](#)

By Ben Lefebvre | 05/03/2018 06:55 PM EDT

Interior Secretary Ryan Zinke has hired Iowa Republican political consultant Chuck Laudner for a position with the National Park Service, an Interior spokeswoman confirmed today.

Interior hired Laudner "a few weeks ago," spokeswoman Heather Swift said, though she did not say what his job he had taken.

"Rebuilding our National Parks infrastructure is a major legislative priority of the Secretary and President and Chuck is helping make it happen," Swift said.

Laudner was an [adviser](#) to President Donald Trump's campaign, and he previously worked with Pennsylvania Republican Sen. Rick Santorum's presidential campaign in Iowa in 2012. Laudner also worked as the executive director for the Iowa Republican Party from 2007 to 2008.

Iowa has two national parks, according to the NPS website.

Laudner's appointment could be the latest example that Zinke is considering a possible presidential run. A [polling firm](#) asked Iowa residents in April their opinion on Zinke, while a political group run by former advisers to Vice President Mike Pence paid for a 30-second [television ad](#) featuring Zinke that aired in Washington, D.C. in March.

"What a curious hire," said Aaron Weiss, media director at Center for Western Priorities, a conservation group. "Chuck Laudner doesn't appear to be at all qualified for a job at the Interior Department, but he's very well-qualified to advise a politician with future ambitions in Iowa."

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Blankenship goes after McConnell's 'China family' in new ad [Back](#)

By Alex Isenstadt | 05/03/2018 05:25 PM EDT

West Virginia GOP Senate hopeful Don Blankenship is amping up his racial attacks on Senate Majority Leader Mitch McConnell with a new ad declaring, "Swamp captain Mitch McConnell has created millions of jobs for China people."

"While doing so, Mitch has gotten rich," Blankenship adds. "In fact, his China family has given him tens of millions of dollars."

McConnell's wife, Transportation Secretary Elaine Chao, was born in Taiwan and her parents are Chinese. Her father is chairman of a shipping company.

The new spot, which is expected to start airing on Friday, comes just ahead of the May 8 primary. As the dramatic contest comes to a close, Blankenship, a former coal baron who spent a year in prison following the 2010 explosion at his Upper Big Branch Mine that killed 29 workers, has focused his assault squarely on McConnell — sometimes in harshly racial terms.

During a recent interview with POLITICO, Blankenship said McConnell "has a lot of connections in China." He also said that Chao is "from China, so we have to be really concerned that we are in truth" putting America's interests first.

Earlier this week, Blankenship began running another TV spot labeling McConnell "cocaine Mitch." The spot is apparently in reference to a 2014 report that drugs were once found aboard a shipping vessel owned by Chao's family.

McConnell has singled out Blankenship for defeat, convinced that a Blankenship primary win would destroy the party's prospects for defeating Democratic Sen. Joe Manchin in November. A McConnell-aligned super PAC has aired about \$1.3 million in negative ads against Blankenship.

Blankenship is facing two more mainstream GOP opponents, Rep. Evan Jenkins and state Attorney General Patrick Morrisey. Recent polls have shown Blankenship fading.

With Blankenship going after Chao, McConnell's political team has swung back aggressively. Josh Holmes, a longtime McConnell political adviser, has described Blankenship as "mentally ill."

In his new spot, Blankenship responds to that accusation, saying: "Mitch's swamp people are now running false, negative ads against me. They're also childishly calling me despicable and mentally ill."

The ad closes with a shot of Blankenship holding two young children, one on each arm as he pronounces, "I will beat Joe Manchin and ditch cocaine Mitch for the sake of the kids."

Holmes fired back at Blankenship. "This clown is a walking talking case study for the limitation of a prison's ability to rehabilitate," he wrote in a text message.

While Blankenship has attempted to focus the campaign on China during the closing stretch of the race, McConnell's team has noted that in 1999 Blankenship spoke of moving to China and becoming a Chinese citizen. Blankenship's girlfriend was born in China, according to media reports.

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Pruitt airs environmental concerns about proposed Alaska mine [Back](#)

By Alex Guillén | 01/26/2018 07:34 PM EDT

EPA Administrator Scott Pruitt today announced he has serious concerns about any potential mining project in Alaska's Bristol Bay region, creating doubt that the controversial Pebble Mine proposal may ultimately be approved.

EPA said in a release today that it will suspend its proposed withdrawal of Obama-era restrictions after hearing from Alaskan residents and other interested parties. The proposed mine has long drawn opposition from some in the state, including independent Gov. Bill Walker, as well as environmentalists, over worries that it could harm Bristol Bay's critical salmon fisheries.

"It is my judgment at this time that any mining projects in the region likely pose a risk to the abundant natural resources that exist there," Pruitt said in a statement. "Until we know the full extent of that risk, those natural resources and world-class fisheries deserve the utmost protection."

The permitting process, which is handled at this stage by the Army Corps of Engineers, can continue, EPA said. But the agency warned that the developers will have to clear a "high bar." The agency added in a release that not revealing Pruitt's doubts at this stage would be "disingenuous." EPA has veto power over such Army Corps permits.

Pebble Limited Partnership CEO Tom Collier said in a statement that the company "can demonstrate that we can responsibly construct and operate a mine at the Pebble Deposit that meets Alaska's high environmental standards."

To view online [click here](#).

[Back](#)

DOJ charges former VW CEO with conspiracy, wire fraud [Back](#)

By Lauren Gardner | 05/03/2018 04:42 PM EDT

DOJ unsealed an indictment today charging former Volkswagen AG leader Martin Winterkorn with conspiracy and wire fraud linked to the automaker's effort to cheat U.S. diesel emissions standards.

Winterkorn is charged with one count of conspiracy with other VW executives to defraud the United States, along with the manufacturer's customers. The other three counts concern wire fraud tied to the scheme.

"If you try to deceive the United States, then you will pay a heavy price," Attorney General Jeff Sessions said in a statement. "The indictment unsealed today alleges that Volkswagen's scheme to cheat its legal requirements went all the way to the top of the company. These are serious allegations, and we will prosecute this case to the fullest extent of the law."

The indictment alleges that Winterkorn knew of the emissions cheating as far back as May 2014, and that he was informed again of it in July 2015. VW as a company pleaded guilty in March 2017 to criminal charges related to the regulatory deception and agreed to pay a \$2.8 billion criminal penalty.

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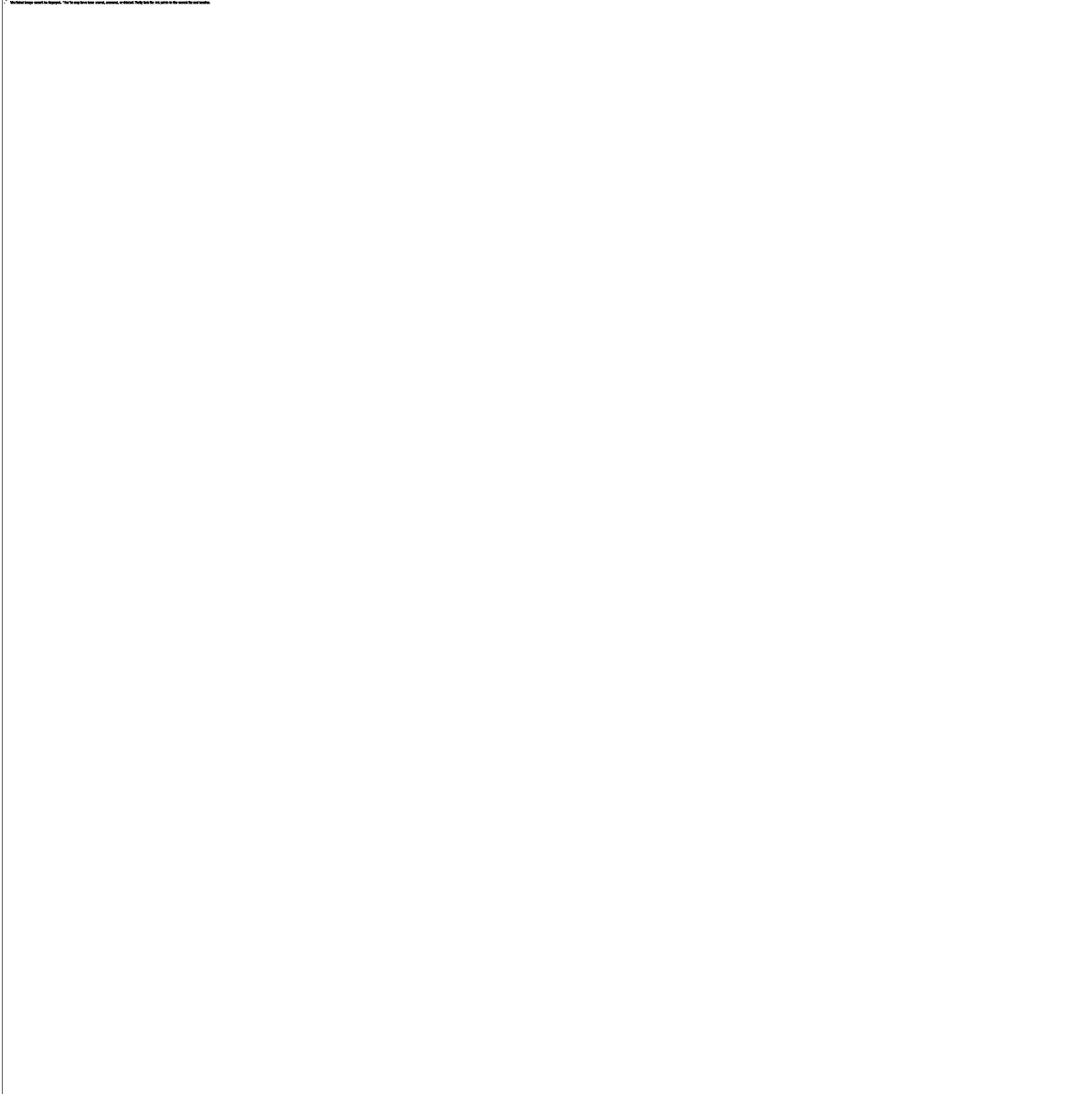
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REDEFINING EPA: Overhauling an agency and its mission -- Complete coverage

June 1, 2018

The Weekly Focus

EPA's Push To Overhaul NAAQS Poses Test For 'Cooperative Federalism'

EPA's push to overhaul and streamline the national ambient air quality standards (NAAQS) process will pose a major test for Administrator Scott Pruitt's pledge to give states more power over environmental decisions, as some states welcome new NAAQS compliance flexibility while others fear it will boost interstate pollution.

Latest News

SAB Votes To Review EPA's Science, Emissions Rules In Sign Of 'Rebuke'

EPA advisers have voted to review the science underlying agency rules aimed at rolling back a suite of Obama administration's greenhouse gas and emissions regulations, as well as a controversial proposal to require that major rules be based on publicly available science, decisions that environmentalists say amount to a "sharp rebuke" of Administrator Scott Pruitt's deregulatory agenda.

SAB Chair Honeycutt Dodges Tough Questions On EPA Science Policies

Michael Honeycutt, the new chair of EPA's Science Advisory Board (SAB), dodged tough questions from reporters on EPA's "secret science" policy, review of major EPA rulemakings and related issues at the first panel meeting since his appointment, but he reaffirmed his skepticism of the Obama administration's decision to tighten the ozone ambient air standard.

EPA, Sierra Club Fail To Reach Deal On Key 'Sue-And-Settle' Test Case

EPA and the Sierra Club have abandoned an effort to settle a suit over the agency's failure to produce congressionally mandated studies on the environmental impacts of the renewable fuel standard (RFS), seeking instead to brief the case in a move that suggests Administrator Scott Pruitt's directive against settling such cases is driving the action.

Observers Criticize Hill GOP Claim No RIA Needed For 'Glider' Repeal Rule

Key observers are criticizing claims by Hill Republicans that the Office of Management and Budget (OMB) should not require a regulatory impact analysis (RIA) when reviewing EPA's plan to scrap production limits on high-emitting "glider" trucks because it is deregulatory, saying there is no such exception.

Judges Reject Rehearing In Groundwater Suit, Teeing Up High Court Petition

A closely divided appellate court will let stand a panel ruling that imposed Clean Water Act (CWA) liability for an underground pipeline leak that reached surface waters through groundwater, but the narrow vote -- with five judges in favor of *en banc* rehearing -- signals that the question is far from settled and could bolster a Supreme Court petition.

Daily Feed

States launch suit to force EPA to implement landfill rules

Eight states say EPA has failed to take action on state compliance plans for the Obama-era methane standards for existing landfills, charging that the agency has "conceded" its failure to act.

OMB formally reviewing vehicle GHG rule rollback plan

It is not clear if officials have incorporated calls from a wide range of industry groups to seek input on a more moderate plan to largely retain Obama-era stringency levels while offering more compliance "flexibility."

Senate Democrats seek IG inquiry into Pruitt's house hunting

Top Democratic senators are seeking an investigation into whether Administrator Scott Pruitt violated federal regulations when one of his top aides searched for housing on his behalf.

Ewire: Pruitt touts Trump's support amid ethics scandals

EPA Administrator Scott Pruitt says that he has President Donald Trump's support despite a slew of recent ethics scandals and a looming IG report.

PEER claims ethics violations in Pruitt defense fund

A whistleblower group says EPA Administrator Scott Pruitt's legal defense fund seems "calculated to give the appearance of taking untoward gifts," and calls for investigations into its structure and donors.

Former EPA chief launches new Harvard climate center

Gina McCarthy said the new center seeks to transform science into "meaningful actions that will deliver a healthier, more just, and sustainable world."

Read all the latest EPA news, analysis and documents →

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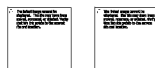
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[Read today's Greenwire on the web](#)

GREENWIRE

AN E&E NEWS PUBLICATION

GREENWIRE — Fri., April 27, 2018



READ FULL EDITION

1. WHITE HOUSE:

OMB backdates completion date for 'secret science' review

The White House has altered an official timeline to show that a required review of a proposed EPA science rule was finished one day before agency Administrator Scott Pruitt signed it this past Tuesday.

TOP STORIES

2. INTERIOR:

Indian Affairs head resigns, but agency won't say why

3. SCIENCE:

'Gamechanger' earthquake linked to geothermal power

4. OFF TOPIC:

On this Dem's 2020 platform: Rising seas, robot apocalypse

POLITICS

5. AIR POLLUTION:

New Source Review rulemaking possible — Pruitt

6. LAW:

Red-state AGs vow to fight climate lawsuits

CONGRESS

7. SENATE:

Energy and environment bills roll out before recess

NATURAL RESOURCES

8. MINING:

Army Corps advances massive Alaska gold project

9. EXTREME WEATHER:

Trump declares disaster area in Ala. tornado path

10. HURRICANE HARVEY:

Houston housing market tries to prepare for future floods

11. MINING:

Colo. regulators reject gravel pit in key habitat

12. PUBLIC LANDS:

Utah activists will face jury for closing cattle gate

13. ENDANGERED SPECIES:

Albino orangutan gets her own island for protection

LAW

14. COAL:

Court won't revive suit challenging black lung claims

ENERGY

15. NUCLEAR:

DOE announces \$60M in grants, agreement with France

16. SOLAR:

In win for Trump, First Solar boosts manufacturing

17. OIL AND GAS:

Fire extinguished at Wis. refinery rocked by explosion

18. UTILITIES:

PG&E fined nearly \$100M for improper talks with regulators

AIR AND WATER

19. AGRICULTURE:

Minn. bails on rule to protect wild rice

BUSINESS

20. PEOPLE:

Watchdogs fret that Perry's son owns energy investment firm

21. COAL:

Arch slashes production amid poor market

TRANSPORTATION

22. ELECTRIC VEHICLES:

Proposal calls for independent Tesla chairman — not Elon Musk

23. ELECTRIC VEHICLES:

Tesla, utilities duke it out over rebates

24. CALIFORNIA:

Billions from gas tax to pay for transit upgrades

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25. CALIFORNIA:

LA ends free trips for solo drivers in zero-emission cars

26. COLORADO:

City receives \$500k for wildfire mitigation

27. WYOMING:

Hunting gear raffle used to boost elk disease reporting

INTERNATIONAL

28. EUROPEAN UNION:

Member states agree to neonicotinoids ban

29. AUSTRALIA:

All of nation's packaging will be sustainable by 2025

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AN E&E NEWS PUBLICATION

GREENWIRE — Thu., April 26, 2018



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1. EPA:

'I have nothing to hide' — Pruitt

EPA Administrator Scott Pruitt said today allegations of excessive spending and misuse of his Cabinet-level authority are aimed at upending President Trump's agenda at the agency.

TOP STORIES

2. WHITE HOUSE:

Pruitt signed 'secret science' plan before OMB ended review

3. POLITICS:

EPA chief's hush-hush trips draw cheers and sneers

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Wood pellet pollution growing — report

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5. NOMINATIONS:

Senate confirms Pompeo for State

6. POLITICS:

LCV hits Gardner, Heller on Pruitt

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Trump nominates slew of federal court judges

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'The Mooch' weighs in on Pruitt

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Feds fail in bid for Yosemite trademarks appraisal info

10. GREAT LAKES:

Ohio's spending on algal blooms isn't paying off — study

11. EXTREME WEATHER:

No twisters in 'Tornado Alley' states this spring

12. HURRICANE HARVEY:

Houston registry to track storm's impacts

13. WILDLIFE:

Colo. mine next to pristine ecosystem could get approval

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14. AGRICULTURE:

N.Y. court strikes down manure permits for megafarms

15. VW SCANDAL:

Volkswagen agrees to pay Md. \$33.5M for excess emissions

16. ELECTRIC VEHICLES:

Lawsuit accuses Tesla of not allowing rest breaks

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17. TRANSPORTATION:

Elaine Chao has said little on climate. Here's what we know

18. CLEAN POWER PLAN:

Curtain falls today for comments on proposed repeal

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19. COAL:

Ariz. exempts mines from sales tax to save power plant

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Sunlight reduces effectiveness of dispersants — study

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Pollution remains near closed Calif. battery recycling plant

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John Kerry joins impact investing firm

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23. AFRICA:

Scientists find gorilla population dropping at alarming rate

24. PHILIPPINES:

Famous vacation island closes for cleanup

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Clean Water Act 'ambulance chasers'? Firm raises eyebrows

The Trump administration is taking rare action against a Pennsylvania law firm for filing Clean Water Act citizen suits.

TOP STORIES

2. EPA:

Agency wanted 'war room' press coverage

3. SCIENCE:

GOP lawmakers, industry had EPA's ear on advisory panels

4. DRINKING WATER:

Science proposal muddies reviews of toxic nonstick chemicals

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5. EPA:

Comment period extended for 'secret science' proposal

6. AUTOS:

Global confusion as Trump floats tariffs on car imports

7. PEOPLE:

Ex-Interior appointee turns to government relations

CONGRESS

8. DEFENSE:

House OKs Pentagon bill with sage grouse, mining provisions

9. NUCLEAR:

White House keeps Congress, advocates guessing about review

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10. INTERIOR:

Award-winning FWS official has 'had a blast'

11. POLLINATORS:

Beekeepers coming to terms with increased winter losses

12. EXTREME WEATHER:

NOAA predicts 'near- or above-normal' hurricane season

13. WILDLIFE:

Wyo. approves trophy hunt of Yellowstone-area grizzlies

14. PEOPLE:

Air Force general who oversaw disaster response retires

15. WILDLIFE:

USDA cyanide devices killed 164 Wyo. coyotes last year

16. MARINE MAMMALS:

Humans caused 2 Calif. whale deaths — officials

LAW

17. WILDLIFE:

Greens sue Interior over migratory bird law revisions

18. COAL:

Greens sue over water permit for power plant

AIR AND WATER

19. AGRICULTURE:

'Takes your breath away': N.C. residents fight manure pools

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20. SPORTS:

Stadiums score high on green architecture

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21. SELF-DRIVING CARS:

Uber halts testing in Ariz. in wake of fatal crash

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22. CALIFORNIA:

Companies draw fire for ballot bid to duck lead paint costs

23. HAWAII:

Volcano creates blue flames; man describes harrowing injury

24. MARYLAND:

Some worry pumped-up Ocean City beaches threaten swimmers

25. WEST VIRGINIA:

Mishandled flood relief money draws scrutiny

26. NEW JERSEY:

Shore town bans plastics, foam takeout boxes

INTERNATIONAL

27. AUSTRALIA:

World's longest cat-proof fence to guard marsupials

28. INDIA:

Authorities pull plug on smelter after deadly protests

29. YEMEN:

Cyclone pounds island with winds, rain

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GREENWIRE — Wed., May 2, 2018



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1. EPA:

Spotlight turns to lobbyist who facilitated Morocco trip

Top Senate Democrats are demanding a hearing with EPA Administrator Scott Pruitt after reports surfaced yesterday that a lobbyist helped facilitate his trip to Morocco last year.

TOP STORIES

2. REGULATIONS:

First federal reg czar opposes EPA 'secret science' plan

3. INTERIOR:

Indian Affairs head resigned amid harassment charges — email

4. EPA:

Lobbyist recommended science advisers

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5. EPA:

Dems charge Pruitt sought to open office in hometown

6. DOE:

Perry tells lawmakers he has no travel controversies

POLITICS

7. ADVOCACY:

Group hires leader for sportswomen's program

8. CAMPAIGN 2018:

Colo.'s Lamborn back on ballot after federal court ruling

9. RENEWABLES:

Solar, wind donate more to GOP than Dems in midterms

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10. NATIONAL PARKS:

NPS set to close farm over contract dispute

11. ENDANGERED SPECIES:

Judge reaffirms protections for Klamath River salmon

12. MARINE MAMMALS:

Humpback whales near Antarctica having more babies

13. INVASIVE SPECIES:

Frog-eating frogs as big as fists found in New Orleans

14. FISHERIES:

La. House panel votes down Russian fish farming

LAW

15. BIOFUELS:

Trade group sues EPA over refineries' hardship waivers

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Judge rejects Trump bid to halt N.D. lawsuit

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EPA finds no toxic air after refinery blast

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Is it the end of the line for tiny hotel shampoo?

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Enviros fret as tourists trek to newfound 'Rainbow Mountain'

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Subject: The Morning Headlines from InsideEPA.com -- April 23, 2018



REDEFINING EPA: Overhauling an agency and its mission -- Complete coverage

April 23, 2018

Latest News

EPA Floats 'Secret Science' Ban Rule, Signaling Possible Internal Fixes

EPA has sent for White House review a proposed rule to increase the transparency of regulatory science, advancing Administrator Scott Pruitt's controversial efforts to ban the use of "secret science" in a move that suggests officials have addressed at least some internal concerns that such a policy could violate statutory protections of medical privacy and trade secrets.

Previewing Hearing, Environmentalists Fault EPA Coal Ash Rule Revisions

Environmentalists are previewing their testimony for an EPA hearing next week on the agency's planned revisions to its coal ash disposal rule, warning that the changes would increase risks to children's health by removing a mandate to protect sensitive subpopulations and harm communities by ending a requirement to quickly clean up ash spills.

Compliance Costs Create Dilemma For Wehrum's Bid To Kill Utility MACT

ORLANDO, FL -- EPA air chief William Wehrum is acknowledging that he faces a dilemma over whether to grant calls from utilities and others to scrap the regulatory justification for the Obama-era utility air toxics rule as a "satisfying" move, or retain it as even some of its staunchest industry critics have spent millions in compliance costs.

EPA's Chloroform Study Plan Raises Queries Over Reach Of IRIS Reviews

Introducing their plan to science advisors last September, Bahadori's presentation slides explained that chloroform has a "small evidence base" and the plan is to conduct a "targeted update to address Agency need." EPA's Superfund, air and Region 4 offices expressed a specific need for an inhalation reference value for chloroform, the documents say.

CSB Asks Appellate Court To Back Broad Subpoena On 'Potential' Releases

The U.S. Chemical Safety and Hazard Investigation Board's (CSB) is asking a federal appellate court to grant it broad power to subpoena documents related to "potential" releases at facilities where it is investigating industrial incidents, a move that a major refiner is resisting, charging it amounts to an unlawful expansion of the board's powers.

Daily Feed

IG to investigate Pruitt security on personal travel

This investigation will be separate from probes already under way into Pruitt's travel and security detail, "so as not to delay the completion of our ongoing work in those areas," EPA's IG says.

States criticize EPA's efforts to 'delay' CWA jurisdiction rule suit

Seven GOP-led states are pushing back against EPA's latest attempt to block substantive litigation over the 2015 Clean Water Act jurisdiction rule.

Democratic senators block ballast provision

Democratic senators have blocked a controversial provision that would remove EPA's Clean Water Act regulation of ships' ballast water.

ALA ties ozone spike to global warming

The American Lung Association is using its annual 'state of the air' report to call for action to protect Obama-era Clean Air Act rules from attacks by Congress and EPA.

Federal judge sends utility ELG delay suit to appeals court

The judge's order ends a lower court suit over the Trump EPA's delay of the Obama-era power plant effluent rule and shifts focus to a pending appeals court case.

Ewire: Mulvaney pledges probe of Pruitt's spending

In today's Ewire: "I'm not any happier about it than you are," White House budget chief Mick Mulvaney tells a House financial services panel, referencing reports of Scott Pruitt's spending as EPA administrator.

EPA GHG inventory sees 2.5 percent drop in 2016

EPA Administrator Scott Pruitt touted the use of innovative technologies for the decline in greenhouse gases, calling it "one of the great environmental successes of our time."

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Subject: EPA Announces Extended Comment Period and Public Hearing on Proposed Rule to Strengthen Science Transparency in EPA Regulations

EPA Announces Extended Comment Period and Public Hearing on Proposed Rule to Strengthen Science Transparency in EPA Regulations

WASHINGTON (May 24, 2018) - Today, the U.S. Environmental Protection Agency (EPA) announced an extension of the comment period on the proposed rule, "Strengthening Transparency in Regulatory Science." EPA is also announcing a public hearing for the proposed rule, which will be held on July 17, 2018, in Washington, D.C.

"EPA is committed to public participation and transparency in the rulemaking process," said EPA Administrator Scott Pruitt. **"By extending the comment period for this rule and holding a public hearing, we are giving stakeholders the opportunity to provide valuable input about how EPA can improve the science underlying its rules."**

On April 30, 2018, EPA announced the proposed rule with a 30-day comment period that was scheduled to close on May 30. With today's extension, the comment period will now close on August 17. EPA is soliciting comments on all aspects of the proposal and specifically on the issues identified in Section III. The public hearing will provide a forum for interested parties to present data, views, and arguments regarding EPA's proposed rule.

The proposed rule will strengthen the science used in regulations issued by EPA. It will require that underlying scientific information be publicly available. Also, this rule is consistent with data access requirements for major scientific journals and builds upon Executive Orders 13777 and 13783.

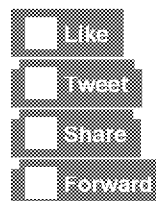
Comments should be identified by Docket ID No. is EPA-HQ-OA-2018-0259 and submitted through the Federal eRulemaking Portal: <http://www.regulations.gov>.

The public hearing will be held at the U.S. Environmental Protection Agency Headquarters, William Jefferson Clinton East Building, Main Floor Room 1153, 1201 Constitution Avenue NW, in Washington, D.C. 20460. The public hearing will convene at 8:00 a.m. EST and continue until 8:00 p.m. EST. Parties interested in presenting oral testimony at the public hearing should register online by July 15, 2018, at <https://www.epa.gov/osa/strengthening-transparency-regulatory-science>.

While we have taken steps to ensure the accuracy of this [Internet version of the rule](#), it is not the official version of the rule for purposes of public comment. Please refer to the official version in a forthcoming *Federal Register* publication.

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Subject: Morning Energy, presented by ExxonMobil: Democrats try to make GOP pay at the pump — Nukes out at PJM even as capacity prices double — Senate Appropriations marks up Energy-Water

By Kelsey Tamborrino | 05/24/2018 05:42 AM EDT

With help from Anthony Adragna and Eric Wolff

PUMP UP THE VOLUME: Days away from the Memorial Day weekend, gas prices are on the rise — and Democrats didn't have to look far for someone to blame. During a press conference in front of a notably pricey Exxon gas station, Democratic leaders blamed President Donald Trump's foreign policy decisions — including his move to reimpose sanctions on Iran — for the 50-cent-per-gallon surge in prices since he took office. "There's a straight line between Trump's policies and the price of gasoline," Sen. [Brian Schatz](#) told Pro's Ben Lefebvre and Anthony Adragna.

A page out of the Trump playbook: In pushing the blame onto Republicans, Democrats aren't breaking new ground. Trump himself called for former President Barack Obama's firing when in October 2012 gas prices hit "crazy levels." Republicans weren't surprised by the Democratic talking point, either. "Everyone's going to look for whatever political leverage they have going into an election," Sen. [Lisa Murkowski](#) said. "[But do] you think that Republicans created the high prices? No."

Roadblocks ahead: The Democratic message faces a big obstacle: Short of an energy crisis like the one President Jimmy Carter faced in his 1980 reelection campaign, it's tough to convince voters the president is to blame for expensive gas. Especially because the White House has little control over gas prices, which largely track the movement in global crude oil market prices. Energy market watchers say the price rally is largely due to moves by OPEC and Russia, in addition to the collapse of Venezuela's oil industry. [Read more.](#)

RELATED DOC: Trump has staffed his administration with oil and auto industry insiders, according to a new report from ethics watchdog group Public Citizen. The report breaks down industry influence by the numbers and finds 52 administration staff members have oil and gas ties, 15 with auto industry ties and 10 who have ties to both. Those industry ties are most concentrated at EPA, Interior and the White House. [Read the report.](#)

GOOD THURSDAY MORNING! I'm your host Kelsey Tamborrino. Congrats to the American Petroleum Institute's Khary Cauthen, who was the first to identify Franklin D. Roosevelt as the first president to have a state car custom built to Secret Service standards. For today: In what year did someone first attempt to jump the White House fence? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](#), [@Morning_Energy](#) and [@POLITICOPro](#).

POLITICO and the South China Morning Post are partnering to expand coverage of U.S.-China relations. Read our note from POLITICO Editor-in-Chief John Harris and Editor Carrie Budoff Brown to [learn more](#). If you want all China-related content that appears through this partnership sent directly to your inbox, go to your [account settings](#) to sign up for the South China Morning Post tag or reach out to your [account manager](#) for assistance.

COMMENT PERIOD EXTENDED: EPA [extended](#) the comment period for its controversial "secret science" proposal that was set to end on May 30. The public will now have until Aug 16 to make their voices heard on

the proposal to ban the use of studies that don't publicly disclose all data. EPA also said it would hold a public hearing July 17 in Washington on the proposal rule, heeding public requests to do so.

NUKES OUT OF PJM EVEN AS CAPACITY PRICES DOUBLE: PJM Interconnection, which manages the nation's largest power market, shed almost a third of its nuclear capacity in capacity auction results released yesterday for the 2021-22 delivery year. The auction, which provides extra payments to generators in return for staying available to run at any time, saw prices nearly double to \$140 per megawatt-day, and it will generate \$9.3 billion in revenue for companies with plants that cleared. Stu Bressler, PJM's senior vice president for Operations and Markets said prices rose because companies were trying to make up revenue lost to lower energy prices. "The offers from supply resources into the capacity auction take into account the actual as well as the anticipated energy revenues when they construct those offers in order to meet their required revenues," he told reporters Wednesday.

More megawatts cleared the auction for every other fuel type. Solar capacity quadrupled and wind added 529 MW, making up for ground lost in last year's auction. Coal added 500 MW compared to the previous auction, something that may catch the attention of the Department of Energy, which is trying to save coal plants. "The results of this auction should reassure everyone that the electricity markets are working and maintaining a reliable system," said Susan Buehler, a spokeswoman for the grid operator. "PJM has always said we don't believe there is any need for intervention."

Plenty of power: PJM continues to have far more power than it needs to meet reserve requirements. In 2021-22, it will have a 21.5 percent reserve, well above the 15.8 percent target. That reserve is actually down 2 points from the auction to supply power for 2020-21.

EVERY BILL GETS ITS DAY: The Senate Appropriations Committee will mark up its fiscal 2019 Energy-Water appropriation bill, which puts discretionary funding at \$43.8 billion — \$566 million more than this year's appropriation and \$7.2 billion more than the administration requested. The bill provides \$6.65 billion for the Office of Science — a \$390 million boost — and would increase funds for ARPA-E, which the White House has sought to eliminate. The committee will also consider so-called 302(b) allocations.

How it'll play out: Lamar Alexander is already eyeing how the Senate might move on the title in the coming weeks. "My guess would be two or three bills would come over from the House, Sen. [Mitch] McConnell could put those bills together, put them on the floor at once and allow amendments to them all," Alexander, who chairs the Energy and Water Subcommittee, told reporters. He added that 83 senators had provided input into his bill and that his subcommittee was able to address those suggestions "to some degree in almost every case."

If you go: The markup kicks off at 10:30 a.m. in 106 Dirksen.

BRIDENSTINE'S CLIMATE EVOLUTION COMPLETE: NASA Administrator Jim Bridenstine endorsed a major federal report that echoed the scientific consensus that human activity is the primary driver of climate change. Under questioning Wednesday from Sen. Brian Schatz, the former Oklahoma lawmaker said the National Climate Assessment "has clearly stated that it is extremely likely ... that human activity is the dominate cause of global warming and I have no reason to doubt the science that comes from that." Bridenstine agreed that his new position on the science constituted an evolution of his views and vowed to protect climate science work at the space agency. Keep in mind: The climate report in question is the same assessment Administrator Scott Pruitt sought to rebuff in his proposed "red team-blue team" debate. Watch the Bridenstine clip here.

WHEN WE LAST LEFT OUR HEROES: Top deputies across the Trump administration — including EPA Deputy Administrator Andrew Wheeler, Deputy Energy Secretary Dan Brouillette and USDA Deputy Secretary Stephen Censky — will meet today to try to resolve long-standing tensions over the Renewable Fuel Standard. The group will pick up where the president left off during his meeting on the topic last month, including the unfinished business of whether to allow biofuel exports to receive Renewable Identification Numbers, and whether to reallocate the gallons small refiners were exempted from blending under economic hardship waivers

from EPA. A refining source previously told Pro's Eric Wolff the USDA is trying to capitalize on the controversies surrounding EPA and has been pressing the agency to move quickly on allowing year-round sales of 15 percent ethanol fuel.

And with small refinery exemptions on the table, ME will be looking to see how Wednesday's news that Marathon Petroleum asked EPA for an exemption plays out. Ahead of today's meeting, the ethanol and biofuel trade association Growth Energy released a statement that called out the "flood of illegitimate waivers" and their resulting "'demand destruction' for U.S. farmers at a time when rural communities can least afford it."

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BIODIESEL WANTS MORE: Biodiesel producers think EPA should crank up the biodiesel requirement, not leave it flat, as POLITICO reported yesterday. "These rumored numbers are disappointing," Kurt Kovarik, VO for federal affairs for the National Biodiesel Board said in a statement. "Holding biomass based diesel flat is a missed opportunity to signal growth, which is what the RFS is intended to do. ... The easiest way to fix this and turn around growing dissatisfaction among rural voters is to provide growth to the biodiesel industry and increase this number."

STILL WORKING: John Cornyn, the Senate's No. 2 Republican, said he continues to have discussions on his legislation to overhaul the Renewable Fuel Standard "almost daily, certainly at the staff level," but wasn't sure the talks would bear fruit this year. "We keep making progress but the goal line still seems some ways away," he told reporters. "I'd love to solve the problem this year, but I just don't know."

CARB AND EPA HAVE A MEET: EPA and the California Air Resources Board met Wednesday to open negotiations on a single unified standard for fuel economy, following a White House meeting with automakers earlier in the month. EPA and the National Highway Traffic Safety Administration are threatening to try and revoke California's waiver, risking a lengthy court battle that could balkanize the auto market. "Today's conversations between Administration Officials and the California Air Resources Board were productive," EPA and the Department of Transportation said in a joint statement following the meeting. "We are fully supportive of an open dialogue that proceeds in an expedited manner. EPA and USDOT look forward to moving ahead on a joint proposed rule and receiving practical and productive feedback from all stakeholders."

MOVING QUICKLY: Senate EPW Chairman John Barrasso said Wednesday he's working to reach a time agreement with Democrats to speed floor consideration of a broad water infrastructure package S. 2800 (115) that cleared his panel unanimously earlier this week. Barrasso said it would "be great" to get the bill passed before the Fourth of July recess. His Democratic counterpart on the panel, Sen. Tom Carper, agreed it wouldn't take long for the Senate to complete its work on the bill: "I don't think we're going to need a week. We might need a day," he said.

N.J. GOV DEFENDS EXXON SETTLEMENT USE: New Jersey Gov. Phil Murphy defended using money from a \$225 million settlement with Exxon Mobil to help balance his state's budget. The Democratic governor told reporters he wasn't happy about the decision, but said the state had "been dealt a lousy hand." Environmental groups are appealing the settlement in the hopes of negotiating a new deal, Pro New Jersey's Danielle Muoio reports.

MAIL CALL! FINISH UP, FERC: A new letter from 16 Democratic senators calls on FERC to finish up its rule to allow distributed energy resources to connect to the grid. The letter, led by Sheldon Whitehouse and Ed Markey, concerns the integration of DERs and renewable aggregators into capacity and energy markets. "This

will enable consumers to play a central role in strengthening reliability and avoiding unnecessary costs by supplying localized energy services," the senators write. Read the [letter](#).

REPORT: TRIBAL COMMUNITIES AT RISK: The Clean Air Task Force published a new [brief](#) Wednesday on the adverse health effects from oil and gas pollution on tribal lands. The report, which looked at lands in New Mexico, North Dakota and Utah, found that Native Americans face disproportionate health risks from living near sources of pollutants, such as VOCs, NOx and resultant smog.

WHAT'S HAPPENING IN COLORADO? The Colorado Association of Commerce and Industry and the National Association of Manufacturers will host [an event](#) today with former Interior Secretary and Colorado Attorney General Gale Norton, focusing on the Boulder, Colo., [climate lawsuit](#) against energy manufacturers over their role in contributing to climate change. Ahead of the event, Independent Petroleum Association of America's Energy in Depth is launching a digital ad buy in the state on the opposition against the lawsuit. Watch [the video](#).

THANKS, CHARLIE: The Citizens for Responsible Energy Solutions will announce a \$185,000 [television and digital ad](#) buy today, thanking Massachusetts Gov. Charlie Baker for his actions addressing climate change and on clean energy solutions. The ads will run across the state and encourage residents to thank Baker for his leadership.

MOVER, SHAKER: Van Ness Feldman announced Wednesday that Jason Larrabee, former Interior principal deputy assistant secretary for fish and wildlife and parks, has joined the firm as a senior policy adviser.

QUICK HITS

- Critics: EPA can't keep prior fuel economy data in its blind spot, [Bloomberg BNA](#).
- Coal company claims bank did not allow it to make loan payments, [S&P Global](#).
- Zinke, Burgum tout innovation over regulation at oil conference, [Bismarck Tribune](#).
- How more carbon dioxide can make food less nutritious, [The New York Times](#).
- New documents show why Pruitt wanted a "campaign-style" media operation, [Mother Jones](#).

HAPPENING TODAY

10:30 a.m. — Senate Appropriations Committee [markup](#) of FY 2019 Energy-Water bill and consideration of 302(b) allocations, 106 Dirksen

11:00 a.m. — The National Oceanographic and Atmospheric Administration conference call briefing on the 2018 Atlantic hurricane season outlook, Lakeland, Fla.

12:45 p.m. — The Center for Strategic and International Studies [conference](#) on "Can Nuclear Compete?" 1616 Rhode Island Avenue

1:00 p.m. — The National Academy of Sciences' Polar Research Board [webinar](#) on "Shaping Scientific Committee on Antarctic Research's New Scientific Research Programs"

5:30 p.m. — U.S. Green Building Council holds [2018 Building Tech Forum](#), Boston

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Stories from POLITICO Pro

Democrats turn to GOP playbook in pinning gas prices on Trump [Back](#)

By Ben Lefebvre and Anthony Adragna | 05/24/2018 05:02 AM EDT

A spike in gasoline prices is giving Democrats a rare chance to borrow an old Republican tactic: pounding the occupant of the White House for motorists' pain at the pump.

They're unleashing the message with gusto against President Donald Trump, arguing that his foreign policy moves — including his push to reimpose sanctions on Iran — are to blame for a 50-cent-per-gallon surge in prices since he took office. Democrats also note that gas prices are the highest they've been in nearly four years despite the multibillion-dollar windfall that oil companies are set to receive from the GOP-backed tax bill.

"There's a straight line between Trump's policies and the price of gasoline," Rep. [Brian Schatz](#) (D-Hawaii) said in a brief interview, echoing a growing chorus of Democrats.

Voters are already feeling spooked: Forty-two percent of Americans won't take a road trip for summer vacation this year, a much lower number of people than last year, and many of them cited higher gas prices as the reason, according to a [survey](#) by gas station data company GasBuddy.

But the Democratic message faces a big obstacle, even as the party is riding a wave of optimism to the November midterms: Short of an energy crisis like the one former President Jimmy Carter faced in his 1980 reelection campaign, it's tough to convince voters the president is to blame for expensive gas, as GOP candidate Mitt Romney found out when he [tried to use it](#) against former President Barack Obama 2012.

Trump himself frequently criticized Obama for rising gas prices in the run-up to his reelection, [tweeting](#) weeks before the November 2012 vote, "Gas prices are at crazy levels--fire Obama!"

GOP lawmakers say they aren't surprised by the Democrats' efforts and they doubt voters will buy the attacks.

"Everyone's going to look for whatever political leverage they have going into an election," Sen. [Lisa Murkowski](#) (R-Alaska), chairwoman of the Energy and Natural Resources Committee, told POLITICO. "[But do] you think that Republicans created the high prices? No."

Still, Democrats believe that the jump in prices at the pump to [nearly \\$3 a gallon](#) will be a core pocketbook issue for voters on the Memorial Day weekend, which signals the beginning of the high-demand summer driving season.

"I'm going to be having town meetings at home over the course of the week. They'll be in rural areas. People drive a long way and they're not going to see this as an abstract issue," Sen. Ron Wyden (D-Ore.), the top Democrat on the Senate Finance Committee, told POLITICO.

Wyden's panel on Tuesday released a report highlighting the fact that the nation's four largest oil companies are poised to reap some \$15 billion in tax benefits over the next decade from the GOP's tax law, while gas prices reach their highest levels in years. Sen. Ed Markey (D-Mass.) released his own staff report this week using the same tactic, blaming higher prices on "President Trump's incoherent foreign policy."

To be sure, the White House has little control over gas prices, which largely track the movement in global crude oil market prices. Those prices have jumped more than 60 percent since last June, even as U.S. oil production climbs to record levels. Energy market watchers say the price rally is largely because OPEC and Russia have cooperated to sop up extra supplies in the international markets as demand continues to climb.

In addition, the collapse of Venezuela's oil industry, one of the biggest foreign suppliers to the U.S., has pushed prices up. Its oil exports have fallen by a third from January 2016 amid the country's political meltdown, and the Trump administration looks poised to place sanctions on the country's remaining exports.

"Even OPEC could not have hoped for this kind of result," said Kevin Book, analyst at energy consulting firm ClearView Energy.

But analysts are also saying that the White House may indeed be contributing to the rise in prices. Trump's appointment of John Bolton as his national security adviser has spooked oil traders who worry about tensions in the Middle East, said Citigroup energy analyst Eric Lee. Meanwhile, Trump's threat to place heavy sanctions on Iran could remove oil from the global markets, and his moving the U.S. embassy in Israel to Jerusalem may irritate Saudi Arabia enough that the kingdom won't increase its own oil flows to lessen the hurt on U.S. drivers.

"It's a combination of things, but what really took prices to the current level is U.S. policy or at least uncertainty," Lee said in an interview.

On Wednesday, a gaggle of Democratic senators including Markey, Minority Leader Chuck Schumer, Maria Cantwell (Wash.) and Bob Menendez (N.J.) held a news conference at an Exxon filling station near the Capitol to blame the price increase on Trump.

"It's well known that geopolitical instability drives oil prices, and gas prices, around the world higher and higher," said Menendez, ranking member of the Senate Foreign Relations Committee. "The Trump administration's chaotic approach to foreign policy not only served instability around the world, it certainly serves to drive up oil prices higher and higher."

When asked how any president could impact pump prices, Schumer told reporters that Trump should pressure OPEC member states and U.S. oil companies to lower their prices.

"He's very, very tight with the crown prince," Schumer said of Trump's relationship with the head of Saudi Arabia. "He's very, very tight with the head of the UAE, very, very tight, supposedly, with Putin. Why doesn't he use that? Oil companies just got a big tax break. Jawbone them."

Trump and Republicans still have one card to play, analysts said: releasing oil into the market from the Strategic Petroleum Reserve, which could tap down prices. That's precisely what some Democrats asked Obama to do in early 2012 when they faced rising retail prices.

"I wouldn't be surprised if the president were to consider the use of the SPR to dampen prices to play to his base for the midterm elections," said Gary Ross, head of global oil analytics at S&P Global Platts. "He might see

such as a signal that he cares, and one that might deflect some criticism for higher gasoline prices due to Iranian sanctions."

White House and Energy Department spokespeople declined to answer questions about whether the administration would consider an SPR release if prices continue to climb.

To view online [click here](#).

[Back](#)

Editor's note: A POLITICO partnership in China [Back](#)

By John F. Harris and Carrie Budoff Brown | 05/22/2018 05:04 AM EDT

POLITICO readers will see on our pages today something new and important: the first stories reflecting the publication's commitment to illuminating the U.S. relationship with China.

POLITICO, which began in 2007 as preeminently a Washington publication, in recent years has had a global focus. In Europe, we have the largest news operation covering the increasingly complex and consequential workings of the European Union. Including our growing coverage in the U.S., POLITICO's 250 reporters and editors are now in 15 cities spanning nine time zones. Increasingly, we have heard from our most engaged readers that the place to expand our focus is toward the Pacific, as the U.S. relationship with China — intensely competitive in some spheres, intertwined and mutually dependent in others — will hover over the political and policy debates of the next generation.

One part of our expanding coverage involves a content partnership we are unveiling today with the South China Morning Post. SCMP, based in Hong Kong, is the oldest newspaper in Asia and is the only independent English-language publication in the region. SCMP has an editorial staff of 300 in Asia, with about 40 reporters stationed in mainland China. Like POLITICO, the publication has global ambitions. Under the partnership, SCMP editors will have access to POLITICO stories to share with their readers, and POLITICO editors can draw on the SCMP stories we believe our readers will find most relevant. Over time, editors in both newsrooms will look for opportunities to combine resources on original stories produced in combination with POLITICO and SCMP journalists.

Our experience shows often that the most important stories are best illuminated by being reported simultaneously from multiple perspectives. That's what we do every day in the United States and in Europe. In combination with SCMP, we will now be able to do the same on important subjects — trade, finance, technology and national security among them — at the heart of U.S. interests in China.

And you can expect POLITICO's growth to continue. As our readers' interests reflect a global perspective, so will our publication's journalistic focus and resources.

John F. Harris
Editor in chief

Carrie Budoff Brown
Editor

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Senate subcommittee advances energy and water spending bill [Back](#)

By Eric Wolff | 05/22/2018 03:44 PM EDT

A Senate subcommittee today advanced the Energy-Water appropriations bill to the full committee.

The bill appropriates \$43.8 billion in discretionary funding, \$566 million more than last year's appropriation and \$7.2 billion more than the administration requested. Non-defense activities rose \$474 million, while defense activities were increased \$92 million.

The bill provides \$6.65 billion for the Office of Science, \$390 million more than the last appropriation. And it funds an increase for ARPA-E. It also maintains funding for a weatherization assistance program and includes an extra \$196 million for drought resilience, among other measures.

Chairman [Lamar Alexander](#) lamented that writing the bill was made more difficult because the committee "started with an unrealistic budget proposal from the administration."

Appropriators funded DOE's Office of Energy Efficiency and Renewable Energy at \$2.3 billion, the same level as the current appropriation, but \$1.6 billion than President Donald Trump's budget.

The bill also provides \$6.9 billion for the Army Corps of Engineers, the largest appropriation for the corps, according to Alexander. It makes full use of the Inland Waterways Trust Fund, specifically the top four priority projects.

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Emails show Pruitt pushing 'red team-blue team' climate debate [Back](#)

By Alex Guillén and Anthony Adragna | 05/15/2018 06:39 PM EDT

EPA Administrator Scott Pruitt had hoped at least twice last year to announce his plans for a controversial red team-blue team debate that would take aim at a federal assessment supporting climate change science, according to newly released emails.

Pruitt's contentious review was abandoned because of the White House's objections, but the [communications](#) reveal new details about how the process would have worked and who was influencing Pruitt.

Many scientists have complained that a red team-blue team style debate was a poor way to examine the scientific evidence that overwhelmingly supports the findings that humans are the primary driver behind climate change. But for Pruitt, who had once suggested the event might be televised, [the debate](#) appeared to be directed at rebuffing the Fourth National Climate Assessment.

That government-wide report issued on Nov. 3 contradicted many Trump administration political appointees who have questioned the connection between greenhouse gas pollution and global warming.

A draft press release that circulated on Nov. 4 among top EPA officials, and which was shared with Pruitt on Nov. 5, laid out the line of attack, according to the documents made public on Tuesday by EPA following a records request from the Natural Resources Defense Council.

"EPA is standing up a Red Team peer review of the report," they wrote, while the "blue team" would essentially be the federal assessment and its authors.

"A robust, transparent public peer review evaluation of climate change is something everyone should support," Pruitt said in the unreleased November statement. "Now is a perfect opportunity for the formation of a 'Red Team' exercise."

The draft release also included space for quotes from two prominent climate science critics: Steve Koonin, an Obama-era Energy Department official, and William Happer, a Princeton physicist who argues that increased carbon dioxide would benefit the planet.

The duo appear to have been tapped to help guide the red-team review together.

"Your contributions even in a small way to the validity of the red team blue team approach would be appreciated," Ryan Jackson, Pruitt's chief of staff, wrote to Koonin and Happer on Nov. 4.

In an email to POLITICO, Happer said the exercise was "badly needed," while Koonin, now the director of the Center for Urban Science and Progress at New York University, told POLITICO the National Climate Assessment was "demonstrably deficient on a number of points."

EPA did not return a request for comment.

Pruitt has previously said a Wall Street Journal piece written by Koonin in April 2017 calling for a similar EPA review of climate science was his inspiration for instigating the "red team" review.

The emails, however, show that Koonin and his allies began wooing Pruitt even before that. In an email more than a week before Koonin's WSJ piece ran, Dan Yergin, the Pulitzer-winning oil historian and vice chairman of IHS Markit who joined a board advising President Donald Trump, introduced Koonin by email to Jackson.

Pruitt and Koonin met April 28, and the emails show Koonin was closely involved in the process afterward.

Koonin sent EPA a "prospectus" outlining the exercise, and though much of it was redacted by EPA before its release, Koonin suggested timing the red team review to the National Climate Assessment, which was due out six months later. Doing so would "ensure that certainties and uncertainties in projections of future climates are accurately presented to the public and decision makers," he wrote.

A revised version of the prospectus was circulated by EPA to White House officials in July after news of Pruitt's plans had leaked.

"There are a lot of press reports about EPA's planning on this. None of it is being run by us. This seems to be getting out of control," wrote Michael Catanzaro, a top energy adviser to Trump who has since left the administration, a few days after receiving Koonin's proposal.

In late June, Liz Bowman, then a top EPA spokeswoman, questioned whether the exercise could be announced as early as July 5 or 6. But it wasn't until November that top Pruitt staffers begin circulating a draft press release on the announcement.

A draft of the announcement on Nov. 5 inspired a [lengthy email chain](#), which EPA redacted, that involved direct messages from Trump chief of staff John Kelly, strategic communications director Mercedes Schlapp, and former White House staff secretary Rob Porter.

Pruitt was [touting](#) his plans to launch the red team review as late as December. Emails early in that month [indicate](#) the agency's air chief, Bill Wehrum, would make the announcement on Dec. 12 while Pruitt traveled in Morocco. One message that included Jackson had the subject line of "Red Team/Blue Team Announcement Planned for Tuesday, Dec. 12."

The [New York Times](#) reported in March that Kelly and other top officials stopped the announcement in the fall, and Kelly's deputy Rick Dearborn met with Pruitt in mid-December to declare the plan dead.

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Sources: EPA, DOE, USDA to talk biofuels Thursday [Back](#)

By Eric Wolff | 05/22/2018 05:09 PM EDT

Top deputies for EPA and the departments of Energy and Agriculture will meet on Thursday to hash out changes to the Renewable Fuel Standard, sources in the ethanol industry and the Senate told POLITICO today.

EPA Deputy Administrator Andrew Wheeler, DOE Deputy Secretary Dan Brouillette and USDA Deputy Secretary Stephen Censky will try to resolve long-standing tensions over the program. None of the agencies responded to requests for comment.

The group will pick up the items left unfinished from the meeting with President Donald Trump last month, including whether to allow biofuel exports to receive Renewable Identification Numbers, and whether to reallocate the gallons small refiners were exempted from blending under the economic hardship waivers granted by EPA.

A refining industry source says that USDA has been pressing EPA to move quickly on allowing year-round sales of 15 percent ethanol fuel, and that USDA "is looking to jam EPA" on reallocating the gallons in the 2019 blending mandate.

"They are probably trying to take advantage of what they imagine to be Pruitt's weakened status these days," the source said. "Not sure it will work."

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Message

From: Lovell, Will (William) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3B150BB6ADE640F68D744FADCB83A73E-LOVELL, WIL]
Sent: 6/8/2018 2:34:56 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: FW: "Strengthening transparency..." story

From: Block, Molly
Sent: Wednesday, June 6, 2018 10:04 AM
To: Woods, Clint <woods.clint@epa.gov>; Lovell, Will (William) <lovell.william@epa.gov>
Cc: Daniell, Kelsi <daniell.kelsi@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>
Subject: RE: "Strengthening transparency..." story

Thanks all!

From: Woods, Clint
Sent: Wednesday, June 6, 2018 9:11 AM
To: Lovell, Will (William) <lovell.william@epa.gov>
Cc: Daniell, Kelsi <daniell.kelsi@epa.gov>; Block, Molly <block.molly@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>
Subject: Re: "Strengthening transparency..." story

Agree

On Jun 6, 2018, at 9:05 AM, Lovell, Will (William) <lovell.william@epa.gov> wrote:

Deliberative Process / Ex. 5

From: Daniell, Kelsi
Sent: Tuesday, June 5, 2018 5:26 PM
To: Bolen, Brittany <bolen.brittany@epa.gov>; Block, Molly <block.molly@epa.gov>; Lovell, Will (William) <lovell.william@epa.gov>
Subject: Fwd: "Strengthening transparency..." story

See below. Anything we want to say here?

Sent from my iPhone

Begin forwarded message:

Resent-From: <Press@epa.gov>
From: "Eric Roston (BLOOMBERG/ NEWSROOM:)" <eroston@bloomberg.net>
Date: June 5, 2018 at 10:19:17 AM MDT
To: "Wilcox, Jahan" <wilcox.jahan@epa.gov>, Press <Press@epa.gov>
Subject: Fwd:"Strengthening transparency..." story
Reply-To: Eric Roston <eroston@bloomberg.net>

Hi, resending this in case it fell in a crack, thanks. Best, Eric

Eric Roston
212-617-5464

----- Original Message -----
From: ERIC ROSTON
To: press@epa.gov
At: 04-Jun-2018 16:15:42

Greetings,

I'm writing an overview/catch-up piece about the proposed "Strengthening Transparency in Regulatory Science" rule. It's an introduction to the debate(s). It explains what the rule would appear to do, why many scientists and organizations say they oppose it in its current form, and shares some of the comments from the public docket. I'd like to run the below questions and comments by you, in the event that EPA would like to respond to any or all of them, or flag anything specific you would like considered for inclusion. Thank you. Eric

1) Any thoughts on these things?:

- A public comment from the Bipartisan Policy Center says that the proposal "is not consistent with the [2009] BPC report in substance or intent" [<https://bit.ly/2Js0NIR>].
- The SAB's Friday agreement to include the transparency rule in its coming letter to the Administrator.
- Five leading peer reviewed journals in a public comment suggest that the rule would "limit the scientific evidence" that can inform policy [<https://bit.ly/2Lm2vZI>].

- The Ranking Member of the House Science Committee, U.S. Rep. Johnson, sent in a public comment that accuses the agency of executive “overreach” [<https://bit.ly/2J86kFb>].
- This recent essay by Stanford’s John Ioannidis: <https://bit.ly/2IopXYl>

Some other questions:

- A comment from a GWU Regulatory Studies Center scholar concludes that "The requirements proposed here are not a radical departure from existing guidelines." What in the proposal is a departure, and why is it necessary?
- Is “secret science” fraudulent science? What studies specifically are the best examples of it? (I noticed that that phrase does not appear in the rule.)
- Is this line from the 2002 “Guidelines for Ensuring and Maximizing the Quality...” a plausible summary of the overall “transparency” v “best available science” debate [<https://bit.ly/2J8qA9r>]? “However, the objectivity standard does not override other compelling interests such as privacy, trade secrets, intellectual property, and other confidentiality protections.” Is this sentence consistent with the proposed rule?
- The same 2002 guidance cites the HEI work on the Harvard Six Cities study and the ACS PM study as an example how to verify studies without absolute public disclosure. Is that 3rd-party verification by HEI still a useful reference for reproducibility? Would this rule vacate that guidance?
- Could small business owners be disproportionately affected by the rule?

- Can you describe the review process for the proposal before it went out on April 30? How deeply were career staff involved in its drafting?
- This question may sound petty, but I'm actually just curious, probably because it relates to my own nightmares when publishing stories on any topic. Copy-editing errors are rare in regulations, but there are at least two in the 4/30 proposal. It just made me wonder if anything about the rule was rushed:
 - Footnote 3: "...Historically, EPA has not consistently observed the policies underlying this proposal, and courts have at times upheld EPA's use non-public data in support..."
 - Section §30.7 heading: "What role does independent peer review in this section?" [This question is written correctly on the prior page.]

Thanks again for any insight.

Eric Roston
212.617.5464 desk
202.253.5723 cell/Signal


From: E&E News [ealerts@eenews.net]
Sent: 6/5/2018 8:35:26 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: June 5 -- E&E News PM is ready

[Read today's E&E News PM on the web](#)

E&E NEWS PM

AN E&E NEWS PUBLICATION

E&E NEWS PM — Tue., June 5, 2018

 [READ FULL EDITION](#)

1. EPA:

Pruitt's Chick-fil-A 'opportunity' grabs Inhofe's attention

One of EPA Administrator Scott Pruitt's closest allies on Capitol Hill expressed worry over the latest ethics allegation against the agency chief.

THIS AFTERNOON'S STORIES

2. SENATE:

McConnell cancels August recess

3. APPROPRIATIONS:

Trump drops EPA, Sandy aid from cuts package

4. LEAD:

TV home renovation show draws EPA penalty

5. EPA:

Former staffers blast 'secret science' plan, rollbacks

6. NATURAL RESOURCES:

Republicans seek clarity on green group's China ties

7. FORESTS:

Trump admin working to lift roadless rule in Alaska

8. PEOPLE:

Heritage Action's Dan Holler jumps to Rubio staff

UPCOMING HEARINGS AND MARKUPS

9. CALENDAR:

Activity for June 4 - June 10, 2018

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Subject: April 20 -- Greenwire is ready

[Read today's Greenwire on the web](#)

GREENWIRE

AN E&E NEWS PUBLICATION

GREENWIRE — Fri., April 20, 2018

 [READ FULL EDITION](#)

1. REGULATIONS:

EPA sends 'secret science' plan to White House

EPA yesterday sent a proposed rule to the White House Office of Management and Budget with the announced purpose of "strengthening transparency and validity in regulatory science," according to the RegInfo.gov site.

TOP STORIES

2. INTERIOR:

Migratory bird law may target smugglers, not polluters

3. PUBLIC LANDS:

This Patch of Heaven emerges as anti-government hotbed

4. BUSINESS:

100% renewables — gimmick or game changer?

CONGRESS

5. AIR POLLUTION:

14 Republicans urged Pruitt to retain Obama glider rules

6. FEDERAL AGENCIES:

Senate Democrats probe Koch 'infiltration'

7. OFFSHORE DRILLING:

Cantwell wants to protect coasts from spills

POLITICS

8. OFF TOPIC:

Meet the clean car pioneer they called 'dragon lady'

9. EPA:

Wheeler sworn in

10. WHITE HOUSE:

Oil markets shift as Trump tweets

11. BRISTOL BAY:

Conservatives keep up pressure on Pruitt over Pebble

NATURAL RESOURCES

12. NATIONAL MONUMENTS:

San Gabriel plans bar energy, mineral development

13. BRISTOL BAY:

Pebble protesters say Army Corps silenced their concerns

14. PUBLIC LANDS:

Utah's Rainbow Bridge monument becomes dark sky sanctuary

15. SCIENCE:

Humans to blame for 'downsizing of nature' — study

16. WILDLIFE:

Reclamation investigates possible theft of mammoth bones

ENERGY

17. BIOFUELS:

Ethanol boosters scramble to decode Trump's E15 plans

18. ELECTRICITY:

In a first, U.K. goes 55 hours without tapping coal

19. OIL AND GAS:

3 LNG tankers cross Panama Canal in a day, setting milestone

AIR AND WATER

20. COLORADO RIVER:

Western states call Ariz. a water hog

21. WASTE:

The smelly food in your fridge squanders tons of water

22. AIR POLLUTION:

Artist's pods give people a taste of world's dirtiest air

CHEMICALS

23. TEXAS:

Valero plant explodes; no injuries reported

24. TOXICS:

Contaminated soil leads to tense dispute with Army Corps

STATES

25. HAWAII:

Historic rains inspire 'despicable' scam by boaters

26. NEW JERSEY:

Former acting EPA chief visits threatened marsh cabins

27. WYOMING:

Coal firm appealed to Gov. Mead over denied mine permit

INTERNATIONAL

28. JAPAN:

Volcano erupts for first time in a quarter-millennium

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Highlights

LEADING THE NEWS

'No Planet B,' Macron Tells Congress, Defending Climate Deal

By Dean Scott

French President Emmanuel Macron urged Congress April 25 to reconsider having the U.S. walk away from the Paris climate pact and work with other nations to build a low-carbon economy.

EPA Plan to Limit Science Use May Undercut Air, Climate Programs

By Jennifer Lu and Abby Smith

New EPA plans to limit "secret science" in policy making could unravel the agency's decades-old approach to crafting environmental protections, both supporters and critics of the proposal said.

TODAY'S NEWS

House Takes Up Fish, Science, Pacific Northwest Electricity Bill

By Alan Kovski

House lawmakers are scheduled to vote April 25 whether to override a federal judge's opinion on protections for salmon and steelhead fish at hydroelectric dams on the Columbia River system in Washington state.

Fight Grows Over Who Owns Real Estate Drowned by Climate Change

By Christopher Flavelle

As seas rise and coasts wash away, who owns the land that goes underwater? A debate on that issue is taking place in courtrooms, legislatures, and government offices, raising the question of whether and when climate change justifies seizing private property. The stakes are enormous, affecting not just ownership of offshore mineral and fishing rights but also potentially trillions of dollars of coastal real estate.

Williams Companies to Try Again for New York's Pipeline Approval

By Gerald B. Silverman

The Williams Companies Inc. will press forward to get New York approval of an expansion of its Transco natural gas pipeline through three states, despite a permitting setback from state environmental regulators.

PG&E, Edison Could Gain Shield from Some Wildfire Liability in California

By Mark Chediak

Utility giants PG&E Corp. and Edison International could gain at least some protection against future wildfire damages under a bill that's advancing in California's legislature.

Congress to Seek VW Chief's Testimony in New Cheating Probe (Corrected)

By Ari Natter and Ryan Beene

A U.S. House committee has begun investigating allegations of overseas emissions cheating by Volkswagen AG and seeks testimony from the automaker's chief executive officer Herbert Diess.

Bosch Says Breakthrough Can Save Diesel Engines

By Christoph Rauwald

Robert Bosch GmbH said its engineers have developed a new diesel-exhaust system that cuts emissions far below legal limits taking effect in 2020 and can help automakers avoid potential driving bans in Europe that threaten to doom the engine technology.

Air Pollution Monitors, Not Tighter Rules, Next Step for Indian Cities

By Madhur Singh

India wants to extend air quality monitoring to 100 of its cities, but industrial polluters needn't worry about tighter regulations. At least not yet.

Asia-Pacific Fight for Forests Hitting Fiscal Realities

By Murray Griffin

Asia-Pacific countries see efforts to reduce deforestation and forest degradation as crucial to meeting their climate goals, but still lack the money needed to adequately address the issue, a top official from Fiji said.

Ruling Tosses Green Group Claims Over N.M. Fracking

By Steven M. Sellers

Proposed fracking wells in New Mexico's San Juan Basin, one the largest oil and gas fields in the U.S., may proceed because the U.S. Bureau of Land Management followed federal requirements in assessing and issuing permits for those wells, a federal court in New Mexico ruled.

Federal Circuit Reignites Oil Drilling Equipment Case

By Brian Flood

Imports of oil drilling equipment partially made in China were improperly exempted from anti-dumping and anti-subsidy duties, a Federal Circuit Court of Appeals panel ruled.

TUESDAY NIGHT WRAPUP

Retailers' Costs May Rise Under California Pesticide Label Proposal

By Ayanna Alexander

Retailers could face increased costs from lawsuits if California revises pesticide labeling requirements, an industry group said.

EPA's Ethanol Waivers Reduced Sales, Biofuel Group's Study Says

By Mario Parker

The EPA's hardship exemptions for small refiners "effectively erased" at least 1.6 billion gallons of federally mandated biofuel demand, according to an analysis by the Renewable Fuels Association.

MarkWest Agrees to Spend \$5.6M to Settle Clean Air Act Claims

By Leslie A. Pappas

Two MarkWest Energy Partners LP subsidiaries will pay more than \$5.6 million and cut annual emissions by more than 700 tons to settle allegations of Clean Air Act violations in Pennsylvania and Ohio.

Canada Pushes for Caribou Protection as Alaska Prepares to Drill

By James Munson

Canada will urge the U.S. not to allow oil and gas drilling where Alaskan caribou give birth, during a study of the environmental impacts of new petroleum development.

Divest Automakers That Relax Fuel Standards: California Democrats

By Kate Smith

A group of congressional Democrats representing California urged the state's pension system to divest from any car manufacturer that follows the Trump administration's plan to relax emission standards.

Brazil Lawsuit Seeks to Suspend Sale of Genetically Modified Seeds

By Michael Kepp

Brazil has moved to suspend the sale of three of its most widely planted, genetically modified seeds as scientists evaluate the toxicity of the herbicide that they are bioengineered to resist.

Bloomberg Environment

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Subject: Afternoon Energy: In with the new — More letters and more hearings for Pruitt — FERC tightens cyber standards

By Garrett Ross and David Beavers | 04/24/2018 05:04 PM EDT

With help from Alex Guillén and Eric Wolff

IN WITH THE NEW: EPA's controversial new science policy was announced by Administrator Scott Pruitt today, after a speedy review by the OMB, and just two days before Pruitt is scheduled to face intense questioning over his reported ethical lapses. The proposed rule, based on legislation pushed by House Science Chairman Lamar Smith (R-Texas), seeks to bar the agency from relying on studies that don't publicly disclose all their data when crafting policy.

"It is a **codification of an approach** that says as we do our business at the agency, the science that we use is going to be transparent, it's going to be reproducible, it's going to be able to be analyzed by those in the marketplace," Pruitt said at an invitation-only meeting at EPA headquarters with supporters of the policy today.

While the proposal has been discussed for weeks by Pruitt, the White House received it for interagency review just last week. Such swift review is very rare for the OMB, which often takes months to vet a new policy. At least one group, the Environmental Defense Fund, has requested a meeting with OMB officials to discuss the rule, but OMB's website shows that no meetings have been scheduled with interested groups.

The idea has faced long-standing opposition, a point which opponents of the move made in a letter to Pruitt on Monday. Smith's legislation "failed to pass Congress for several years for good reason," nearly 1,000 scientists organized by the Union of Concerned Scientists, including former EPA career staffers, wrote in the letter. They said the plan would "weaponize 'transparency' to facilitate political interference in science-based decisionmaking." Read more from Emily Holden and Annie Snider here.

Welcome to Afternoon Energy! We're your hosts Garrett Ross and David Beavers. Send suggestions, news and tips to gross@politico.com, dbeavers@politico.com, mdaily@politico.com and njuliano@politico.com, and keep up with us on Twitter at [@garrett_ross](https://twitter.com/garrett_ross), [@davidabeavers](https://twitter.com/davidabeavers), [@dailym1](https://twitter.com/dailym1), [@nickjuliano](https://twitter.com/nickjuliano), [@Morning_Energy](https://twitter.com/Morning_Energy) and [@POLITICOPro](https://twitter.com/POLITICOPro).

POLITICO's Ben White is bringing Morning Money to the Milken Institute Global Conference to provide coverage of the day's events and evening happenings. The newsletter will run April 29 - May 2. **Sign up to keep up with your daily conference coverage.**

MORE LETTERS AND MORE HEARINGS: More letters and hearings came from lawmakers' offices and other groups today regarding ongoing and new questioning of Pruitt's behavior.

— **Sens. Tom Carper (D-Del.) and Sheldon Whitehouse (D-R.I.)** wrote in a letter to EPA ethics chief Kevin Minoli that a 2013 waiver covering Pasquale "Nino" Perrotta published in The New York Times earlier this month "is insufficient on its face for at least three reasons" if it was the basis for clearing a contract to look for listening devices in Pruitt's office. The Democrats asked Minoli to produce by May 4 all approvals and denials for outside employment at EPA since 2009. Read more from Alex here.

— **Sen. Lisa Murkowski (R-Alaska), meanwhile,** said Pruitt is scheduled to testify in May before the Senate Appropriations subcommittee that oversees his budget, of which she is chairwoman. She also said it was "absolutely appropriate" for the Environment and Public Works Committee to hold an oversight hearing on the administrator's conduct in office, an idea that has been endorsed by multiple Republicans. Read more from Pro's Anthony Adragna [here](#).

— **Virginia Democratic Reps. Don Beyer and Gerry Connolly** today [wrote](#) to EPA's inspector general, asking the watchdog to look into Albert "Kell" Kelly, the former Oklahoma banker with longtime connections to Pruitt who now runs EPA's Superfund program. "Mr. Kelly came to this position without the necessary qualifications, and with serious and still-unexplained red flags, and his conducts has raised ethical, regulatory and potential legal issues that we believe your office should examine," they wrote. Read more from Alex [here](#).

— **And the liberal group Citizens for Responsibility and Ethics in Washington** [asked EPA's IG](#) to review "the process by which ethics advice and determinations are provided to EPA Administrator Scott Pruitt and other EPA appointees by agency ethics officials and other legal advisors." CREW added: "The clearly inadequate handling of the numerous, increasingly outrageous ethical issues that have recently come to light suggests that the process is broken, and may be compromised by the fear of retaliation against officials who question Administrator Pruitt's conduct."

FERC TIGHTENS CYBER STANDARDS: FERC today released new cybersecurity [standards](#) for laptops, thumb drives and other devices that frequently connect to "low-impact" parts of the grid, Eric reports. The commission approved the new standards last week and will publish them in the Federal Register on Wednesday. FERC Chairman Kevin McIntyre has said he will make improving grid cybersecurity a top priority during his tenure. Read more from Eric [here](#).

MNUCHIN TO CHINA: President Donald Trump today said he is sending his Treasury secretary, Steven Mnuchin, to China "in a few days" to try to negotiate a deal in hopes of eliminating the need for the White House to impose tariffs on as much as \$150 billion in Chinese exports, Pro's Doug Palmer writes. The Trump administration published a list of roughly \$50 billion worth of Chinese exports that could be hit with a new 25 percent tariff, and Beijing responded with its own list of \$50 billion worth of American goods that could be subject to retaliatory duties. Trump did not specify who else would be part of the delegation to China. Read more [here](#).

D.C. CIRCUIT SIDES WITH CITY AGAINST FERC: The D.C. Circuit Court of Appeals said FERC overstepped its bounds when it tried to regulate Clarksville, Tenn.'s municipal gas service. FERC said that because Clarksville was selling gas in Kentucky — a byproduct of supplying Fort Campbell, which straddles state lines — the city is subject to some FERC rules under the Natural Gas Act. But the court noted that the act excludes municipal utilities and [found](#) in favor of Clarksville.

RALLY CAPS ON: The American Federation of Government Employees is planning a "[Rally For Government That Works For America](#)" from noon until 1 p.m. Wednesday, for what the group is describing as a rally "in support of EPA Workers."

QUICK HITS:

— Energy, a bright spot in NAFTA talks, bogged down by dispute over rule change, [The Wall Street Journal](#).

— Controversial contractor was behind island-wide blackout, as Puerto Rico debates full privatization, [The Intercept](#).

— AES coal plant closing in Ohio sheds workers in small communities, [Bloomberg Law](#).

WIDE WORLD OF POLITICS:

- Trump's VA nomination in trouble as allegations of misconduct emerge
- Flipping Cohen against Trump may not be so easy
- Trump defiant over Iran deal as deadline approaches

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<https://www.politicopro.com/newsletters/afternoon-energy/2018/04/in-with-the-new-182280>

Stories from POLITICO Pro

Pruitt scales back EPA's use of science [Back](#)

By Emily Holden and Annie Snider | 04/24/2018 03:17 PM EDT

Environmental Protection Agency chief Scott Pruitt announced Tuesday he would seek to bar the agency from relying on studies that don't publicly disclose all their data, a major policy change that has long been sought by conservatives that will sharply reduce the research the agency can rely on when crafting new regulations.

The unveiling of the proposed rule delivers a win to Republicans like House Science Chairman [Lamar Smith](#) (R-Texas), who unsuccessfully pushed legislation to impose the same type of change. The move also demonstrates Pruitt's persistence in pursuing President Donald Trump's anti-regulation agenda just two days before the embattled EPA chief is due to face fierce questioning from lawmakers about his hefty spending, expanded security detail and cheap condominium rental from the wife of an energy lobbyist.

At an invitation-only meeting at EPA headquarters with Smith, Sen. [Mike Rounds](#) (R-S.D.) and other supporters of the policy, Pruitt said the proposed rule was critical in ensuring that the agency was transparent about how it is making decisions to justify costly new regulations. It is the latest step Pruitt has taken to fundamentally shift the agency's approach to science.

"It is a codification of an approach that says as we do our business at the agency the science that we use is going to be transparent, it's going to be reproducible, it's going to be able to be analyzed by those in the marketplace. And those who watch what we do can make informed decisions about whether we've drawn the proper conclusions or not," Pruitt said.

Text of the proposed rule was not immediately available.

The proposal, based on legislation pushed by Smith, is intensely controversial, and scientists and public health groups say it will prevent federal regulators from enacting health and safety protections. Nearly 1,000 scientists, including former EPA career staffers, signed a [letter](#) opposing the policy sent by the Union of Concerned Scientists to Pruitt on Monday.

Their primary concern was that many of the country's bedrock air and water quality regulations are based on research that cannot disclose raw data because it includes the personal health information.

But industry has its own version of the same problem. EPA often relies on industry studies that are considered by companies to be confidential business information when determining whether new pesticides and toxic chemicals are safe to use. Internal EPA emails obtained under the Freedom of Information Act show that EPA political officials, including Nancy Beck, who became the chief of the agency's chemical safety office last year

after working for years at a chemical industry lobbying group, worried that the new policy would limit the agency's ability to consider industry data or would force companies to make this proprietary data public.

"We will need to thread this one real tight!" Richard Yamada, political official who led work on the new policy wrote to Beck after she raised the concerns.

It was not immediately clear if the new proposed rule included measures to address those concerns.

Rush Holt, CEO of the American Association for the Advancement of Science, said Pruitt's changes could keep the agency from revising public health regulations as problems arise or new data comes to light.

"On the surface it sounds so innocuous or even beneficial. What could be wrong with transparency? Well it's clear to me that this is not based on an effort to be transparent. It is rather based on an effort to be just the opposite," he said.

"EPA is particularly important because when science is misused, people die," he added.

Pruitt has been discussing the new scientific policy publicly for weeks, but it only went to the White House for interagency review last week. Such swift review is very rare for the Office of Management and Budget, which often takes months to vet a new policy. At least one group, the Environmental Defense Fund, has requested a meeting with OMB officials to discuss the rule, but OMB's website shows that no meetings have been scheduled with interested groups.

Many public health studies can't be replicated without exposing people to contaminants, and environmental disasters such as the Deepwater Horizon oil spill cannot be recreated, the group said, raising intellectual property, proprietary and privacy concerns.

Pruitt's predecessor Gina McCarthy, and her air chief Janet McCabe, in an op-ed in The New York Times in March said concerns about studies are dealt with through the existing peer-review process, which ensures scientific integrity.

"[Pruitt] and some conservative members of Congress are setting up a nonexistent problem in order to prevent the E.P.A. from using the best available science," they said.

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Democrats question outside work approval for Pruitt's security chief [Back](#)

By Alex Guillén | 04/24/2018 01:20 PM EDT

Two Democratic senators today questioned whether the head of EPA Administrator Scott Pruitt's security detail, Pasquale "Nino" Perrotta, had been properly cleared for outside work at the security firm he founded.

In a letter to Kevin Minoli, EPA's top ethics official, Sens. Tom Carper (D-Del.) and Sheldon Whitehouse (D-R.I.) note that a 2013 waiver covering Perrotta's outside work was published by the New York Times earlier this month.

But if that was the basis for clearing Perrotta's outside security work with Sequoia Security Group, "it is insufficient on its face for at least three reasons," the lawmakers wrote.

The clearance expired on March 5, 2018, and should have been revised after Perrotta's duties at EPA changed as he was promoted to the head of Pruitt's security detail last year, Carper and Whitehouse wrote. They also argued that Perrotta did not fully represent the scope or nature of his outside work on the authorization forms.

The Democrats asked Minoli to produce all approvals and denials for outside employment at EPA since 2009.

Last April, a member of Sequoia's management team's practice — Edwin Steinmetz Associates — reportedly received a contract to look for listening devices in Pruitt's office.

WHAT'S NEXT: Carper and Whitehouse asked for a response by May 4.

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Murkowski: Pruitt will testify to Senate appropriators [Back](#)

By Anthony Adragna | 04/24/2018 03:03 PM EDT

EPA Administrator Scott Pruitt is scheduled to testify in May before the Senate appropriations subcommittee that oversees his budget, Sen. [Lisa Murkowski](#) (R-Alaska), who chairs the panel, said today.

Murkowski did not elaborate on her plans for the hearing or how much it would delve into Pruitt's ethics and spending. But she said it was "absolutely appropriate" for the Environment and Public Works Committee to hold an oversight hearing on the administrator's conduct in office, an idea that has been endorsed by [multiple Republicans](#) on the authorization committee.

"I'm hoping they move on it sooner than later," Murkowski said of the EPW committee.

EPW Chairman [John Barrasso](#) (R-Wyo.) said today he has "serious questions" about how Pruitt has handled taxpayer dollars but stopped short of announcing plans for Pruitt to testify.

"We'll see what comes out of the hearings this Thursday," Barrasso said, referring to Pruitt's scheduled appearance of two House hearings that day.

Barrasso said he planned to send additional letters to EPA, following his recent request for details on the administrator's use of four separate email accounts. In response to that earlier letter, EPA [told him](#) all of Pruitt's accounts are searched in response to public records requests.

"You want to make sure taxpayers are getting value for their dollars," Barrasso told reporters today. "We want to make sure money is being spent appropriately."

WHAT'S NEXT: Murkowski declined to say when Pruitt would appear before her Appropriations Subcommittee on Interior, Environment and Related Agencies, but she has [said previously](#) it was expected to be the week of May 7.

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Democrats request IG probe of Pruitt banker-turned-Superfund chief [Back](#)

By Alex Guillén | 04/24/2018 03:30 PM EDT

Two House Democrats today [asked](#) EPA's inspector general to look into Albert "Kell" Kelly, the former Oklahoma banker with longtime connections to Administrator Scott Pruitt who now runs EPA's Superfund program.

"Mr. Kelly came to this position without the necessary qualifications, and with serious and still-unexplained red flags, and his conducts has raised ethical, regulatory and potential legal issues that we believe your office should examine," wrote Reps. [Don Beyer](#) and [Gerry Connolly](#), both Virginia Democrats.

Kelly previously ran Tulsa-based SpiritBank, and last year agreed to pay a \$125,000 fine under a deal with the FDIC that also banned him from banking for the rest of his life for unspecified violations.

Kelly recently [defended](#) the loan in question, saying there was "nothing untoward about it" and noting that "the bank made money." Pruitt also [said](#) this month that he is unfamiliar with Kelly's banking problems and that they have no bearing on his EPA work.

Pruitt and Kelly have a longstanding financial relationship, according to recent reports. Kelly's bank issued mortgages for homes Pruitt bought in Tulsa and Oklahoma City, as well as for a significant stake Pruitt purchased in a minor league baseball team, the New York Times [reported](#) Saturday.

Aside from his qualifications, the lawmakers also asked the IG to review the Superfund task force run last year by Kelly that EPA later said never generated any meeting notes, communications or other documents under the Freedom of Information Act.

WHAT'S NEXT: The IG will decide whether to pursue a review of Kelly.

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FERC order tightens cybersecurity standards [Back](#)

By Eric Wolff | 04/24/2018 10:51 AM EDT

FERC is tightening up security standards for laptops and access controls for certain "low-impact" parts of the grid.

The [order](#) approves parts of a new set of standards submitted by the North American Electric Reliability Corporation. It sets up new standards for thumb drives and laptops and other devices that frequently connect

and disconnect from systems. FERC approved the order last week and released it today ahead of its publication in Wednesday's Federal Register.

FERC also decided not to adopt new standards for access control for systems that connect to other systems that provide key grid services. The commission instead asked NERC to review existing access controls and see if they provided enough security. It also decided that provisions setting standards for mitigating the damage from viruses were not sufficiently clear, and asked NERC try again.

FERC Chairman Kevin McIntyre has said that improving cybersecurity from the grid is one of his highest priorities while chairman. The Trump administration in March revealed that Russian hackers penetrated power plant control systems to the extent that they could turn off the power, if they wanted.

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Trump: Mnuchin going to China soon for trade talks [Back](#)

By Doug Palmer | 04/24/2018 12:17 PM EDT

U.S. Treasury Secretary Steven Mnuchin will be traveling to China in the hopes of negotiating a deal to eliminate the need for the United States to impose duties on as much as \$150 billion of China's exports to the U.S., President Donald Trump said today.

"The treasury secretary, Steve Mnuchin, will be going to China in a few days to negotiate on trade," Trump said at the start of a White House meeting with French President Emmanuel Macron. "I think China is very serious. We're very serious. We have no choice but to be very serious. You know we've put on very substantial tariffs. And that will continue unless we make a trade deal."

Trump said the United States was sending a delegation to China at Beijing's request, but did not say whether U.S. Trade Representative Robert Lighthizer or Commerce Secretary Wilbur Ross would be part of the team.

"They came here recently, and we're going there," Trump said.

Last month, the Trump administration published a list of about \$50 billion worth of Chinese exports that could be hit with a new 25-percent tariff to punish Beijing for alleged intellectual property theft and forced transfer of valuable American technology. After China responded by publishing its own list of \$50 billion worth of American goods that could be subject to retaliatory duties, Trump upped the ante and asked Lighthizer to consider another \$100 billion worth of Chinese exports that could be targeted with new duties. That second list has not been published.

Trump again complained about the size of the U.S. trade deficit with China, but expressed optimism the two sides could reach an agreement without duties being imposed.

"I think we're — we've got a very good chance of making a deal," Trump said, referring to Chinese President Xi Jinping as "a terrific guy and a friend of mine."

Maya Parthasarathy contributed to this alert.

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Trump's VA nomination in trouble as allegations of misconduct emerge [Back](#)

By Andrew Restuccia, Matthew Nussbaum and Burgess Everett | 04/24/2018 09:33 AM EDT

President Donald Trump pledged on Tuesday to stand behind his embattled pick to lead the Department of Veterans Affairs, even as support on Capitol Hill eroded and Trump himself opened the door for Rear Adm. Ronny Jackson to withdraw himself from consideration.

"I said to Dr. Jackson, what do you need it for?" Trump said repeatedly at a news conference, as allegations of workplace misconduct threw the nomination in doubt and led the Senate to postpone a hearing pending an investigation.

"He's a fine man. I'll always stand behind him," Trump said about the White House physician, adding it is Jackson's choice to remain the nominee or withdraw. "What does he need it for? To be abused by a bunch of politicians that aren't thinking nicely about our country? I really don't think personally he should do it, but it's totally his ... decision."

The mixed signals — a pledge to defend Jackson coupled with advice that he withdraw from consideration — came as Jackson appeared to dig in, traveling to Capitol Hill and saying he looks forward to the hearing, whenever it may be.

Lawmakers have delayed the confirmation — which was scheduled for Wednesday — amid allegations of workplace misconduct and over-prescribing medication, according to multiple people briefed on the issue. The allegations have so far mostly been word-of-mouth, and the Senate Veterans' Affairs Committee is demanding 12 years of documents about Jackson's service as the presidential physician and in the White House medical unit.

Trump, who feels strongly that Jackson has been unfairly targeted by the press and his political opponents, is sympathetic to the doctor's situation, according to a White House official. During Tuesday's news conference, Trump wasn't sending a message to Jackson that he should step down, the official said. The president was instead publicly reflecting his frustration at seeing somebody he likes face such intense and personal criticism.

The president and many in the White House are deeply skeptical of the allegations against Jackson, even as they suspect that other administration officials are spreading them. Indeed, the fracas over Jackson's nomination has again brought to the surface a sense among many White House aides that forces in the building are working against them.

The White House official stressed that there are no current plans to push Jackson out. To the contrary, the White House plans to stand behind Jackson if he decides to move forward with the nomination, as Trump said he would.

But others in the White House believe it is foolhardy to continue backing a nominee who faced a rocky confirmation even before the rumors began circulating, given his lack of experience leading such a large organization. One administration official privately expressed annoyance that Trump's penchant for nominating his friends and allies with little vetting has led to another confirmation mess.

White House officials first became aware of the rumors about Jackson when Capitol Hill aides passed along what they were hearing, the White House official said.

Privately, Republicans are fretting that a flood of bad press could prove unsustainable and derail the nomination to lead the sprawling agency.

"I can't tell" if it's in trouble, said Senate Majority Whip John Cornyn (R-Texas). "I don't know if the allegations are credible. If they are it's a serious matter."

Senate Majority Leader Mitch McConnell (R-Ky.) was noncommittal on Tuesday morning when asked if he was confident in Jackson. "We are going to wait and see what the administration and Chairman Isakson recommend," McConnell said, referring to Senate Veterans Affairs Committee Chairman Johnny Isakson (R-Ga.).

Members of Trump's legislative affairs team huddled Tuesday morning to discuss the nomination as reports of allegations proliferated. After the meeting, a White House official said there were no current plans to withdraw the nomination, and the press shop separately issued a public statement in support of Jackson.

"Admiral Jackson has been on the front lines of deadly combat and saved the lives of many others in service to this country," said deputy White House press secretary Hogan Gidley in a statement on Tuesday. "He's served as the physician to three Presidents—Republican and Democrat—and been praised by them all. Admiral Jackson's record of strong, decisive leadership is exactly what's needed at the VA to ensure our veterans receive the benefits they deserve."

Meanwhile, Jackson was making his case for his nomination on Tuesday despite the firestorm, meeting with VA Committee member Sen. Jerry Moran (R-Kan.) in his Capitol Hill office as a horde of media waited outside.

"He does deny that he's done anything wrong in his service to the country and particularly his time at the White House," Moran said after meeting with Jackson. "He knows of nothing that would prohibit him from being qualified."

A failed nomination would be an embarrassing debacle for the White House, and the postponed hearing is reminiscent of Andy Puzder's failed nomination to be Labor Secretary last year. Republicans are operating under a razor-thin majority of 51 senators, several of whom have already expressed concern with Jackson's lack of experience to operate the massive Veterans Affairs agency.

Isakson and ranking member Jon Tester (D-Mont) wrote Trump a letter on Tuesday asking for "all documentation pertaining to Rear Admiral Jackson's service in the White House medical unit and as Physician to the President."

In the meantime, senators are being cautious about the claims of misconduct.

"Swirl of allegations happens all the time. You have to show proof. Haven't seen that yet," said Sen. Joe Manchin (D-W.Va.), a member of the committee.

Trump named the White House physician to lead the sprawling bureaucracy after firing David Shulkin, even after Isakson personally implored Trump to keep Shulkin. The move raised eyebrows in Congress and among veterans groups because Jackson, who was also former President Barack Obama's physician, has never led a large organization.

Veterans groups said the delay and additional vetting for Jackson is appropriate.

"This is an important cabinet position. If the Senate needs more time to properly vet this nominee, they should take that time," said Dan Caldwell, executive director of Concerned Veterans for America. "I just hope that the confirmation process for the VA secretary doesn't distract from passing legislation to fix the VA's Choice and community care programs."

Democrats took an aggressive posture toward the allegations against Jackson, demanding more information and saying the scandal reflects poorly on Trump's White House.

"It needs to be addressed. Right now. Today," Sen. Richard Blumenthal (D-Conn.) told POLITICO. "The White House needs to be forthcoming. It has been clearly careless and negligent in vetting."

The nomination will be "unacceptable" unless the White House offers further information, Blumenthal added.

"Maybe one day the president, who we know acts on impulse, had this nominee in the room ... and said: 'Hey, let's put you up without any vetting,'" said Senate Minority Leader Chuck Schumer (D-N.Y.) on Tuesday morning.

As the White House physician, Jackson had already been subjected to a basic background check and review of his past. But multiple people familiar with the process said Jackson did not undergo a thorough vetting ahead of his nomination as veterans affairs secretary.

The concern on Capitol Hill is palpable. Isakson spoke with fellow committee members over the weekend to discuss the "unsubstantiated allegations," Sen. Mike Rounds (R-S.D.) told NPR on Tuesday.

"We have been given a brief sketch of what they are but I'd prefer not to discuss them at this time. As I say, they are unsubstantiated," Rounds said. "The chairman is aware of them. He's discussed them with the White House. ... These are serious allegations and they're ones that we most certainly want to get through and vet properly."

Elana Schor, Lorraine Woellert and Louis Nelson contributed to this report.

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Flipping Cohen against Trump may not be so easy [Back](#)

By Josh Gerstein | 04/24/2018 05:00 AM EDT

Getting Michael Cohen to rat out President Donald Trump may not be as simple as it sounds.

Although Trump's detractors are rooting for Trump's personal attorney to "flip" on the president and cooperate with special counsel Robert Mueller to escape a potentially harsh prison sentence, legal obstacles make it difficult for lawyers to expose their clients' guarded secrets.

Even if Cohen is determined to break his confidences with Trump, legal ethics might deter federal prosecutors from coaxing him to betray his professional confidences with Trump, legal veterans and experts say.

"This idea of 'flipping' Cohen — they can't just flip a lawyer to testify against a client," longtime defense attorney Harvey Silverglate said. "Even if Cohen doesn't know better, one would think the FBI and the prosecutors would know better."

Silverglate said not only Cohen but prosecutors could be disbarred for overstepping the well-established ethical boundaries.

FBI agents raided Cohen's home and office earlier this month and seized records and electronic devices that reportedly contain communications with Trump, whom Cohen has represented for more than a decade.

Because Cohen was Trump's lawyer, many of those communications are likely covered by the legal principle of attorney-client privilege, which would typically prevent them from being admissible in court.

While the privilege can be waived, only Trump — and not Cohen — has the right to do so.

"It is absolutely the case that, even if he is criminally liable himself, Michael Cohen is not allowed to disclose client confidences learned through the attorney-client relationship about any client without their permission," said Paul Rosenzweig, a former legal adviser to Whitewater independent counsel Kenneth Starr.

Attorneys for Cohen and Trump declined to comment for this story. But other lawyers expect that the president's legal team would vigorously object to Cohen discussing Trump's past dealings to prosecutors. Lawyers for Trump are already fighting in court to block prosecutors' access to information the FBI seized on the grounds that it is covered by privilege.

There are exceptions to what privilege will protect. Communications made with the intent of committing or concealing a crime or fraud are exempted, for instance.

And Cohen is entitled to disclose conversations with Trump that are directly related to charges he might face.

"The ethics rules allow lawyers to disclose client confidences from a representation if the lawyer is charged with wrongdoing arising out of the representation," said New York University law professor Stephen Gillers. "You can't trade on client information unless you're charged with wrongdoing because of the representation of that client."

Lawyers said prosecutors are likely to tread carefully because any misstep could jeopardize the investigation by the U.S. attorney's office in New York into Cohen, which includes his payment of \$130,000 in alleged "hush money" payment to porn star Stormy Daniels, who claims she had sex with Trump and was paid to buy her silence shortly before the 2016 election. Trump says he was unaware of the payment.

That federal probe also reportedly involves Cohen's personal business dealings, including financing of dozens of New York City taxi medallions that Cohen has owned.

Casual treatment of information from Cohen could even put at risk Mueller's investigation into alleged collusion between the Trump campaign and Russia, attorneys said. It was Mueller who uncovered and referred to New York federal prosecutors the information that triggered the raid on Cohen's addresses.

On Saturday, Trump lashed out at press reports that Cohen might choose to "flip" against his former boss and client, but the president also seemed to emphasize that Cohen was engaged in business Trump had nothing to do with.

"Michael is a businessman for his own account/lawyer who I have always liked and respected. Most people will flip if the Government lets them out of trouble, even if it means lying or making up stories," Trump wrote. "Sorry, I don't see Michael doing that despite the horrible Witch Hunt and the dishonest media!"

Even if Cohen is inclined to share information about Trump with prosecutors, the government would likely want a judge to rule explicitly that the attorney-client privilege doesn't apply — either because Cohen was engaged in order to commit a crime or because the matter in question did not involve confidential legal advice.

"They have to be very careful. They don't want to taint the members of the Mueller team," said one former federal prosecutor who handled a case in which an attorney was charged criminally. "They get tainted with that, they're off this case. It's a pretty heavy penalty. ... They certainly could not simply bring [Cohen] in. They could not break that privilege without some court deciding that."

Adding to the complexity is the fact that Cohen also served as an attorney for the Trump Organization and acted on his own in various business deals. That means prosecutors could be entitled to ask some questions about Cohen's experiences in dealings with Russia, for example, but may not be entitled to pry into what Cohen told Trump on such issues or vice versa.

"They could ask about what he negotiated with the Russians but cannot ask what he told Trump or what Trump told him," said Silverglate. "The relationship between Trump and his lawyer was probably very mixed. If they were in business together and had a part of some deal together, that wouldn't surprise me."

Ultimately, divining that line will likely require a court-appointed special master to consider what is fair game for prosecutors. Any rulings on those questions could spur protracted litigation but could provide a road map for what prosecutors can talk to Cohen about and what they can't

"It's incredibly complicated. ... The special master is really essential," Silverglate added.

Veteran prosecutors say they can recall few, if any, instances in which attorneys agreed to testify freely about their clients — even in cases where attorneys have been prosecuted for alleged complicity in mafia or drug activity.

Cohen's dilemma does have at least one significant historical echo.

After President Richard Nixon's personal attorney, Herbert Kalmbach, pleaded guilty in 1974 to illegal fundraising for GOP congressional candidates, he agreed to cooperate with prosecutors to reduce his prison sentence and revealed that he knew of payments of illegal "hush money" to Watergate burglars.

Former White House counsel John Dean said Monday he does not recall attorney-client privilege being an issue because Kalmbach's activities were clearly in the fundraising and financial realm and not the provision of legal advice.

Dean, who served as White House counsel to Nixon from 1970 to 1973, said the president ultimately waived any attorney-client privilege to allow his own testimony. However, the president dropped the privilege issue only after Dean made clear he was planning to testify anyway on the ground that some of his actions amounted to crimes.

"Nixon waived the privilege, although he did know that I was going to blow right through it," said the former White House counsel, who pleaded guilty in 1973 to conspiracy to obstruct justice in connection with the payments Kalmbach made to the burglars. "I'd already flipped."

Darren Samuelsohn contributed to this report.

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Trump defiant over Iran deal as deadline approaches [Back](#)

By Nahal Toosi and Quint Forgey | 04/24/2018 11:23 AM EDT

President Donald Trump and Iranian President Hassan Rouhani exchanged threats over the Iran nuclear deal Tuesday, with Trump warning that Tehran will face "big problems" if it restarts its nuclear program and Rouhani saying America will face "severe consequences" if it abandons the agreement.

Meanwhile, French President Emmanuel Macron, in Washington on a state visit, called for a "new deal" to complement the 2015 nuclear agreement, covering not just nuclear issues but also ballistic missiles and Iran's roles in conflicts in the Middle East, including the wars in Syria and Yemen.

If he convinces Trump that's worth pursuing, it could buy the nuclear deal more time.

The verbal warfare between Iran and Trump comes ahead of a deadline on May 12 for Trump to decide whether to re-impose some of the economic sanctions on Tehran that were lifted under the nuclear deal. The U.S. president, alongside Macron on Tuesday, repeatedly belittled the Barack Obama-era agreement but didn't say for sure if he'd walk away from it next month.

"It was insane. Ridiculous. It should have never been made," Trump said of the deal, warning Iranian officials that if they restart their nuclear program, they're "going to have big problems, bigger than they've ever had before."

Although Iran has suggested it might restart its nuclear activities should the deal collapse, analysts are divided on whether Tehran would follow through on its threat. Trump's harsh rhetoric, meanwhile, may simply be a tactic to intimidate Iran to accept new restrictions on its behavior that Washington has been demanding.

Macron's visit this week is considered a critical moment for U.S. allies and partners who want to keep the deal in place. The French leader, who has a relatively good relationship with Trump, appeared eager to prove to the U.S. leader that he sympathizes with concerns about the limits of the deal.

But Macron also said he doesn't want to tear up the existing agreement. Rather, he said, the goal is "to work on a new deal with Iran."

This "new deal" would include four pillars, Macron said. One is to block nuclear activity in Iran in the short term, which Macron noted the existing agreement does until parts of it start expiring in 2025. The other three pillars, he said, are having a longer-term agreement on stopping Iranian nuclear activity, putting "an end" to Iran's ballistic missile program, and laying groundwork for political solutions to conflicts in countries such as Yemen, Iraq, Syria and Lebanon, where Iran has significant influence.

Ministers from France and its allies that have already been meeting in small groups to look at ways to deal with Iran could work on establishing such a framework, Macron said. "The purpose is to have some allied powers and we among them and of course also the regional powers to work at the level of this small group" he said.

"And will have some discussions with Russia and Turkey on regional topics including Syria. So as from now, we will work using that method in favor — work towards a deal."

Macron's idea is akin to a "grand bargain" between world powers and Iran, and it is unlikely to become a reality anytime soon, especially if Iran wants major concessions from the West in return. Whether his pitch buys the deal more time could come down to whether Trump will feel comfortable casting Macron's approach as a way to "fix" the existing deal, something he's said he is willing to try before quitting it.

Trump's frustrations with the nuclear deal are many. He is unhappy that it doesn't cover Iran's ballistic missile program, that it doesn't allow for more intrusive international inspections of suspected nuclear sites and that some of its provisions expiring starting in 10 years.

Trump is also unhappy that Iran's non-nuclear activities in the Middle East, including its sponsorship of proxy militias in Arab countries, aren't covered by the agreement. Iran's regional rise has particularly alarmed Israel and Saudi Arabia, two staunch allies of the United States.

During multiple appearances Tuesday, Trump cited Iran's support for Syrian President Bashar Assad, whom U.S. officials allege is using chemical weapons in his fight against rebels. Trump also bemoaned Iran's role in the conflict in Yemen, where Saudi-led forces have been battling Houthi rebels backed by Tehran since March 2015.

Although the nuclear agreement took years to negotiate and was unveiled just a few months after the conflict in Yemen began, Trump was frustrated that it didn't cover the Yemen crisis.

"They should have made a deal that covered Yemen, that covered Syria, that covered other parts of the Middle East where ... Iran is involved," Trump said in a press conference alongside Macron.

Earlier in the day, Trump said the Iranians "have been butchers."

Iran's leaders, meanwhile, have stepped up their own campaign in favor of the existing deal, which they brokered with the Obama administration as well as France, Germany, China, Russia, and Britain.

The July 2015 deal lifted a broad set of nuclear-related U.S. and international sanctions on Iran in exchange for severe curbs on the country's nuclear program.

Iranian officials warn that they will respond if Trump reneges on the U.S. side of the deal.

"I am telling those in the White House that if they do not live up to their commitments... the Iranian government will firmly react," Rouhani, the Iranian president, said in a Tuesday speech, according to a Reuters [report](#).

"If anyone betrays the deal, they should know that they would face severe consequences," Rouhani said. "Iran is prepared for all possible situations."

Iran's foreign minister, Javad Zarif, said in an interview with The Associated Press published Tuesday that if the U.S. withdraws from the agreement, Iran will likely to do same.

"If the United States were to withdraw from the nuclear deal, the immediate consequence in all likelihood would be that Iran would reciprocate and withdraw," Zarif said. He added: "There won't be any deal for Iran to stay in."

In an interview that aired Sunday, Zarif told CBS News that his country could resume its nuclear program "at much greater speed." Zarif insisted, however, that didn't mean developing nuclear weapons because Iran "has never wanted to produce a bomb."

Iran has always said its nuclear program was peaceful, meant for energy and scientific purposes. But Western powers have long suspected Iran wants nuclear weapons capability.

Maya Parthasarathy contributed to this report.

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The Daily Caller

Scott Pruitt Will End EPA's Use Of 'Secret Science' To Justify Regulations

Michael Bastasch

March 19, 2018

<http://dailycaller.com/2018/03/19/epa-scott-pruitt-secret-science/>

Environmental Protection Agency (EPA) Administrator Scott Pruitt will soon end his agency's use of "secret science" to craft regulations.

"We need to make sure their data and methodology are published as part of the record," Pruitt said in an exclusive interview with The Daily Caller News Foundation. "Otherwise, it's not transparent. It's not objectively measured, and that's important."

Pruitt will reverse long-standing EPA policy allowing regulators to rely on non-public scientific data in crafting rules. Such studies have been used to justify tens of billions of dollars worth of regulations.

EPA regulators would only be allowed to consider scientific studies that make their data available for public scrutiny under Pruitt's new policy. Also, EPA-funded studies would need to make all their data public.

"When we do contract that science out, sometimes the findings are published; we make that part of our rule-making processes, but then we don't publish the methodology and data that went into those findings because the third party who did the study won't give it to us," Pruitt added.

“And we’ve said that’s fine — we’re changing that as well,” Pruitt told TheDCNF.

Conservatives have long criticized EPA for relying on scientific studies that published their findings but not the underlying data. However, Democrats and environmental activists have challenged past attempts to bring transparency to studies used in rule making.

Texas Republican Rep. Lamar Smith pushed legislation to end the use of what he calls “secret science” at EPA. Pruitt instituted another policy in 2017 backed by Smith against EPA-funded scientists serving on agency advisory boards.

“If we use a third party to engage in scientific review or inquiry, and that’s the basis of rulemaking, you and every American citizen across the country deserve to know what’s the data, what’s the methodology that was used to reach that conclusion that was the underpinning of what — rules that were adopted by this agency,” Pruitt explained.

Pruitt’s pending science transparency policy mirrors Smith’s HONEST Act, which passed the House in March 2017. Smith’s office was pleased to hear Pruitt was adopting another policy the House Committee on Science, Space and Technology chairman championed.

“The chairman has long worked toward a more open and transparent rule-making process at EPA, and he looks forward to any announcement from Administrator Pruitt that would achieve that goal,” committee spokeswoman Thea McDonald told TheDCNF.

Junk science crusader Steve Milloy also called on EPA to end its use of “secret science” in rule making, especially when it comes to studies on the toxicity of fine particulates in the air.

EPA has primarily relied on two 1990s studies linking fine particulate pollution to premature death. Neither studies have made their data public, but EPA used their findings to justify sweeping air quality regulations.

Reported benefits from EPA rules are “mostly attributable to the reduction in public exposure to fine particulate matter,” according to the White House Office of Management and Budget report. That’s equivalent to billions of dollars.

In fact, one of EPA’s most expensive regulation on the books, called MATS, derived most of its estimated benefits from reducing particulates not from reducing mercury, which the rule was ostensibly crafted to address.

EPA estimated MATS would cost \$8.2 billion but yield between \$28 billion to \$77 billion in public health benefits. It’s a similar story for the Clean Power Plan, which EPA estimated would cost \$8.4 billion and yield from \$14 billion to \$34 billion in health and climate benefits.

Democrats and environmentalists have largely opposed attempts to require EPA rely on transparent scientific data. Said data would restrict the amount of studies EPA can use, but a major objection is making data public would reveal confidential patient data, opponents argue.

“A lot of the data that EPA uses to protect public health and ensure that we have clean air and clean water relies on data that cannot be publicly released,” Union of Concerned Scientists representative Yogin Kothari told E&E News.

“It really hamstrings the ability of the EPA to do anything, to fulfill its mission,” Kothari said.

Milloy, however, countered and argued it’s a “red herring” to claim that forcing regulators to use public science data would harm patient privacy.

“The availability of such data sets is nothing new,” said Milloy, publisher of JunkScience.com and senior fellow at the Energy and Environmental Legal Institute.

“The state of California, for example, makes such data available under the moniker, ‘Public Use Death Files,’” Milloy said. “We used such data in the form of over two million anonymized death certificates in our recent California study on particulates and death.”

“Opponents of data transparency are just trying to hide the data from independent scrutiny,” Milloy added. “But the studies that use this data are taxpayer-financed, and they are used to regulate the public.”

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Subject: Morning Energy: How 'the swamp' could overtake West Virginia's primary — Groups react to EPA's proposed 'secret science' rule — API to tap Mike Sommers

By Kelsey Tamborrino | 05/01/2018 06:01 AM EDT

With help from Garrett Ross

HOW 'THE SWAMP' COULD OVERTAKE WEST VIRGINIA'S PRIMARY: West Virginia Attorney General Patrick Morrisey may be touting himself in the GOP Senate primary as a Washington outsider who wants to "blow up" D.C., but his opponents are dragging him through the muddy swamp. "Morrisey got filthy rich in the swamp lobbying for special interests," says the narrator of one of his opponent Rep. Evan Jenkins' ads, Pro's Theodoric Meyer reports. And while Morrisey, who's hoping to take on Democratic Sen. Joe Manchin this fall, has so far weathered the attacks and continues to do well in public polling, the May 8 vote will ultimately test whether GOP voters are willing to send a former lobbyist to Washington.

"Morrisey's self-described 'outsider' rhetoric cloaks an insider record: Before he was elected attorney general, Morrisey spent eight years as a Washington lobbyist, and the influence industry has fueled his campaign with hundreds of thousands of dollars in contributions," Theo writes. "It's going to be challenging, because the word 'lobbyist' has such negative connotations," said Cam Savage, a Republican operative who helped run Sen. Todd Young's successful 2016 campaign against former Democratic Sen. Evan Bayh, whose work for a Washington law and lobbying firm hindered his campaign. Read more.

IN THE OTHER CORNER of the Republican primary sits coal baron Don Blankenship, who spent a year in prison following the 2010 explosion at his Upper Big Branch Mine that killed 29 workers and who continues to escalate his attacks against Senate Majority Leader Mitch McConnell, POLITICO's Alex Isenstadt reports. The Senate hopeful is out with a new ad that dubs McConnell "Cocaine Mitch" as polls show Blankenship falling behind his more mainstream opponents. "One of my goals as U.S. senator will be to ditch Cocaine Mitch," Blankenship says toward the end of the new ad, possibly referring to a 2014 report in the liberal Nation magazine that drugs were once found aboard a shipping vessel owned by the family of McConnell's wife, Transportation Secretary Elaine Chao, Alex reports.

WELCOME TO TUESDAY! I'm your host Kelsey Tamborrino. BP America's Bob Stout was the first to correctly guess that former President Calvin Coolidge was the first president to attend the White House Correspondents' Dinner. For today: Which president brought the first professional baseball team to the White House to visit? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter @kelseytam, @Morning_Energy and @POLITICOPro.

POLITICO's Ben White is bringing Morning Money to the Milken Institute Global Conference to provide coverage of the day's events and evening happenings. The newsletter will run April 29 - May 2. Sign up to keep up with your daily conference coverage.

WHILE CONGRESS IS AWAY, THE CONFERENCES WILL PLAY: The National Hydropower Association continues its Waterpower Week in Washington today with remarks from FERC Chairman Kevin McIntyre and Thomas Smith, chief of operations and regulatory division for the U.S. Army Corps of Engineers. McIntyre will discuss the "global frontiers of waterpower," providing an update on FERC's

hydropower activities and his perspective on the industry's future. Smith will deliver remarks during the presidential luncheon this afternoon, alongside Herbie Johnson, hydro general manager at the Southern Company. The annual conference is tied to three co-located conferences, including the NHA conference, the International Marine Renewable Energy Conference and the Marine Energy Technology Symposium.

— **The Solar Summit 2018 also kicks off today in San Diego**, where Abigail Ross Hopper, president and CEO of the Solar Energy Industries Association, will discuss solar in the Trump era, with a focus on the corporate tax reform, Section 201 and other macro-level risks. Hopper will be joined on stage by Avangrid Renewables' Laura Beane and Charlie Gray, director of the Solar Energy Technologies Office at DOE's Office of Energy Efficiency & Renewable Energy.

A LOAN IN THE SUN: Coinciding with the solar conference, GTM Research is out with a new report this morning on U.S. residential solar financing. The report found that last year was the first year since 2011 when more systems have been purchased with cash and loans (59 percent) than with leases and power purchase agreements (41 percent). That's in part due to the availability of loan products, as well as a shortage of third-party ownership suppliers, and Tesla and Vivint's move away from third-party ownership, the GTM report found.

The report also said that competition has intensified in solar loans, with various solar-specific loan providers, traditional banks and credit unions entering the realm. The increased competition has led to "uber-competitive rates and therefore compressed margins, leaving questions about the financial health and long-term viability of many of these loan providers," a summary of the report said.

RULE REACTIONS: EPA is moving full-speed ahead in its controversial scientific policy that would exclude the use of studies that don't publicly disclose all data. The agency published the proposed rule in the Federal Register on Monday, kicking into gear a 30-day comment period. And already, several groups have come forward to oppose the policy, laying out what they see as the policy's adverse effects — and calling for more consideration before any formal change.

— **The Union of Concerned Scientists** — which sent a letter signed by more than 1,000 scientists to EPA Administrator Scott Pruitt last week asking him to reverse course prior to the rule's announcement — plans to send another urging for the comment period to be extended a minimum of 60 days and calling for the agency to hold three public hearings across the U.S. to receive additional input. "The current timeframe and lack of opportunities for engagement are wholly inadequate and will not allow for thorough public input of this proposed rule and its impact on science-based health and environmental safeguards." Read the letter here.

— **A group of scientific journals** released a joint statement saying that the proposal "does not strengthen policies based on scientific evidence to limit the scientific evidence that can inform them; rather, it is paramount that the full suite of relevant science vetted through peer review, which includes ever more rigorous features, inform the landscape of decision making. Excluding relevant studies simply because they do not meet rigid transparency standards will adversely affect decision-making processes."

A SOMMERS DAY: The American Petroleum Institute is expected to tap Mike Sommers to replace Jack Gerard to lead the oil and gas industry lobbying group, two sources tell POLITICO's Emily Holden and Eric Wolff. Sommers was former House Speaker John Boehner's chief of staff and has since spent two years leading the American Investment Council, a private equity trade group. Gerard announced earlier this year that he would step down in August. Read more.

TRUMP GRANTS TARIFF EXTENSION FOR SOME: The president extended a temporary exemption by one month for Canada, Mexico and the European Union from heavily watched steel and aluminum tariffs, the White House announced Monday. The move gives the key U.S. allies until June 1 to reach a deal with the administration to avoid the tariffs of 25 percent on steel and 10 percent on aluminum exports sent to the United

States. The tariffs were slated to take effect at 12:01 a.m. today if President Donald Trump had not moved to extend the deadline, POLITICO's Megan Cassella [reports](#).

WHISTLEBLOWER SAYS PRUITT LIED: Kevin Chmielewski, the former deputy chief of staff for operations at EPA, told ABC News Pruitt was telling a "bold-faced" lie last week when he testified to lawmakers that none of his employees were retaliated against for raising concerns about his spending decisions. Chmielewski, who was dismissed and is now acting as a whistleblower, told ABC that chief of staff Ryan Jackson called him into his office and said: "Hey — Administrator Pruitt either wants me to fire you or put you in an office so that he doesn't have to see you again." Chmielewski added: "And in addition to that, he wants to put Millan (Hupp) in your spot, as your title and your pay grade."

EPA declined to comment to ABC in response to Chmielewski's allegations, but the outlet said it obtained a personnel form filled out by EPA human resources officials that said Chmielewski resigned on March 17. "The form is not signed by Chmielewski, who says he was actually forced to leave a month before that date," ABC writes. [Read more.](#)

DEMOCRATS PRESS PRUITT ON TESTIMONY: Separately, Democratic Reps. [Doris Matsui](#) and [Paul Tonko](#) sent a letter Monday calling out a different aspect of Pruitt's testimony last week before Congress. The pair point to a contradiction between Pruitt's remarks and reports that the administration has [drafted](#) a proposed rulemaking to block California's waiver authority to set stricter standards for light-duty vehicles. "If true, these reports directly contradict your testimony last week. As you were reminded at the start of that hearing, it is a violation of the law to knowingly make false statements to a Congressional committee," Matsui and Tonko write in a letter to Pruitt. Asked last week about whether he would revoke California's special Clean Air Act waiver, Pruitt [told lawmakers](#) "not at present." The lawmakers requested Monday that Pruitt provide all documentation related to the development of the notice of proposed rulemaking by Friday. [Read the letter here.](#)

SAGE SUIT: Conservation groups are suing the Trump administration over policies that they say would "adversely impact essential habitats and populations" for the greater sage grouse. The lawsuit, filed in the U.S. District Court in Boise, concerns Interior Department's oil and gas lease auctions in Nevada, Utah, Montana, Wyoming and Idaho — and calls on the court to reverse the sales. "There's no scientific or legal support behind these policies, and no public support for them either," said Michael Saul, a senior attorney at the Center for Biological Diversity. "They're clearly intended to make fossil fuel development the dominant use of public land, and that's illegal." [Read the complaint.](#)

DOE 'ENCOURAGED' BY PJM MOVE: The Energy Department said it was "encouraged" by news Monday that PJM Interconnection [will perform](#) "stress tests" on different parts of the grid to identify fuel supply vulnerabilities. "PJM's concerns are consistent with what DOE, NERC, and others have been saying for years: premature retirements of fuel-secure resources are putting the future of our nation's electric grid at risk, and that undermines our national security," DOE press secretary Shaylyn Hynes said in a statement. DOE urges the regulatory agency "to take immediate action to stop the loss of fuel-secure capacity," Hynes said, adding that DOE continues to review all of its options within its authority to ensure a resilient grid. Recently, Energy Secretary Rick Perry [has considered](#) invoking the 1950 Defense Production Act to keep money-losing power plants running by designating them as crucial for national security.

BY PROXY: A new report from the American Council for Capital Formation out today found that proxy advisory firms — which advise shareholders on how to assess and vote on company plans — are operating with minimal oversight and are moving toward an increasingly activist stance on issues relating to the environment, as well as social and political issues. The report, titled "The Conflicted Role of Proxy Advisors," examines the impact such proxy firms have on major policies at most publicly traded companies. [Read it here.](#)

FIRST OFFICIAL DAY ON THE JOB: Today is Secretary of State Mike Pompeo's first full day in Foggy Bottom, where he will deliver a speech to introduce himself to the department. POLITICO's Nahal Toosi breaks

down the differences between Pompeo and his predecessor and former Exxon Mobil CEO Rex Tillerson [here](#). But keep an ear out for any climate mentions, as diplomats and environmentalists [gather](#) today in Bonn, Germany, to work out the kinks of the Paris climate agreement. Greens have hit Pompeo as a climate science doubter, while others like Competitive Enterprise Institute's Myron Ebell have said the Kansas Republican will be a "forceful advocate" of Trump's decision to exit the Paris accord.

A PENNY FOR YOUR FREETHOUGHT CAUCUS: Democratic Reps. [Jared Huffman](#), [Jamie Raskin](#), [Jerry McNerney](#) and [Dan Kildee](#) launched the Congressional Freethought Caucus on Monday "to promote sound public policy based on reason, science, and moral values, protect the secular character of our government, and champion the value of freedom of thought worldwide." In a [statement](#), Huffman said the caucus "will help spark an open dialogue about science and reason-based policy solutions."

PAY THE PRICE: The New York Independent System Operator and state policymakers released [a draft plan](#) on Monday to price carbon as part of the electric system, [Pro New York's Marie French](#) reports. The move comes as an early step toward addressing the impact of state subsidies for renewables and nuclear power on the competitive market. "Under the proposal, a social cost of carbon set by state regulators would be added on to regional energy prices," Marie writes. Read [more](#).

MAIL CALL! A coalition of more than 160 groups sent a letter to Interior Secretary Ryan Zinke on Monday in opposition to the department's [proposal](#) to rescind the "blanket rule" the U.S. Fish and Wildlife Service used to extend protections for endangered species. Read the [letter](#).

— **Oregon Sens. [Ron Wyden](#) and [Jeff Merkley](#)** and Reps. [Earl Blumenauer](#), [Peter DeFazio](#), [Suzanne Bonamici](#) and [Kurt Schrader](#) sent a letter Monday to Office of Management and Budget Director Mick Mulvaney and Assistant Army Secretary R.D. James., requesting federal officials support a flood protection feasibility study for Portland. Read it [here](#).

MOVER, SHAKER: The White House is expected to tap California agriculture attorney Michael Stoker to lead EPA's San Francisco-based Region 9 office, [sources tell E&E News](#). The regional office is the only one to which Trump has not appointed a leader.

A NEW LOOK: Trade association the American Exploration & Production Council is launching today a [new website](#) and [Twitter](#) and [Facebook](#) accounts. The new website will include videos, fact sheets, info-graphics and issue pages.

QUICK HITS

— Utilities, oil interests clash over EV policy at conservative policy summit, [Utility Dive](#).

— Contura, Alpha to merge, creating largest U.S. met coal producer, [Reuters](#).

— Blankenship's mine took this man's son, brother and nephew. Now Blankenship wants his vote, [Huffington Post](#).

— In cities v. fossil fuels, Exxon's allies want the accusers investigated, [InsideClimate News](#).

— Australia investing \$377 million to protect Great Barrier Reef, [NPR](#).

HAPPENING TODAY

8:45 a.m. — GreenTech Media holds [Solar Summit](#), San Diego

10:00 a.m. — CSIS Energy & National Security Program discussion on carbon pricing, 1616 Rhode Island Ave NW

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Stories from POLITICO Pro

Lobbyists fuel lobbyist-turned-'outsider' Senate candidate Back

By Theodoric Meyer | 05/01/2018 05:00 AM EDT

West Virginia Attorney General Patrick Morrisey has gone a notch above pledging to "drain the swamp" during his Senate campaign. "Let's not just change Washington; let's blow it up," Morrisey says in an early TV ad, as he drops a mountain on the Capitol dome.

But Morrisey's self-described "outsider" rhetoric cloaks an insider record: Before he was elected attorney general, Morrisey spent eight years as a Washington lobbyist, and the influence industry has fueled his campaign with hundreds of thousands of dollars in contributions. Morrisey's wife is also a lobbyist, and their work in D.C. has been the subject of unforgiving attacks from both of Morrisey's opponents in the Republican Senate primary.

"Morrisey got filthy rich in the swamp lobbying for special interests," the narrator says in one of Rep. Evan Jenkins' commercials.

Morrisey has weathered the attacks, leading the field or running a close second in recent public polls of the Republican primary to take on Democrat Joe Manchin, one of the most vulnerable senators up for reelection this year. The race has attracted national attention as Washington Republicans attempt to derail the candidacy of Don Blankenship, the former coal-mining executive who spent a year in prison for his role in a mine explosion that killed 29 men. But next week's primary will also test whether GOP voters are willing to send a former lobbyist to Washington, despite President Donald Trump's vow to curb K Street's influence.

"It's going to be challenging, because the word 'lobbyist' has such negative connotations," said Cam Savage, a Republican operative who helped run Sen. Todd Young's (R-Ind.) successful 2016 campaign against former Democratic Sen. Evan Bayh, whose work for a Washington law and lobbying firm hindered his campaign.

While Morrisey has tried to deflect attention away from his lobbying past, he has embraced it behind the scenes. Morrisey's campaign raised more than \$250,000 from more than 200 current and former registered lobbyists through March 31, according to a POLITICO review of campaign finance records — accounting for nearly 20 percent of his individual donations.

Morrisey has raised even more from corporate and lobbying firm PACs, as well as from people who aren't registered lobbyists but clearly work in Washington's influence industry, such as former Rep. Mike Ferguson (R-N.J.), who heads BakerHostetler's federal policy team but isn't registered as a lobbyist. Of the \$250,000, roughly \$167,000 of it comes from lobbyists who are currently registered.

Many of Morrisey's lobbyist contributors work for health care and pharmaceutical interests, which Morrisey represented during his own years on K Street. They include Rodger Currie, the top lobbyist for Pharmaceutical

Research and Manufacturers of America, the powerful trade group for drug companies, who wrote Morrisey's campaign a \$2,000 check in December.

Former Rep. David Jolly (R-Fla.), a former lobbyist elected in 2014, said his lobbying background "was definitely an issue that my opponents tried to use to define me" in the race. He was able to overcome those attacks, he said, because he hadn't lobbied for clients that voters found objectionable.

Morrisey represented about 30 clients during his time at two Washington firms, Sidley Austin and King & Spalding, including big pharmaceutical companies such as Bayer, Novartis and Novo Nordisk. If Jolly had represented such clients, he said, he might have had a tougher race.

"These are very fair and legitimate questions," Jolly said.

Morrisey has shied away from discussing his lobbying days, instead casting himself as an outsider and conservative in contrast with Jenkins, who used to be a Democratic state legislator.

Morrisey refused to say the word "lobbyist" during a debate last week, even as Jenkins and Blankenship attacked him for lobbying for the pharmaceutical industry — a sensitive subject in a state that's struggling to combat an opiate crisis partly fueled by drug distributors. Asked by the moderators at the end of the debate to clear up a misconception about himself, Morrisey said only that he'd "never worked on opiate issues in the private sector."

Morrisey's campaign website uses similar language, describing him as a former "health care attorney in the private sector."

Jenkins, who's facing Blankenship and Morrisey in the three-way race for the nomination, has raised far less from K Street, even though, as a sitting congressman, he has plenty of opportunity to mingle with lobbyists, too.

A review of Jenkins' campaign finance reports turned up only 10 current and former lobbyists who had given a combined \$20,000 to his campaign since he filed to run last May. Four of them are currently registered. Jenkins has raised much more than Morrisey from corporate PACs: about \$136,000 to Morrisey's \$86,000, according to a POLITICO analysis.

Morrisey's campaign declined to make him available for an interview.

"Patrick Morrisey served as a law partner and practice group co-chair at two of the largest law firms in the country, focusing his practice on health care regulatory matters, legislative issues, compliance, fraud and abuse, administrative law, investigations, and solving client problems," Nachama Soloveichik, a Morrisey campaign spokeswoman, said in an statement.

Preeya Noronha Pinto, a partner at King & Spalding who lobbied alongside Morrisey and gave his campaign \$500 last year, said much of their work involved meeting with administration officials and, occasionally, members of Congress in an effort to get Medicare, Medicaid and other government health care programs to cover new drugs and medical devices developed by their clients. She said she hadn't seen the ad in which Morrisey drops a mountain on the Capitol, but she wasn't surprised he was running a campaign critical of Washington.

"I think everybody in a certain respect, even if they've worked here for years, thinks that D.C. is dysfunctional and there's a lot of room for improvement," Pinto said.

Morrisey's wife, Denise Henry Morrisey, has also been the subject of attacks based on her lobbying work.

"His wife's firm lobbies for Planned Parenthood," the narrator charges in one of Blankenship's TV ads. "The Morrisseys won't stop drug abuse or abortions by lobbying for drug companies and abortion clinics."

Soloveichik, the Morrissey campaign spokeswoman, said Denise Morrissey would stop lobbying if her husband were elected to the Senate. But she declined to say whether Denise Morrissey would give up her stake in Capitol Counsel, a top Washington firm in which she owns a 15 percent stake.

Denise Morrissey agreed to an interview with POLITICO last week but later stopped responding to emails and phone calls.

Savage, the Republican operative who worked as a consultant on Young's campaign in 2016, said it was possible to parry lobbying attacks — but only with willingness to answer questions about it.

Savage managed former GOP Sen. Dan Coats' comeback campaign in Indiana in 2010, when he won back his old seat in 2010 after working as a lobbyist. Savage credited Coats' victory, in part, to his willingness to be forthcoming about his lobbying work.

"The attacks after that kind of fell flat, to be honest with you," Savage said.

Kevin Robillard contributed to this report.

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Blankenship slams 'Cocaine Mitch' in anti-McConnell ad [Back](#)

By Alex Isenstadt | 04/30/2018 06:23 PM EDT

West Virginia Senate hopeful Don Blankenship is intensifying his offensive against Majority Leader Mitch McConnell, calling him "Cocaine Mitch" in a new TV ad released just more than a week until the Republican primary.

"One of my goals as U.S. senator will be to ditch Cocaine Mitch," Blankenship says toward the end of the [spot](#), which comes as polls show the coal baron falling behind his more mainstream opponents.

Blankenship, who spent a year in prison following the 2010 explosion at his Upper Big Branch Mine that killed 29 workers, offers no context for the jab. But he may be referring to a 2014 [report](#) in the liberal Nation magazine that drugs were once found aboard a shipping vessel owned by the family of McConnell's wife, Transportation Secretary Elaine Chao.

Blankenship has gone after McConnell in startlingly personal ways. During a recent interview with POLITICO, Blankenship said McConnell "has a lot of connections in China," and that Chao is "from China, so we have to be really concerned that we are in truth" putting America's interests first.

A McConnell representative did not respond to a request for comment.

With the May 8 primary fast approaching, Blankenship has launched a slash-and-burn campaign targeting the Senate GOP leader. Blankenship's offensive comes as polls show him falling behind GOP Rep. Evan Jenkins and state Attorney General Patrick Morrisey in the primary.

McConnell's political operation has moved aggressively to block Blankenship's path. Operatives close to the majority leader, convinced that Blankenship would lose to Democrat Joe Manchin in the November general election, have launched a super PAC that has spent about \$1.3 million on TV ads attacking the coal baron.

One ad from Mountain Families PAC describes Blankenship as a "convicted criminal," who lived a lavish lifestyle while ignoring mine safety laws.

"Don Blankenship was about the money," the spot concludes. "West Virginia families paid the price."

To view online [click here](#).

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West Virginia Senate hopeful Don Blankenship is intensifying his offensive against Majority Leader Mitch McConnell, calling him "Cocaine Mitch" in a new TV ad released just more than a week until the Republican primary.

"One of my goals as U.S. senator will be to ditch Cocaine Mitch," Blankenship says toward the end of the spot, which comes as polls show the coal baron falling behind his more mainstream opponents.

Blankenship, who spent a year in prison following the 2010 explosion at his Upper Big Branch Mine that killed 29 workers, offers no context for the jab. But he may be referring to a 2014 report in the liberal Nation magazine that drugs were once found aboard a shipping vessel owned by the family of McConnell's wife, Transportation Secretary Elaine Chao.

Blankenship has gone after McConnell in startlingly personal ways. During a recent interview with POLITICO, Blankenship said McConnell "has a lot of connections in China," and that Chao is "from China, so we have to be really concerned that we are in truth" putting America's interests first.

A McConnell representative did not respond to a request for comment.

With the May 8 primary fast approaching, Blankenship has launched a slash-and-burn campaign targeting the Senate GOP leader. Blankenship's offensive comes as polls show him falling behind GOP Rep. Evan Jenkins and state Attorney General Patrick Morrisey in the primary.

McConnell's political operation has moved aggressively to block Blankenship's path. Operatives close to the majority leader, convinced that Blankenship would lose to Democrat Joe Manchin in the November general election, have launched a super PAC that has spent about \$1.3 million on TV ads attacking the coal baron.

One ad from Mountain Families PAC describes Blankenship as a "convicted criminal," who lived a lavish lifestyle while ignoring mine safety laws.

"Don Blankenship was about the money," the spot concludes. "West Virginia families paid the price."

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Pruitt scales back EPA's use of science [Back](#)

By Emily Holden and Annie Snider | 04/24/2018 03:17 PM EDT

Environmental Protection Agency chief Scott Pruitt announced Tuesday he would seek to bar the agency from relying on studies that don't publicly disclose all their data, a major policy change that has long been sought by conservatives that will sharply reduce the research the agency can rely on when crafting new regulations.

The unveiling of the proposed rule delivers a win to Republicans like House Science Chairman [Lamar Smith](#) (R-Texas), who unsuccessfully pushed legislation to impose the same type of change. The move also demonstrates Pruitt's persistence in pursuing President Donald Trump's anti-regulation agenda just two days before the embattled EPA chief is due to face fierce questioning from lawmakers about his hefty spending, expanded security detail and cheap condominium rental from the wife of an energy lobbyist.

At an invitation-only meeting at EPA headquarters with Smith, Sen. [Mike Rounds](#) (R-S.D.) and other supporters of the policy, Pruitt said the proposed rule was critical in ensuring that the agency was transparent about how it is making decisions to justify costly new regulations. It is the latest step Pruitt has taken to fundamentally shift the agency's approach to science.

"It is a codification of an approach that says as we do our business at the agency the science that we use is going to be transparent, it's going to be reproducible, it's going to be able to be analyzed by those in the marketplace. And those who watch what we do can make informed decisions about whether we've drawn the proper conclusions or not," Pruitt said.

Text of the proposed rule was not immediately available.

The proposal, based on legislation pushed by Smith, is intensely controversial, and scientists and public health groups say it will prevent federal regulators from enacting health and safety protections. Nearly 1,000 scientists, including former EPA career staffers, signed a [letter](#) opposing the policy sent by the Union of Concerned Scientists to Pruitt on Monday.

Their primary concern was that many of the country's bedrock air and water quality regulations are based on research that cannot disclose raw data because it includes the personal health information.

But industry has its own version of the same problem. EPA often relies on industry studies that are considered by companies to be confidential business information when determining whether new pesticides and toxic chemicals are safe to use. Internal EPA emails obtained under the Freedom of Information Act show that EPA political officials, including Nancy Beck, who became the chief of the agency's chemical safety office last year after working for years at a chemical industry lobbying group, worried that the new policy would limit the agency's ability to consider industry data or would force companies to make this proprietary data public.

"We will need to thread this one real tight!" Richard Yamada, political official who led work on the new policy wrote to Beck after she raised the concerns.

It was not immediately clear if the new proposed rule included measures to address those concerns.

Rush Holt, CEO of the American Association for the Advancement of Science, said Pruitt's changes could keep the agency from revising public health regulations as problems arise or new data comes to light.

"On the surface it sounds so innocuous or even beneficial. What could be wrong with transparency? Well it's clear to me that this is not based on an effort to be transparent. It is rather based on an effort to be just the opposite," he said.

"EPA is particularly important because when science is misused, people die," he added.

Pruitt has been discussing the new scientific policy publicly for weeks, but it only went to the White House for interagency review last week. Such swift review is very rare for the Office of Management and Budget, which often takes months to vet a new policy. At least one group, the Environmental Defense Fund, has requested a meeting with OMB officials to discuss the rule, but OMB's website shows that no meetings have been scheduled with interested groups.

Many public health studies can't be replicated without exposing people to contaminants, and environmental disasters such as the Deepwater Horizon oil spill cannot be recreated, the group said, raising intellectual property, proprietary and privacy concerns.

Pruitt's predecessor Gina McCarthy, and her air chief Janet McCabe, in an op-ed in The New York Times in March said concerns about studies are dealt with through the existing peer-review process, which ensures scientific integrity.

"[Pruitt] and some conservative members of Congress are setting up a nonexistent problem in order to prevent the E.P.A. from using the best available science," they said.

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API's Gerard to exit on an oil industry winning streak [Back](#)

By Ben Lefebvre | 01/17/2018 06:05 PM EDT

American Petroleum Institute President and CEO Jack Gerard's plan to exit the powerful trade association could signal the end an era for oil industry lobbying.

Gerard notched up a long list of achievements during his 10-year tenure, which coincided with the oil and gas boom that turned the U.S. into the world's largest energy producer. He will step down in August after deciding not to renew his contract, API announced.

Gerard took the helm at the API after leading the American Chemistry Council and the National Mining Association. And he was well compensated, receiving \$6 million in salary and other compensation as of 2015, according to the API's latest tax forms.

During his time atop API, flagging U.S. production rebounded with the advent of fracking and horizontal drilling, allowing energy producers to tap new resources in North Dakota, Appalachia and West Texas. And as overall oil output doubled to nearly 10 million barrels a day, API's membership swelled by 50 percent, to more than 600 companies.

That helped API to expand its reach, and it doled out \$9.4 million on lobbying Washington lawmakers in 2017, quadruple the amount it spent in the year Gerard took the helm.

API helped overturn the decades-old ban on oil exports, open new areas to drilling — including the Arctic National Wildlife Refuge — and win federal approval for the Keystone XL pipeline. And under Gerard, API also introduced the term that would eventually be taken up by President Donald Trump, when in 2012 it called for a "new era of American world energy dominance."

"We've taken the nation from energy scarcity to energy abundance," Gerard said of the industry at the API's annual State of American Energy address in Washington earlier this month.

But he warned at that event that it wasn't time for API to take "a victory lap," as he cited a to-do list that contained little more than continuing a yearslong fight to repeal a biofuels mandate the industry finds burdensome and streamlining the federal permitting process.

"It's hard to say API wasn't successful under his tenure," said John Northington, a former Clinton-era Interior Department official who works as an energy consultant for many API member companies, adding that it delivered much of what the industry wanted to accomplish.

Not all energy industry insiders agreed, however. Some pointed that for an organization with annual revenue of around \$250 million — much of which it spent on advertisements, including one that ran during last year's Super Bowl, or donations to Republicans — the API's influence was limited. Despite a string of recent wins, it hadn't managed to record any progress in altering the decade-old Renewable Fuel Standard for biofuels or ending restrictions under the Jones Act against foreign-flagged ships transporting fuel between U.S. ports.

"They have this ridiculous amount of money, but they don't get a lot of results," said one refining industry source who requested anonymity to discuss the association. "They don't do bad work, but for that kind of money, you expect more."

The API's ranks have also become divided over how to handle growing public concern about the oil and gas industry's role in climate change. The group in 2016 created a task force to massage the industry's environmental image and work Democrats on a potential carbon tax, a policy that drives a wedge between companies like Exxon Mobil, which has supported such a tax, and Chevron, which has opposed it.

An API spokeswoman said it was unknown whether Gerard was retiring or would join another organization. Gerard will help lead the search for a new president and CEO, the spokeswoman added.

One possible replacement for Gerard is API's current executive vice president and chief strategy officer, Marty Durbin. Durbin had been in charge of API's government affairs before departing to become head of the lobby group America's Natural Gas Alliance, which subsequently merged with API.

Other names floated by industry insiders as potential candidates included Mike Sommers, a former chief of staff for former House Speaker John Boehner, now CEO of the American Investment Council; Karen Harbert, head of the U.S. Chamber of Commerce's Global Energy Institute; and former Sen. Blanche Lincoln, an Arkansas Democrat.

An API spokeswoman did not comment on possible candidates.

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Sources: API expected to tap Sommers as new chief [Back](#)

By Emily Holden and Eric Wolff | 04/30/2018 04:33 PM EDT

The American Petroleum Institute is expected to tap Mike Sommers, the head of a private equity trade group who worked as a top aide to former House Speaker John Boehner, to replace Jack Gerard at the helm of the powerful oil and gas industry lobby group, according to two sources.

Gerard announced his retirement earlier this year after a decade at the helm of the API, where he notched up a long list of achievements including overturning the decades-old ban on crude oil exports. He will step down in August.

API did not reply to a request for comment.

The oil and gas industry has so far gotten strong support from the Trump administration, which has moved to open the Arctic National Wildlife Refuge to exploration, is considering making wide swathes of coastal waters available to the industry, and last week said it would roll back some Obama offshore drilling rules.

But API has urged the White House to scrap its steel and aluminum tariffs, and to keep core provisions of NAFTA in place as it negotiates an update to the trade agreement.

Sommers, who was Boehner's chief of staff, has led the American Investment Council for two years, a position that kept him close to Arclight Capital Partners, The Blackstone Group, EnCap Investments and other firms that have invested heavily in energy projects. He also served as an aide to former President George W. Bush in 2005 at the National Economic Council working on agriculture, trade and food policy.

Barry Worthington, CEO of the United States Energy Association, which brings together public and private organizations, corporations and government agencies, said he'd been told Sommers would succeed Gerard.

"Jack Gerard is going to be a tough act to follow," he said.

Gerard was also one of the best-paid lobbyists in Washington, D.C. He received \$5 million in direct compensation from API, plus another \$1.2 million in perks in 2015, according to the group's latest IRS forms.

Marianne Levine and Ben Lefebvre contributed to this report.

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Trump grants key U.S. allies an extra month of tariff relief [Back](#)

By Megan Cassella | 04/30/2018 05:57 PM EDT

President Donald Trump has decided to extend by one month a temporary exemption from steel and aluminum tariffs for Canada, Mexico and the European Union, the White House announced Monday evening.

The move gives key allies — and three of the U.S.' four largest trading partners — until June 1 to reach some sort of deal with the Trump administration to avoid duties of 25 percent on steel and 10 percent on aluminum exports sent to the United States. The tariffs had been set to take effect at 12:01 a.m. Tuesday if Trump had not moved to extend the deadline.

The administration has also reached preliminary agreements with three other countries that had initially been granted a temporary exemption — Argentina, Brazil and Australia — allowing them to escape the duties as details are finalized over the next 30 days, the White House said. Trump did not set a deadline for those details to be worked out but said he would consider reimposing the tariffs if the agreements are not finalized "shortly."

One other country, South Korea, had already reached a preliminary deal for a permanent exemption from the steel tariffs because it agreed to cap its exports to the U.S. at 70 percent of the average export volume over the previous three years. Trump's official proclamation said the administration will monitor the implementation and effectiveness of that quota and left room for Trump to "revisit" his decision if needed.

"In all of these negotiations, the administration is focused on quotas that will restrain imports, prevent transshipment, and protect the national security," the White House said in its declaration. "These agreements underscore the Trump administration's successful strategy to reach fair outcomes with allies to protect our national security and address global challenges to the steel and aluminum industries."

The declaration brings some clarity to a decision-making process that until the official release left key allies wondering whether they would beginning Tuesday face penalties sure to roil international markets and disrupt global supply chains. Few people inside the White House or overseas had been sure of what or even when Trump would decide.

Imposing the duties would also have affected foreign steel industries that depend on access to the U.S. market. Canada and Mexico both send more than half of their steel produced annually into the United States, while the 28 nations of the EU together serve as the largest single supplier of steel to the U.S.

Of \$29.1 billion worth of steel that the United States imported last year, \$6.2 billion came from the 28 nations of the EU and \$2.9 billion from other European countries. About \$5.1 billion came from Canada, \$2.8 billion from South Korea, \$2.5 billion from Mexico, \$1.6 billion from Japan, \$1.4 billion from Russia and just \$976 million from China.

A U.K. government spokesperson called the extension "positive" and said EU countries would continue to work to reach a permanent solution.

"We remain concerned about the impact of these tariffs on global trade and will continue to work with the EU on a multilateral solution to the global problem of overcapacity, as well as to manage the impact on domestic markets," the spokesperson said in a statement Monday night.

Although the move grants some of the United States' closest allies another month to work out a deal, it remains unclear what sort of concessions would satisfy Trump and his administration.

Commerce Secretary Wilbur Ross and other administration officials have said in recent days that countries would have to choose between either quotas or tariffs — but the EU, Canada and Mexico have said they expect a full exemption without having to agree to such restrictions.

"We're busy alienating the few friends we have left," said Bill Reinsch, a senior adviser at the Center for Strategic and International Studies. "The president clearly, on trade issues, doesn't make a distinction between the good guys and the bad guys. If you're not doing exactly what he wants, you're a bad guy by definition — and nothing else counts."

The process of deciding on the exclusions and exemptions has been chaotic since the departure of former White House staff secretary Rob Porter, who was heavily invested in trade policy and making sure that differing viewpoints were included in the decision-making process.

U.S. Trade Representative Robert Lighthizer, meanwhile, has had myriad policy questions on his plate, including the ongoing NAFTA talks and his upcoming trip to China later this week to talk trade.

With any final decision still up in the air, some nations have indicated exactly how they will retaliate if and when Trump does impose the tariffs. The European Union last month generated a list of U.S. exports ranging from peanut butter to lipstick and yachts that would face punitive 25 percent duties on their way into the European market if Brussels is not spared. The EU's list, which is valued at roughly \$3.4 billion, is largely comprised of products from Republican states and districts that would bear the brunt of the tariff impact.

At the same time, European nations have also been working among themselves and with the United States to strike a compromise. German Chancellor Angela Merkel and French President Emmanuel Macron both traveled to the White House last week to talk face-to-face about the issue with Trump, who is still toying with the decision.

Merkel and Macron both spoke over the weekend with U.K. Prime Minister Theresa May about the "vital importance" of Europe's steel and aluminum industries and pledged to work together with the rest of the EU to push for a compromise and a permanent exemption.

To that end, EU Trade Commissioner Cecilia Malmström also spoke again over the phone on Monday with Ross.

Tensions are similarly high with Canada and Mexico, who are in intensive trade negotiations with the United States to update NAFTA.

Both countries have repeatedly made clear that they expect to be granted a full, permanent exemption from the tariffs without having to agree to quotas or any other restrictions. But their temporary reprieve was contingent upon a successful completion of the NAFTA rewrite — and with that deal still at least a week away, it remains unclear whether Trump will make the exemption permanent or at least extend it on a temporary basis while negotiations continue.

For either of the U.S. neighbors, imposition of the duties would ratchet up trade tensions at a time when all three countries are working to wrap up a NAFTA negotiation that has already been technically and politically difficult.

"Obviously, Lighthizer knows very clearly our position and how we have to react if any measure is imposed," Mexican Economy Secretary Ildefonso Guajardo said Friday during a visit to Washington to talk NAFTA. "I have been very clear that in this context a quota on steel won't be the best way to go."

If the tariffs do go ultimately into effect for any of the countries involved, a key question will be whether Trump will ratchet up the pressure again after the countries inevitably retaliate, Reinsch said.

"We act, they act, that's round one. The question will be, is [Trump] then going to start round two?" he said, noting that one round of tit-for-tat is "not that unusual" but that two would be more remarkable. "I think the trade war starts in round two."

Nancy Cook and Jakob Hanke contributed to this report.

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Source: EPA draft would halt auto standards at 2021 levels, block California authority [Back](#)

By Alex Guillén | 04/27/2018 06:28 PM EDT

A draft proposal from EPA would freeze auto emissions standards after model year 2021 and seek to block California's ability to enact its own more stringent regulations, according to a source familiar with the draft.

The text of the draft is still reportedly in flux, but if ultimately finalized, it would erase half a decade's worth of the Obama administration's much-touted emissions savings, handing a major win to the oil industry. It would also set up a nasty legal fight with California that many legal experts believe the state could win.

The Los Angeles Times first reported on the draft plan today.

EPA Administrator Scott Pruitt on Thursday told a House Energy and Commerce subcommittee that he did "not at present" have any plans to try to revoke California's Clean Air Act waiver to enforce more stringent standards.

"It's important that we work together to achieve, as was indicated earlier, a national standard," Pruitt added.

Automakers successfully lobbied the Trump administration to revisit the 2022-2025 standards — although most indicated they simply wanted more flexibility to reach the ultimate emissions goals in 2025. They had complained it would be difficult to meet the Obama administration's goals that would have ultimately lifted the average fuel economy target for the nation's fleet of cars and light trucks to 55 miles per gallon by 2025.

Industry trade groups and individual automakers have also cautioned that a single national standard is preferable to a regulatory patchwork of rules.

WHAT'S NEXT: EPA reportedly will send the proposal to the White House for review in the near future. The agency is working alongside the National Highway Traffic Safety Administration, which is writing its own separate but related fuel economy rules for 2022-2025 vehicles.

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Pruitt: EPA not going after California's waiver 'at present' [Back](#)

By Anthony Adragna | 04/26/2018 12:04 PM EDT

EPA Administrator Scott Pruitt said today his agency is "not at present" attempting to undo California's special Clean Air Act waiver allowing the state to set stricter emissions levels for vehicles.

"It's important that we work together to achieve, as was indicated earlier, a national standard," Pruitt said at a House Energy and Commerce subcommittee hearing this morning. "We are working very diligently and diplomatically with California to find answers on this issue."

California officials have warned they would diligently challenge any effort by the Trump administration to go after the waiver.

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PJM to probe fuel supply vulnerabilities [Back](#)

By Eric Wolff | 04/30/2018 11:08 AM EDT

PJM Interconnection said today it would seek to identify any fuel supply vulnerabilities in its grid and design market tools to increase resilience, a move that appears designed to head off Energy Secretary Rick Perry's effort to bail out coal-fired and nuclear power plants.

PJM says in a report out today it will run models to "stress test" different parts of the grid to see if fuel security could be compromised under different circumstances. If it finds risks of fuel constraints, it would consider allowing different prices for power from generators that are better able to hedge against fuel problems.

"As is the case with reliability standards, PJM believes the most effective way to address fuel security is to define and establish fuel security criteria and then use market forces to allow all resources to compete to meet those criteria," the report says.

The report's biggest concern appears to be a grid dominated by natural gas, since cold weather can increase demand for home heating and constrain gas supplies. The report makes only one mention of renewables.

PJM has consistently opposed efforts by DOE to exercise emergency authority under either the Federal Power Act or the Defense Production Act to directly subsidize coal or nuclear power plants struggling in the face of low cost power from natural gas and renewables.

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Perry's latest bid to help coal faces uphill battle [Back](#)

By Eric Wolff | 04/25/2018 05:08 AM EDT

Energy Secretary Rick Perry's latest idea to protect coal-fired and nuclear power plants may not fare much better than his previous efforts, according to energy experts.

Perry is considering invoking the 1950 Defense Production Act to keep money-losing power plants running by designating them as crucial for national security. But that would stretch the definition of the law and almost certainly draw legal challenges — and it would hit a big hurdle in Congress, which would need to approve perhaps billions of dollars in funding to keep the plants afloat, the experts said.

At the urging of President Donald Trump, Perry has sought to keep open coal and nuclear power plants that are threatened with shutdowns amid the stagnant demand for power — and even as natural gas and renewable power sources grab a growing share of the market.

So far, Perry's had no luck. FERC earlier this year rejected his proposal to give the plants financial support, and Energy Department lawyers stymied a push last year to invoke the agency's authority under the Federal Power Act to force the plants to run.

Some experts said any attempt to use the DPA is likely to meet the same fate.

"To me, it's a tough argument to make. It's a specious argument on its surface that seems like a perversion of the intended use of the Defense Production Act," said Tom Hicks, a former acting undersecretary of the Navy under

former President Barack Obama and now a principal at the advisory firm The Mabus Group. "Defense Production Act is on the vanguard of the need for resources, not on the back end for an industry being challenged by economic forces."

But the effort has been a priority for Trump and Perry, who sees saving coal-fired power generation as vital to U.S. security, according to a source familiar with the conversations on the issue.

The Cold War-era law grants the federal government powerful authorities to inject cash into companies essential for national defense in order to preserve domestic supplies of key products. But DOE will have to make the case that electricity produced specifically from coal and nuclear power plants, and not other types of power, is a critical resource.

Using the act to protect the plants when there appeared to be no immediate shortage of power supplies would be a novel application that would almost certainly face legal challenge.

"If the administration uses DPA, they're going to be using it very creatively," said Ari Peskoe, director of the Electricity Law Initiative at the Harvard Law School Environmental and Energy Law Program. "They may come up with reasoning for higher rates and who's going to pay for it. Whether that will hold up, I don't know."

Perry and his staff appear to have very few viable options for bailing out coal and nuclear power, a major energy priority for Trump, who has promised to revive the coal industry. DOE has opened a comments process for interested parties to weigh in on its use of the Federal Power Act's 202(c) emergency provisions, though that would require the agency to go through FERC, which unanimously rejected a similar Perry effort in January.

The 202(c) effort has been pushed by coal magnate Bob Murray, owner of Murray Energy, and by FirstEnergy Solutions, the unit of FirstEnergy Corp. that is in bankruptcy proceedings and which expects to shut down four coal and nuclear power plants. That company asked DOE to use the emergency authority to save not only its plants, but all 85 coal and nuclear power plants in the PJM Interconnection power market.

The DPA was last used by the Obama administration starting in 2012 to help spur the biofuels industry to develop the kind of advanced biofuels that could power ships and aircraft. The government can purchase capital equipment for the cause of national security, and it can fund advertising to support the effort.

And it allows the government to become the buyer of last resort, which could put Washington on the hook to buy excess power generated by coal and nuclear plants. Technically, this electricity could only be purchased at the "cost of production," a level that in the past has been determined by a team within the Defense Department.

While no hard estimate for the cost of a DPA subsidy exists, consultants analyzing Perry's previous bailout proposal estimated costs between \$4 billion and \$10.6 billion annually.

That's a far higher level than Congress typically allocates for the DPA. It provided \$67.4 million in the omnibus passed in March, H.R. 1625 (115), down slightly from the \$76 million it provided for all projects in 2017, according to a report submitted to Congress.

And Congress — and the Republican Party — is deeply divided on using government subsidies to save these plants. Rep. David McKinley (R-W.Va.) has some allies from other coal districts for the effort, but other free market-oriented lawmakers like Rep. Pete Olson (R-Texas) say they want to see markets function unimpeded.

McKinley's staff has been in touch with DOE and the White House, as has West Virginia Sen. Joe Manchin (D).

"I think it's an emergency national concern for the national defense of our country. I think Rick Perry agrees with it, and I think the president does also," Manchin told POLITICO.

PJM has itself said the retirement of FirstEnergy's coal plants did not pose a threat to the region's power supplies, and that it had ample generation to meet demand. It has opposed any effort to mandate to require the plants to stay online.

"We believe that a market-oriented approach consistent with the American free-enterprise system offers better results than government-mandated subsidies," said PJM spokesman Jeff Shields.

Anthony Adragna contributed to this report.

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Chatty Pompeo strikes early contrast with reclusive Tillerson [Back](#)

By Nahal Toosi | 04/30/2018 06:11 PM EDT

Mike Pompeo, the new secretary of state, is leaning hard into the side of the job his predecessor seemed to hate the most: public relations.

Within hours of being confirmed last week, Pompeo took along several journalists on a trip to Europe and the Middle East, answering their questions in public and private, and appearing Sunday on ABC News' "This Week." He's planning a town hall meeting with State Department staff soon. And he may even start tweeting.

The moves are in many ways a return to tradition for a secretary of state, a high-profile position where words are the most powerful tool. But they stand in marked contrast to the man Pompeo replaced, Rex Tillerson, whose early lack of visibility caused lingering damage to his reputation inside the Trump administration and beyond.

"It signals that, unlike Tillerson, Pompeo recognizes some of the basic things he needs to do to make the State Department relevant," said Ilan Goldenberg, a former Obama-era State official now with the Center for a New American Security. "By itself, it won't make Pompeo an effective secretary of state. But not doing these things really hurt Tillerson."

On Tuesday afternoon, his first full day in Foggy Bottom itself, Pompeo will deliver a speech introducing himself to the department. Staffers and journalists won't be the only ones listening; foreign diplomats will also parse Pompeo's words carefully.

Tillerson, too, gave a well-received speech his first full day on the job. But for months afterward, he almost seemed to have taken a vow of silence.

He refused to engage reporters, didn't hold a town hall until three months in and had no social media presence. U.S. diplomats soon found themselves aimless, lacking guidance from Tillerson and his small coterie of advisers. Veteran NBC News reporter Andrea Mitchell took to loudly asking questions of a silent Tillerson during his public appearances, videos of which went viral. The department's daily press briefing, a decades-old

tradition, was put on ice for nearly two months. Under pressure, Tillerson brought it back, but in a scaled back format. Headlines asked: "Where's Rex?"

Tillerson puzzled a foreign policy establishment used to secretaries of state — including Hillary Clinton and John Kerry — who sought, rather than shunned, public attention. Many State Department staffers came to see Tillerson as isolated and aloof. And foreign leaders who concluded he was ineffectual and out of the loop engaged directly with the White House instead.

Tillerson greatly increased his visibility in the second half of his 14-month tenure, but the damage was done. Trump fired Tillerson in mid-March.

The difference between Tillerson and Pompeo might be explained, in part, by their respective backgrounds: Tillerson had previously been a taciturn CEO of ExxonMobil, Pompeo a pugnacious congressman from Kansas.

"His background as a congressman is a great asset in his current position," said Brett Schaefer, a foreign policy analyst with the conservative Heritage Foundation. "He has a great deal of experience in interacting with a broad number of people and doing so in a way that is designed to listen to their concerns and respond to them."

Pompeo has also pledged to stay in close touch with his former colleagues in Congress. Tillerson drew criticism for being slow to respond to lawmakers' requests.

And while Tillerson showed no visible interest in social media, a person familiar with Pompeo's situation said he is considering using Twitter.

David Wade, a former chief of staff to Secretary of State John Kerry, argued that a secretary of state's public words matter well beyond the Washington Beltway. "Externally, you're in a race to define the American narrative against those like Russia and China which will fill in their own narrative if you're absent," he said.

Calling Tillerson "an abysmal failure at communications both internally and externally," Wade said Pompeo "can be a good communicator, and as a politician he's more talented than his predecessor." But, he added, "all the public diplomacy in the world can't get him out from under the weight of Trump's tweets and slurs about people from the Middle East to Africa."

The timing of Pompeo's Thursday confirmation vote allowed him to attend a long-scheduled meeting of NATO foreign ministers in Brussels the next day, winning him early plaudits from others in the military alliance.

"He actually jumped on a plane just after he was sworn in and he was able to address the North Atlantic Council, the foreign ministers of NATO, just 12 hours and 34 minutes after his confirmation," NATO Secretary General Jens Stoltenberg said with admiration.

Pompeo left Washington with six journalists on his plane. On his first major overseas trip, Tillerson brought just one reporter, from the conservative Independent Journal Review.

As he continued from Brussels to Saudi Arabia, Israel and Jordan over the weekend, Pompeo picked up two more reporters. He spoke to the reporters on the plane and also took questions during news conferences on the ground.

Tillerson, by contrast, generally avoided even the reporters who — having been denied seats on his official plane — chased him around the world on commercial flights.

Shortly after he took office, Tillerson took a quick trip to Bonn, Germany, for a meeting of G-20 foreign ministers. At an appearance on the sidelines with Russian Foreign Minister Sergey Lavrov, reporters were escorted out of the room before Tillerson gave remarks. Even Lavrov was puzzled: "Why did they shush them out?" he asked.

"I'm not a big media press access person. I personally don't need it," Tillerson would later tell the IJR reporter, who traveled with him to Asia a month later.

During his 15 months as CIA director, Pompeo forged a much closer relationship with Trump than Tillerson. He is believed to have a much better sense of where the president stands, and his own, often-hawkish views appear more in line with Trump's thinking. Pompeo has also been vocal about wanting to improve morale at the State Department, where many diplomats have been distressed over Trump's attempts to slash their budget and Tillerson's unwillingness to listen to their expertise.

In a news conference in Brussels, Pompeo pointed out that he'd met with U.S. diplomats who work in the Belgian capital and that he was committed to making his department more relevant.

The diplomats, he said, "may have been demoralized, but they seemed in good spirits. They are hopeful that the State Department will get its swagger back."

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Pruitt's Science Margin for Error • Coal Country Debate • Undersea Robots Study Dead Zone

By Chuck McCutcheon

Scott Pruitt drew lots of attention when he declared limits on “secret science” in policymaking. But it’s no secret to lawyers watching the EPA chief that he has no room for error in crafting the policy.

The proposed open-data policy would enable the EPA head to issue waivers, David Schultz writes in a story being published today. Environmental attorneys say the waiver provision actually makes the proposal even more vulnerable to legal challenges.

“How is EPA choosing when to waive and when not to waive?” asks Amanda Leiter, a law professor at American University in Washington. “Does that give the EPA too much discretion? Will they just be cherry-picking?”

COAL COUNTRY DEBATE: The West Virginia Republican Senate race goes

nationwide tonight, with the three top contenders squaring off in a nationally televised Fox News debate.

All three candidates want the same things for coal—to get the government out of the way, to open more mines, to burn more coal for energy, to export more coal to foreign countries, and to create more jobs at home.

The splashiest name is former coal mogul and ex-convict Don Blankenship. So far, Blankenship has concentrated on criticizing the Mine Safety and Health Administration, which he says is the real culprit for the mine disaster that landed him in jail. Blankenship wants to split MSHA into two agencies, one responsible for regulating and the other for enforcement.



West Virginia Republican U.S. Senate candidate Don Blankenship appears at a town hall campaign event in Huntington in February.
Photographer: Luke Sharrett/Bloomberg via Getty Images

Rival Evan Jenkins walks into the debate with three and a half years' experience in the House and two decades before that as a state lawmaker. If elected, he'd be a reliable vote to pare back the EPA's budget and staffing. He's worked to give money to Appalachian states to clean up abandoned mines and backs funding research to extract rare earth elements from coal.

The third candidate, state Attorney General Patrick Morrisey, shares some similarities to Scott Pruitt. Like the EPA chief when he was Oklahoma's attorney general, Morrisey sued the Obama EPA several times, and both Morrisey and Pruitt are strong believers in deregulation. Stephen Lee is watching.

OMAN DEAD ZONE: It sounds like bad science fiction: Undersea robots spent eight months exploring a marine dead zone off the coast of Oman.

But the robot research yielded scary real-life results, Matthew Kalman writes in a story being published today. Scientists found that the zone of oxygen-starved waters, mapped in the 1960s, had grown and crept closer to the coast of Oman, squeezing valuable tuna, lanternfish, and other fish into a shrinking layer of oxygen-rich water close to the surface.

Dead zones are a “disaster waiting to happen, made worse by climate change, as warmer waters hold less oxygen, and by fertilizer and sewage running off the land into the seas,” says Bastien Queste, a research fellow at the U.K.’s University of East Anglia.

OTHER STORIES WE’RE COVERING

- The National Hydropower Association continues its [Waterpower Week](#). Today’s speakers include Federal Energy Regulatory Commission Chairman Kevin McIntyre and Tim Welch, hydropower program manager for the Energy Department’s Water Power Technologies Office. Bloomberg News is covering.
- The Federalist Society is [holding a teleconference](#) on Arizona’s recent decision to eliminate legal deference to agencies in state courts. [Kimberly Robinson](#) is monitoring.
- The latest episode of Bloomberg Environment’s podcast, [Parts Per Billion](#), follows up with [Sylvia Carignan](#) on her [recent story](#) about locating a bitcoin mine at a contaminated site in New York, where General Motors once manufactured parts for its ill-fated Corvair. Could this be the Superfund program’s future?

QUOTE OF THE DAY

“Clean water is a basic right. We won’t allow a pipeline to put that at risk.”
—New York Attorney General Eric Schneiderman, [tweeting](#) about the U.S. Supreme Court’s decision not to hear an appeal from four natural gas companies seeking to build a natural gas pipeline to New York from the Marcellus Shale in Pennsylvania.

AROUND THE WEB

- The federal government [helped turn](#) Nevada rancher Cliven Bundy into an anti-public lands hero.
- Penn State researchers [are joining](#) an international effort to better understand the “doomsday glacier,” an Antarctic glacier about the size of Pennsylvania that’s at risk of collapsing and contributing significantly to global sea-level rise.
- Minneapolis [becomes](#) the 65th U.S. city to adopt an all-renewables goal.

- Pruitt's low-wattage, lawyerly demeanor [helped him deal](#) with last week's hearings in which lawmakers aggressively questioned his ethics and spending decisions.

TODAY'S EVENTS

- **All Day • Renewable Energy/Smart Grid** • The U.S. Agency for International Development holds a [forum](#) on renewable energy and smart grid suppliers in Denver as a prelude to the National Renewable Energy Laboratory's [Emerging Markets Day](#) and the NREL Industry Growth Forum.
- **10 a.m. • Carbon Pricing** • Center for Strategic & International Studies [holds forum](#) on carbon pricing.
- **2 p.m. • Pesticides and Mosquitoes** • The EPA [holds webinar](#) on how pesticide resistance testing can help manage mosquitoes.

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Subject: Morning Energy, presented by Anheuser-Busch: Zinke's turn on the Hill — EPA watchdog: Aides slow to turn over docs — House to take up Yucca bill today

By Kelsey Tamborrino | 05/10/2018 06:01 AM EDT

With help from Eric Wolff, Alex Guillén, Anthony Adragna and Jennifer Haberkorn

ZINKE HEADS TO THE HILL: Interior Secretary Ryan Zinke faces his Senate appropriators today to discuss his department's budget request for fiscal 2019. Expect Democrats to bring up familiar topics, such as his plans to reorganize the department and last year's decision to shrink national monuments in Utah. Subcommittee ranking member Tom Udall plans to tell Zinke that until courts weigh in on whether his move was legal, "I believe that moving forward with land management plans that will open these iconic areas to development is reckless."

Subcommittee Chair Lisa Murkowski may be interested in hearing more about Zinke's plans for oil and gas development in Alaska, after Interior kicked off its environmental review of potential drilling in part of the Arctic National Wildlife Refuge thanks to language she got included in last year's tax bill. And Sen. Lamar Alexander, another member of the subcommittee, can follow up on the maintenance backlog for the national parks, an issue the two discussed when Zinke visited Tennessee last week.

Ahead of the hearing, the Coalition to Protect America's National Parks is sending a letter to Zinke, with signatures from current and former employees of the National Park Service, calling on him to support permanent reauthorization of the Land and Water Conservation Fund, an issue with support in both parties.

If you go: The Senate Appropriations Interior-Environment Subcommittee hearing begins at 9:30 a.m. in 138 Dirksen.

— **But first:** Zinke will join Agriculture Secretary Sonny Perdue at USDA headquarters for an 8 a.m. briefing on the forecast for this year's wildfire season.

WATCHDOG: EPA AIDES SLOW TO SEND DOCS: EPA's internal watchdog complained last year that Administrator Scott Pruitt's aides were taking their sweet time handing over documents related to a probe into their boss' travels, new emails show. Although the standoff between the inspector general's office and Pruitt's staff was resolved a month later, the incident illustrates tensions between political appointees and career oversight officials that developed early on. The IG's office is in the process of conducting multiple reviews into Pruitt's actions.

The new emails, released under a FOIA request from California's Justice Department, show the IG's office was seeking information for its probe of Pruitt's frequent travel to Oklahoma on EPA business, Pro's Alex Guillén reports. That same probe was later expanded to include a wider swath of Pruitt's travel practices, including his first-class flights that cost more than \$100,000. (The investigation is slated to be completed this summer.)

At the time, the agency's assistant inspector general for audits, Kevin Christensen, wrote to a top career official in EPA's finance office to warn of a "potential situation" with the travel audit just two weeks after it began, the emails show. Christensen flagged messages showing Pruitt's chief of staff Ryan Jackson was

"screening" documents before releasing them to the Office of Inspector General. "This does not fit the definition of unfettered access or comply with the Administrator memo on access and providing information to the OIG," Christensen wrote to Jeanne Conklin, EPA's controller who oversees financial management and reporting. "When we are denied access to information until approved for release, it raises the question as to what is being withheld and approved for release."

The emails spotlight concerns about the lack of transparency atop the agency since Pruitt joined. And other emails released to California's Department of Justice also show career ethics officials warning Pruitt's aides about accepting industry awards and attending political events, further exemplifying internal tensions as Pruitt's external problems grow. Read more from Alex [here](#).

— **Related reporting:** Amid ongoing scrutiny, Pruitt met with industry representatives Wednesday, where a reporter asked if he still had the confidence of the White House. Pruitt said: "I think they've spoken very clearly," Bloomberg [reports](#).

WELCOME TO THURSDAY! I'm your host Kelsey Tamborrino. Bracewell's Frank Maisano was the first to correctly identify Detroit as home to the first paved roadway. Woodward Avenue carries the designation M-1 for its status as the first place to pour a 1-mile patch of concrete roadway. For today: Name the state first lady who simultaneously served as a member of the House. Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](#), [@Morning_Energy](#) and [@POLITICOPro](#).

TRUMP EXTENDS OLIVE BRANCH: President Donald Trump called coal baron Don Blankenship Wednesday to exchange pleasantries and offer up congratulations for waging his campaign, POLITICO's Alex Isenstadt reports. The conversation was described as straightforward, polite and cordial, and comes days after Trump tweeted that voters shouldn't vote for Blankenship in the West Virginia Republican primary. Blankenship also published an [open letter](#) to Trump on Wednesday that in part blamed the president for his loss. "Your interference in the West Virginia election displayed a lack of understanding of the likely outcome of the upcoming general election," Blankenship wrote. But he ended with a note of optimism: "I look forward to meeting with you in the near future." Alex reported the president had also reached out to Rep. [Evan Jenkins](#), who also lost in Tuesday's primary, but had yet to connect with the Republican party's winner, Patrick Morrisey, as of Wednesday evening. Read [more](#).

**** A message from Anheuser-Busch:** Anheuser-Busch announced that America's leading brewer has placed an order for up to 800 hydrogen-electric powered semi-trucks. The zero-emission trucks will be able to travel between 500 and 1,200 miles. Anheuser-Busch aims to convert its entire long-haul dedicated fleet to renewable powered trucks by 2025. [Learn more](#). **

HOUSE GOES NUCLEAR: The House will take up the long-awaited [H.R. 3053 \(115\)](#), the "Nuclear Waste Policy Amendments Act of 2018," for consideration today, with votes expected between 10:45 a.m. and 11:45 a.m. The bipartisan legislation would update how the U.S. handles nuclear waste and promote development of the Yucca Mountain repository in Nevada, among other provisions. The legislation is expected to pass, although it will face a much shakier Senate reception with Sen. [Dean Heller](#) facing a tough re-election race this year. Rep. [John Shimkus](#), who introduced the comprehensive nuclear waste package, previously said he hadn't had any recent talks with Senate counterparts about potentially moving the bill across the Capitol. Still, its appearance today is a victory for Shimkus: [Greg Walden](#) told reporters this week that Shimkus had sent handwritten letters to the homes of every member of leadership during recess encouraging the bill to come up, praising his tenacity.

COURT SAYS CRA IS A-OK: A federal judge in Alaska yesterday [dismissed](#) an environmental group's lawsuit that called the Congressional Review Act unconstitutional. The Center for Biological Diversity specifically challenged the CRA [resolution](#) successfully passed by Congress last spring that nullified an Interior Department rule regarding hunting in Alaska wildlife refuges.

Judge Sharon Gleason of the U.S. District Court for Alaska, an Obama appointee, noted that both the CRA itself and this specific resolution were passed by both chambers and signed by the president, fulfilling the constitutional requirements for creating laws. Other parts of CBD's argument similarly failed to hold water. "The Court finds that even construing all the facts in favor of CBD, CBD's constitutional claims fail to adequately allege a plausible basis for relief," Gleason wrote.

SUNNY CALIFORNIA: The California Energy Commission voted unanimously Wednesday to require solar panels be installed for all newly built single-family homes and multifamily buildings less than three stories starting in 2020. A CEC study found that installing solar would increase home prices, but that would be more than offset by lower utility bills, according to the Los Angeles Times. The move has been anticipated for years and was supported by much of the home building industry. More from the LAT [here](#).

STEELWORKERS SAY YES TO RFS: The United Steelworkers are supporting Trump's recent decisions on the Renewable Fuel Standard, which include expanding sales of 15 percent ethanol fuels and having EPA and USDA workout some kind of program for biofuel credits on exported ethanol. "While it will continue to review the details, [USW] supports a deal brokered by the President that appears to address the long-running conflict between ethanol producers and oil refiners over federal biofuels mandates," the union said in a press release.

HOUSE GOP DROPS RESCISSIONS PACKAGE: House Majority Leader [Kevin McCarthy](#) unveiled the chamber's batch of [spending cuts](#) Wednesday. Similar to the White House's [request](#), the package makes cuts to Energy Department loan guarantee programs for clean energy and vehicle technologies. The bill is expected to [go directly to the House floor](#) for a vote, Pro's Sarah Ferris [reports](#). Senate GOP leaders have said they will consider the bill if and when it passes the House.

MEANWHILE IN BONN: Things aren't going as planned for the second week of climate talks in Bonn, Germany, punting further discussions to another meeting in September. The U.N. Framework Convention on Climate Change [said](#) Wednesday that there would be an additional meeting from Sept. 3-8 in Bangkok amid a stalemate centered in part around clarity on climate finance between developed and developing countries. The new date underscores the pressure negotiators are under to advance talks enough for ministers to strike a deal later this year at the COP24 in Katowice, Poland. "We need to resolve differences on finance, accounting and transparency," Alden Meyer of the Union of Concerned Scientists [told POLITICO Europe's](#) Kalina Oroschakoff.

CALVERT: EPA-INTERIOR COMING SHORTLY: Rep. [Ken Calvert](#), who oversees EPA and Interior on the Appropriations Committee, told ME to expect their fiscal 2019 bill "pretty soon" as work's going well. "We're working on final details now," he said. As for the perennial question, yes, Calvert expects policy riders to be in play: "There's always riders," he quipped.

AUTOMAKERS WANT MORE FUEL EFFICIENCY: The Alliance of Automobile Manufacturers and the Global Automakers, trade associations which together represent most of the automakers who sell cars in the U.S., will tell Trump that they most definitely want increases in fuel efficiency standards, contra that zero increase preference of the Department of Transportation. They also want the federal government to work out a single national standard with California, rather than face either a bifurcated market or a long legal battle. "Automakers are deeply committed to increased fuel economy and safety measures that meet the needs of our customers, and we expect to share the importance of government policies that provide certainty to the auto sector, continue to reduce greenhouse gas emissions, reflect what consumers will buy and result in a national policy that includes California," the two groups said in a statement.

FOLLOW THE MONEY: The Environmental Integrity Project released a database Wednesday of political contributions from companies and conservative organizations that met with Pruitt between Feb. 21, 2017, and April 13 of this year. The database was compiled via EPA calendars, FEC reports and data from the Center for Responsive Politics. See it [here](#).

SAVE THE DATE: BLM scheduled meetings to discuss its plans for an environmental review of planned oil and gas leases in ANWR. Several will be held in Alaska, including one each in Fairbanks and Anchorage on May 29 and May 30, respectively. Another meeting is scheduled for Washington D.C. on June 15. For those who can't make the hearings, BLM plans to live stream the Fairbanks and Anchorage dates.

MAIL CALL! ISN'T IT IRONIC? Six Democratic senators wrote to Office of Information and Regulatory Affairs Administrator Neomi Rao on the office's review and evaluation process for EPA's proposed "secret science" proposal to ban the use of studies that don't publicly disclose all their data. "The review process and rollout of this rule appears to have been rushed and secretive — which is particularly ironic for a proposal that purportedly aims to improve agency transparency and decision-making processes," they write.

Separately, bipartisan Reps. Ryan Costello and Paul Tonko sent a letter to the National Academy of Sciences asking for its input on the proposed rule, which was discussed when Pruitt testified before the House E&C Committee. Read the letter here.

Of course, Pruitt seems pleased with the proposal: Bloomberg's Ari Natter snapped a photo of new signs at EPA that tout the agency's "Strengthening Transparency in Regulatory Science."

ROCK STARS: Access Fund and American Alpine Club are sponsoring their annual "Climb the Hill" event today with professional rock climbers and outdoor recreation advocacy groups, who will hit the Hill today to talk outdoor recreation and public lands. Sen. Maria Cantwell will attend a reception with the group at 3 p.m. in 385 Russell. High-profile members of the rock-climbing community and executives from REI, Patagonia and The North Face will attend.

QUICK HITS

— Pair of investor-pushed resolutions pass at Kinder Morgan, Axios.

— Saudis pledge to "mitigate" loss of Iranian oil exports from U.S. sanctions. But crude prices rise anyway, The Washington Post.

— Emails: Perdue's donors, agency coordinated on biomass, E&E News.

— Hugh Hewitt used his MSNBC gig to praise efforts to weaken a law that his firm's client is accused of violating, Media Matters.

— Emails show Heritage Foundation offered Pruitt flights, hotel, and talking points for its conference, ThinkProgress.

HAPPENING TODAY

8:00 a.m. — The Women's Council on Energy and the Environment discussion on "Congressional Energy and Environmental Priorities: 2018 and Beyond," 400 North Capitol Street NW

8:30 a.m. — The International Trade Administration meeting of the Renewable Energy and Energy Efficiency Advisory Committee, 1401 Constitution Avenue NW

8:45 a.m. — Peter G. Peterson Foundation holds "the 2018 Fiscal Summit: Debt Matters," 1301 Constitution Ave NW

9:00 a.m. — House Appropriations Interior-Environment Subcommittee two-part hearing on "American Indian/Alaska Native Public Witnesses," 2007 Rayburn

9:00 a.m. — The Environmental Law Institute conference on "Infrastructure Review and Permitting: Is Change in the Wind?" 601 Massachusetts Avenue NW

9:00 a.m. — The Washington Post discussion on "The Energy 202 Live," 1301 K Street NW

9:30 a.m. — Senate Appropriations Interior-Environment Subcommittee hearing on Interior's FY 2019 budget request, 138 Dirksen

10:00 a.m. — House Energy and Commerce Energy Subcommittee hearing examining the state of electric transmission infrastructure investment, planning, construction and alternatives, 2123 Rayburn

1:00 p.m. — The United States Energy Association forum on "Chemical Looping Prospective: An Advanced Approach to Coal Utilization," 1300 Pennsylvania Avenue NW

2:00 p.m. — Center for Climate and Energy Solutions webinar on "City-Utility Partnerships for a Cleaner Energy Future."

THAT'S ALL FOR ME!

**** A message from Anheuser-Busch:** Anheuser-Busch announced that America's leading brewer has placed an order for up to 800 hydrogen-electric powered semi-trucks from the pioneer in hydrogen-electric renewable technology, Nikola Motor Company. The zero-emission trucks — which will be able to travel between 500 and 1,200 miles and be refilled within 20 minutes, reducing idle time — are expected to be integrated into Anheuser-Busch's dedicated fleet beginning in 2020.

Through this agreement Anheuser-Busch aims to convert its entire long-haul dedicated fleet to renewable powered trucks by 2025.

"At Anheuser-Busch we're continuously searching for ways to improve sustainability across our entire value chain and drive our industry forward," said Michel Doukeris, CEO of Anheuser-Busch. "The transport industry is one that is ripe for innovative solutions and Nikola is leading the way with hydrogen-electric, zero-emission capabilities. We are very excited by the possibilities our partnership with them can offer."

Learn more. **

To view online:

<https://subscriber.politicopro.com/newsletters/morning-energy/2018/05/zinkes-turn-on-the-hill-209472>

Stories from POLITICO Pro

EPA watchdog knocked Pruitt aides for slowing probe Back

By Alex Guillén | 05/09/2018 06:43 PM EDT

EPA's internal watchdog complained last year that Scott Pruitt's top aides were delaying handing over documents to auditors probing the administrator's travel practices, according to newly released emails.

That standoff between the EPA inspector general's office and Pruitt's team was resolved a month after the IG's staff flagged the issue and warned that the reticence to release the documents came close to impeding their probe, the emails show. But the incident highlights early tension between EPA's political appointees and the internal watchdog, which is now conducting multiple reviews of Pruitt's actions.

And it shows that concerns about the lack of transparency atop the agency since Pruitt joined have rankled people inside the agency as well as outside. POLITICO reported last week that Pruitt's political appointees were screening documents produced for public records requests related to the embattled administrator, slowing the release of information.

The new emails, released under a Freedom of Information Act request from California's Justice Department, show the IG's office was seeking information for its probe of Pruitt's frequent travel to Oklahoma on EPA business, enabling him to spend numerous weekends at his home in Tulsa.

That probe was later expanded to look at Pruitt's other travel practices, including his first-class flights that cost more than \$100,000, and it is expected to be completed by this summer. The watchdog has since opened additional probes into Pruitt's security spending, condo rental, soundproof phone booth, large raises for aides and allegations of retaliation against staff who questioned him.

Kevin Christensen, EPA's assistant inspector general for audits, wrote in September to a top career official in EPA's finance office to warn of a "potential situation" with the travel audit just two weeks after it began, the emails show. He flagged messages showing Pruitt's chief of staff Ryan Jackson was "screening" documents before releasing them to the Office of Inspector General.

"This does not fit the definition of unfettered access or comply with the Administrator memo on access and providing information to the OIG," Christensen wrote to Jeanne Conklin, EPA's controller who oversees financial management and reporting. "When we are denied access to information until approved for release, it raises the question as to what is being withheld and approved for release."

The auditors were able to obtain the documents on Pruitt's flights from the EPA's finance office in Cincinnati, even as Pruitt's staff continued to withhold them, Conklin wrote to Kevin Minoli, a career official who at that time served as EPA's acting general counsel.

"Do they not understand in the [Office of the Administrator]," Conklin asked Minoli. "Perhaps someone can speak to them and make them understand that the OIG has the documents already and they appear close to impeding the audit."

Both Minoli and Conklin stated in their email exchange that neither of them advised Pruitt's staff that they had the power to delay or withhold handing over documents to the OIG.

Minoli said in an email a week later that Jackson had delayed providing the records over concerns the audit might make public some previously redacted information, such as Pruitt's calendar and flight records. Minoli said he discussed the matter with the deputy inspector general, Chuck Sheehan, and noted the IG's office "has a long-standing practice of not using privileged information in their published work unless absolutely necessary."

An EPA spokesman on Wednesday declined to comment on the incident.

Other emails released to California's Department of Justice under the FOIA request also show career ethics officials warning Pruitt's aides about accepting industry awards and attending political events.

In March 2017, the Oklahoma-based National Stripper Well Association told Pruitt it would award him its "Industry Leader Award" at an annual gala, which was sponsored by Koch Industries. The group represents the

owners of the hundreds of thousands of small wells that produce less than 15 barrels of oil or 90,000 cubic feet of natural gas per day.

But EPA ethics official Justina Fugh noted in an email to Pruitt's schedulers, Sydney Hupp and Millan Hupp, that NSWA was registered to lobby the federal government and Pruitt would violate his ethics agreement if he accepted the honor.

The group had praised Pruitt's decision that month to halt the Obama EPA's request for oil and gas companies to provide the agency with information about methane emissions, a possible first step toward regulating pollution in those existing wells. "NSWA Got a Win at EPA Already!" touted an early March [blog post](#) by the group. It is unclear whether Pruitt's award was directly connected to that decision.

Fugh warned the Hupps that Pruitt would have to walk a fine line in accepting anything from a lobbying entity. Items with "no other intrinsic value" like a plaque may be OK, she said, but "an ashtray or coffee table book" would not be.

Pruitt ultimately appears to have accepted a plaque from the NSWA, according to a [photo](#) posted on the group's site and his own internal calendars. Another photo posted on the NSWA's Facebook page shows Pruitt [posing](#) with Koch executives.

Pruitt's Outlook calendar, released in response to public records requests, lists the topic of the speaking engagement as "acceptance of award, thank you."

EPA did not say whether Pruitt officially accepted the award from the group along with the plaque, despite Fugh's advice.

"We gave the plaque to [the Office of the Executive Secretariat] who confirmed that we could keep it," EPA spokesman Jahan Wilcox said. NSWA did not say Wednesday why it honored Pruitt.

Pruitt aides hinted to ethics officials last fall that he expected to be invited to increasing numbers of political events, which ethics officials warned raises a host of Hatch Act concerns about mixing political activities with his official duties.

Earlier in his tenure, Pruitt had decided not to attend an Oklahoma GOP fundraiser after reports revealed the event would feature a speech on EPA issues.

Last fall, Ronna McDaniel, the head of the Republican National Committee, invited Pruitt to attend an Oct. 25 fundraiser in Dallas for Trump Victory, a joint fundraising committee that funnels money to the RNC and Trump's reelection campaign.

"We will get more and more of these" invites as "political season" approaches, Jackson wrote to an ethics official.

Hatch Act restrictions would allow Pruitt to attend, but he would be barred from mentioning his EPA affiliation or asking for donations, Fugh replied. EPA could not cover his travel costs, although the agency could pay for his security detail's travel, Fugh added. Event organizers could not specifically invite guests with issues before the agency and would need to rescind invitations to anyone with business before EPA.

Pruitt ultimately appears to have skipped that fundraiser.

Emily Holden contributed to this report.

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Trump calls Blankenship after pushing for his loss in West Virginia [Back](#)

By Alex Isenstadt | 05/09/2018 10:55 PM EDT

President Donald Trump connected by phone on Wednesday with Don Blankenship, the former coal baron and ex-con whose Senate candidacy he helped sink.

Trump and Blankenship spoke briefly, according to three people familiar with the discussion. The conversation was described as straightforward, polite and cordial, with the president calling to exchange pleasantries and offer his congratulations on waging the campaign.

The call came two days after Trump took to Twitter to urge West Virginia Republicans to reject Blankenship's candidacy. In the tweet, Trump argued that Blankenship, who spent a year in jail following a 2010 explosion at his Upper Big Branch Mine that killed 29 workers, would be unable to defeat Democratic Sen. Joe Manchin in November.

Trump's intervention undermined Blankenship, who had aligned himself closely with the president — so much so that he described himself as "Trumpier than Trump."

Blankenship would go on to lose the primary decisively, finishing a distant third behind state Attorney General Patrick Morrisey and Rep. Evan Jenkins.

In his remarks to supporters on Tuesday evening, Blankenship attributed his loss to the president's last-minute intervention in the contest, saying that it had halted his momentum.

"I think if there was any single factor based on the polling at different times, the debates, and all the things I saw, it was probably President Trump's lack of endorsement — I don't know what to call it, but 'Don't vote for Don' tweet," he said. "I don't know what else it would have been."

In the final hours of the race, he said he was convinced that Trump had been pushed into the intervention by Senate Majority Leader Mitch McConnell, who had aggressively opposed Blankenship.

Blankenship on Wednesday released an "open letter" to Trump in which he accused the president of spreading "fake news against me."

"Your interference in the West Virginia election displayed a lack of understanding of the likely outcome of the upcoming general election," Blankenship added. "Patrick Morrisey will likely lose the general election. It's too late to change that, but it's not helpful to do to me what others are doing to you."

The president also connected briefly with Jenkins, but as of Wednesday evening had yet to connect with Morrisey, the winner of the primary. On Tuesday, though, Morrisey spoke with Donald Trump Jr. During the call, the president's eldest son promised to be helpful.

Trump's calls on Wednesday, several Republicans said, were partly aimed at healing the wounds following a deeply divisive primary. Blankenship has yet to endorse Morrissey, who aggressively attacked him during the final days of the race.

Some in the party are concerned that the deep-pocketed Blankenship, who spent more than \$2.5 million of his own funds in the primary, could wage an effort to damage Morrissey in the general election.

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DOE loan guarantee programs hit hard in White House rescissions package [Back](#)

By Anthony Adragna | 05/08/2018 11:08 AM EDT

More than \$5 billion in Energy Department loan guarantee programs for clean energy and vehicle technologies would be cut under a \$15 billion rescissions [request](#) unveiled today by the White House.

The proposal would cut \$684 million from clean energy loan guarantee programs, on top of the \$4.33 billion in proposed cuts to Advanced Technology Vehicles Manufacturing loan program [already announced](#) by the Trump administration.

"This proposed rescission would eliminate subsidy amounts that are inconsistent with the President's policies," the proposal says of cutting from the loan guarantee programs.

In addition, the package would cut \$10 million in water quality research grants, which the proposal says "are duplicative with other Federal programs."

WHAT'S NEXT: The package is expected to easily pass the House but faces a less certain fate in the Senate.

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Trump spending cut package to head directly to House floor [Back](#)

By Sarah Ferris | 05/09/2018 01:03 PM EDT

House Republican leaders are moving quickly to tee up the White House's \$15 billion package of proposed spending cutbacks.

GOP leaders plan to release legislative text of [the White House's proposal](#) as early as today, a House GOP aide confirmed.

The package is expected to closely mirror the Trump administration's request, which targeted unspent dollars from years-old accounts.

It will not go through the House Appropriations Committee, another GOP aide confirmed. That sets up the bill directly for a floor vote.

Most Republicans have embraced the proposed cuts, even as some budget hawks complained that most of the savings are only on paper.

But some, like GOP Rep. [Vern Buchanan](#) of Florida, have rejected the idea of cutting \$7 billion of budget authority from the Children's Health Insurance Program.

White House officials have argued that most of the funding has technically expired and can't be used, so it would have zero impact on the program.

The CBO confirmed that point today, saying that there would be no actual cuts or coverage reductions for CHIP.

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House GOP leaders unveil rescissions bill [Back](#)

By Sarah Ferris | 05/09/2018 08:28 PM EDT

House Republican leaders today unveiled a package of spending cuts, following a request from President Donald Trump this week.

The House GOP bill contains \$10.45 billion in specific cuts, including roughly \$7 billion to the Children's Health Insurance Program.

Other cutbacks in the GOP bill — including one targeting an energy program in the 2009 Obama-era stimulus bill — do not provide specific dollar amounts.

House GOP leaders will now begin whipping support for the bill, which is expected to go directly to the House floor for a vote. Senate GOP leaders have said they will consider the bill if and when it passes the House.

Under a decades-old law, presidential rescissions requests can pass the Senate with a simple majority, instead of the usual 60-vote threshold for procedural votes.

Democrats argue that Trump's bill would require the full 60 votes, however, because it targets mandatory funding, and not solely discretionary.

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May 18, 2018

Latest News

Suppliers Seek 'Robust' Vehicle GHG Standards With Additional 'Flexibility'

Auto industry suppliers are detailing their call for the Trump administration to embrace “robust” vehicle greenhouse gas and fuel economy standards with more flexibility for automakers, urging agencies to formally seek comment on an “advanced technologies flexibility option” that would recognize California’s “critical role” in limiting emissions and possibly prevent years of litigation over the program.

Top Advisers Pan Pruitt’s Science Transparency Rule, Seek SAB Review

Top EPA science advisers, including Administrator Scott Pruitt's hand-picked chairman of the agency's Science Advisory Board (SAB), are strongly criticizing the administrator's controversial plan to require only publicly available research to justify its regulations, charging it will undermine rules' integrity and was developed without adequate review.

EPA Science Plan Skirted Usual Process, Raising Finalization, Legal Doubts

The Trump EPA's controversial plan requiring use of publicly available research to justify rules appears to have been developed by political appointees without following the agency's usual action development process (ADP) for crafting important rules, leaving career staff and program offices out of the loop but raising doubts about how it will be finalized without them.

Magistrate Suggests Court Unlikely To Halt Discovery In Youth Climate Suit

A federal magistrate judge is strongly suggesting that he is unlikely to grant the Trump administration's request to halt discovery in a novel suit brought by 21 youth plaintiffs who charge that the government is violating the Constitution and the public trust doctrine by failing to protect them from the worst harms of climate change.

Climate Beat

Regulation: Wehrum sidesteps queries on SAB review of science rule

The EPA air chief's responses to a Democratic lawmaker's questions suggest the agency may urge its science advisors to avoid a review of its controversial rule seeking to block the use of 'secret science.'

Vehicles: Northeast states float EV charging strategy

The strategy seeks to coordinate a range of efforts regarding electric vehicle charging deployment, and could complement other state efforts to encourage sales of such vehicles to improve air quality and address climate change.

Loose Change: Amid scandals, Pruitt lawyers up

In today's news roundup: The EPA chief has hired a white-collar defense attorney to advise him as he faces more than a dozen official investigations, and hired another attorney to set up a legal defense fund.

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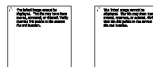
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Subject: Morning Energy, presented by America's Pledge: First SAB meeting to eye EPA reg rollbacks — Cramer hits Trump's legislative director — DOE: U.S. generally 'well prepared' for grid hacks

By Kelsey Tamborrino | 05/31/2018 05:43 AM EDT

With help from Eric Wolff

PRUITT'S SAB STORY: EPA's independent Science Advisory Board will meet today and Friday for the first time since Administrator Scott Pruitt barred scientists on the committee from receiving EPA grants and boosted its ranks with industry representatives — and the group's agenda is packed. The SAB will look at Pruitt's "secret science" proposal to bar EPA from using studies that don't make public all their data, as well as the Clean Power Plan repeal, Pruitt's decision to relax 2022-25 auto emissions standards, changes to the 2016 methane rule for new oil and gas wells and effort to repeal a rule regulating emissions from "glider" trucks — and that's not all.

A lot to dive into: The heavy slate of issues is unusual for the advisory board, Pro's Alex Guillén reports. Several current and former SAB members say it's unprecedented for the board to consider reviewing so many regulatory actions. But like green groups and critics of Pruitt, the SAB scientists say EPA has declined to share information about its regulatory rollbacks. "The agency has not been forthcoming about how they're developing the relevant science work products," said Chris Frey, a professor of environmental engineering at North Carolina State University and a SAB member since 2012.

EPA keeps quiet: SAB has been conducting twice-yearly reviews of EPA's planned regulatory actions since 2012, members said. It's an effort designed to enable the advisory board to help guide EPA before its rules are finalized. But this time around, the SAB's working groups say EPA wasn't being forthcoming with information. "Basically they just didn't provide us with any answers," said Frey. "That kind of put us in a position where all we can really do is say EPA has not identified the science or any plan to review it, and clearly there are science issues that are in the proposed rule."

What to expect: It's not immediately clear whether the full SAB will vote today to advance the reviews. But Frey noted that some of the members appointed by Pruitt had been on the working groups, giving him hope that the full board will back the recommendations to look deeper into the regulatory rollbacks. Should SAB adopt them, Alex reports, it likely would mean setting up special subcommittees that include current members plus outside experts to question EPA further. Read more [here](#).

IT'S THURSDAY! I'm your host Kelsey Tamborrino, and Entergy's Rob Hall correctly identified former President William Howard Taft as the first to see a Major League Baseball game in his hometown of Cincinnati. For today: Name all the presidents who were married while in office. Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseyam](#), [@Morning_Energy](#) and [@POLITICOPro](#).

Register for the Pro Summit: Join Pro subscribers, expert reporters and key decision-makers from the executive branch, federal agencies and Congress for a full day of incisive policy conversations on July 17. [Learn more](#).

THE LONG AND SHORT OF IT: In an unusual attack on the White House's legislative affairs director, North Dakota Rep. Kevin Cramer blamed Marc Short explicitly for the party's legislative failures in the Senate, including ending the Obama rule on flaring and venting from oil and gas wells. After POLITICO published a story outlining the awkward dynamic between Heidi Heitkamp, Cramer and the White House, Cramer told North Dakota radio host Rob Port that he had done some digging and believes that there "are some people in the White House that think, you know, the president's too friendly too her," Burgess Everett recaps.

Moreover, Cramer laid specific blame at Short's feet for failed GOP efforts in the Senate to roll back an Obama-era regulation limiting flaring and venting, as well as repealing Obamacare. Heitkamp voted against gutting that flaring rule, something Cramer has criticized her for, in particular. "If Marc Short was very good at his job, you know, we'd have a repeal and replacement of Obamacare, we'd have a replacement of the venting and flaring rule," Cramer said. Read that story here.

PRUITT'S MEDIA BLITZ: The EPA administrator visited Rosslyn, Va., on Wednesday to sit for interviews with two conservative media outlets. One was conducted by Boris Epshteyn for his Sinclair Broadcasting segment, "Bottom Line with Boris." (Watch that here.) The other was with the Washington Free Beacon, where Pruitt repeated familiar talking points in defense of the ongoing scandals and investigations that have surrounded him over the past few months. Pruitt said he still has President Donald Trump's backing, noting that Trump has "spoken very strongly and consistently" about their working relationship. "It's been intense the last couple of months, but he's been very encouraging, very empathetic and very supportive rather consistently," Pruitt said. The administrator also discusses the Paris climate agreement, "The Bachelorette" and, of course, baseball in the 13-minute segment, which you can listen to here.

GRID AND BEAR IT: In response to an executive order signed last year, the Energy Department released a new report Wednesday that said senior government officials and electric sector executives don't know enough about how energy companies could recover from a disruptive cyberattack, and those companies aren't thinking about cyber threats enough when building out their supply chains. While the report mainly hammered home some long-known problems with the grid, DOE highlighted how grid resilience efforts suffer because of "gaps in incorporating cybersecurity concerns, including planning for long-term disruption events, into state emergency response and energy assurance planning." Generally, however, the report said the U.S. is "well prepared to manage most electricity disruptions." Read more from Pro's Eric Geller here.

WHERE'S PERRY? Energy Secretary Rick Perry delivers remarks this morning on critical infrastructure at DOE's Texas-Israel Cyber Security Conference in Dallas. The department also announced that Perry would address the DOE's annual Cyber Conference in Austin on Monday. During both events Perry is expected to discuss DOE's new Cybersecurity, Energy Security and Emergency Response office, as well as efforts at DOE to address cyber vulnerabilities in the energy sector.

ABOUT THAT GLIDER RULE: The New York Times' Eric Lipton tweeted out new documents late Wednesday that give new details into the controversial Tennessee Technological University study on truck emissions that Pruitt used to consider rewriting part of the Phase 2 truck rules. "The letters obtained via open records request show that the principal investigator at Tenn Tech who conducted study funded by Fitzgerald, the company that makes the so-called glider trucks, disavowed the work, saying that it had been distorted in a fraudulent way," Lipton tweeted.

BY THE NUMBERS: The federal government spent \$13.2 billion across 19 agencies during fiscal 2017 on programs related to climate change, a report from the Government Accountability Office says. That's an overall \$1.5 billion increase across the federal government over fiscal 2016, Pro's Anthony Adragna reports. And it's an increase of \$4.4 billion since fiscal 2010, according to the report, which was request by House Science Chairman Lamar Smith. Read more.

CALIFORNIA GETS CHARGED UP FOR EVs: The California Public Utilities Commission is expected to approve a \$589 million program for its four investor-owned utilities to build out their electric vehicle charging infrastructure. The plan is part of the implementation of California's aggressive greenhouse gas law passed in 2015. Most of the money — which will ultimately come from ratepayers — will go toward setting up electric vehicle charging stations and related infrastructure. California leads the nation by far in electric vehicle sales and adoption.

NO MAJOR FLAWS IN FERC PROCESS: Auditors in the DOE inspector general's office said they found no major flaws in FERC's process for reviewing interstate natural gas pipelines, according to a new report. But they also flagged concerns about FERC's transparency and how it handles public comments. The auditors said that "nothing came to our attention to indicate that FERC had not performed its due diligence" in how it balanced public benefits of a proposed project with its adverse impacts. But the report also said regulators' "had not fully ensured" that the certification process was transparent to those who want to participate, and it hit the agency's eLibrary documentation system as difficult to use, Pro's Darius Dixon reports.

**** A message from America's Pledge:** America's Pledge is flipping the script on climate action. One year after the federal government announced it would pull out of the Paris Agreement, 2,700+ U.S. cities, states, and businesses are saying, "We Are Still In." See how far we've come: <https://politi.co/2koAHZb> **

FERC DENIES PENNEAST REHEARING: FERC on Wednesday denied a rehearing sought by the Delaware Riverkeeper Network and Sourland Conservancy on the controversial PennEast pipeline. Commissioner Richard Glick issued a separate statement on the agency's use of tolling orders. "This proceeding, in particular, illustrates the need for prompt action on rehearing requests," Glick wrote. " ... I also have serious concerns regarding the Commission's practice of issuing conditional certificates — which, notwithstanding their name, vest the pipeline developer with full eminent domain authority — in cases where the record does not contain adequate evidence to conclude definitively that the pipeline is in the public interest."

GREENS ENDORSE DE LEON OVER FEINSTEIN: 350.org co-founder Bill McKibben and 350 Action said Wednesday it is backing Kevin de León in his bid to challenge California Sen. Dianne Feinstein. McKibben said de León, a current California state senator, "has been a strong champion of clean energy — and an effective one, using his power in Sacramento to make change happen against the strong opposition of the fossil fuel industry." Read De León's candidate questionnaire answers here.

SELC SUES OMB OVER REORG: The Southern Environmental Law Center sued the Office of Management and Budget Wednesday for its failure to release information under FOIA on the reorganization at federal agencies that manage public lands. SELC says OMB has not provided requested information under a November 2017 FOIA request, nor has it made a determination or otherwise responded to the request, and has subsequently stopped communicating with SELC. The center is seeking "all records in the custody or control of OMB submitted in connection with Executive Order 13781 by any agency responsible for the management of federal public lands," including the Forest Service, National Park Service, BLM and the Fish and Wildlife Service. The EO in question directed each agency head to submit a report to OMB outlining proposed changes to their agency. Read the lawsuit.

CRES BACKS McMASTER IN SOUTH CAROLINA: Citizens for Responsible Energy Solutions will announce a \$175,000 television and digital ad buy today highlighting South Carolina Gov. Henry McMaster's record on clean energy. "First as lieutenant governor and now as governor, his commitment to the development of advanced energy technologies like natural gas and solar power is helping the state's economy and job market thrive," CRES Chairman and Executive Director James Dozier said.

McCARTHY NAMED DIRECTOR OF HARVARD CENTER: Harvard T.H. Chan School of Public Health announced former EPA Administrator Gina McCarthy will lead its newly launched Center for Climate, Health,

and the Global Environment. Under McCarthy, C-CHANGE announced a collaboration between Harvard University and Google to reduce the use of harmful chemicals in construction and renovation projects. "C-CHANGE will ensure that cutting-edge science produced by Harvard Chan School is actionable — that the public understands it, and that it gets into the hands of decision-makers so that science drives decisions," McCarthy said in a statement.

MOVER, SHAKER: Mitch Schwartz started this week as communications director for Jason Crow's campaign in Colorado's 6th Congressional District. Schwartz previously worked for SKDKnickerbocker.

— **PUSH Buffalo, a sustainable housing group**, announced Rahwa Ghirmatzion as its new executive director as of August 2018. Ghirmatzion has served as the organization's deputy director since 2017.

QUICK HITS

- Exxon aims to boost production even with any climate rules, [Associated Press](#).
- Buffett utility to be first in U.S. to reach 100 percent renewables, [Reuters](#).
- Chevron shareholders reject climate change resolutions, [Washington Examiner](#).
- It's not every day you see a tropical depression over Indiana — but here it is, [The Washington Post](#).
- U.S. solar manufacturing poised to boom in wake of Trump tariffs, [Bloomberg](#).
- Oil prices steady after big drop on OPEC talks, [The Wall Street Journal](#).

HAPPENING TODAY

10:00 a.m. — The U.S. Energy Association [forum](#) on coal mine drainage as a domestic source of rare earth elements, 1300 Pennsylvania Ave NW

10:00 a.m. — The World Resources Institute [webinar](#) on "Guidance for Apparel and Footwear Sector Companies to Set Science-Based Targets," focusing on greenhouse gas emissions

12:00 p.m. — Women's Council on Energy and the Environment [event](#) on "Solar Jobs and Community Impact," 1350 I Street NW

12:00 p.m. — The Property Casualty Insurers Association of America briefing on "Hurricane Season: Preparedness, Response, and Recovery," 2044 Rayburn

5:00 p.m. — House Science Committee [field hearing](#) on "Earthquake Mitigation: Reauthorizing the National Earthquake Hazards Reduction Program," Huntington Beach, Calif.

THAT'S ALL FOR ME!

**** A message from America's Pledge:** One year after President Trump announced plans to withdraw from the Paris Agreement, America's Pledge is showing the world that U.S. cities, states, and businesses can lead us towards our goals - with or without Washington. <https://politi.co/2koAHZb> **

To view online:

<https://subscriber.politicopro.com/newsletters/morning-energy/2018/05/first-sab-meeting-set-to-begin-237617>

Stories from POLITICO Pro

EPA boosts industry membership on key advisory boards [Back](#)

By Alex Guillén | 11/03/2017 01:41 PM EDT

EPA officially announced the new line ups for several key advisory boards today, bolstering their membership with employees of energy companies and state agencies just days after Administrator Scott Pruitt ordered scientists who have received agency grant money to give up their EPA funding or their seat.

As POLITICO [reported](#) on Tuesday, the [Science Advisory Board's](#) new additions include representatives from Phillips 66, Total, Southern Co., the American Chemistry Council and NERA Economic Consulting, a firm frequently hired by industry interests. Their additions boost the industry membership of SAB, although the panel had previously included members from Dow Chemical and other industries or companies.

The [Clean Air Scientific Advisory Committee](#), which provides health advice for air quality standards, also has three new members. Aside from new Chairman Tony Cox, an independent consultant, the new members are Larry Wolk of the Colorado Department of Public Health and Environment and James Boylan of the Georgia Department of Natural Resources.

EPA also announced a slate of new additions to the [Board of Scientific Counselors](#), which advises on research issues. The former chairwoman, Deborah Swackhamer of the University of Minnesota, is now listed as member, while Paul Gilman of waste-to-energy company Covanta has taken over as chair.

Other new BOSC members include representatives from the North Dakota Petroleum Council, Eli Lilly and Co., the Defense Threat Reduction Agency, the Arkansas Department of Environmental Quality, the California Energy Commission and the consulting firm Ramboll Environ.

To view online [click here](#).

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EPA's science advisers turn eyes on Pruitt's rollbacks [Back](#)

By Alex Guillén | 05/31/2018 05:00 AM EDT

EPA's influential Science Advisory Board will meet on Thursday for its first time since Administrator Scott Pruitt filled it with a slate of industry representatives — and it's got a long list of controversial rule rollbacks to review.

The SAB plans to pore over the science EPA is using to justify rollbacks on emissions regulators for cars, trucks, power plants and oil and gas wells — as well as Pruitt's proposed "transparency" rule for scientific studies.

Several current and former SAB members told POLITICO that it was unprecedented for the board to consider diving into so many regulatory actions, but the heightened scrutiny from the outside experts came about because the agency stonewalled the scientists' questions about Pruitt's deregulatory decisions. That echoes the complaints from environmentalists and public advocacy groups who say EPA has declined to share information about how it was justifying easing the regulations put in place during the Obama administration.

"The agency has not been forthcoming about how they're developing the relevant science work products," said Chris Frey, a professor of environmental engineering at North Carolina State University and a SAB member since 2012.

In a move critics derided as an attempt to stack the 44-member board with industry-friendly voices, Pruitt last year broke with the tradition of reappointing first-term SAB members for second three-year stints by removing several advisers who received grants from the agency. In their places, he installed scientists from the fossil fuel and chemicals sectors and several Republican environmental officials. Among the new members are representatives from Phillips 66, Total, Southern Co., the American Chemistry Council and NERA Economic Consulting.

In addition to studying Pruitt's proposal to bar EPA from using studies that don't make public all their data, the SAB's working groups suggested the full group take a closer look at the repeal of the Clean Power Plan and EPA's reconsideration of its related rule limiting carbon emissions from future power plants. Also up for review are Pruitt's decision to relax 2022-2025 auto emissions standards, changes to the 2016 methane rule for new oil and gas wells, and EPA's effort to repeal a rule regulating emissions from "glider" trucks.

The working groups also deferred decisions on two other rulemakings: the Waters of the U.S. rewrite and rules on a special class of "persistent, bioaccumulative and toxic chemicals" under the Toxic Substances Control Act. SAB can decide whether to conduct a deeper review into those once EPA has reviewable regulatory language available, the groups said.

Frey, who has been a SAB member for six years, said having multiple rules up for review was very unusual for the board.

"It's very rare that we've recommended to the full Science Advisory Board that there should be an SAB action," he said.

SAB has been conducting twice-yearly reviews of EPA's planned regulatory actions since 2012, members said, an effort designed to enable the advisory board to help guide EPA before its rules are finalized.

In the early days, getting information from EPA was "like pulling teeth," said Kimberly Jones, a SAB member from 2011 through 2017 and the chair of environmental engineering at Howard University. But that quickly improved once EPA knew the scope of SAB inquiries, she added.

The SAB's working groups review how EPA uses scientific studies in its rulemakings, including whether and how a study was peer-reviewed and if EPA has properly accounted for uncertainties in the scientific findings. The groups typically find that further reviews aren't needed.

But this time around, the working groups said EPA didn't respond to their questions about many of Pruitt's highest-profile rollbacks.

"Basically, they just didn't provide us with any answers," Frey said. "That kind of put us in a position where all we can really do is say EPA has not identified the science or any plan to review it, and clearly there are science issues that are in the proposed rule."

Frey pointed to lengthy memos from the working groups that included multiple pages of questions that had been posed to EPA for each rulemaking. EPA responded with short statements promising to keep the issues in mind as it develops the final rules.

"The response from the agency was basically a non-response," Frey said.

An agency spokesman said in a statement that SAB "plays an important role" advising EPA.

"We value the Board's expertise, and we welcome feedback from the chartered panel on areas in which they are interested in getting additional scientific information that is relevant to the rulemaking process," the spokesman said.

It was not clear whether the full SAB will vote on Thursday to advance the reviews.

Frey noted that some of the members appointed by Pruitt had been on the working groups, giving him hope that the full board will back the recommendations to look deeper into the regulatory rollbacks.

Should SAB adopt them, it likely would mean setting up special subcommittees that include current members plus outside experts to question EPA further.

The board can advise EPA only on scientific matters, not policy or legal issues. In several cases, like with the repeals of the Clean Power Plan and the glider rule, EPA says it has a legal argument about statutory authority that does not rely on scientific issues.

But even then, Frey said, EPA must keep the science in mind.

"It's in the best interest of the agency to make sure that it's using appropriately developed and reviewed science in its rules," Frey said. "And the flip side of that is if the agency's not doing that, it could open itself up to legal challenges for not following appropriate procedures to develop the science."

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GOP sweats Trump's Heitkamp flirtation [Back](#)

By Alex Isenstadt and Burgess Everett | 05/30/2018 05:08 AM EDT

When a small group of alarmed White House aides caught wind that Sen. Heidi Heitkamp — one of the most endangered Democrats up for reelection in 2018 — would be attending President Donald Trump's bill signing last week, they raced to stop it.

Word eventually reached Senate Majority Leader Mitch McConnell, who has made unseating Heitkamp a top priority. He opted not to intervene, and the invitation stood: As the president signed a banking deregulation bill into law before a national audience, Heitkamp was right next to him, the only Democrat in the room.

As the election year kicks into high gear, Republicans have grown increasingly frustrated with Trump's ongoing flirtation with the freshman senator. At a time when many in the GOP fear that the president's unpredictable style will undercut their best-laid midterm plans, the relationship has given Heitkamp — who is seeking reelection in a state where Trump won nearly two-thirds of the vote — fodder to portray herself as a presidential ally.

Her office keeps a running list of the dozen-plus meetings Heitkamp has had with Trump and his top advisers since the 2016 election. And the senator is fond of noting that she forged close ties with Trump's former top economist, Gary Cohn. The president met with Heitkamp in Trump Tower after the 2016 election to discuss a

possible Cabinet position, asked her to join him on Air Force One, and invited her onstage to join him and her Republican opponent, Rep. Kevin Cramer, during an appearance in North Dakota.

"Everyone is saying, 'What's she doing up here?'" the president said at the September event to sell his tax reform plan, which Heitkamp eventually opposed. "But I'll tell you what. Good woman, and I think we'll have your support, I hope we'll have your support. And thank you very much, senator, thank you for coming up."

After last week's bill signing, Heitkamp's allies raced to capitalize. The North Dakota Democratic Party sent out a tweet with an image of Cramer looking on uncomfortably as the president stood next to Heitkamp.

"At a bill signing today, @HeidiHeitkamp got a shout out and all @kevincramer got was a photo op next to a chair," the state party boasted.

"We will see footage of this on every platform," said Doug Heye, a former top Republican National Committee official. "It's a huge gift for her campaign."

Trump aggressively recruited Cramer to give up his House seat to take on Heitkamp, and his actions since have left some of Cramer's closest allies feeling snubbed. They note that while Trump has savaged Democratic incumbents Joe Donnelly of Indiana and Jon Tester of Montana and visited a growing list of states to pump up Republican Senate hopefuls — most recently Tennessee, where he appeared Tuesday on behalf of Rep. Marsha Blackburn — he has yet to make a campaign appearance with Cramer. Nor has the attack dog-in-chief attacked Heitkamp.

After Cramer learned last year that Heitkamp would be accompanying the president on Air Force One to North Dakota, he complained bitterly to the White House, according to two people with direct knowledge of the discussions. Heitkamp, Cramer predicted at the time, would try to use it to her political advantage. (A Cramer adviser, Pat Finken, denied that the congressman had complained about the senator riding on Air Force One.)

The administration has taken steps to assure Cramer that he has the president's full support. The congressman has been regularly in touch with White House political director Bill Stepien, and the two met earlier this month. Trump has agreed to hold a rally for Cramer later this year.

In an interview, Cramer shrugged off Heitkamp's attendance at the bill signing and said there would soon be "clarity" on who Trump supports in the race.

Yet the congressman declined to predict whether the president would go after Heitkamp aggressively, as Trump has done with other Democratic incumbents. Cramer seemed aware of the warmth between the president and the senator. Trump has asked Cramer whether he likes Heitkamp, and when the congressman responds yes, the president seems to be "relieved," Cramer said.

"Politically, North Dakota's a pretty nice state. So I don't know that turning it on her is necessarily politically helpful to me," Cramer said. "They may just be concerned that she's a woman and maybe that has an impact. I just don't know."

Heitkamp said she's proud of her ability to work with the president.

"I have a friendly relationship. I have a very important working relationship," she said in an interview, "not just with him but other members of the administration."

Trump's reluctance to go after Heitkamp stems in part from the simple fact that he needs her vote. With Republicans clinging to a narrow Senate majority, the White House has pushed for her support on several

contentious votes, including the recent confirmations of CIA Director Gina Haspel and Secretary of State Mike Pompeo. She also backed Trump's nominations of Supreme Court Justice Neil Gorsuch and Environmental Protection Agency Administrator Scott Pruitt.

Last week's signing ceremony was organized by White House Office of Legislative Affairs Director Marc Short. He said he extended an invitation to Heitkamp because she played a central role in passing the banking deregulation law.

"She was an original cosponsor of the bill," Short said. "But she's also someone who opposed tax relief, who opposed repeal of Obamacare, and someone who will always support Chuck Schumer. So you can be sure the president will be actively campaigning in North Dakota this cycle."

Cramer's February entry into the race followed an intense pursuit from Trump and top White House officials. After Cramer initially said in January that he wouldn't run for Senate, he received overtures from Trump, White House counselor Kellyanne Conway, and energy executive and Trump donor Harold Hamm within a three-day period. Trump also met with Cramer's wife, Kris.

Cramer said Trump told him at the time that he'll "be out there campaigning more than you are." Trump's entreaties, Republicans contend, helped to push Cramer into the contest. Cramer won his statewide, at-large House seat in 2012, the same year Heitkamp entered the Senate.

"The president leaned on him very hard. The president wanted the best candidate, and everyone in the state thought Kevin was the best candidate to beat Heidi," said Gary Emineth, a former North Dakota GOP chairman who is close with the congressman. "You know how the president is. He just doesn't quit."

Heitkamp predicted that Trump would attack her eventually. While she has maintained a positive working relationship with the president, she said it pales in comparison to Cramer's staunch loyalty.

"I don't think anyone can match his Trump credentials," Heitkamp said. "He is somebody who will always do what the president asks him to do, regardless of whether it's good for North Dakota."

As of late, the senator has been airing commercials that highlight her balancing act. "When I agree with the president I vote with him — and that's over half my votes," she says in a spot that began airing this month. "And if his policies hurt North Dakota, he knows I'll speak up."

Cramer accused Heitkamp of acting like a "Republican wannabe" with her occasional support for key Trump nominees.

"Her trying to cozy up to Donald Trump has resulted in good votes," Cramer said. "But every time she tries to become more like me, it's more flattering to me than it is to her."

Democrats, however, couldn't be happier to portray Cramer as a jilted lover.

Last week, the North Dakota Democratic Party released a video featuring a montage of clips of the president praising Heitkamp and shaking her hand as Cramer looks on — set to the sad sounds of R.E.M.'s "Everybody Hurts."

To view online [click here](#).

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GOP Senate candidate lashes out at Trump's legislative director [Back](#)

By Burgess Everett | 05/30/2018 06:27 PM EDT

Rep. Kevin Cramer, one of the GOP's top Senate recruits, launched an unusual attack on the White House's legislative director Wednesday, blaming him explicitly for the party's legislative failures in the Senate.

The comments from Cramer (R-N.D.) come amid rising GOP angst over President Donald Trump's close relationship with his opponent in the North Dakota Senate race, Democratic Sen. Heidi Heitkamp.

Heitkamp was the only Democrat invited to the White House last week for a bank deregulation bill signing, alarming some White House aides and Republicans. After POLITICO published a [story](#) on Wednesday outlining the awkward dynamic between Heitkamp, Cramer and the White House, Cramer [told](#) North Dakota radio host Rob Port that he had done some digging and believes that there "are some people in the White House that think, you know, the president's too friendly too her."

Then Cramer laid into White House legislative affairs director Marc Short for two prominent failed GOP efforts in the Senate: Repeal of Obamacare and the rollback of an Obama-era regulation that would limit flaring and venting from oil and gas wells. Heitkamp voted against both and Cramer has criticized her in particular over the flaring vote.

"If Marc Short was very good at his job, you know, we'd have a repeal and replacement of Obamacare, we'd have a replacement of the venting and flaring rule," Cramer said.

In an interview last week with POLITICO, Cramer insisted he is not angry over Trump's political flirtations with Heitkamp: "Not the case at all. I've been fine with it. I just don't think it hurts me." And on Wednesday on Port's show, Cramer said the spat over Heitkamp's attendance at the banking bill signing "just seems to be an argument between Marc Short and other people in the White House."

Short extended an invitation to Heitkamp to the bill signing, but also has knocked Heitkamp for opposing the GOP's tax law. He did not respond to a request for comment for this story.

Heitkamp has tried to stay out of the back and forth, though she is playing up her collaborations with a president that won her state in 2016 by more than 35 points.

"The president has got bigger fish to fry and bigger problems to solve than whether Kevin likes him more than I do," Heitkamp said.

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DOE report: U.S. generally 'well prepared' for grid hacking, but gaps remain [Back](#)

By Eric Geller | 05/30/2018 06:05 PM EDT

Senior government officials and electric sector executives don't know enough about how energy companies could recover from a disruptive cyberattack, and those companies don't consider cyber threats enough when building out their supply chains, according to a new Energy Department [report](#).

Grid resilience efforts also suffer because of "gaps in incorporating cybersecurity concerns, including planning for long-term disruption events, into state emergency response and energy assurance planning," said the report.

"The United States is, in general, well prepared to manage most electricity disruptions," the Energy Department said in its report. But gaps still exist in areas like situational awareness, workforce development, separation of roles and responsibilities and the coordinated use of resources like digital defense tools.

DOE completed the report last August as part of President Donald Trump's May 2017 cyber executive order but did not publish it until today.

The report mostly hammered home long-understood problems with protecting the power grid from hackers, including the challenges of sharing cyber threat data between partners

"The variation in infrastructure ownership and operation and the jurisdictional overlap add complexity to sharing actionable information in a timely manner," the report said. "These complexities are compounded when information is classified or sensitive due to the limited options and access to facilitate sharing."

It also warned of compounding problems in the event of a major power outage. For example, "as cyber incidents may impact disparate systems across the country, the impacted owner-operators may not be familiar with each other's systems and procedures."

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DOE working to stand up new cyber unit in fiscal 2018 [Back](#)

By Darius Dixon | 03/01/2018 01:11 PM EDT

The Energy Department is aiming to have its new cybersecurity office fired up before the end of the fiscal year, Bruce Walker, the agency's top electricity official, said today.

"We're working with Congress because we put it into the FY 2019 budget proposal ... and we're looking to stand it up earlier because of the importance and our sector-specific agency authority [for cyber incidents]," he told reporters after testifying before the Senate Energy and Natural Resources Committee.

Walker has previously noted that DOE wouldn't need additional congressional authority to create the office or a new assistant secretary job to lead it. Today, he also said that the design change is meant to elevate cyber issues as well as to divide up the agency's infrastructure work into short-term and long-term operations.

Creating the Office of Cybersecurity, Energy Security and Emergency Response is a reaction to a range of issues, including Congress giving DOE more emergency authorities in the 2015 FAST Act ([H.R. 22 \(114\)](#)), the relentless need to improve cyber defenses, and the deepening marriage between the natural gas and electric sectors.

Walker would still lead the electricity office, which would focus on long-term infrastructure plans and set research-and-development goals, including for cybersecurity. Meanwhile, the new CESER office would be "actionable, near-term and highly responsive" recovery work like the devastation in Puerto Rico or the immediate response to a cyberattack, he said.

"One basically feeds the other," Walker said. "[CESER] responds to the incidents, OE will design them out of the system on a going-forward basis."

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GAO: Government spent \$13.2B on climate change last year [Back](#)

By Anthony Adragna | 05/30/2018 04:34 PM EDT

The federal government spent \$13.2 billion across 19 agencies during fiscal 2017 for various programs related to climate change, according to [a report](#) from the Government Accountability Office released today.

Overall, climate change-related spending across the federal government rose \$1.5 billion between fiscal 2016 and 2017 and grew \$4.4 billion since fiscal 2010, according to the report.

GAO examined the budget justifications for six agencies accounting for 89 percent of all climate change spending and found just 18 of 533 programs within those agencies whose primary purpose is to address climate change. It further concluded that those programs primarily dedicated to addressing the problem "serve different purposes, target different audiences, or operate at different time periods and scales, which minimizes potential overlap or duplication." The other programs had multiple purposes beyond addressing climate change.

The White House Office of Management and Budget reports the government has spent over \$154 billion since 1993 to understand and address climate change.

House Science Chairman [Lamar Smith](#) (R-Texas) requested the report.

To view online [click here](#).

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DOE IG: No big flaws in FERC pipeline review process, but transparency should improve [Back](#)

By Darius Dixon | 05/30/2018 03:21 PM EDT

Federal watchdogs said they found no major flaws in FERC's process for reviewing interstate natural gas pipelines, but they flagged concerns about its transparency and how it handles public comments, according to [new report](#).

Auditors in the Energy Department inspector general's office who reviewed FERC's pipeline certification process said that "nothing came to our attention to indicate that FERC had not performed its due diligence" in how it balanced public benefits of a proposed project with its adverse impacts.

But the report said regulators' "had not fully ensured" that the certification process was transparent to those who want to participate and that its eLibrary documentation system was difficult to use. And it said FERC lacked a consistent method for tracking and addressing comments submitted on a proposed project.

"FERC had not specifically designed its public-facing systems for use by the general public," the IG report said, noting that "although available to the general public, eLibrary had been designed for use by practitioners, the legal community, and other stakeholders."

The report also said parts of the eLibrary website "did not contain a sufficient explanation of the entire process" and that a document for landowners who could be affected by a project was not clear about key aspects of the certification process.

"While nothing came to our attention to indicate that natural gas certification applications had been inappropriately approved or disapproved," watchdogs wrote, "FERC can take steps to improve aspects of the natural gas certification process."

WHAT'S NEXT: FERC is in the process of a broad review of its natural gas pipeline certification process but there's no established deadline.

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Subject: Morning Energy, presented by Anheuser-Busch: Returning to the battlefield over California car rules — Pruitt screens friendly questions — Art of the RFS deal

By Kelsey Tamborrino | 05/09/2018 05:42 AM EDT

With help from Anthony Adragna

IF AT FIRST YOU DON'T SUCCEED: The looming fight between the Trump administration and the state of California over climate change rules for cars will cover some familiar terrain — where the liberal state and its environmentalist allies have won major legal battles in the past, Pro's Alex Guillén reports. The White House strategy appears to mirror the approach that automakers and dealers unsuccessfully pursued more than a decade ago in an attempt to reverse California's strict limits on vehicles' greenhouse gas emissions.

This again? California — which has a waiver under the Clean Air Act to enact stricter standards — is hoping things play out the same way it did the last time around, when two federal district courts upheld its rules, which other states also can choose to follow. "It's sort of déjà vu because it's going to be basically round two," said Kevin Leske, who was an assistant attorney general in Vermont in 2007 when the state fought off an industry lawsuit seeking to block the greenhouse gas rules for cars.

The details: At issue is the interplay between the long-standing Corporate Average Fuel Economy standards that were established under the 1975 Energy Policy and Conservation Act, and the relatively new emissions standards enforced nationally for the first time under the Obama administration. The Trump administration is expected to nullify the waiver granted to California and then try to circumvent any questions by arguing that EPCA preempts California from enforcing its auto emissions standards — essentially the same argument automakers and dealers deployed in multiple lawsuits over a decade ago.

But keep in mind: That strategy fell short the first time around. A U.S. district court judge in California concluded that greenhouse gas standards are too different from fuel economy regulations to fall under EPCA's "related to" preemption language. However, the cases were never appealed after a larger political deal was reached on the car rules, but advocates of the Trump administration's approach say they hope to take the issue to a higher court this time around. Read [more](#).

GOOD WEDNESDAY MORNING! I'm your host Kelsey Tamborrino. Andrew Fasoli of the American Chemistry Council was the first to correctly guess that former President Ronald Reagan was first to watch a major league baseball game from the dugout, at a Baltimore Orioles game. For today: In what city did the nation's first paved roadway appear? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](#), [@Morning_Energy](#) and [@POLITICOPro](#).

Download. Edit. Present. DataPoint has ready-made slide presentations to help you translate complex policy issues in the simplest terms. [Learn more](#).

BEGS THE QUESTION: EPA Administrator Scott Pruitt and his staff sought extensive control over questions that could be asked to the administrator when he toured the country speaking to industry groups, POLITICO's Anthony Adragna and Emily Holden report. Even seemingly friendly questions got axed by the agency, like, "How often do you get back to Oklahoma?" That question was crossed off a proposed list of questions without

an explanation ahead of Pruitt's appearance in December at an event in Iowa, internal emails made public by the Sierra Club through a public records lawsuit show. (At the time, EPA's inspector general was already investigating Pruitt's frequent trips back home.) The emails offer new insight into EPA staff's desires to limit access by independent journalists, pre-screen questions from friendly interviewers and coordinate Pruitt's message with lobbyists ahead of gatherings with conservative or industry groups. Read the details [here](#).

WHAT HAPPENED AT THAT BIOFUELS POWWOW: President Donald Trump appears to have brokered a deal in the long-running fight between ethanol producers and oil refiners over federal biofuels mandates. At a White House meeting Tuesday with Pruitt, Agriculture Secretary Sonny Perdue and a few Republican senators. Trump reiterated his pledge to allow 15 percent ethanol fuels year-round and rejected a price cap on biofuel credits, called Renewable Identification Numbers. Those are both big wins for the corn crowd, Pro's Eric Wolff [reports](#). But ethanol producers groused about another proposed aspect of the deal that would lower compliance costs for refiners: allowing ethanol exports to qualify for RINs. Refiners, meanwhile, were wary of a separate proposal for EPA to require large refiners to take on the ethanol-blending requirements for which it issued dozens of waivers to smaller refiners.

IT'S KIND OF INFRASTRUCTURE WEEK: Close to none of Trump's big-ticket [proposals](#) to streamline environmental rules made it into the first major bill infrastructure bill introduced in Congress since his election. America's Water Infrastructure Act of 2018, as the Senate bill is called, is so far the "most significant step lawmakers have taken to help fulfill the president's marquee campaign promise to revitalize the country's transportation arteries," Pro's Annie Snider writes. The bill's authors purposefully set their sights on bipartisanship in light of the fast-approaching midterm elections. "We focus on the 80 percent where we have general agreement, and we're going to get something done," said Sen. [Tom Carper](#) (D-Del.), the top Democrat on the panel and a cosponsor of the measure. Read [more](#).

MORRISEY WINS: West Virginia Attorney General Patrick Morrisey came out on top Tuesday, clinching the Republican nomination to take on Democratic Sen. [Joe Manchin](#) come November. Coal baron Don Blankenship, who was running a controversial campaign against the Republican establishment and Mitch McConnell, ended up in third place in the most-watched race of the night. Blankenship, who was convicted in 2015 of conspiring to skirt mine standards after 29 miners were killed at Massey Energy's Upper Big Branch facility, only [received](#) 19.9 percent of the vote to Morrisey's 34.9 percent, and 29.3 percent for Rep. [Evan Jenkins](#), the other major candidate in the race. Read more on all of Tuesday's primaries [here](#).

NEW DETAILS IN PRUITT SAGA: EPA worked closely with groups such as the Heartland Institute and the CO2 Coalition — both of which dispute the scientific consensus on climate change — when planning Pruitt's proposed "red team, blue team" debate over climate science, The New York Times [reports](#) via new documents released by the NRDC. The emails show that EPA scientists were not involved in the discussion, and that political aides continued to work on the idea even after White House chief of staff John Kelly tried to squelch the plan, according to the Times. In a separate report, the Times got a hold of documents that shed new light on the day security officers, fearing for Pruitt's safety, smashed down his condo door. Read it [here](#).

— **Pruitt's former security chief** Pasquale "Nino" Perrotta told the House Oversight Committee that Pruitt and his staff missed a connecting flight on a trip to Morocco because his security detail's weapons and gear couldn't be transferred between the planes in time, the Associated Press reports, citing anonymous committee aides. The delay forced Pruitt to spend more than 24 hours in Paris, and Perrotta's version of events calls into question the official rationale given by EPA. Read that story [here](#).

**** A message from Anheuser-Busch:** Anheuser-Busch announced that America's leading brewer has placed an order for up to 800 hydrogen-electric powered semi-trucks. The zero-emission trucks will be able to travel between 500 and 1,200 miles. Anheuser-Busch aims to convert its entire long-haul dedicated fleet to renewable powered trucks by 2025. [Learn more](#). **

BARRASSO: 'CLOSELY MONITORING' PRUITT SITUATION: EPW Chairman John Barrasso told ME he's "closely monitoring" the ongoing ethical woes of Pruitt and continuing with unspecified "oversight" of the agency. "The job that he's doing — in terms of the job assigned by the president to roll back regulations and overreach by the federal government — he continues to do well," Barrasso said. "We want to make sure taxpayer money is being well spent and appropriately spent." But Barrasso wouldn't specify if he'd sent additional letters to the agency, again deferring to the White House's vague, ongoing review of the situation.

Wait and see: Senior House Republicans overseeing the EPA also appeared to be publicly sticking with Pruitt as well. Rep. John Shimkus, who oversees the EPA on the House Energy and Commerce Committee, told ME he didn't have plans for additional oversight on his subcommittee but deferred to Chairman Greg Walden on whether it was appropriate. Shimkus acknowledged his lack of oversight plans "might disappoint some of my colleagues," including some Republicans who questioned Pruitt's spending at a hearing several weeks ago. A spokesman for the committee didn't respond to requests for comments on its oversight plans.

HEWITT KNEW IT: Conservative radio host Hugh Hewitt responded Tuesday on his radio show to a POLITICO report about a meeting set up by Hewitt between Pruitt and a water utility that sought a Superfund distinction in his hometown — which it ultimately received. "I knew it was going to show up in the FOIA request," Hewitt said of the meeting request. "I just didn't think it was a story." Separately, the liberal media watchdog group Media Matters reported Tuesday, that The Washington Post's Editorial Page Editor Fred Hiatt had not known of ties between EPA and Hewitt's law firm. "Hewitt, who has not written about Pruitt since September, has agreed not to write about him going forward and has assured us that similar incidents won't occur in the future," Hiatt said in an email to the group.

PERRY PULLS UP: Energy Secretary Rick Perry will testify this morning before the House Science Committee on his department's overall budget for fiscal 2019. Members will likely discuss funding for Advanced Research Projects Agency-Energy and Department's Loan Programs, which are terminated under the budget, as well as Perry's recent moves on coal plants. "Termination of these programs will save over \$300 million in FY 2019 alone while significantly reducing financial risk to the taxpayer moving forward," Perry is expected to say. **If you go:** The hearing kicks off at 9 a.m. in 2318 Rayburn. Watch the livestream here.

AT THE SAME TIME: The House Energy and Commerce Committee is slated to hold a markup on five cybersecurity, small-scale LNG bills this morning. Included in the docket: The bipartisan H.R. 5175 (115), the "Pipeline and LNG Facility Cybersecurity Preparedness Act." The slate of bills — which also includes H.R. 4606 (115), H.R. 5174 (115), H.R. 5239 (115), H.R. 5240 (115) — were approved by the subpanel in April. H.R. 4606 — which would allow the expedited approval of small-scale shipments of liquefied natural gas — got a vote of 19-14 over the objections of most Democrats.

CHATTERJEE SEES CHALLENGES: FERC Commissioner Neil Chatterjee called out natural gas pipeline permitting in New York Tuesday, while speaking at the at the Independent Power Producers of New York conference. "The gravest threat we face to resilience and fuel security is in New England and that's not the result of coal and nuke retirements but because of gas constraints due to a lack of adequate infrastructure," Chatterjee told reporters. Read more from Pro New York's Marie French here.

INTERIOR FACES FOIA SUIT: The Wilderness Society will file a lawsuit today to compel Interior to release documents related to the administration's environmental protection plans on public lands. The group says it filed 21 requests under the Freedom of Information Act for documents related to orders issued by Trump and DOI in March 2017 aimed at removing "potential burdens" to energy development on public lands. TWS says it only received responses to two of those requests.

MAIL CALL! The Environmental Protection Network sent this letter to EPA requesting a public hearing and an extension of the 30-day public comment period on the agency's "secret science" proposal to ban the use of

studies that don't publicly disclose all their data. "The proposal is far too complex, with effects too broad and indeterminate, and requests comment on far too many issues, for a thirty-day response period," the letter says.

WATCH IT: The American Council for Capital Formation released a new ad on Tuesday calling on the president to uphold the investor-state dispute settlement mechanism in any negotiation of NAFTA. Watch it [here](#).

E2 LAUNCHES CLEAN JOBS CAMPAIGN: Environmental Entrepreneurs launched a nationwide campaign Tuesday, dubbed [Clean Jobs Count](#), "to advance awareness and support of America's fastest-growing energy sector." The campaign includes digital ads in Michigan, Ohio, Illinois and Colorado, and additional ad campaigns are planned throughout the rest of the year in at least half a dozen more states.

MOVER, SHAKER: Exelon [announced](#) Constellation CEO Joseph Nigro was promoted to Exelon senior executive vice president and CFO, succeeding Jack Thayer, who becomes senior executive vice president and chief transformation officer. ComEd President and CEO Anne Pramaggiore was promoted to CEO of Exelon Utilities, succeeding Denis O'Brien. And Joseph Dominguez, the executive vice president of governmental and regulatory affairs and public policy, was promoted to CEO of ComEd Chicago.

— **Power Ledger**, a blockchain-powered renewable energy trading platform, announced Dante Disparte was appointed its strategic adviser and ambassador.

QUICK HITS

— Thousands of Puerto Ricans are still in the dark while U.S. agencies leave, [Bloomberg](#).

— Cassidy charts own course on climate change, [E&E News](#).

— Poll: Majority of voters oppose Trump offshore drilling plan, [The Hill](#).

— Trump's pick for top U.N. migration job gave misleading answers on tweets critical of climate change, [CNN](#).

— EPA's "secret science" rule could undermine agency's "war on lead," [Science](#).

— Due to climate change, hurricanes are raining harder and may be growing stronger faster, [The Washington Post](#).

HAPPENING TODAY

9:00 a.m. — House Appropriations Interior-Environment Subcommittee [two-part hearing](#) on "American Indian/Alaska Native Public Witnesses," 2007 Rayburn

9:00 a.m. — OPIS West Coast Fuel Supply and Transportation Opportunities [conference](#), Napa Valley, Calif.

9:00 a.m. — House Science Committee [hearing](#) on "An Overview of the Budget Proposal for the Department of Energy for FY2019," 2318 Rayburn

9:00 a.m. — House Energy and Commerce Committee [markup](#) on various bills, 2123 Rayburn

9:30 a.m. — Center for Climate and Energy Solutions [discussion](#) on "Zero-Carbon Power: Maintaining U.S. Nuclear Capacity," 2000 H St NW

9:30 a.m. — NAS Committee on Earth Resources spring meeting on "Critical Minerals and Materials: Opportunities, Challenges and the Needs for U.S. Manufacturing, Economy and Security," 500 Fifth Street NW

9:30 a.m. — The U.S. Chamber of Commerce's annual Sustainability and Circular Economy Summit on "Translating Value to Ignite Action," 1615 H Street NW

10:00 a.m. — Senate Energy and Natural Resources Public Lands Subcommittee hearing on law enforcement programs at the Bureau of Land Management and the Forest Service, 366 Dirksen

10:00 a.m. — Senate Environment and Public Works Committee hearing on the "America's Water Infrastructure Act of 2018," 406 Dirksen

10:00 a.m. — House Foreign Affairs Committee markup of H.R. 5535 (115), the "Energy Diplomacy Act of 2018," 2172 Rayburn

12:00 p.m. — The Environmental Law Institute discussion on the Ramsar Convention on Wetlands of International Importance, 1730 M Street NW

4:00 p.m. — Senate Indian Affairs Committee hearing on the nomination of Tara Mac Lean Sweeney to be assistant Interior secretary for Indian affairs, 628 Dirksen

6:00 p.m. — The Environmental Law Institute holds National Wetlands Awards, 100 Maryland Avenue SW

6:30 p.m. — The Carnegie Institution for Science discussion on "Deep Earth Through a Diamond Looking Glass," 1530 P Street NW

THAT'S ALL FOR ME!

**** A message from Anheuser-Busch:** Anheuser-Busch announced that America's leading brewer has placed an order for up to 800 hydrogen-electric powered semi-trucks from the pioneer in hydrogen-electric renewable technology, Nikola Motor Company. The zero-emission trucks — which will be able to travel between 500 and 1,200 miles and be refilled within 20 minutes, reducing idle time — are expected to be integrated into Anheuser-Busch's dedicated fleet beginning in 2020.

Through this agreement Anheuser-Busch aims to convert its entire long-haul dedicated fleet to renewable powered trucks by 2025.

"At Anheuser-Busch we're continuously searching for ways to improve sustainability across our entire value chain and drive our industry forward," said Michel Doukeris, CEO of Anheuser-Busch. "The transport industry is one that is ripe for innovative solutions and Nikola is leading the way with hydrogen-electric, zero-emission capabilities. We are very excited by the possibilities our partnership with them can offer."

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Stories from POLITICO Pro

Failed legal argument against California car rules gets second wind under Trump Back

The Trump administration's plan to stymie California's tough greenhouse gas emissions for cars is about to trigger an epic legal fight — and the White House appears to be planning to use the same strategy that failed to block the state's rules a decade ago.

California's supporters, however, hope any courtroom battles will play out the way they did when the auto industry tried to prevent California and other like-minded states from setting stricter emissions limits than those pushed by EPA: with a pair of resounding legal defeats.

"It's sort of déjà vu because it's going to be basically round two," said Kevin Leske, who was an assistant attorney general in Vermont in 2007 when the state fought off an industry lawsuit seeking to block the greenhouse gas rules for cars.

"Here we are, 10 or 11 years later, basically facing the prospect, it sounds like, of the Trump administration making the same arguments that the auto industry did," added Leske, now a law professor at Barry University in Florida.

If finalized, the move would be one of the biggest regulatory rollbacks of the Trump administration, and it could go even further than what automakers have asked the White House to do. And its advocates say despite the previous legal setbacks, they hope to take the issue to a higher court, something they were denied in the previous battle when a political deal ended the conflict.

In the meantime, California, which has already spearheaded a lawsuit over EPA's April decision to weaken the standards, is already preparing for a major regulatory break with the Trump administration. The state's Air Resources Board on Monday asked for public input for regulatory language that it will not consider cars complying with a weakened federal standard to be acceptable in California.

The legal issue will center on the interplay between the long-standing fuel economy standards known as the Corporate Average Fuel Economy, which is issued by the National Highway Traffic Safety Administration under the 1975 Energy Policy and Conservation Act, and the relatively new greenhouse gas emissions standards enforced nationally for the first time under the Obama administration.

In requiring a national CAFE standard, Congress barred states from issuing their own laws or regulations "related to" fuel economy standards. But California's novel approach to regulate carbon dioxide emissions via the state's special authority under the Clean Air Act gave it significant leverage to force car makers to meet stricter rules.

In order to avoid a patchwork of different regulations between California and its allies and the rest country, the Trump administration is expected to seek to nullify the waiver EPA granted California in 2009 allowing it to enforce its own rules. EPA has never tried to revoke a waiver, and legal observers note the law does not explicitly grant EPA such authority.

But the Trump administration is expected to try to circumvent any questions around revoking the waiver by arguing that EPCA preempts California from enforcing its auto emissions standards — essentially the same argument automakers and dealers deployed in multiple lawsuits over a decade ago.

A May 1 letter from Sen. Tom Carper to EPA and DOT says the draft proposal would adopt that EPCA preemption argument.

That strategy fell short first time around, when a California judge concluded that greenhouse gas standards are too different from fuel economy regulations to fall under EPCA's "related to" preemption language. Emissions

may be closely correlated to fuel efficiency, he ruled, but factors like air conditioning usage and credits for electric vehicles mean that the pollution rules are not explicitly aimed at fuel economy, and thus are not preempted

Meanwhile, a Vermont judge also ruled in 2007 that since EPA had approved the California standard under the Clean Air Act waiver, it becomes a proper government motor vehicle standard, which EPCA requires DOT to take into account when setting fuel economy targets. Congress "could not have intended that an EPA-approved emissions reduction regulation did not have the force of a federal regulation," the judge wrote.

Those two legal rulings with the span of a few months would seem to be formidable hurdles for any EPCA preemption argument. And the case gets even more difficult for the Trump administration when the Supreme Court's landmark ruling in that year's *Massachusetts v. EPA* is added in. In that case, the majority said that fuel economy and greenhouse gas rules may "overlap," but could both be administered in a way that would "avoid inconsistency."

"I think it's fair to say this ground has been trod before and it's not looking good if Pruitt's EPA trots out this EPCA preemption argument again," said Sara Colangelo, the environmental law and policy program director at Georgetown University.

Congress also passed two major Clean Air Act updates after EPCA, in 1977 and 1990, that expanded California's special powers and didn't address the exemption at all, a move Colangelo said "really signals that they intended California to maintain this special position as the laboratory for advancing pollution controls in the emissions arena."

NHTSA declined to address the preemption issue, but said in a statement that its "top priority" is safety and that the administration "must also consider economic practicability." A spokesman for California's Air Resources Board said that the preemption proposal "would harm people's health, boost greenhouse gas pollution and force drivers to pay more money at the pump for years."

Those two previous court losses are not slowing down conservatives pushing the Trump administration to adopt the preemption argument now.

Undeterred, a coalition of industry groups wrote to EPA Administrator Scott Pruitt in March urging him to revoke California's waiver by concluding it is preempted by EPCA.

"Even though these two lower courts have weighed in, I think there's opportunity now for the lawsuits to move on to a higher level," Patrick Hedger, the policy director for the FreedomWorks Foundation, a conservative advocacy group.

He added that no higher court ultimately addressed the issue. Appeals in both cases were dropped as part of the single national standard deal reached between the Obama administration, California and automakers. Hedger noted that the Supreme Court's *Massachusetts v. EPA* ruling was not specifically about EPCA preemption.

Marlo Lewis, a senior fellow at the Competitive Enterprise Institute, believes the best way to win the preemption argument is to focus on the high degree of overlap to show the two standards are "related" under EPCA

"You and your dad are different people. Are you not related?" Lewis said. "The idea that they're not related because they're not identical is just pure rhetorical flimflam."

Like many other deregulatory actions, this proposal would substantially benefit the energy-producing that voted for Trump.

For conservatives, blocking California's climate change authority is the ultimate goal, since the Democratic hold on state politics and California's size mean its aggressive action on climate change has an outsize influence on the rest of the nation.

"I think this is one step in basically saying, 'Look, we're not going to allow California on this issue or any others in the future to continue to supersede federal policy on these issues and basically impose their standards on the entire country just because of the size of the market,'" said Hedger.

Halting fuel economy standards at 2020 levels would mean needing roughly 2 billion barrels more oil over the lifetime of cars built from 2021 to 2026, said David Cooke, a senior vehicles analyst at the Union of Concerned Scientists. And that's not counting the longer-term demands that would be caused for future model years that would start with lower targets because of this potential freeze.

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Pruitt sought tight control of events even on friendly turf [Back](#)

By Anthony Adragna and Emily Holden | 05/08/2018 06:38 PM EDT

EPA Administrator Scott Pruitt and his staff went to great lengths to avoid unscripted questions when he toured the country speaking to industry groups, and even a seemingly friendly ice breaker can be deemed unacceptable.

"How often do you get back to Oklahoma?" the top official from the Iowa Association of Electric Cooperatives planned to ask Pruitt when he addressed the group last December, according to internal emails that were recently made public.

That question was crossed out when an EPA staff member sent back a proposed list of questions for Pruitt's "fireside chat" with Chuck Soderberg, the association's executive vice president. Tate Bennett, EPA's associate administrator of public engagement, did not explain why that and another question had been removed, but at the time of his Nov. 29 email the administrator was already [facing questions](#) over his travel practices. A few months earlier, EPA's inspector general had [launched an investigation](#) into whether the agency had sufficient policies in place to "prevent fraud, waste and abuse with the Administrator's travel that included trips to Oklahoma."

The [emails](#) among Bennett, other EPA staffers and representatives of the Iowa cooperatives were included in the thousands of documents obtained by the Sierra Club through a public records lawsuit. They reveal a pattern of Pruitt and his staff working to limit access by independent journalists, pre-screen questions from friendly interviewers and coordinate his message with lobbyists ahead of gatherings with conservative or industry groups.

Ahead of the Iowa event, the co-op association's director of government relations, Kevin Condon, confirmed that neither his group nor EPA would issue a media advisory, and they would cancel a press gaggle but still host an interview with the group's internal Living with Energy in Iowa magazine.

That publication also got questions [pre-approved](#) by EPA staff.

"Let me know if any of these give you heartburn," said Erin Campbell, the co-op group's director of communications. "This would be a friendly interview environment and we're keeping the conversation focused on Iowa consumers."

In another instance, before Pruitt spoke at a U.S. Chamber of Commerce event in June, EPA received a list of 10 proposed questions from the head of the group's energy institute, Karen Harbert. They touched on his regulatory philosophy, his efforts to rollback rules, and whether co-owning a minor league baseball team taught him lessons useful for running a federal agency. EPA staff did not appear to object to Harbert's proposed list.

When Pruitt was slotted to speak at a Texas Oil and Gas Association conference in October, EPA staff asked for a Q&A format with a representative of the group, rather than have the administrator take three pre-screened questions from the crowd.

EPA aides asked for the change in plans after being made aware that four reporters would be attending from the Houston Chronicle, Bloomberg BNA and Reuters.

Bennett wrote that after updating Pruitt that the media would attend, "he'd like to respectfully request that the entire format now be Q&A with two chairs on stage." She also shared a list of questions the moderator could ask, including on regulatory rollbacks, on what Pruitt would consider "true environmentalism" and on what his relationship was like with the president.

"What has it been like to run such a newsworthy agency? More difficult than you imagined?" the last question read.

And in at least one instance, a lobbyist for a group Pruitt was set to address offered to help write his speech for him. Before Pruitt and an entourage of eight staffers and security agents traveled in November to Kiawah Island, South Carolina, for a speaking engagement with the American Chemistry Council, the group's lobbyist Bryan Zumwalt asked a scheduler who to contact to help write Pruitt's speech.

"Who in your sop (sic) should I be working with to help prepare Administrator Pruitt's talking points/speech? Figure someone there might like the help on key areas to discuss," he said.

The scheduler, deputy White House liaison Hayley Ford, replied that Millan Hupp, director of scheduling and advance, and Bennett could assist.

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Trump plan leaves biofuel makers cold [Back](#)

By Eric Wolff | 05/08/2018 06:48 PM EDT

President Donald Trump's latest bid to strike a deal on biofuels on Tuesday appeared to win over oil refiners, but a plan to allow ethanol exports to qualify for credits under the federal program left biofuel producers irate.

Trump gave ethanol producers two big victories at the White House meeting by reiterating his promise to allow 15 percent ethanol fuels year-round and rejecting a price cap on the credits, called Renewable Identification Numbers, that are used to prove compliance with the Renewable Fuel Standard. But ethanol producers balked at

the plan to have EPA Administrator Scott Pruitt and Agriculture Secretary Sonny Perdue set up a system to allow ethanol exports to receive RINs.

"The notion of allowing exported ethanol to count toward an oil company's RFS obligation is extremely problematic," Bob Dinneen, president and CEO of the Renewable Fuels Association, said in a statement. "In no way will that ever be acceptable or considered a win for our industry."

But the Trump administration said it has found the right balance between competing parts of its electorate.

"After several meetings and input from stakeholders on both sides, President Trump is pleased to announce that a final decision has been made that allows E15 to be sold year-round, while providing relief to refiners," White House spokeswoman Lindsay Walters said in a statement. "This outcome will protect our hardworking farmers and refinery workers. The President is satisfied with the attention and care that all parties devoted to this issue."

Refiners backed the idea, although they were wary of a separate proposal to allow EPA to consider requiring large oil refineries to take on the ethanol-blending requirements the agency lifted from small refiners by issuing dozens of compliance waivers.

Sen. Ted Cruz (R-Texas) emerged from Tuesday's meeting calling the deal a "win-win." Refiners have been pressing for years to change the program to lower compliance costs that they say are eating away at their profits.

"President Trump brought together two sides that thought a deal couldn't be reached and he found a 'win-win' solution to one of the most intractable regulatory problems facing the nation — a problem that has been neglected for years," refiner Valero Energy said in a statement.

The group of independent refiners pushing for changes, led by Valero, Carl Icahn's CVR and some Philadelphia-area refiners, had previously sought a cap on RIN prices in exchange for supporting an increase in the sales of E15.

At Tuesday's meeting, the seventh so far held by the White House, a source said Trump agreed to definitively reject any price cap, but he also asked Pruitt and Perdue to work out a plan for how exports could ease price pressure on RINs. Currently, ethanol that is shipped abroad is stripped of the RINs that can be used to meet a refiner's RFS obligation. Sources who work with refiners say preserving those credits would increase the supply and drive down prices for refineries.

"Because biofuels exports are a long-time major objective of the farm community, allowing export RINs is literally the anticipated win-win solution, obviating the need for more direct cost containment devices," said a refining industry source close to discussions.

But ethanol producers, who have been increasing their exports in recent years, complain that allowing those shipments to earn RINS would undermine the biofuel program's goals.

"Pursuing a path that includes RIN credits on export gallons would violate the letter and spirit of the RFS, serving the interests of oil refiners who have already benefited from Administrator Pruitt's unprecedented RFS volume waivers at the further expense of America's farmers," Kevin Skunes, president of the National Corn Growers Association, said in a statement.

Sources said Tuesday's meeting included a lengthy discussion about whether EPA could potentially reallocate the 1.2 billion gallons of ethanol demand the industry says has been exempted under the dozens of compliance waivers the agency has granted to small refineries. One source said Pruitt expressed openness to shifting those gallons to large refiners, something the refiners opposed. But that reallocation discussion got tied up with the

idea of export RINs, and Pruitt and Perdue left the White House with instructions to develop some kind of proposal.

"There was discussion about how to reallocate the waived obligations so that demand for biofuels wouldn't be hurt," Sen. Chuck Grassley (R-Iowa) said in a statement. "While details weren't decided, I look forward to reviewing a plan being developed by Secretary Perdue and Administrator Pruitt. Any fix can't hurt domestic biofuels production."

Republican Sen. Pat Toomey of Pennsylvania also expressed reservations about the vague promise of changes to the program.

"The proposal discussed at our White House meeting today might result in lower RIN prices, which would relieve this artificial burden — but even that is not clear until details are established," he said in a statement.

Even as the White House has pushed for a deal, Sen. John Cornyn (R-Texas) and Rep. John Shimkus (R-Ill.) have been leading efforts in Congress to overhaul the program. Shimkus and his staff have said in the past that administrative changes to the program would undermine their effort, though they appear to be moving full-steam ahead for now.

"Executive actions aren't a substitute for legislation," said Shimkus spokesman Jordan Haverly. "The only path to an enduring and equitable deal for farmers, refiners, ethanol producers, automakers and consumers — especially one that won't spend more time in court than on the books — is through Congress. Those legislative efforts remain ongoing."

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Trump's latest strike against regulations: His infrastructure plan [Back](#)

By Annie Snider and Anthony Adragna | 02/16/2018 05:01 AM EDT

President Donald Trump's infrastructure plan would trigger one of the most significant regulation rollbacks in decades, benefiting not just roads and bridges, but businesses ranging from coal mines to homebuilders to factories.

The blueprint the White House released this week would eliminate the Environmental Protection Agency's authority to veto the Army Corps of Engineers' wetlands permits, a power that the EPA wielded during the Obama administration to block a controversial mountaintop coal mine in West Virginia. Industrial facilities like coal plants and steel factories could get 15-year Clean Water Act pollution permits — up from five years — that would be automatically renewed. For some infrastructure permits, the deadline for opponents to file legal challenges would shrink from six years to 150 days.

The proposed revisions to some of the nation's bedrock environmental regulations are drawing heavy criticism from congressional Democrats — including in the Senate, where Republicans would need at least nine extra votes to enact Trump's plan. Environmental groups say the ambition of the plan's deregulation push contrasts with the relatively meager amount of federal money the White House is proposing to contribute toward the \$1.5 trillion total.

"This isn't an infrastructure package," said Melissa Samet, an attorney with the National Wildlife Federation. "This is an all-out attack on longstanding environmental protections that have done a lot of good for this country."

Republicans and business groups have long complained that the federal government's often cumbersome permitting process, governed by laws Congress enacted decades ago, creates unnecessary delays for projects. "We built the Empire State Building in just one year," Trump said in his State of the Union address last month. "Is it not a disgrace that it can now take 10 years just to get a permit approved for a simple road?"

Supporters of Trump's plan are happy the White House is pushing for changes.

"We're very pleased with the permitting provisions," said Ross Eisenberg, a vice president at the National Association of Manufacturers. "Even some of them being signed law would be a major improvement. We don't want to blow up the process. We just want it to go faster."

Senate Environment and Public Works Chairman John Barrasso (R-Wyo.) said he hopes Democrats will come around.

"You're never going to win over every obstructing Democrat, but they've got to realize that projects have been slowed down in their states," Barrasso said.

But Democrats say the nation's real infrastructure problem is money — and the Trump proposal calls for just \$200 billion in federal investments over the next decade for needs including roads, bridges, airports, water plants, veterans' hospitals and rural broadband service. And they questioned whether Trump's aim is really just to make regulatory reviews more efficient.

"The president's contentions are not to streamline a process, but to compromise needed environmental and public health issues," Sen. Ben Cardin (D-Md.) told reporters.

Some kind of environmental streamlining has been a part of most of the major infrastructure measures Congress has passed in recent years. Provisions in the 2012 highway bill and a 2014 water bill aimed to get agencies to coordinate their permit reviews more efficiently and impose consequences for delays.

Supporters of those changes included then-Sen. Barbara Boxer (D-Calif.), an environmental stalwart, who argued that the streamlining amounted to common sense despite the opposition of some environmentalists. Many of those provisions have yet to take effect, however.

Trump's infrastructure proposal would go much further, setting strict deadlines for reviews and curtailing EPA's say over projects.

For instance, Trump has touted the proposal's two-year limit for agencies to issue final permitting decisions, including a strict 21-month limit on analyses done under the National Environmental Policy Act of 1970, one of the nation's foundational environmental laws.

The law requires federal agencies to make a public estimate of the environmental impacts when the federal government spends money or makes a permitting decision, although nothing in the law requires agencies to limit environmental damage. Repeated environmental studies under NEPA were one factor that contributed to the Obama administration's nearly seven-year review of the Keystone XL oil pipeline, a project Trump has pushed to revive this year.

Under Trump's proposal, agencies would be required to complete environmental reviews in no more than 21 months. Anyone seeking to challenge the permits would have just 150 days to sue, instead of the current six years.

Industry groups argue the act's long statute of limitations for permit challenges leaves a cloud of uncertainty over projects. But Samet, the National Wildlife Federation attorney, said 150 days runs by quickly when challengers have to track down documents that regularly run hundreds of pages, decipher them, find experts to analyze the data, hire lawyers and scrounge up the money to cover legal costs.

The result, she said: "Bad projects will move forward. There'll be nothing to stop them."

Trump's plan would also deliver on a long-sought Republican goal of curbing EPA's authority under the Clean Water Act's wetlands program — a change that would have sweeping effects not just for infrastructure projects but for nearly any kind of development.

The blueprint would remove EPA's authority to oversee the Army Corps of Engineers' determinations about which streams and wetlands are subject to Clean Water Act protections. And it would take away the EPA's ability to veto dredge-and-fill permits that it decides would cause undue harm to the environment.

EPA has used that veto authority only 13 times since the Clean Water Act was enacted, including with its 2012 reversal of a Army Corps permit for the Mingo Logan mountaintop coal mine in West Virginia — a decision that angered the coal industry's supporters in Congress. Most of the other occasions when it used that power came during Republican administrations.

Trump's proposal would also extend pollution discharge permits under the Clean Water Act from five years to 15, and allow them to be automatically renewed as long as "water quality needs do not require more stringent permit limits." Those changes that would apply not only to municipal wastewater treatment plants but also to industrial facilities.

The plan also calls for eliminating a section of the Clean Air Act that requires EPA to review, comment on and rate other agencies' environmental impact statements.

While the proposal may allow construction on projects to get started faster, it might end up creating bigger problems in the end, argued Kym Hunter, an attorney with the Southern Environmental Law Center. She said a narrower NEPA review wouldn't just keep potential environmental problems from coming to light, but it would also keep the public in the dark about whether a project would live up to its promises.

"NEPA is about taking that hard look," Hunter argued. "When it was promulgated in 1970, the idea was if you think about what you are doing you're likely to make a better decision. This [Trump proposal] would just encourage agencies to rush forward without being thoughtful, without being careful."

Trump's plan also attempts to limit the ability of courts to halt work on projects while lawsuits proceed. But that could backfire too, Hunter said, if it keeps courts from halting an ill-conceived project until after a government body has started spending money and taking on debt.

Sen. Tom Carper of Delaware, the top Democrat on the Environment and Public Works Committee, didn't dismiss the idea of making updates to the decade-old laws. But if the administration's goal is to weaken environmental regulations, he said, "we're not going to get very far."

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Trump's proposed regulatory rollbacks left out of Senate infrastructure bill [Back](#)

By Annie Snider | 05/08/2018 06:44 PM EDT

The first major infrastructure bill introduced in Congress since President Donald Trump took office ignores virtually all of the big-ticket deregulatory proposals the White House laid out in its blueprint earlier this year.

Chief among Trump's complaints about the country's infrastructure system is the amount of time it takes to get environmental permits. The package the White House unveiled in February included a meager \$200 billion in federal funding for infrastructure, and instead focused on a number of so-called environmental streamlining provisions. Among them: proposals to eliminate the EPA's authority to veto the Army Corps of Engineers' wetlands permits and reduce the length of time opponents have to file legal challenges to permits from six years to 150 days.

But none of those provisions made it into what stands to be a multibillion dollar water resources measure introduced by top Republicans and Democrats on the Senate Environment and Public Works Committee on Tuesday.

That bill, dubbed America's Water Infrastructure Act of 2018, is so far the most significant step lawmakers have taken to help fulfill the president's marquee campaign promise to revitalize the country's transportation arteries. And in a bid to have a feather in their caps to take home before the 2018 midterm elections, lawmakers in the upper chamber are charting a bipartisan course with the measure.

"We focus on the 80 percent where we have general agreement, and we're going to get something done," Sen. Tom Carper (D-Del.), the top Democrat on the panel and a cosponsor of the measure, told reporters.

The House Transportation and Infrastructure Committee is working on its own water resources bill that also could be released this month, and members are pursuing a bipartisan approach, too, as they have historically.

The Senate bill is sidestepping battles over the nation's foundational environmental laws, including the National Environmental Policy Act and the Clean Water Act. Republicans and business groups fault those laws for delays and skyrocketing costs — "Is it not a disgrace that it can now take 10 years just to get a permit approved for a simple road?" Trump asked in his State of the Union address in January — but Democrats and environmentalists defend them as critical protections.

Instead, the bill's authors set their sights on a suite of more practical changes at the Army Corps of Engineers — one of the government's most red-tape-laden bureaucracies that just about every lawmaker loves to hate.

The bill includes dozens of provisions aimed at making the agency more transparent and responsive to Congress and the communities it works with to build projects. It would make a major change to the way the Army Corps budgets, in an effort to help projects that are important to states but aren't competing well for scarce federal dollars under the current approach. And it would create a board related to water storage projects that an environment committee aide said is aimed at helping communities understand early on whether their project will be able to get a permit.

The measure also includes a number of drinking water and wastewater provisions, issues that became a major component of the last such measure in 2016, when an aid package to help Flint, Mich., recover from its lead

contamination crisis was included. The new Senate bill includes provisions to help small and rural water utilities with technical assistance, allow communities to use federal drinking water dollars to protect their water sources, and to help communities balance multiple costly wastewater upgrade requirements at the same time.

The meat of the bill is six new project authorizations for the Army Corps, including a ship channel extension project in Texas, flood control projects in New York and Hawaii, and hurricane protection projects in Florida and Texas. The bill would also increase the amount that can be spent for the Savannah Harbor expansion project, a top priority for Georgia's senators, and allow more water to be stored at a key Wyoming reservoir.

And it's not just Trump's environmental permitting changes that senators rejected in the bill; they also responded to the White House's past proposals to eliminate or significantly cut a popular Great Lakes restoration program by increasing its authorization. The bill would also require EPA to open a new program office for the Long Island Sound, where the Trump administration also proposed eliminating funding.

Asked Tuesday how work on the the House's measure is coming, Transportation Committee Chairman [Bill Shuster](#) (R-Pa.) said "good."

But one fault line is already emerging between the two chambers.

Shuster has backed a proposal from his water resources subcommittee chairman, Rep. [Garret Graves](#) (R-La.) to move the Army Corps of Engineers out of the Pentagon and to another agency like the Department of Transportation or the Interior Department. But an EPW aide said that both Republicans and Democrats in the Senate have concerns with the idea; their bill would instead mandate a study by the National Academy of Sciences into the structuring of the Army Corps.

"We're trying to pass a bipartisan bill and I think that would make it very difficult to do with the limited amount of time that we have," the aide said.

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Top takeaways from the first big primary of 2018 [Back](#)

By Steven Shepard, Elena Schneider and Scott Bland | 05/09/2018 01:13 AM EDT

Republicans can exhale now.

Convicted coal magnate Don Blankenship's surprise third-place finish in Tuesday's West Virginia GOP Senate primary sidestepped yet another debacle for the party after consecutive meltdowns in special elections in Alabama and Pennsylvania. Instead, party leaders celebrated state Attorney General Patrick Morrisey's win, which capped the first multi-state primary of 2018.

The night saw Republicans pick three of the 10 candidates who will take on Democratic senators in states President Donald Trump won, and the first House incumbent go down in a primary in 2018.

Here are POLITICO's seven takeaways from Tuesday:

1. Republicans averted catastrophe, but victory in West Virginia is far from assured.

A Blankenship nomination might well have extinguished GOP hopes of toppling Democratic Sen. Joe Manchin, despite the state's heavy Republican electorate. Blankenship was living in a Phoenix halfway house this time last year, after his conviction for conspiracy to skirt mine safety rules after an incident claimed the life of 29 miners at one of his facilities. He called Senate Majority Leader Mitch McConnell "Cocaine Mitch," and made racially charged comments about McConnell's family.

Morrissey is someone national Republicans can embrace. National Republican Senatorial Committee executive director Chris Hansen said in a statement Tuesday night that Morrissey will "fight for conservative values" and predicted his victory over Manchin in the general election.

But Morrissey enters the race with his own baggage — even if it's nothing like Blankenship's. Morrissey used to be a Washington lobbyist, and Morrissey's wife still is one. Also, Morrissey ran for Congress in 2000 — in New Jersey.

Rep. Evan Jenkins, who finished second on Tuesday night, tried to level those attacks. But the punches didn't land with Blankenship's circus-like candidacy stealing the spotlight.

With Blankenship fading into the distance, Manchin can contrast his folksy, "Pepperoni Roll," West Virginia affect against Morrissey's Jersey accent and D.C. "swamp" ties. Republicans will fire back, alleging that Manchin isn't the aw-shucks bipartisan he claims to be and doesn't stick up for Trump, who is very popular in the state.

2. Words alone can't earn the Trump mantle.

Reps. Luke Messer and Todd Rokita spent the final week of the GOP Senate primary in Indiana trying to convince voters that Mike Braun — the businessman and former one-term state representative who had surged to the front of the field on an outsider message — wasn't a reliable conservative. They cited Braun's participation in Democratic primaries for more than three decades.

But Braun easily defeated both Messer and Rokita because his outsider message, in contrast with his two D.C. insider rivals, resonated more than his Democratic past. (Braun said he only voted in Democratic primaries to influence local elections, but Messer and Rokita painted that as a lame excuse.)

Braun's argument was easier to make after Trump's 2016 presidential campaign. Trump's opponents in the GOP primaries needled the billionaire for his past donations to Democratic candidates, or his past conservative apostasies on issues like abortion and universal health care. Trump parried those attacks, barely breaking a sweat.

Ultimately, as much as Rokita (who donned a red "Make America Great Again" hat in his ads) or Messer (who talked up Trump for a Nobel Peace Prize) tried to claim the Trump mantle, Braun seemed more like the real deal. He hit Messer and Rokita for being attorneys who never practiced law, instead getting into politics at a young age. And Braun, who will now try to unseat Democratic Sen. Joe Donnelly, said he was the only candidate who had signed the front of a paycheck, while his opponents had been endorsing government checks for most of their careers.

3. House members went down hard.

It was a bad night for House members running statewide: Jenkins lost to Morrissey by more than 5 points. Rokita and Messer finished even further behind Braun.

Rep. Jim Renacci, who still won the GOP nomination to face Sen. Sherrod Brown in Ohio, failed to win a majority of the vote in the primary, despite endorsements from Trump and the state Republican Party.

For a party led by a first-time-candidate-turned-president, it's not surprising that Congress isn't the ideal springboard to higher office. But the GOP is relying on other House members to maintain its Senate majority — whether it's Martha McSally in Arizona, Marsha Blackburn in Tennessee or Kevin Cramer in North Dakota.

And for members facing competitive statewide primaries — think McSally, Kristi Noem for governor in South Dakota, Raul Labrador for Idaho governor or Diane Black for Tennessee governor — they may find their congressional résumés are more anchors than propulsion for their candidacies.

4. The first incumbent falls. Will others join?

Rep. Robert Pittenger (R-N.C.) became the first incumbent member of Congress knocked out in a primary in 2018.

Pittenger tried to align himself closely to Trump, touting in his first TV ad that he was the "strongest supporter" of the president. But Mark Harris, a pastor who nearly beat Pittenger in 2016, successfully tagged Pittenger as a part of the "Washington swamp." Republicans in primaries across the country are questioning their opponents' pro-Trump bona fides, a strategy that proved effective here.

Pittenger's loss surprised national and local Republicans, who expected the congressman to survive the primary challenge. But Harris' campaign said Pittenger's "votes didn't match his rhetoric," pointing to his support for the omnibus spending bill in March, said Andy Yates, a spokesman for the campaign. (Harris, a social conservative, said he planned to join the House Freedom Caucus.)

It's not clear that there's a long list of Pittengers about to be swept away in primaries. Still, his defeat could serve as a wake-up call to incumbents who have struggled to unite Republicans at the ballot box in the past, like Reps. Martha Roby (Ala.) and Doug Lamborn (Colo.).

5. Both parties got their men for Ohio governor.

It was an easy night for both parties watching the Ohio gubernatorial race. State Attorney General Mike DeWine easily dispatched Lt. Gov. Mary Taylor in the GOP primary, aided by the imprimatur of the state party.

And on the Democratic side, former state Attorney General Richard Cordray cruised past Rep. Dennis Kucinich after weeks of hand-wringing that the race against the at-times eccentric Kucinich was closer than it should have been.

In the end, Cordray — who until recently headed the federal Consumer Financial Protection Bureau — crushed Kucinich and four other challengers, even winning a greater percentage in the Democratic primary among a fractured field than DeWine earned in a one-on-one matchup with Taylor.

Both parties quickly pivoted to trying to attach a Washington brand to their opponents. The Republican Governors Association called Cordray "a Washington D.C. power-hungry insider," despite DeWine's 20-year congressional tenure.

Meanwhile, the Democratic Governors Association said DeWine was "a card-carrying member of the D.C. and Columbus swamp," despite the fact that Cordray was DeWine's predecessor as attorney general and was an Obama political appointee.

Either way, the gubernatorial election this year will be a rematch of the 2010 attorney general race. DeWine, four years removed from a loss to Brown, toppled the then-incumbent Cordray by 1 percentage point in the GOP wave year.

6. Chalk two up for the GOP establishment.

Establishment Republicans got more good news in Ohio when Troy Balderson and Anthony Gonzalez won primaries for open congressional seats.

Balderson, backed by former Rep. Pat Tiberi, beat Melanie Leneghan in two primaries in Ohio's 12th District on Tuesday — one for the November election, and one for an August special election to complete Tiberi's unexpired term.

The race was a proxy war between Tiberi — an long-time ally of former House Speaker John Boehner — and Rep. Jim Jordan (R-Ohio). Tiberi spent money on TV ads to back Balderson, while Jordan, the House Freedom Caucus co-founder, cut a competing TV ad for Leneghan that aired with help from conservative megadonor Richard Uihlein.

Gonzalez, a former Ohio State University football star, won a similar fight in the state's 16th District. He defeated state Sen. Christina Hagan, who had Jordan's backing in the race.

Both districts have been Republican strongholds — the 16th is even more solidly red than the 12th. But given Democrats' stronger-than-expected performances in special elections in the Trump era, Republicans are gearing up for a fight for the Tiberi seat over the next three months.

"There will be a very clear contrast between Troy and ... [Democratic nominee] Danny O'Connor in the months ahead," said Rep. Steve Stivers (R-Ohio), who chairs the National Republican Congressional Committee.

7. Women are dominating Democratic primaries

Women are running for federal office in record numbers in 2018 — and it looks like Democratic primary voters are poised to support those candidates like never before. There were 20 open Democratic House primaries with women on the ballot Tuesday night, and voters selected a female nominee in 17 of them.

It's a sharp turnaround from past years when female Democrats faced big hurdles in trying to win support from voters. A good number of the primary winners Tuesday night are running in heavily Republican seats with little chance of winning general elections. But they are still part of an important trend: Evidence is building that Democratic voters are tilting toward supporting women this year.

Keep this in mind as we approach primaries in big states full of battleground districts over the next two months: California and New York in June, and Pennsylvania next week.

To view online [click here](#).

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Pruitt fast-tracked California cleanup after Hugh Hewitt brokered meeting [Back](#)

By Emily Holden and Anthony Adragna | 05/07/2018 10:12 PM EDT

EPA Administrator Scott Pruitt [placed](#) a polluted California area on his personal priority list of Superfund sites targeted for "immediate and intense" action after conservative radio and television host Hugh Hewitt brokered a

meeting between him and lawyers for the water district that was seeking federal help to clean up the polluted Orange County site.

The previously unreported meeting, which was documented in emails released by EPA under a Freedom of Information Act lawsuit by the Sierra Club, showed Pruitt's staff reacting quickly to the request last September by Hewitt, who has been one of Pruitt's staunchest defenders amid a raft of ethics controversies around his expensive travel, security team spending and a cheap Washington condo rental from a lobbyist.

Pruitt has drawn criticism from environmentalists and other critics for letting prominent GOP backers and industry groups influence the agency's agenda — even as he has kicked scientists off of EPA's advisory panels and moved to limit the kinds of peer-reviewed research it will consider when making decisions.

In many cases, the people whose advice Pruitt is heeding could be useful supporters for him in a future race for U.S. senator or president. They include GOP megadonor Sheldon Adelson, who — as POLITICO reported in March — persuaded Pruitt last year to take a meeting with an Israeli water purification company called Water-Gen that later won a research deal with the EPA.

Hewitt, a resident of Orange County whose son James works in EPA's press office, emailed Pruitt in September to set up a meeting between the administrator and the law firm Larson O'Brien, which employs Hewitt and represents the Orange County Water District. Pruitt had been planning to meet with the lawyers in California a month earlier, but cancelled the trip to undergo knee surgery.

"I'll join if the Administrator would like me too or can catch up later at a dinner," Hewitt wrote in his Sept. 18 message. Hewitt added that the issues surrounding the Superfund site were "Greek to me but a big deal in my home county."

Pruitt's aides responded within minutes and quickly confirmed an Oct. 18 meeting for the lawyers and a project director.

Six weeks after that meeting, on Dec. 8, the Orange County North Basin site appeared on Pruitt's list of 21 contaminated areas to address. A month later, Pruitt proposed listing the site on EPA's National Priorities List, a move that could make it eligible for long-term federal cleanup funding from the federal government if the responsible polluters cannot be identified and forced to pay for its remediation.

Since then, Hewitt has been a robust defender of Pruitt, dismissing his recent controversies as "nonsense scandals" on MSNBC in early April and saying his detractors were "just trying to stop the deregulation effort."

Pruitt has touted the agency's Superfund work as one of his key priorities, setting up a task force to seek to speed up the clean-up of the nation's worst contaminated sites. That task force had been headed by Albert "Kell" Kelly, a former banker and longtime friend, who departed the agency last week after news about loans he provided to Pruitt in Oklahoma, including the mortgage provided to Pruitt for a house he bought from a lobbyist when he was a state senator.

Environmental advocates have worried Pruitt's efforts to identify Superfund priority sites would bypass the process set up by Congress to ensure cleanup resources are divided fairly, and that he could focus on sites seen as important to his political supporters. And environmentalists have said Pruitt's rush to claim that contaminated properties have been remediated could risk turning them over to local governments and businesses that might pursue cheaper, inadequate solutions.

Elgie Holstein, senior director for strategic planning at the Environmental Defense Fund who has been tracking EPA's Superfund actions, said the connection to Hewitt is "not a surprise."

"The biggest fear we have is that No. 1, the administrator's political priorities and personal ambitions, political ambitions become the primary criteria for action under this program instead of science and health," Holstein said.

EPA never disclosed the meeting with Hewitt's contacts. It was listed on Pruitt's public calendar as a staff briefing. But on his private Outlook schedule, which the agency has released in response to lawsuits, it appeared as an "Orange County Superfund Site" meeting with Kelly and two other staffers. The records did not list the Californians in attendance at the meeting at EPA headquarters in Washington.

But EPA spokesman Jahan Wilcox confirmed that two lawyers representing the water district, Robert O'Brien and Scott Sommer, and the water district director of special projects, Bill Hunt, were there. A third lawyer, former federal Judge Stephen G. Larson, was forced to cancel his trip due to wildfires in California, according to emails.

"Hugh Hewitt helped arrange the meeting at the request of the water district but did not attend," Wilcox said.

Wilcox said the meeting was for the water district to "brief EPA on the Superfund site's cleanup efforts and request expedited cleanup," following a 2016 agreement with the agency to conduct a remedial investigation and feasibility study, at a cost of \$4 million over two years. Hunt did not immediately respond to a request for comment.

Hewitt in an email to POLITICO called Pruitt a friend and said he does not have a working relationship with him. He said that his firm has represented the water district and worked on the site with EPA's regional office for years but that he had not participated in that work.

Hewitt said he requested a meeting because the water district wanted to brief the new EPA team, he said, adding that he was an Orange County resident until 2016 as well as an Orange County Children and Families Commission member. He said that he "very much" wanted the Superfund site remediated as soon as possible.

According to an EPA fact sheet, the Orange County site has more than five square miles of polluted groundwater containing chlorinated solvents and other contaminants across the cities of Anaheim, Fullerton, and Placentia. It includes the Orange County Groundwater Basin, which provides drinking water to more than 2.4 million residents across 22 cities, according to the agency. Those pollutants can damage humans' nervous systems, kidneys and livers, and some are considered carcinogenic.

EPA has just begun its process of studying the contamination and it has not determined which companies caused the pollution in the area. But an administrative settlement with the EPA in 2016 says the area was home to "electronics manufacturing, metals processing, aerospace manufacturing, musical instrument manufacturing, rubber and plastics manufacturing, and dry cleaning."

Hewitt also thanked EPA schedulers for working to arrange a meeting between Pruitt and the California Lincoln Clubs, which describe themselves as in favor of "limited government, fiscal discipline and personal responsibility." After some rescheduling Pruitt eventually met with representatives of the group on a trip to California in March of this year, according to his public calendar. Prominent Orange County businessman John Warner also helped to connect that group with staffers.

Pruitt and his scheduling staff have frequently sought to set up meetings with or for influential Republican figures, according to the internal EPA emails.

His team accepted an invitation for him to address The Philanthropy Roundtable at an invitation-only event at the White House for "conservative and free-market foundation CEOs and individual wealth creators to discuss

the greatest opportunities for foundations to protect and strengthen free society" and "what [Pruitt] views as unique opportunities for philanthropic action.

As POLITICO reported in March, Pruitt also met with an Indiana coal executive and Trump fundraiser who was seeking to soften a pollution rule.

Pruitt also crafted his travel schedule — including a tour of states in August — to meet with big business much like a member of Congress would during the annual recess.

In July, EPA's associate administrator of public engagement Tate Bennett was working with Pruitt to "essentially create an August recess for the EPA to be out in the states talking with individual companies & doing listening sessions within sectors," said Leah Curtsinger, the federal policy director for the Colorado Association of Commerce & Industry, in an email introducing Bennett to her husband, public affairs director at coal company Cloud Peak Energy and a fellow alum of Senate Majority Leader Mitch McConnell's office.

Annie Snider contributed to this report.

To view online [click here](#).

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House subpanel approves cybersecurity, small-scale LNG bills [Back](#)

By Anthony Adragna | 04/18/2018 11:19 AM EDT

A House Energy and Commerce subpanel today approved a quartet of bills designed to boost DOE's efforts to protect the nation's electric grid from cyberattack.

All four cybersecurity measures — [H.R. 5174 \(115\)](#), [H.R. 5175 \(115\)](#), [H.R. 5239 \(115\)](#), [H.R. 5240 \(115\)](#) — advanced by voice vote.

H.R. 5175 asks DOE to coordinate the federal, state and business responses to physical and cybersecurity threats. H.R. 5239 would establish a voluntary DOE program to test the cybersecurity of products intended for use in the bulk-power system. H.R. 5240 would encourage public-private partnerships on cybersecurity efforts, while H.R. 5174 would have DOE bolster its emergency response efforts.

In addition, the subcommittee approved [H.R. 4606 \(115\)](#), which would allow the expedited approval of small-scale shipments of liquefied natural gas, over the objections of most Democrats. That vote was 19 to 14.

"Leave it to the Republican leadership of this committee to markup a bill that has even fewer environmental safeguards than a Trump Administration proposal," Rep. [Frank Pallone](#) (D-N.J.), ranking member of the full committee, said. "This bill is unnecessary, it is bad policy and it is a legislative earmark."

WHAT'S NEXT: The bills will get consideration by the full House Energy and Commerce Committee.

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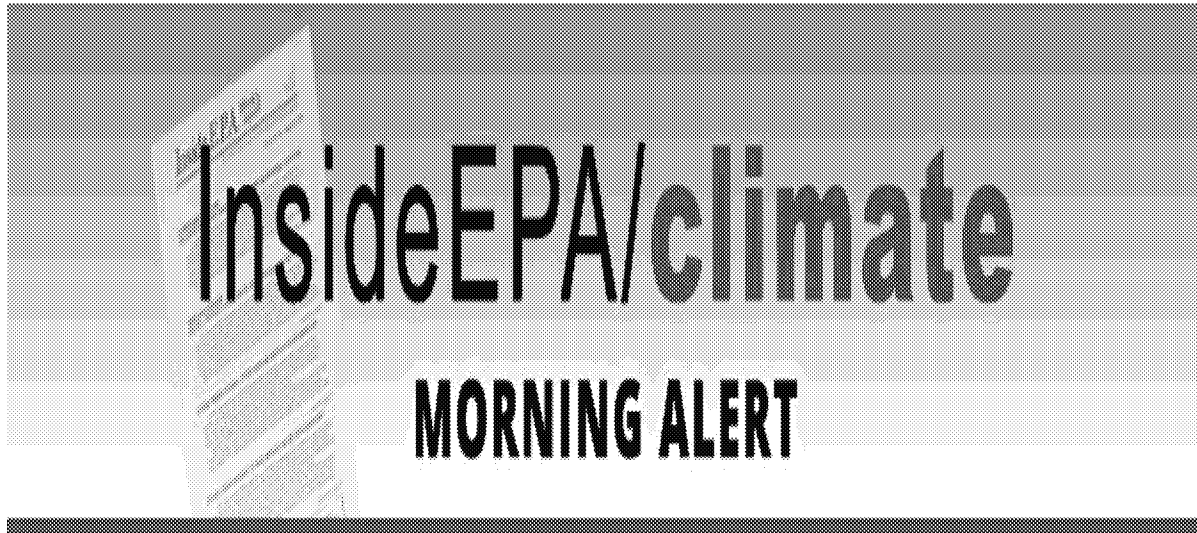
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April 24, 2018

Latest News

EPA Issues Carbon-Neutral Biomass Policy, Spurning SAB Review Efforts

EPA in a new guidance document says it will treat carbon dioxide emissions "resulting from the combustion of biomass from managed forests at stationary sources for energy production as carbon neutral," largely spurning a Science Advisory Board (SAB) review of the issue because the agency believes it has taken too long.

EPA Floats 'Secret Science' Ban Rule, Signaling Possible Internal Fixes

EPA has sent for White House review a proposed rule to increase the transparency of regulatory science, advancing Administrator Scott Pruitt's controversial efforts to ban the use of "secret science" in a move that suggests officials have addressed at least some internal concerns that such a policy could violate statutory protections of medical privacy and trade secrets.

Federal Climate Policy 'Vacuum' Has Spurred Uptick In Novel Climate Suits

The recent increase in climate nuisance and other novel private litigation has occurred because of the federal climate policy "vacuum," according to several legal observers, and while they disagree on the suits' prospects, supporters say the new litigation has already begun to address legal hurdles that would have doomed similar efforts several years ago.

Climate Beat

Litigation: Environmentalists cite major 'legal error' in BLM methane ruling

The groups ask the 10th Circuit to block a lower court ruling that "committed an unprecedented legal error" by staying implementation of BLM's regulation without applying court's traditional four-part tests for such relief.

Litigation: Circuit court vacates Trump NHTSA's CAFE penalty delays

The win for states and environmentalists could presage legal problems for the Trump administration's broader efforts to weaken vehicle fuel efficiency rules, critics say.

Loose Change: White House official reiterates support for Pruitt

In today's news roundup: The comments from White House legislative director come amid new reporting about Pruitt's time in Oklahoma, where he also displayed a taste for VIP treatment and high-end travel.

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Subject: Morning Energy: Pruitt's watershed moment — 'Secret science' policy coming — Blankenship slipping

By Kelsey Tamborrino | 04/24/2018 05:42 AM EDT

With help from Emily Holden

PRUITT'S WATERSHED MOMENT: EPA Administrator Scott Pruitt is approaching his two separate House committee hearings this week with sagging support on the hill. The make-or-break moment is approaching as once-stalwart backers begin to express concern about the controversies that have swirled in recent weeks. Republican Sen. Jim Inhofe (Okla.) — perhaps Pruitt's staunchest ally in Congress — told Pro's Anthony Adragna he thinks it's "appropriate to have a hearing in so far as any accusation having to do with his office is concerned," and he cited a report in The New York Times detailing a sweetheart deal Pruitt received on an Oklahoma City home previously owned by a lobbyist.

Sen. Shelley Moore Capito (R-W.Va.) also thought Thursday's hearings before the House Energy and Commerce and Appropriations committees would prove pivotal for Pruitt's long-term future in the administration. "It's really important," Capito said. "He's going to have to answer some tough questions. I'm sure they'll be put to him by both sides and we'll see what his response is."

And Sen. John Boozman joined his two Republican colleagues in supporting hearings by the Environment and Public Works Committee. Meanwhile, sources told Bloomberg that administration officials privately cautioned lawmakers and other conservative allies to pump the brakes on their defenses of Pruitt.

Publicly, however, the White House stands firm in its commitment to Pruitt. Press secretary Sarah Huckabee Sanders told reporters the administration is "continuing to review a number of the reports" about Pruitt, but noted the EPA chief "has done a good job of implementing the president's policies," particularly on deregulation and energy dominance. White House legislative affairs director Marc Short was more direct earlier Monday: "I think Scott Pruitt is doing a great job and we look forward to keeping him there as EPA administrator," he told MSNBC.

More to come? Earlier Monday, five senior congressional Democrats asked House Oversight Chairman Trey Gowdy to obtain further documents and hold hearings after obtaining new records they say raise "troubling" new questions about Pruitt's security expenditures. EPW ranking member Tom Carper told Anthony he had a good conversation with Gowdy regarding Pruitt, but said there was no formal bipartisan agreement to work together on an investigation. "I just gave him plenty of encouragement that he's doing the right thing," Carper said. Read more.

WELCOME TO TUESDAY! I'm your host Kelsey Tamborrino. Congrats to the Nuclear Energy Institute's Robert Powers, who was first to correctly guess Mary Walker was the first woman to receive the Medal of Honor. For today: Who is the last former senator to appear on a U.S. postage stamp? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter @kelseytam, @Morning_Energy and @POLITICOPro.

POLITICO's Ben White is bringing Morning Money to the Milken Institute Global Conference to provide coverage of the day's events and evening happenings. The newsletter will run April 29 - May 2. **Sign up to keep up with your daily conference coverage.**

BLINDED WITH SCIENCE: EPA's Pruitt is expected to unveil his new science policy that restricts the agency from relying on research that doesn't make public all its available data, a source briefed on the announcement tells Pro's Emily Holden. The proposed rule, which the agency submitted to the White House for review last week, will mirror legislation from House Science Chairman Lamar Smith (R-Texas).

Pruitt argues the change will bolster transparency, but scientists and health advocates say it is an effort to constrain rulemaking. The rollout has been delayed as agency officials tried to determine how to treat industry research used to evaluate the safety of pesticides and toxic chemicals, as Pro's Annie Snider reported last week. While academic studies often can't disclose data that includes personal health records, corporations can't reveal proprietary information either.

SCIENTISTS REACT: Close to 1,000 scientists signed onto a letter to Pruitt Monday, calling on the administrator to reverse course on his plans to revise how the agency considers outside research. "EPA can only adequately protect our air and water and keep us safe from harmful chemicals if it takes full advantage of the wealth of scientific research that is available to the agency," write the scientists, including some former EPA career staffers. Read it here.

A BLANK SLIP: GOP establishment attacks on former coal baron Don Blankenship seem to be taking hold, POLITICO's Alex Isenstadt reports via new polling. With the West Virginia Senate primary a mere two weeks away, a poll out Monday found Blankenship falling behind his more mainstream rivals, GOP Rep. Evan Jenkins and state Attorney General Patrick Morrisey. The poll found Morrisey leading with 24 percent, followed by Jenkins with 20 percent, and Blankenship trailing with 12 percent.

National Republicans have scrambled to intervene in the race, concerned that a Blankenship primary win would destroy their prospects of defeating Democratic Sen. Joe Manchin in November. Blankenship, who spent a year in jail following the deadly 2010 explosion at his Upper Big Branch Mine, has poured nearly \$2 million of his own money into a slash-and-burn style campaign savaging Jenkins and Morrisey as pawns of the establishment, Alex writes. Blankenship has also used the Senate run as a path to clear his name. So far, much of his campaign has been geared toward portraying himself as the casualty of the Obama-era Justice Department, which he says was bent on locking him up.

The new survey, which was conducted April 17-April 19 and has a margin of error of 4.9 percentage points, precedes a GOP debate today, and another that will be hosted by Fox News next week for a nationally televised audience. Read more.

SPECIAL ELECTION TODAY: Arizona voters will decide today who will pick up the seat left vacant by Rep. Trent Franks' departure in the state's 8th District. While neither candidate highlights specific environmental issues on her campaign website, Republican Debbie Lesko and Democrat Hiral Tipirneni have markedly different takes on climate change. Tipirneni's site says she believes "climate change is real and that we need to reduce carbon emissions." Meanwhile, Lesko said during a debate earlier this year that "certainly not the majority" of climate change is human-caused. "I think it just goes through cycles and it has to do a lot with the sun. So no, I'm not a global warming proponent," she said.

RULES TO MEET ON COLUMBIA RIVER BILL: The House Rules Committee will meet at 5 p.m. to formulate a rule on H.R. 3144 (115), which would void the environmental impact statement process for altering the hydropower system along the Columbia and Snake rivers. Earlier this month, the 9th Circuit Court of Appeals sided with the state of Oregon, the Nez Perce tribe and conservation groups, ruling that dam operations on the Columbia and Snake rivers must forgo hydropower production during key times of the year to protect

endangered salmon. An environmental impact statement for the system has been the subject of congressional fights, with Rep. Cathy McMorris Rodgers filing the legislation to void that process.

COAL ASH HEARING TODAY: EPA holds a public hearing today on its proposal to roll back the Obama-era regulation for the cleanup and disposal of coal ash. The hearing will begin at 9 a.m. in Arlington, Va., where there will be three sessions: 9 a.m. until noon; another beginning at 1 p.m. and ending at 4 p.m.; and a final session beginning at 5 p.m. and ending at 8 p.m.

PROMISES, PROMISES: Senate spending leaders vowed to restore chamber-wide debate on amendments to individual appropriations bills, Pro's Sarah Ferris and Kaitlyn Burton report. It's a risky move, ME readers may recall, considering how Democrats blocked a largely noncontroversial Energy and Water bill in 2016 because of a proposed amendment on Iran, and in 2015, House Republicans' Interior-Environment bill was tripped up by an unrelated rider on the Confederate flag. But Senate Appropriations Chairman Richard Shelby and his Democratic counterpart Patrick Leahy told committee members in a closed-door meeting Monday that leadership has agreed to allow amendments on the Senate floor for every individual spending bill. And the two have met with Majority Leader Mitch McConnell and Minority Leader Chuck Schumer in recent days about opening up the floor for debate on spending bills.

JUDGE: ENBRIDGE PIPELINE SHOULD STICK TO PLAN : An administrative law judge recommended on Monday that Minnesota regulators approve Enbridge Energy's proposal for replacing its Line 3 crude oil pipeline. But the court stipulated that the pipeline should follow the existing route, not the company's preferred route, which would carry Canadian tar sands crude from Alberta across areas in the Mississippi River, the Associated Press reports. Administrative Law Judge Ann O'Reilly's recommendation to the Public Utilities Commission sets up further disputes, "because the existing line crosses two Ojibwe reservations where tribal governments have made it clear that they won't consent and want the old line removed altogether." Read more.

A METHANE TO THE MADNESS: The comment period on the Bureau of Land Management's proposal to reverse the Methane Waste Prevention Rule ended Monday, drawing thousands of far-reaching comments. The left-leaning Center for Western Priorities analyzed a random sample of 2,000 comments, it said, finding 99.8 percent of them were opposed to the proposal. The Independent Petroleum Association of America and Western Energy Alliance meanwhile submitted joint comments applauding the move. "We were pleased to see workable changes are being considered to the rule that more accurately represent the scope of power and authority given to the BLM for regulating this type of activity," IPAA's Dan Naatz said in a statement. And, E2, an affiliate of the Natural Resources Defense Council, sent a letter to Interior Secretary Ryan Zinke on Monday, expressing its opposition to BLM's proposal. Close to 400 businesses signed onto that letter, which calls BLM's proposal "a net negative for the American public." Read it here.

MAIL CALL! IN HONOR OF NATIONAL PARKS WEEK: League of Conservation Voters organized 122 groups — including the American Civil Liberties Union and the Human Rights Campaign — in a letter to members of Congress opposing the administration's moves on public lands. National monuments "have helped make our public lands more inclusive," the letter states, before calling on lawmakers to "reject any legislation that would limit the president's authority under the Antiquities Act or codify any unlawful rollbacks of existing national monuments." Read it here.

FOR YOUR RADAR: The House will vote to overhaul the 1988 Stafford Act this week, Pro's Budget & Appropriations team reports. The three-decade-old bill is the main piece of legislation overseeing federal disaster-relief efforts, with proposed tweaks that include new incentives to build "smarter and stronger to better withstand disasters in the future," according to GOP Majority Leader Kevin McCarthy's office. That could equate to big changes on how states spend disaster relief money.

ICYMI: ZINKE DRAWS OLIVER'S IRE: The Interior secretary got the full treatment from HBO host John Oliver on "Last Week Tonight" on Sunday. Oliver hit Zinke for referring to himself as a geologist and said he

"has a real flair for creative license." Of course, Zinke is not the first to draw scrutiny from the HBO host. A judge recently dismissed a defamation lawsuit brought by coal magnate Bob Murray against Oliver, who referred to Murray as a "geriatric Dr. Evil." Watch the Zinke video [here](#).

STATE NEWS — CUOMO INTRODUCES PLASTIC BAG BILL: New York Gov. Andrew Cuomo introduced a [bill](#) Monday to ban the use of plastic bags throughout the state, Pro New York's Danielle Muoio reports. The legislation — a long-sought promise from Cuomo — would give the state Department of Environmental Conservation jurisdiction over all matters concerning plastic bags and recycling, but comes with caveats that left some environmental advocates saying it isn't far-reaching enough. Read [more](#).

QUICK HITS

— Trump administration official says it's a "top priority" to improve American weather forecasting model, [The Washington Post](#).

— Sources: Arrested Chevron workers could face treason charge in Venezuela, [Reuters](#).

— Trump likes coal, but that doesn't mean he's hostile to wind, [Associated Press](#).

— Halliburton writes off investment in crisis-hit Venezuela, [Financial Times](#).

— U.S. coal bailout review slows after Trump faces pushback, [Bloomberg](#).

HAPPENING TODAY

8:00 a.m. — American Fuel & Petrochemical Manufacturers holds [security conference](#), New Orleans

10:00 a.m. — Senate Energy and Natural Resources Committee [hearing](#) on the president's proposed budget request for FY 2019 for the Forest Service, 366 Dirksen

10:00 a.m. — Senate Foreign Relations Committee [hearing](#) on nominations, including Jackie Wolcott to be representative to the International Atomic Energy Agency, 419 Dirksen

10:00 a.m. — The Bipartisan Policy Center [webcast](#) on "Can America's Infrastructure Withstand the Next Natural Disasters? Lessons Learned from Previous Disasters."

3:00 p.m. — Woodrow Wilson Center [book launch discussion](#) on "Can We Price Carbon?" 1300 Pennsylvania Ave NW

5:00 p.m. — Johns Hopkins University's Energy, Resources and Environment [presentation](#) on "Cities as Innovation Centers: Investing in Resilient Infrastructure," 1619 Massachusetts Avenue NW

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<https://www.politicopro.com/newsletters/morning-energy/2018/04/pruitts-watershed-moment-180878>

Stories from POLITICO Pro

White House reiterates support for Pruitt [Back](#)

By Anthony Adragna | 04/23/2018 02:30 PM EDT

The White House says it is still standing behind EPA's Scott Pruitt, voicing support for the embattled administrator two days after it was revealed that a Washington lobbyist whose wife rented a condo to him personally lobbied Pruitt despite weeks of denying they had held any meetings.

"We're reviewing some of those allegations, however Administrator Pruitt has done a good job of implementing the president's policies, particularly on deregulation," press secretary Sarah Huckabee Sanders said at the White House briefing.

She added the administration continues its look into Pruitt's conduct, including his lavish spending, first-class travel arrangements, pay raises for political appointees and use of security personnel. White House budget director Mick Mulvaney told a congressional subcommittee last week he'd investigate the EPA chief's spending \$43,000 on a privacy booth for his office.

Pruitt is scheduled to testify at two House hearings on Thursday.

What's next: Sanders said the White House is "monitoring" additional reports about Pruitt.

To view online [click here](#).

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White House stands behind Pruitt despite new lobbying disclosure [Back](#)

By Anthony Adragna | 04/23/2018 01:54 PM EDT

The White House said Monday it still stands behind EPA Administrator Scott Pruitt, praising him for enacting President Donald Trump's environmental and energy policies even as it looked into reports of ethical lapses.

It was the first statement from the White House since POLITICO first reported that despite his denials, Pruitt had met with a lobbyist whose wife rented the Environmental Protection Agency chief his \$50-per-night condo. A disclosure form filled late Friday said J. Steven Hart had lobbied the EPA, although both the agency and the lobbyist contend the meeting, held last July, did not constitute formal lobbying.

"We're reviewing some of those allegations. H however, Administrator Pruitt has done a good job of implementing the president's policies, particularly on deregulation," press secretary Sarah Huckabee Sanders said at the White House briefing.

The White House has been looking into Pruitt's lavish spending on first-class travel arrangements, pay raises for political appointees and use of security personnel. Budget director Mick Mulvaney told a congressional subcommittee last week he'd investigate the EPA chief's spending of \$43,000 on a privacy booth for his office.

That's on top of several ongoing probes by the EPA's own watchdog and three by congressional committees, including the House Committee on Oversight and Government Reform.

Pruitt is scheduled to testify at two House hearings on Thursday.

Sanders' comments come as five senior congressional Democrats asked House Oversight Chairman Trey Gowdy (R-S.C.) to seek new documents and hold hearings regarding "troubling" new questions about Pruitt's security expenditures.

According to nonpublic documents cited in the Democrats' letter, Pruitt's office was not cleared for classified communications as of March 2017. EPA previously said Pruitt's need to handle such information justified the installation of the privacy booth. The Government Accountability Office concluded last week the agency violated federal law by not informing Congress of the purchase.

The letter also alleges that a security sweep of Pruitt's office — the contract for which went to a business partner of Pruitt's security chief, Pasquale "Nino" Perrotta — went outside federal contracting norms without proper pre-approval.

"Given the latest developments and these new documents, we believe these and related matters are ripe for additional document requests to EPA and that Administrator Pruitt should testify about all of these matters immediately," the lawmakers wrote. Sens. Tom Carper of Delaware and Sheldon Whitehouse of Rhode Island and Reps. Elijah Cummings of Maryland and Gerry Connolly and Don Beyer, both of Virginia, signed the letter.

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Pruitt support in Senate erodes as GOP lawmakers seek hearings [Back](#)

By Anthony Adragna | 04/23/2018 08:32 PM EDT

Scott Pruitt's wall of GOP support developed some new cracks on Monday, with three key Senate defenders calling for hearings into the embattled EPA administrator's recent controversies.

The three, including staunch Pruitt ally Sen. Jim Inhofe (R-Okla), all said they supported hearings by the Senate Environment and Public Works Committee to look into the former Oklahoma attorney general's actions.

"I think that a couple of us on the committee think it's appropriate to have a hearing in so far as any accusation having to do with his office is concerned," Inhofe told POLITICO.

Inhofe said he was troubled by a report over the weekend in The New York Times detailing a sweetheart deal Pruitt received on an Oklahoma City home previously owned by a lobbyist while serving in a state government. The Oklahoma Republican declined to discuss which allegations he found disturbing, but said "there are some things in there that I'd like to check out and see."

Joining his call for a Senate hearing were two other senior GOP members of the EPW panel, Sens. Shelley Moore Capito (W.Va.) and John Boozman (Ark.).

"Most people have concerns about some of the allegations," Boozman said. "At some point he'll be before the committee and we'll dig deeper and see exactly what's going on."

EPW Chairman John Barrasso (R-Wyo.) told reporters he expected Pruitt would come to testify at some point, but he stopped short of providing a specific timeframe or stating his intention to call a hearing.

To date, four House Republicans have called on Pruitt to resign, along with scores of elected Democrats. And Sen. Susan Collins (R-Maine), has said Pruitt was "the wrong person" to lead the agency based on his policies.

Pruitt has drawn criticism about his ethics and lavish spending in recent months. Three Congressional committees, the White House and EPA's inspector general are all probing his behavior, ranging from his security expenses, high pay raises for aides, first-class travel and meetings with a coal group.

The House Oversight Committee has requested interviews with five senior agency aides and the White House said it would formally investigate Pruitt's expenses after the Government Accountability Office last week found EPA broke the law by failing to notify Congress about a \$43,000 privacy booth Pruitt had built in his office.

Pruitt will go to the Hill on Thursday to testify before a House Energy and Commerce subcommittee in the morning and at a House Appropriations subpanel in the afternoon. Those appearances will mark his first time before Congress since the recent allegations broke.

Both Inhofe and Capito said they thought those House hearings would prove pivotal for Pruitt's long-term future in the administration.

"It's really important," Capito said. "He's going to have to answer some tough questions. I'm sure they'll be put to him by both sides and we'll see what his response is."

Meanwhile, EPW ranking member Tom Carper (D-Del.) said he had a good conversation with House Oversight Chairman Trey Gowdy (R-S.C.) regarding Pruitt, but he said there was no formal bipartisan agreement to work together on an investigation.

"I just gave him plenty of encouragement that he's doing the right thing," he said.

But the mounting public criticism from Republicans suggests GOP lawmakers' patience in defending the EPA chief's behavior is waning.

"Some of the things that he's done and that he's been alleged to do are just indefensible," Sen. John Kennedy (R-La.) said. "You just can't put lipstick on those pigs. You can't."

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EPA emails show industry worries slowed new science policy [Back](#)

By Annie Snider | 04/19/2018 05:01 PM EDT

EPA's rollout of a controversial new transparency policy that would severely restrict the scientific research the agency can rely on when drafting new regulations has been slowed down by political officials' fears that it could have major unintended consequences for chemical makers, according to newly released EPA documents.

The issue of scientific transparency has been high on the agenda of House Science Chairman [Lamar Smith](#) (R-Texas), who has found strong support from EPA Administrator Scott Pruitt — much to the consternation of public health advocates and green groups, who view the effort as backdoor attack on the agency's ability to enact environmental regulations.

Since Pruitt announced plans for the new policy last month, researchers and public health proponents have raised alarms that it could restrict the agency's ability to consider a broad swath of data about the effects of pollution on human health. But documents released under the Freedom of Information Act show that top EPA officials are more worried the new restrictions would prevent the agency from considering industry studies that frequently support their efforts to justify less stringent regulations.

Emails between EPA officials obtained by the Union of Concerned Scientists show that Nancy Beck, the top political official in the agency's chemicals office who came to the agency after serving as a key expert for the chemical industry's lead lobbying group, voiced major concerns after she received a draft of the not-yet-released policy on Jan. 31.

The new scientific transparency directive is expected to require that the raw data for all studies EPA relies on be publicly available, and that the studies be peer-reviewed. But Beck said these requirements would exclude a great deal of industry data about pesticides and toxic chemicals that her office considers when determining whether a substance is safe or must be restricted.

It costs companies "millions of dollars to do these studies," Beck wrote in an email to Richard Yamada, the political official in EPA's office of research and development who is spearheading work on the new scientific policy and is also a former staffer for the House Science Committee chairman.

"These data will be extremely valuable, extremely high quality, and NOT published," Beck wrote. "The directive needs to be revised."

Moreover, much of this data, Beck noted, is considered proprietary by companies. It is dubbed confidential business information, and even though EPA can consider it as part of its regulatory review, the data cannot legally be made public.

Yamada replied to thank Beck for the heads up. "Yes, thanks this is helpful - didn't know about the intricacies of CBI," he wrote. "We will need to thread this one real tight!"

The term "confidential business information" primarily applies to industry information. That data is separate from the personal medical information that public health researchers worry could block consideration of their work.

Yogin Kothari, a lobbyist for the Union of Concerned Scientists, said the emails show the Trump administration's EPA has been "trying to stack the deck in favor of the industries they're supposed to be regulating."

"They want to potentially create exemptions for industry, but if you look at this entire set of documents ... you will see that there's not a single consideration for the impacts on public health data, on long-term health studies, on studies that EPA does after public health disasters like the BP oil spill," he said.

EPA spokeswoman Liz Bowman emphasized the policy is not yet finalized.

"These discussions are part of the deliberative process; the policy is still being developed. It's important to understand; however, that any standards for protecting [confidential business information] would be the same for all stakeholders," she said in a statement.

The emails indicate Pruitt wanted the new science policy rolled out at the end of February, and teased his plans in an interview with conservative outlet The Daily Caller in mid-March. But the agency has yet to finalize the policy.

The transparency directive has its origins in legislation introduced by Smith during the Obama administration, that had the backing of a number of industry groups, including the American Chemistry Council. The House Science Committee chairman frequently charged that the Obama EPA used "secret science" to justify "costly new regulations."

Although versions of the measure were approved by the House multiple times, the Senate never took it up. CBO estimated that one version of Smith's legislation would cost EPA \$250 million a year, at least in the initial years, and a leaked staff response to questions from the budget office said a later version would be even more costly, would endanger confidential medical and business information, and "would prevent EPA from using the best available science."

But Smith found an ally in Pruitt. The emails indicate that Smith met with Pruitt in early January and show that Pruitt's staff quickly began working on a directive to "internally implement" the legislation.

Industry's backing for the new scientific approach began to waiver under the Trump administration, though. When a top American Chemistry Council scientist testified before Smith's committee in February 2017, she emphasized the need to protect industry information if the transparency initiative moved forward.

"One of the things that we do need to take into consideration as making that data publicly available is that there are adequate protections for confidential business information to ensure that we keep innovation and competitiveness available for the marketplace," Kimberly White told the committee.

Industry has historically claimed that a wide range of information about chemicals, ranging from the processes by which they are produced, to the locations of manufacturing plants, to their very identities, must be kept confidential in order to keep competitors from learning trade secrets. Environmental and public health advocates argue that industry claims this exemption in many cases where it's not necessary and that it often keeps important health and safety information from public view.

The issue was a key point of debate when Congress considered a major overhaul of the nation's primary chemical safety law passed 2016 and has reemerged as Pruitt's EPA sets about implementing the law.

Asked for comment on EPA's new effort to implement the scientific transparency approach internally, American Chemistry Council spokesman Scott Openshaw said the group looks forward to reviewing the directive once it's finalized.

"It is critical that any final directive properly protect confidential business information and competitive intelligence," he said in a statement.

The internal emails show that EPA political staff were particularly attuned to this concern. In a Feb. 23 email to colleagues, Beck forwarded language from a 2005 White House document that laid out narrow exemptions from its requirement that all "important scientific information" disseminated by the federal government go through peer review.

"[Y]ou may need to tweak but hopefully there is something helpful here that can be borrowed/adopted," she wrote.

Richard Denison, lead senior scientist for the Environmental Defense Fund, said that EPA's access to industry data is indeed important to its ability to review the safety of new chemicals and pesticides, but said the internal EPA communications show that Pruitt's EPA wants to "have their cake and eat it too" with the new directive.

"They're trying to force peer review studies done by academic scientists to disclose every last detail, while at the same time allowing industry studies to be kept private or aspects of those to still be kept private," he said.

He pointed out that the concerns Beck raised about the burden the new policy would place on industry are the very same ones that the CBO report said the policy would place on EPA.

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Poll: Coal baron Blankenship fading in W.Va. Senate primary [Back](#)

By Alex Isenstadt | 04/23/2018 07:26 PM EDT

WHEELING, W.Va. — A new poll out Monday evening shows recently imprisoned coal baron and Senate hopeful Don Blankenship fading in the Republican primary, amid an avalanche of establishment attacks aimed at stopping him from winning the nomination.

With the primary two weeks away, the survey shows Blankenship, who spent a year in jail following the deadly 2010 explosion at his Upper Big Branch Mine, falling far behind his more mainstream rivals, GOP Rep. Evan Jenkins and state Attorney General Patrick Morrisey. The poll found Morrisey leading with 24 percent, followed by Jenkins with 20 percent, and Blankenship trailing with 12 percent. Thirty-nine percent were undecided.

The survey, which was conducted April 17-19 and has a margin of error of 4.9 percentage points, came as Blankenship squared off against his rivals in a 90-minute debate held at Wheeling Jesuit University. The candidates spent much of the evening aligning themselves with President Donald Trump, and beating up on Democratic Sen. Joe Manchin.

They will also meet on Tuesday, and again next week for a nationally televised debate hosted by Fox News.

The survey of 411 primary voters was commissioned by GOPAC, an organization that promotes state Republican legislators, and was conducted by National Research Inc., a polling firm that worked on Trump's 2016 campaign. Neither has taken sides in the primary.

National Republicans have scrambled to intervene in the contest, fearing that a Blankenship primary win would destroy their prospects of unseating Manchin. The 68-year-old former coal executive has spent nearly \$2 million of his own to fund a slash-and-burn style campaign savaging Jenkins and Morrisey as establishment pawns.

He has also sought to clear his name. Much of Blankenship's campaign has been geared toward portraying himself as the casualty of an Obama Justice Department bent on locking him up.

Fearful that Blankenship was gaining traction, Mountain Families PAC, a super PAC overseen by strategists close to Senate Majority Leader Mitch McConnell's political operation, swung back — airing around \$700,000 worth of TV ads in recent days accusing Blankenship of contaminating drinking water.

The effort to defeat Blankenship has gone further. Earlier this month, Trump flew to West Virginia to hold an event aimed at selling his tax reform legislation. The president was seated next to Jenkins and Morrisey, a clear attempt to promote their candidacies over Blankenship, who was not in attendance.

For national Republicans, the move was not without risk. Last year, a McConnell-aligned super PAC spent millions to stop Alabama Senate candidate Roy Moore from winning the nomination, only to see it backfire. Moore used it to cast himself as the victim of the establishment, and went on to win the primary before losing the general election in a stunning upset.

Blankenship is taking a similar approach. With the contest hurtling into the final stretch, he has begun airing commercials calling McConnell a "swamp creature."

And during a news conference on Monday morning, Blankenship pledged not to support McConnell as Senate GOP leader if he's elected.

"He needs to understand that if I'm there I will not vote for him for majority leader, and so the rest of the senators should understand that they should not put him up if they need my vote," he told reporters.

The candidates largely avoided attacking each other at Monday's debate, perhaps because three lesser-known contenders were also included onstage, a setup that limited the amount of speaking time.

Blankenship used the debate to further his argument against the establishment. He called the 2010 mine explosion "heart-wrenching," and called it "one of the worst days of my life."

But he blamed the disaster on the government, saying it had taken steps to limit the amount of airflow available to the miners.

During his closing remarks, Blankenship referred to Washington as the "district of corruption," and argued that politicians there often tried to make themselves look like they were fighting over ideals when they were merely posturing.

"When I go to D.C.," he said, "it won't be a fake fight, it will be a real fight."

With candidates and outside groups crowding the TV airwaves, much of the firepower is being directed at Jenkins, a second-term congressman who in 2014 defeated longtime Democratic Rep. Nick Rahall. All told, around \$1.2 million is expected to be spent against Jenkins, according to a media buyer.

Among those spending heavily against Jenkins is Duty and Country, an outside Democratic group with offices in Washington. To date the group has spent around \$380,000 on TV, the vast majority of it against Jenkins.

At Monday's debate, Jenkins argued that Democrats were trying to "meddle" in the primary. He said their attacks on him was proof that the opposing party viewed him as the biggest threat to Manchin.

The Democratic effort, he added, was unprecedented in West Virginia politics.

"They're scared to death of Evan Jenkins on the ballot in November because they know Evan Jenkins can beat Joe Manchin," the congressman said.

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Court chooses salmon over hydropower in Columbia River fight [Back](#)

The 9th Circuit Court of Appeals has sided with the state of Oregon, the Nez Perce tribe and nearly a dozen conservation groups, ruling that hotly contested dam operations on the Columbia and Snake Rivers must forgo hydropower production during key times of the year in order to protect endangered salmon.

The three-judge panel upheld a lower court's decision requiring that water be spilled over the top of dams along the Columbia River System, including the powerhouse Grand Coulee dam, the largest power station in the U.S., during periods when young salmon and steelhead migrate to the ocean. The hydropower turbines pose a threat to the fish.

The Justice Department, representing the National Marine Fisheries Service, Army Corps of Engineers and Bureau of Reclamation, had argued that requiring such operations would cause electricity rates to spike and could threaten the reliability of the electrical grid.

The ruling stems from a years-long battle over the nearly 100-year-old hydropower system along the Columbia and Snake rivers. Conservation groups and tribes with treaty fishing rights want the system altered and operated to benefit wildlife, including calling for the removal of four dams along the Snake River. As part of that litigation, the federal agencies are also working on an environmental impact statement for the system that has been the subject of congressional fights, with Rep. Cathy McMorris Rodgers (R-Wash.) filing a measure (H.R. 3144) to void that process, and Democratic lawmakers coming out in opposition.

WHAT'S NEXT: Unless they successfully appeal the decision, the federal agencies will need to release water over the top of dams beginning this spring. The ongoing environmental impact statement process will continue.

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Senate spending leaders vow to open up floor debate for amendments [Back](#)

By Sarah Ferris and Kaitlyn Burton | 04/23/2018 06:20 PM EDT

Senate Appropriations Chairman Richard Shelby is vowing to restore chamber-wide debate on amendments to individual appropriations bills to help end Congress' stop-and-go funding cycle.

Shelby (R-Ala.), along with his Democratic counterpart Sen. Patrick Leahy, of Vermont, told committee members in a closed-door meeting today that leadership has agreed to allow amendments on the Senate floor for every individual spending bill.

"There is perhaps unanimity, but certainly strong consensus that if the appropriations process is going to work we're going to be casting votes on amendments and we stay here and we vote," Sen. Jerry Moran (R-Kan.) told reporters exiting the meeting, which was the committee's first bipartisan sit-down of fiscal 2019

"I think it's the single best way to restore the Senate the way the Senate's supposed to work. The full Senate gets a chance to offer a variety of amendments, and if you don't like it, you can vote against it," Sen. Lamar Alexander (R-Tenn.) added.

Shelby and Leahy have met with Majority Leader Mitch McConnell and Minority Leader Chuck Schumer in recent days about opening up the floor for debate on spending bills.

When asked if both leaders were on board, Shelby added: "They tell us they are, and I like to believe them." Leahy added: "We both talked with both of them. I think they both understand. The Senate can't go on like this."

It's a risky gambit, particularly in an election year. Contentious amendments have held up bills in both chambers in recent years.

Back in 2016, Senate Democrats blocked a largely noncontroversial Energy and Water bill because of a proposed amendment on Iran. In 2015, the House GOP's Interior-Environment bill was tripped up by an unrelated rider on the Confederate flag.


The number of amendments on Senate spending bills has dropped dramatically in the last two decades, as the chambers considers fewer and fewer individual bills.

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Subject: Morning Energy, presented by Anheuser-Busch: Conservative talker has pull with Pruitt — It's primary day in coal country — Trump meets with ethanol

By Kelsey Tamborrino | 05/08/2018 05:40 AM EDT

With help from Eric Wolff and Anthony Adragna

PRUITT GETS TO IT FOR HEWITT: New emails emerged Monday that provide previously unknown details in the ongoing raft of controversies that have plagued EPA Administrator Scott Pruitt — and provide more ammo for onlookers who worry Pruitt spends too much time currying favor with his political allies.

Conservative commentator Hugh Hewitt brokered a meeting that ultimately ended with a polluted California area on Pruitt's personal priority list of Superfund sites, POLITICO's Emily Holden and Anthony Adragna report. Hewitt lives in Orange County, where the Superfund site sits, and has a son who works in EPA's press office. The TV and radio host emailed Pruitt back in September to set up a meeting between Pruitt and the law firm Larson O'Brien, which employs Hewitt and represents the Orange County Water District. "I'll join if the Administrator would like me too or can catch up later at a dinner," Hewitt wrote in the email, which was obtained under a FOIA lawsuit by the Sierra Club. He added that the issues surrounding the Superfund site were "Greek to me but a big deal in my home county."

Weeks later, the Orange County North Basin site in question appeared on Pruitt's list of 21 contaminated areas to address. Pruitt then proposed listing the site on the agency's National Priorities List, making it potentially eligible for long-term federal cleanup funding. Since the meet-up, Hewitt has been a staunch defender of Pruitt, dismissing his recent controversies as "nonsense scandals" on MSNBC in early April. EPA spokesman Jahan Wilcox confirmed that Hewitt helped arrange the meeting at the request of the water district but didn't attend.

The meeting adds to environmentalists' concerns about Pruitt. "The biggest fear we have is that No. 1 the administrator's political priorities and personal ambitions, political ambitions become the primary criteria for action under this program instead of science and health," said Elgie Holstein, senior director for strategic planning at the Environmental Defense Fund who has been tracking EPA's Superfund actions. [Read the story here.](#)

FIRST CLASS MEMO: EPA on Monday also released a copy of a memo written by the former head of Pruitt's security detail justifying his first class flights. "We have observed and increased awareness and at times lashing out from passengers which occurs while the Administrator is seated in coach with [his security detail] not easily accessible to him due to uncontrolled full flights," Pasquale "Nino" Perrotta wrote in the May 1, 2017, memo. "Therefore, we believe that the continued use of coach seats for the Administrator would endanger his life and therefore respectfully ask that he be placed in either business and or first class accommodations." The Washington Post and E&E obtained copies of the memo via a FOIA request. Perrotta retired from the agency last week.

WELCOME TO TUESDAY! I'm your host Kelsey Tamborrino. Congrats to Cummins Inc.'s Patrick Wilson, who was first to identify former House Speaker Nathaniel Banks of Massachusetts as the representative who served 11 terms and ran for election on five different party tickets. He was successful in all but the Liberal

Republican ticket. For today: What president was first to watch a major league baseball game from the dugout? Bonus points if you can name the team. Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](https://twitter.com/kelseytam), [@Morning_Energy](https://twitter.com/Morning_Energy) and [@POLITICOPro](https://twitter.com/POLITICOPro).

BLANKENSHIP'S BIG DAY: We should know by tonight who will face Sen. [Joe Manchin](#) in a West Virginia Senate race that Republicans see as one of their biggest pickup opportunities of the year — that is, unless coal baron Don Blankenship scores a surprise upset in the surprisingly tight GOP primary. President Donald Trump [tweeted](#) Monday that Blankenship "can't win the General Election in your State," though he didn't endorse one of his opponents. That likely didn't ease fears that the two other major candidates — Rep. [Evan Jenkins](#) and state Attorney General Patrick Morrisey — will split the anti-Blankenship vote evenly and allow the former Massey Energy CEO to come out ahead. Blankenship recently was released from a year in jail following an explosion at the Upper Big Branch Mine that killed 29 workers. Blankenship has called the Upper Big Branch disaster the "worst tragedy" of his life, and is working to have his [conviction thrown out](#). (He has previously lost on appeal and failed to convince the Supreme Court to take the case.) For his part, Blankenship said Monday he was confident he would win, POLITICO's Alex Isenstadt [reports](#) from Mount Hope, W. Va.

That's not all: The Mountain State is not alone in kicking the 2018 midterms into gear. Statewide primary elections also are happening today in Ohio and Indiana and North Carolina, including solar energy entrepreneur and Democrat Dan McCready, who is running in North Carolina's 9th District. Vox nicely breaks down today's big races nationwide [here](#) and POLITICO has 7 things to watch [here](#).

SCHNEIDERMAN RESIGNS: New York Attorney General Eric Schneiderman, who has sued Exxon Mobil and fought the Trump administration's deregulatory agenda, [announced](#) his resignation Monday night in the wake of a report from the [New Yorker](#) that four women had accused him of abuse in previous romantic relationships. Two of the women who went on the record "say that they eventually sought medical attention after having been slapped hard across the ear and face, and also choked," according to the magazine. In a statement, Schneiderman disputed the allegations but said they "will effectively prevent me from leading the office's work at this critical time." The resignation takes effect at the close of business today.

Before the New Yorker story broke, Schneiderman and the attorneys general from seven other states called on Pruitt to withdraw his "secret science" proposal to ban the use of studies that don't publicly disclose all their data. Read the letter [here](#).

CHOPPING BLOCK: The White House on Monday [outlined](#) its package of proposed spending cuts, rescinding \$4.3 billion from the Energy Department's Advanced Technology Vehicles Manufacturing loan program, which supports the production of fuel-efficient, advanced technology vehicles. It was part of an overall request for \$15 billion worth of rescissions from previously appropriated funds from prior years. Another package going after the FY18 omnibus is expected later this year. More [here](#).

ON THE GRID: Puerto Rico's electric grid — which failed to provide power for much of the island for several months after last year's hurricanes — will be the focus of a Senate Energy and Natural Resources hearing this morning. The CEO of the Puerto Rico Electric Power Authority Walter Higgins and Bruce Walker, assistant Energy secretary for electricity delivery and energy reliability, are among the names set to testify. "The end goal is a modern and intelligent energy system that can serve as the resilient engine for Puerto Rico's economic revitalization," Walker is expected to say. Officials [say](#) close to 95 percent of power has now been restored on the island. **If you go:** The [hearing](#) kicks off at 10 a.m. in 366 Dirksen.

— **Forty-seven U.S. and international scientific groups** sent a [letter](#) to Puerto Rico Gov. Ricardo Rosselló on Monday, urging him to keep the island's statistical agency, the Puerto Rico Institute of Statistics, and its board of directors fully independent. "To address the challenges posed by its decade-long economic recession and the devastation of back-to-back hurricanes, Puerto Rico must chart its path toward sustainable recovery using reputable and reliable data and statistical methods," the letter says.

**** A message from Anheuser-Busch:** Anheuser-Busch announced that America's leading brewer has placed an order for up to 800 hydrogen-electric powered semi-trucks. The zero-emission trucks will be able to travel between 500 and 1,200 miles. Anheuser-Busch aims to convert its entire long-haul dedicated fleet to renewable powered trucks by 2025. [Learn more](#). **

ENERGY-WATER BILL ADVANCES: The House Appropriations Energy-Water subpanel swiftly approved its \$44.7 billion energy and water spending bill on a voice vote Monday, sending the measure to the full committee for consideration. The appropriations bill largely ignores the president's budget request, earning the approval of Democrats, who applauded the boost in funding for the Army Corps of Engineers and DOE thanks to the bipartisan agreement to lift spending caps. [Read more](#).

TRUMP MEETS WITH SENATORS ON RFS: In what could perhaps be the final time, Trump plans to meet today with at least Sens. [Chuck Grassley](#), [Joni Ernst](#), [Ted Cruz](#) and [Pat Toomey](#) to discuss their dueling priorities around federal ethanol policy. Who else will be in the room remains unclear, as sources told ME conflicting stories: An ethanol source said neither Pruitt, nor the Ag secretary, would be present, while a Republican Senate aide said both would be there.

A source said Team Ethanol's main goal is to get Trump to affirm his commitment to year-round sales of 15 percent ethanol, but the rest of the agenda seems to be unclear. A biofuels source said they expect Trump to kick the biofuels battle to Congress, where Sen. [John Cornyn](#) and Rep. [John Shimkus](#) have been trying to write a bill to overhaul the RFS. Cruz said at a Capitol Hill rally last week that he would view that decision as doing nothing. Cruz and Toomey are still seeking Renewable Fuel Standard changes to dramatically lower the program's compliance costs for refineries. Trump is scheduled to meet with Republican senators at 11:15 this morning, according to his public schedule.

— **Continuing their push for year-round sales of E15**, fuel retailers from 11 states sent a letter to Trump on Monday, calling on him to instruct EPA to immediately follow up on a pledge to allow the year-round sale of E15 before summer restrictions kick in on June 1. [Read the letter here](#). Eighteen other groups, including the Sierra Club and Earthjustice, signed [onto their own letter](#) expressing concern with the administration's openness to the year-round sale of E15. And the American Energy Alliance launched a digital ad campaign Monday urging for the repeal of the RFS. [Watch that ad here](#).

EXPECTING BIG THINGS: Shimkus is expecting broad support from the House when his comprehensive nuclear waste package [H.R. 3053 \(115\)](#) gets a vote Thursday. "I think people are ready to do something rather than nothing," he told reporters Monday. Shimkus said it's been a months-long process to educate members about the importance of the legislation and added he sent texts to Speaker [Paul Ryan](#) and Majority Leader [Kevin McCarthy](#) thanking them for finally bringing the package to the floor.

But he's not crazy: Shimkus said he hadn't had any recent talks with Senate counterparts about potentially moving the bill across the Capitol and he didn't expect they would this year with one of their most vulnerable incumbents (and ardent Yucca opponent), Sen. [Dean Heller](#), locked in a competitive reelection.

WHERE'S PERRY? Perry is slated to speak today during the Washington Conference on the Americas, where Commerce Secretary Wilbur Ross and Deputy Secretary of State John Sullivan, among others, are set to also appear. Perry will deliver remarks on "energy integration in the Americas" at 3:15 p.m. See the full agenda [here](#).

E&C TACKLES EVs: The House Energy and Commerce Environment Subcommittee will listen to discussion today on how fuel vehicles and electric vehicles will coexist as electric vehicles become more popular. The hearing begins at 10:15 a.m. in 2322 Rayburn, or stream it [here](#).

MAIL CALL: A diverse coalition of energy groups — including Advanced Energy Economy, the American Petroleum Institute and the American Wind Energy Association — on Monday urged Perry not to bail out coal and nuclear plants. Read their [letter](#).

INHOFE BACKS JACKSON: An Axios [report](#) that Pruitt chief of staff Ryan Jackson has been frozen out of the EPA chief's inner circle didn't sound right to his former boss, Sen. [Jim Inhofe](#). "I've known him well since he was 18 years old and I don't think they'd be capable of sidelining him," he told ME. Inhofe admitted that if the report is true — "that's an if I'm not willing to accept," he cautioned — it would be deeply concerning.

PRUITT MEETS MOTHERS ON CHEMICAL BAN: Two mothers will meet today with Pruitt, where they will press the administrator to ban paint strippers containing methylene chloride after their sons died using products with the chemical, according to the Environmental Defense Fund. On former President Barack Obama's last day in office, his administration proposed using the updated Toxic Substances Control Act to ban the use of the chemical in most commercial paint removers. Pruitt [told lawmakers](#) recently that he thinks EPA can make a decision on its proposed ban by the end of the year.

QUICK HITS

- Pruitt's Rome trip: More time on tourism than official business, [The Daily Beast](#).
- Steel town that voted for Trump banks on renewables, [E&E News](#).
- Interior sending officers to assist patrolling the U.S., Mexico border, [The Hill](#).
- EPA proposal pushed by ex-coal lobbyist could transform agency's use of science, [S&P Global](#).
- Booming tourism emits 8 percent of greenhouse gases, study shows, [Reuters](#).
- Old-boys' club that ran power world cracking with its model, [Bloomberg](#).

HAPPENING TODAY

8:30 a.m. — CHP Association holds [CHP policy forum](#) begins, 555 13th St NW

9:00 a.m. — The Atlantic Council's Global Energy Center [discussion](#) on "Transformations in Energy Technology: Innovations for a Secure Energy Future," 1030 15th Street NW

9:00 a.m. — The Bipartisan Policy Center [discussion](#) on "Investing for the Nation's Future: A Renewed Commitment to Federal Science Funding," 1225 I Street NW

10:00 a.m. — The International Energy Agency Bioenergy Technology Collaboration Program [international webinar](#) on "Biofuels for the Marine Sector: New Opportunities and New Challenges."

10:00 a.m. — The United States Energy Association [briefing](#) on "Economic Benefits of U.S. Liquid Natural Gas Exports," 1300 Pennsylvania Avenue NW

10:00 a.m. — Senate Energy and Natural Resources Committee [hearing](#) on the current status of Puerto Rico's electric grid and proposals for the future, 366 Dirksen

10:00 a.m. — The Woodrow Wilson Center's China Environment Forum [discussion](#) on "How Low (on Energy and Carbon) Can Buildings in China and the U.S. Go?" 1300 Pennsylvania Avenue NW

10:00 a.m. — House Transportation and Infrastructure Coast Guard and Maritime Transportation Subcommittee hearing on "blue technologies," 2167 Rayburn

10:15 a.m. — House Energy and Commerce Environment Subcommittee hearing on "Sharing the Road: Policy Implications of Electric and Conventional Vehicles in the Years Ahead," 2322 Rayburn

10:15 a.m. — House Natural Resources Committee markup on various bills, 1324 Longworth

12:00 p.m. — The Americas Society/Council of the Americas annual Washington Conference on the Americas with the theme "Investing in the Americas: The New Agenda for Growth," 2201 C Street NW

3:00 p.m. — House Rules Committee meets to formulate a rule on H.R. 3053 (115), the "Nuclear Waste Policy Amendments Act of 2018," H-313

THAT'S ALL FOR ME!

**** A message from Anheuser-Busch:** Anheuser-Busch announced that America's leading brewer has placed an order for up to 800 hydrogen-electric powered semi-trucks from the pioneer in hydrogen-electric renewable technology, Nikola Motor Company. The zero-emission trucks — which will be able to travel between 500 and 1,200 miles and be refilled within 20 minutes, reducing idle time — are expected to be integrated into Anheuser-Busch's dedicated fleet beginning in 2020.

Through this agreement Anheuser-Busch aims to convert its entire long-haul dedicated fleet to renewable powered trucks by 2025.

"At Anheuser-Busch we're continuously searching for ways to improve sustainability across our entire value chain and drive our industry forward," said Michel Doukeris, CEO of Anheuser-Busch. "The transport industry is one that is ripe for innovative solutions and Nikola is leading the way with hydrogen-electric, zero-emission capabilities. We are very excited by the possibilities our partnership with them can offer."

Learn more. **

To view online:

<https://subscriber.politicopro.com/newsletters/morning-energy/2018/05/conservative-talker-has-pull-with-pruitt-206682>

Stories from POLITICO Pro

Pruitt fast-tracked California cleanup after Hugh Hewitt brokered meeting Back

By Emily Holden and Anthony Adragna | 05/07/2018 10:12 PM EDT

EPA Administrator Scott Pruitt placed a polluted California area on his personal priority list of Superfund sites targeted for "immediate and intense" action after conservative radio and television host Hugh Hewitt brokered a meeting between him and lawyers for the water district that was seeking federal help to clean up the polluted Orange County site.

The previously unreported meeting, which was documented in emails released by EPA under a Freedom of Information Act lawsuit by the Sierra Club, showed Pruitt's staff reacting quickly to the request last September by Hewitt, who has been one of Pruitt's staunchest defenders amid a raft of ethics controversies around his expensive travel, security team spending and a cheap Washington condo rental from a lobbyist.

Pruitt has drawn criticism from environmentalists and other critics for letting prominent GOP backers and industry groups influence the agency's agenda — even as he has kicked scientists off of EPA's advisory panels and moved to limit the kinds of peer-reviewed research it will consider when making decisions.

In many cases, the people whose advice Pruitt is heeding could be useful supporters for him in a future race for U.S. senator or president. They include GOP megadonor Sheldon Adelson, who — as POLITICO reported in March — persuaded Pruitt last year to take a meeting with an Israeli water purification company called Water-Gen that later won a research deal with the EPA.

Hewitt, a resident of Orange County whose son James works in EPA's press office, emailed Pruitt in September to set up a meeting between the administrator and the law firm Larson O'Brien, which employs Hewitt and represents the Orange County Water District. Pruitt had been planning to meet with the lawyers in California a month earlier, but cancelled the trip to undergo knee surgery.

"I'll join if the Administrator would like me too or can catch up later at a dinner," Hewitt wrote in his Sept. 18 message. Hewitt added that the issues surrounding the Superfund site were "Greek to me but a big deal in my home county."

Pruitt's aides responded within minutes and quickly confirmed an Oct. 18 meeting for the lawyers and a project director.

Six weeks after that meeting, on Dec. 8, the Orange County North Basin site appeared on Pruitt's list of 21 contaminated areas to address. A month later, Pruitt proposed listing the site on EPA's National Priorities List, a move that could make it eligible for long-term federal cleanup funding from the federal government if the responsible polluters cannot be identified and forced to pay for its remediation.

Since then, Hewitt has been a robust defender of Pruitt, dismissing his recent controversies as "nonsense scandals" on MSNBC in early April and saying his detractors were "just trying to stop the deregulation effort."

Pruitt has touted the agency's Superfund work as one of his key priorities, setting up a task force to seek to speed up the clean-up of the nation's worst contaminated sites. That task force had been headed by Albert "Kell" Kelly, a former banker and longtime friend, who departed the agency last week after news about loans he provided to Pruitt in Oklahoma, including the mortgage provided to Pruitt for a house he bought from a lobbyist when he was a state senator.

Environmental advocates have worried Pruitt's efforts to identify Superfund priority sites would bypass the process set up by Congress to ensure cleanup resources are divided fairly, and that he could focus on sites seen as important to his political supporters. And environmentalists have said Pruitt's rush to claim that contaminated properties have been remediated could risk turning them over to local governments and businesses that might pursue cheaper, inadequate solutions.

Elgie Holstein, senior director for strategic planning at the Environmental Defense Fund who has been tracking EPA's Superfund actions, said the connection to Hewitt is "not a surprise."

"The biggest fear we have is that No. 1, the administrator's political priorities and personal ambitions, political ambitions become the primary criteria for action under this program instead of science and health," Holstein said.

EPA never disclosed the meeting with Hewitt's contacts. It was listed on Pruitt's public calendar as a staff briefing. But on his private Outlook schedule, which the agency has released in response to lawsuits, it appeared as an "Orange County Superfund Site" meeting with Kelly and two other staffers. The records did not list the Californians in attendance at the meeting at EPA headquarters in Washington.

But EPA spokesman Jahan Wilcox confirmed that two lawyers representing the water district, Robert O'Brien and Scott Sommer, and the water district director of special projects, Bill Hunt, were there. A third lawyer, former federal Judge Stephen G. Larson, was forced to cancel his trip due to wildfires in California, according to emails.

"Hugh Hewitt helped arrange the meeting at the request of the water district but did not attend," Wilcox said.

Wilcox said the meeting was for the water district to "brief EPA on the Superfund site's cleanup efforts and request expedited cleanup," following a 2016 agreement with the agency to conduct a remedial investigation and feasibility study, at a cost of \$4 million over two years. Hunt did not immediately respond to a request for comment.

Hewitt in an email to POLITICO called Pruitt a friend and said he does not have a working relationship with him. He said that his firm has represented the water district and worked on the site with EPA's regional office for years but that he had not participated in that work.

Hewitt said he requested a meeting because the water district wanted to brief the new EPA team, he said, adding that he was an Orange County resident until 2016 as well as an Orange County Children and Families Commission member. He said that he "very much" wanted the Superfund site remediated as soon as possible.

According to an EPA fact sheet, the Orange County site has more than five square miles of polluted groundwater containing chlorinated solvents and other contaminants across the cities of Anaheim, Fullerton, and Placentia. It includes the Orange County Groundwater Basin, which provides drinking water to more than 2.4 million residents across 22 cities, according to the agency. Those pollutants can damage humans' nervous systems, kidneys and livers, and some are considered carcinogenic.

EPA has just begun its process of studying the contamination and it has not determined which companies caused the pollution in the area. But an administrative settlement with the EPA in 2016 says the area was home to "electronics manufacturing, metals processing, aerospace manufacturing, musical instrument manufacturing, rubber and plastics manufacturing, and dry cleaning."

Hewitt also thanked EPA schedulers for working to arrange a meeting between Pruitt and the California Lincoln Clubs, which describe themselves as in favor of "limited government, fiscal discipline and personal responsibility." After some rescheduling Pruitt eventually met with representatives of the group on a trip to California in March of this year, according to his public calendar. Prominent Orange County businessman John Warner also helped to connect that group with staffers.

Pruitt and his scheduling staff have frequently sought to set up meetings with or for influential Republican figures, according to the internal EPA emails.

His team accepted an invitation for him to address The Philanthropy Roundtable at an invitation-only event at the White House for "conservative and free-market foundation CEOs and individual wealth creators to discuss the greatest opportunities for foundations to protect and strengthen free society" and "what [Pruitt] views as unique opportunities for philanthropic action.

As POLITICO reported in March, Pruitt also met with an Indiana coal executive and Trump fundraiser who was seeking to soften a pollution rule.

Pruitt also crafted his travel schedule — including a tour of states in August — to meet with big business much like a member of Congress would during the annual recess.

In July, EPA's associate administrator of public engagement Tate Bennett was working with Pruitt to "essentially create an August recess for the EPA to be out in the states talking with individual companies & doing listening sessions within sectors," said Leah Curtsinger, the federal policy director for the Colorado Association of Commerce & Industry, in an email introducing Bennett to her husband, public affairs director at coal company Cloud Peak Energy and a fellow alum of Senate Majority Leader Mitch McConnell's office.

Annie Snider contributed to this report.

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Blankenship, predicting victory, thumbs his nose at GOP [Back](#)

By Alex Isenstadt | 05/07/2018 08:27 PM EDT

MOUNT HOPE, W. Va. — A defiant Don Blankenship on Monday shrugged off President Donald Trump's last-minute plea for Republican primary voters to reject his insurgent Senate candidacy — and flatly predicted it would fail to halt his momentum.

On the final day of the dramatic West Virginia campaign, the coal baron and ex-prisoner seemed unbothered by the president's foray into the contest, arguing that voters would see through it as the latest ploy in an establishment-led effort aimed at keeping him from winning the nomination.

"I think it's still over," he declared to reporters here during a frenzied final day of the race. "It probably tightens it a point or two, but I don't think it matters much."

At another point in the day, after a reporter asked if he was feeling confident, Blankenship had a deadpan response: "Yeah, we're gonna win."

Senior Republicans are fretting that Blankenship, who spent a year behind bars after the 2010 explosion at his Upper Big Branch Mine that killed 29 workers, has vaulted into the lead heading into Tuesday's primary. GOP officials reviewed a range of surveys over the weekend, with some showing Blankenship holding a narrow single-digit advantage over his mainstream opponents, Rep. Evan Jenkins and state Attorney General Patrick Morrisey. Others had Blankenship ahead by more.

The national GOP has waged an all-out campaign to stop him from winning the nomination. They're convinced would destroy the party's prospects of ousting Democratic Sen. Joe Manchin in November. And many Republicans say a Blankenship win would be yet another black eye for the party, which is still reeling from last year's loss in the Alabama special election.

Over the past month, a super PAC aligned with Senate Majority Leader Mitch McConnell has spent over \$1.3 million on a barrage of anti-Blankenship TV ads.

With the former prisoner gaining momentum, the effort to stop him has gone into overdrive. As the race entered its final day, Blankenship's rivals — who had spent almost the entire campaign attacking one another — turned their fire on him.

In a not-so-veiled jab at Blankenship, Jenkins held a morning campaign event at a memorial for coal workers. At one point, he noted that one of his great grandfathers died in a mine explosion.

"The president could not have made it any clearer this morning that Don Blankenship is not the guy to beat Joe Manchin," Jenkins said.

Morrissey, who spent the day hopscotching across central West Virginia, announced that he'd sent a letter to Blankenship's parole officer highlighting what he argued was a violation. At one point, he took to Twitter to suggest questions for reporters to ask Blankenship. And he released a digital advertisement unloading on the coal baron, and highlighting his role in the 2010 explosion.

"Families devastated, children left fatherless, wives widowed," a narrator intoned. Many in the party are skeptical that the 11th-hour offensive will succeed — and, behind the scenes, finger-pointing is underway. Some are pinning the blame on the White House, saying it should have rebuked Blankenship earlier. Others say the fault lies with Jenkins and Morrissey, whose near constant attacks left one another badly damaged and created an opening for Blankenship.

Still others are pinning the blame on McConnell, saying that he should have long ago used his political muscle to clear the primary field and thereby avoid the three-way dynamic that has played to Blankenship's benefit.

McConnell has privately expressed concern to associates about Blankenship, whom he has long viewed as a serious threat in the contest. A loss for the Senate GOP leader, who hails from a neighboring Appalachian state and has faced withering attacks from Blankenship, would be embarrassing.

Over the weekend, McConnell spoke by phone with the president about the contest. According to a Republican official briefed on the call, Trump informed McConnell that he planned to criticize Blankenship publicly, a step he hadn't taken previously. Among the issues that arose on the call were Blankenship's TV ads, some of which have gone after McConnell's family in deeply personal, racial terms.

White House aides spent part of Friday drafting a tweet targeting Blankenship. Then, on Monday, the president hit send.

"To the great people of West Virginia we have, together, a really great chance to keep making a big difference," he wrote. "Problem is, Don Blankenship, currently running for Senate, can't win the General Election in your State...No way! Remember Alabama. Vote Rep. Jenkins or A.G. Morrissey!"

For Blankenship, who has tied himself closely to the president and on Monday declared himself "Trumpier than Trump," the attack could have stung. Yet as the race came to a close, Blankenship seemed unbothered.

Speaking to reporters after touring a freight shipping office here, Blankenship said he placed no stock in the president's tweet. It was McConnell, Blankenship said, who convinced Trump to weigh in. After Tuesday, Blankenship added, the president would be embarrassed he followed McConnell's lead.

"It's obvious that the president is suffering from the same thing that many in the public do, which is misinformation and untruths," Blankenship said. "The lesson that will be learned here when I win is that you shouldn't blindly endorse or cast doubts or favoritism unless you actually look at their record and not depend on the people in that swamp that you're trying to drain."

At times, Blankenship seemed to take pleasure in his recalcitrance. He refused to commit to endorsing his primary rivals should they win, which he said wouldn't happen, anyway. He wouldn't apologize for running TV ads lambasting McConnell's "China family." And he reiterated that he wouldn't vote for McConnell to serve as Senate GOP leader.

At one point, Blankenship noted that he'd been disrespected at other times in his career. The Marshall University-educated businessman noted that he'd grown up poor before becoming a multimillionaire, and recalled one episode in which he easily passed a CPA exam that Ivy Leaguers he knew had struggled with.

Now, he said, he was confronting another kind of establishment.

"I've been underestimated," he said, "all my life."

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What's in Trump's \$15B spending cuts package [Back](#)

By Kaitlyn Burton | 05/07/2018 08:29 PM EDT

The White House is set to release a \$15 billion spending cuts package Tuesday. Here are some of the plan's targets, a senior administration official told reporters today:

- \$7 billion from the Children's Health Insurance Program, which covers about 9 million low-income children.
- \$4.3 billion from the Energy Department's Advanced Technology Vehicles Manufacturing loan program, which supports the production of fuel-efficient, advanced technology vehicles.
- \$800 million from the Center for Medicare and Medicaid Innovation, which was created under Obamacare.
- \$252 million from the 2015 Ebola outbreak response.
- \$148 million from the Animal and Plant Health Inspection Service for responding to disease outbreaks "that have already been resolved," the official said.
- \$107 million for technical assistance after Hurricane Sandy for emergency watershed programs.
- \$15 million from USDA's Rural Cooperative Development Grant program, which seeks to boost the economies of rural areas.

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Trump tries to woo conservatives with bid to cut spending [Back](#)

By Sarah Ferris and Kaitlyn Burton | 05/07/2018 09:05 AM EDT

The White House on Tuesday will send \$15 billion in proposed spending cuts to Congress in an attempt to demonstrate fiscal austerity to skeptical conservatives, senior administration officials confirmed Monday night.

The administration had last week planned to send Congress a package of \$11 billion in spending reductions. But since then, some conservatives have quietly pushed for an even bolder proposal, particularly after the GOP's spending binge in recent months, said Republicans familiar with the discussions.

The White House initially floated as much as \$60 billion in cuts, including an unprecedented attempt to cancel money from this year's omnibus spending bill. The proposal was later downsized to \$11 billion, and then back up to \$15 billion, targeting only unused funding from past years, which POLITICO first reported.

One senior administration official told reporters that the proposal coming Tuesday is "the largest single rescissions package at one time."

The White House also plans to make a second attempt at clawing back funding from the omnibus, but the senior administration official said that could come weeks later.

The official said President Donald Trump will be personally involved in the details of the next package, which will include "substantial" cuts in current spending based on the president's own budget request.

Unlike regular spending bills, a presidential rescissions package is given fast-track authority in both chambers. That means the proposal is one of the rare spending-related bills that is able to bypass the 60-vote threshold in the Senate.

Nearly half of the package, a whopping \$7 billion, pulls from the Children's Health Insurance Program, which covers about 9 million low-income children.

Of this, \$5 billion is fiscal 2017 funding that has already expired, and \$2 billion is money from a so-called contingency fund that states can tap into if they're short on cash.

These CHIP rollbacks "will not impact the program," the senior administration official said.

It would also cut \$800 million from the Center for Medicare & Medicaid Innovation, which was created under Obamacare.

In addition, the proposal will target 38 programs with large amounts of leftover cash, including \$148 million from the Animal and Plant Health Inspection Service, \$107 million for Hurricane Sandy in 2013 and \$252 million for the Ebola outbreak in 2015.

The senior administration official said the White House is starting with "uncontroversial" cutbacks as a sweetener to bring Democrats on board.

"I don't think we believe there's a reason we wouldn't get bipartisan support for a package like this," the official said.

The process also includes a special bonus for fiscal hawks: Whenever the president submits a rescissions request, that spending is frozen automatically for 45 legislative days, or until Congress formally rejects it.

OMB Director Mick Mulvaney said in April that he hopes for a vote in the House before the July Fourth recess, and officials told reporters Monday that the House is "very interested in this package."

The GOP-dominated House is expected to easily clear the rescissions package, but even White House officials are less confident about its fate in the Senate, White House legislative affairs director Marc Short told POLITICO on Monday. Trump is pleased with the \$15 billion proposal, Short said.

In a call with Capitol Hill staff on Monday, White House officials skirted a question about whether Majority Leader Mitch McConnell had signed off on the proposal.

"We are in discussions with the majority leader," the administration official said on the call, which POLITICO was permitted to listen to by a staffer. "We're hopeful the Senate's going to come our way but I would say it's an ongoing conversation right now."

Trump's unusually large request would come after a nearly two-decade drought of any formal rescissions proposal.

Former President Bill Clinton was the last president to propose rescissions. His three requests totaled just \$128 million, a fraction of Trump's request.

Even with Trump's record-setting sum, conservative groups are demanding the Trump administration go further by proposing to cancel funds from the omnibus, which Trump threatened to veto.

Americans for Prosperity, the right-leaning group founded by the Koch brothers, is asking the White House to reel back \$45 billion from the \$1.3 trillion omnibus.

The group on Monday released an exhaustive list of programs it believes should go on the chopping block, including homeless assistance grants, a Coast Guard security center, FBI salaries and the National Cancer Institute.

Behind the scenes, top budget officials have wrestled for weeks with Republican lawmakers on the size and scope of the rescissions package.

The debate was largely centered on whether to cut money across the board from the omnibus spending package, or whether to target individual programs.

Few Republicans wanted the across-the-board cuts as those would have hit the hard-won increases to military spending. But officials also worried that going after specific programs would spur infighting among Republicans, according to one former top GOP congressional aide briefed on the deliberations — an outcome everyone hoped to avoid ahead of the 2018 midterm elections.

Meanwhile, belt-tightening conservatives in the House are still hoping for more than \$15 billion in cuts.

An internal survey of dozens of House Republican Study Committee members found that lawmakers overwhelmingly support the largest possible rescissions request. The survey, which was obtained by POLITICO, found that 71 percent of RSC members said they would back a proposal that cut at least \$60 billion. Another 9 percent said they'd support any amount.

And 94 percent of RSC members surveyed said the rescissions package should cut at least some domestic funding from this year's \$1.3 trillion omnibus. Only 6 percent said "maybe."

Republican budget wonks also wondered if the final package would accomplish the task of reducing government spending in a meaningful way, if it indeed took previously unspent money from old programs.

"This is not a deficit reduction exercise, but more of a public relations exercise to soothe the base and convince them that the White House is fiscally responsible," said G. William Hoagland, a senior vice president at the Bipartisan Policy Center and former director of budget and appropriations for former Senate Majority Leader Bill Frist as well as the former director of the Senate Budget Committee.

"If they are finding unused budget authority and putting that in a special package to Congress as appropriators are trying to put together the [fiscal] 2019 bill, it may have the effect of creating more spending for 2019 rather than less," Hoagland said.

Nancy Cook, John Bresnahan and Matthew Nussbaum contributed to this report

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House Appropriations panel advances \$44.7B energy and water bill [Back](#)

By Annie Snider | 05/07/2018 06:15 PM EDT

A House Appropriations Committee subpanel swiftly approved its \$44.7 billion energy and water spending bill on a voice vote today, sending it to the full committee for consideration.

Democrats applauded the boost in funding that the measure provides for the Army Corps of Engineers and DOE thanks to the bipartisan agreement to lift spending caps.

"Our bill is certainly a message to the executive branch that the legislative branch rejects the ill-considered, draconian cuts we have come to expect to every important agency we fund in this bill," said Rep. [Marcy Kaptur](#), the top Democrat on the subcommittee.

Overall, the bill would provide \$7.28 billion to the Army Corps of Engineers, \$451 million over 2018 levels. That includes \$1.6 billion for harbor maintenance activities, or \$160 million more than the level appropriators committed in a major 2014 bill.

DOE's energy programs would get \$13.4 billion under the measure, with increases for fossil and nuclear energy research and cuts for renewable energy and energy efficiency.

Democrats objected to that disparity, as well as to a spate of policy riders in the bill such as a provision to repeal the Obama administration's Waters of the U.S. rule and another to override a court decision and operate the Columbia and Snake rivers' dams for hydropower production rather than protecting endangered salmon.

WHAT'S NEXT: The full House Appropriations Committee is expected to consider the measure soon.

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Neutral



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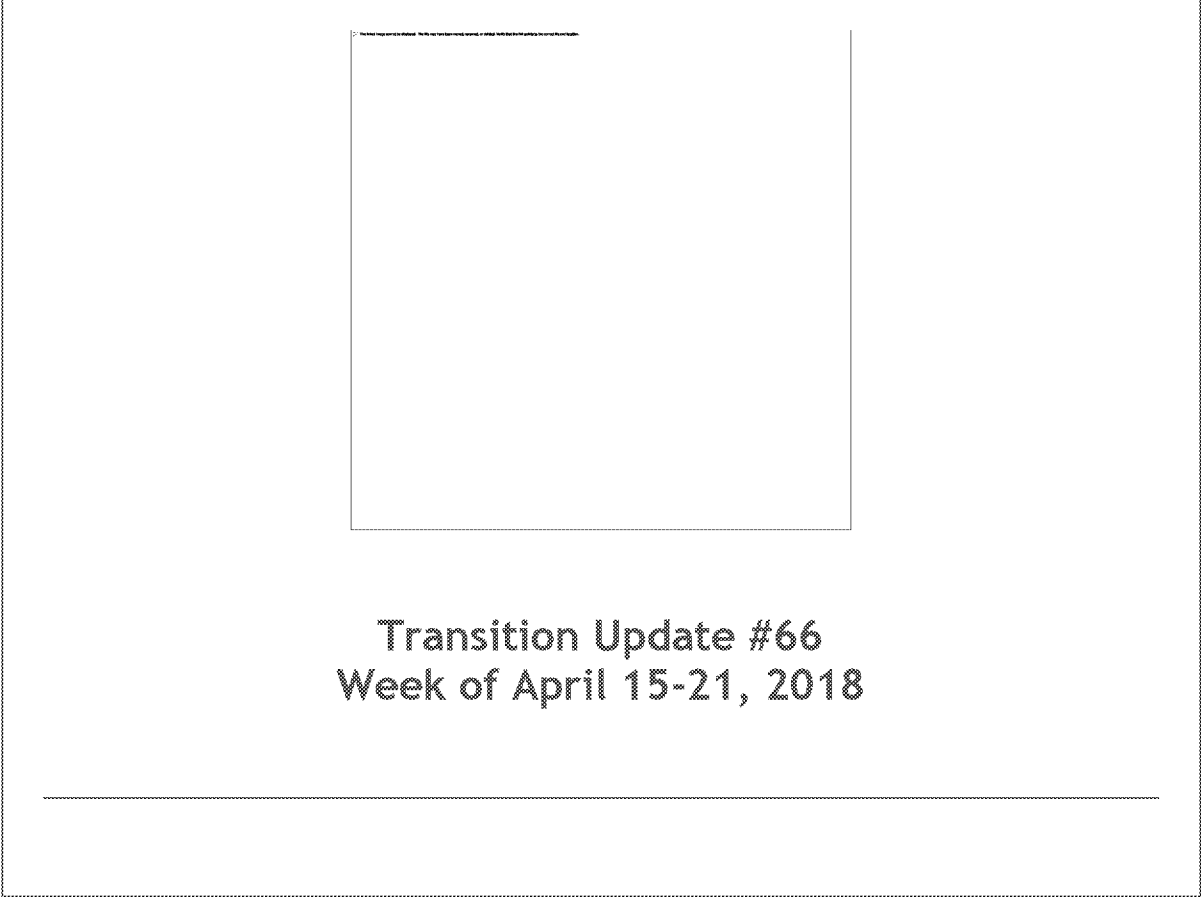
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Subject: Fw: Transition Update #66 Week of April 15-21, 2018

Brittany,

Good to see you today. FYI, below is a sample of the EPA Alumni Association's "Transition Update" newsletter.

Best,
Brian Mannix

From: EPA Alumni Association
Sent: Sunday, April 22, 2018 10:19 PM
To: bmannix@aol.com
Subject: Transition Update #66 Week of April 15-21, 2018



Transition Update #66
Week of April 15-21, 2018

Annual Meeting - May 11, 2018

Our DC Annual Get Together is scheduled for Friday, May 11, 2018 from 5:00 PM to 8:30 PM EDT. The meeting will be held at:

The Offices of Sidley Austin
1501 K Street, NW,
Concourse Level
Washington, DC 20005

[More Information about Annual Meeting](#)

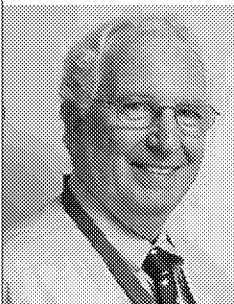
[Online Registration for Annual Meeting](#)

Linda Fisher, Mike Walsh, and Elizabeth Shogren will talk about EPA's future.



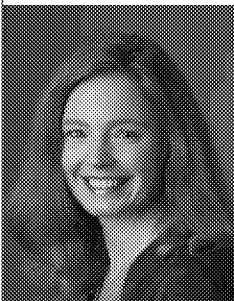
Linda J. Fisher

Linda was Chief of Staff to Administrator Lee M. Thomas and was Assistant Administrator for Policy, Planning and Evaluation. In the George W. Bush Administration she served as Assistant Administrator Pesticides and Toxic Substances. She was Deputy Administrator in the George H.W. Administration. Linda retired as the Vice President for Safety, Health, and Environment and Chief Sustainability Officer for DuPont.



Mike Walsh

Mike Walsh is the Founding Chairman and currently Adviser to the International Council on Clean Transportation. Mike was previously EPA DAA for Mobile Sources and served in New York's pollution control office.



Elizabeth
Shogren

Elizabeth Shogren is a reporter for the Center for Investigative Reporting, covering science issues. She was previously a correspondent for High Country News. She covered environmental issues for NPR and before that, for the LA Times where she was also the network's Moscow correspondent.

Nominees and Appointments

Awaiting Hearings - Peter Wright and Charles McIntosh

William Charles McIntosh - announced by the White House as the nominee to be Assistant administrator for international and tribal affairs on March 23rd. The formal appointment was received and referred to the Environment and Public Works Committee on April 9th.

Mr. McIntosh ran Ford's environmental compliance and policy divisions from 1998 until he retired last year. Before Ford, he worked for Michigan Gov. John Engler as his Environmental and Natural Resources Advisor, where he was involved in comprehensive environmental statutory and regulatory reform. He also worked as the deputy director of the Michigan Department of Environmental Quality, where he was responsible for programs, implementing regulatory reform, and criminal investigations.

Peter Wright - On March 6th, the nomination of Peter Wright to be the Assistant Administrator for Land and Emergency Management was received from the White House and immediately referred to the Senate Environment and Public Works Committee. No hearing is scheduled at this time.

Open Positions

The [Washington Post Appointment Tracker](#) shows the following positions at EPA with no one currently nominated or confirmed.

- Assistant administrator for chemical safety and pollution prevention
- Assistant administrator for environmental information
- Assistant administrator for research and development
- Assistant administrator for administration and resources management

April 16, 2018

GAO found that the EPA violated the Antideficiency Act by spending more than the amount Congress approved.

The Government Accountability Office found that the EPA violated the Financial Services and General Government Appropriations Act by spending more than \$5,000 on the phone booth without notifying Congress.

GAO did not rule on the phone booth's necessity, but said its construction qualified as a furnishing under federal statute, meaning the "EPA was required to notify the appropriations committees of its proposed obligation."

The GAO also found that the expenditure violated the Antideficiency Act by spending more than the amount Congress approved.

Huffington Post: GAO found that the EPA violated the Antideficiency Act by spending more than the amount Congress approved.

April 16, 2018
**Farm Bill Would Remove ESA Consideration from
EPA Pesticide Decisions**



A provision in the 2018 farm bill would allow EPA to approve pesticides without undertaking reviews now required to protect endangered species. Environmental groups say the provision is an "unprecedented" attack that could have lasting ramifications for ecosystems across the nation.

The bill would allow the EPA to skip consultations with agencies that include the Interior Department's Fish and Wildlife Service and the

National Marine Fisheries Service, which oversee the implementation of Endangered Species Act protections, and opponents have said that it would gut protections for endangered species.

In a December 2017 report, the National Marine Fisheries Service said pesticides like chlorpyrifos, malathion, and diazinon threaten a number of marine animals, including some that are protected, as well as the predators that prey on them. Some types of protected salmon, butterflies and all kinds of pollinators could be harmed by toxic pesticides applied without proper review, advocates worry.

"It's a poison-pill rider in the most literal and unfortunate way," said Jordan Giaconia, federal policy associate for defense at the Sierra Club. It takes just one harmful chemical to be injected into the ecosystem to cause widespread damage, he said. "The ramifications are pretty far reaching."

Republicans on the House Agriculture Committee see the language as a "commonsense reforms" to an "onerous and conflicting" consultation process that needs to be modernized, according to a summary provided by the panel's majority.

Roll Call: EPA Pesticide Approval Without Endangered Species Review in Farm Bill

April 17, 2017
**Human role in climate change removed from
National Park Service science report**

The National Center for Investigative Reporting published a long story on the editing of a National Park Service report on sea level rise and storm surge for apparently political purposes.

National Park Service officials have deleted every mention of humans' role in causing climate change in drafts of a long-awaited report on sea level rise and storm surge, contradicting Interior Secretary Ryan Zinke's vow to Congress that his department is not censoring science.

The research for the first time projects the risks from rising seas and flooding at 118 coastal national park sites, including the National Mall, the original Jamestown settlement and the Wright Brothers National Memorial. Originally drafted in the summer of 2016 yet still not released to the public, the National Park Service report is intended to inform officials and the public about how to protect park resources and visitors from climate change.

Reveal from The Center for Investigative Reporting obtained and analyzed 18 versions of the scientific report. In changes dated Feb. 6, a park service official crossed out the word "anthropogenic," the term for people's impact on nature, in five places. Three references to "human activities" causing climate change also were removed.

The 87-page report, which was written by a University of Colorado Boulder scientist, has been held up for at least 10 months, according to documents obtained by Reveal. The delay has prevented park managers from having access to the best data in situations such as reacting to hurricane forecasts, safeguarding artifacts from floodwaters or deciding where to locate new buildings.

Examples of changes are:

Zinke testified at a Senate committee hearing last month that the Interior Department has not changed any scientific documents.

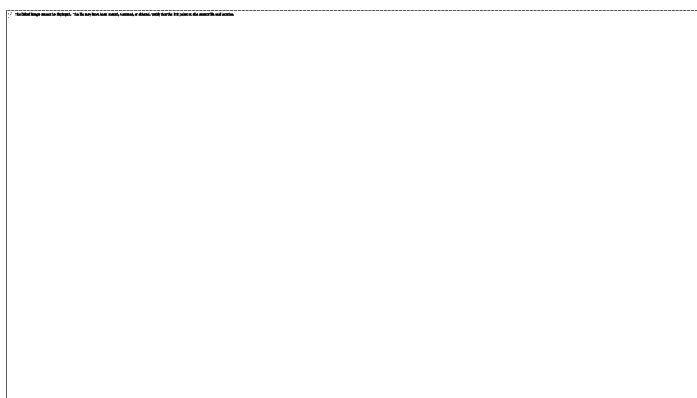
"There is no incident, no incident at all that I know that we ever changed a comma on a document itself. Now we may have on a press release," Zinke told the senators. "And I challenge you, any member, to find a document that we've actually changed on a report."

Zinke's office did not respond to a request for comment by the the Center for Investigative Reporting.

Reveal: Wipeout: Human role in climate change removed from science report

April 18, 2018

Trump's EPA quietly revamps rules for air pollution



The Hill describes several industry friendly actions that EPA is taking that will result in more industry friendly air permitting.

In a move announced in December, the EPA will no longer "second guess" companies' calculations of their expected pollution output after certain big projects under a New Source Review. Under the policy, EPA will usually not take action against a company for its calculations if they turn out to be wrong and emissions are higher than estimated.

The EPA will also now allow industry to mover from major sources to minor sources if emissions drop enough. This ends the "once in, always in" policy for major sources.

EPA is also poised to allow project netting" when applying for permits for major projects under the New Source Review program. That means companies can use a more industry-friendly emissions calculation when they argue that a particular project would reduce emissions.

The Hill: Trump's EPA quietly revamps rules for air pollution

April 16, 2018

Letter to the New Yorker editor from William Ruckelshaus

Pruitt vs. the E.P.A.

Margaret Talbot's article about Scott Pruitt paints a scathing picture of his assault on the Environmental Protection Agency ("Dirty Politics," April 2nd). I was the first, and then the fifth, administrator of the agency. The environment

is far healthier today than it was forty-seven years ago, when the E.P.A. was created, precisely because of the science-based standards that the agency implemented. Pruitt is systematically attacking both the E.P.A.'s budget and its scientific framework. If he is successful, the very reason for the E.P.A.'s creation-illness and disease from pollution-will reëmerge, and we will have to start from square one. The country must challenge the Trump Administration's war on science. Otherwise, as a result of actions taken by Pruitt and this Administration, the uncontrolled pollution that we have greatly reduced in the past five decades will return.

William D. Ruckelshaus
Seattle, Wash.

[Link to the New Yorker Letters to the Editor](#)

[The New Yorker: Scott Pruitt's Dirty Politics by Margaret Talbot](#)

April 19, 2018

Libertarian economist at George Mason finds that federal regulations not are strangling the economy

For at least the last 40 years, conservative politicians have been arguing that Federal regulations are strangling the economy. Alex Tabarrok set out to it. That's not what he found.

When Tabarrok and his former grad student Nathan Goldschlag set out to measure how federal regulations impact business growth, they were sure they'd find proof that regulations were dragging down the economy. But they didn't. No matter how they sliced the data, they could find no evidence that federal regulation was bad for business.

For his first paper using a new public database, RegData, Tabarrok decided to analyze the effect of federal regulation on "economic dynamism"-a catch-all term referring to the rate at which new businesses launch and grow, and at which people switch jobs, lose jobs, or migrate for work. There has been a notable and somewhat mysterious decline in dynamism over the last few decades. The rate at which start-ups form is half of what it was forty years ago, the fraction of workers who bounce from one job to another-a sign of competitive labor markets-has plunged, productivity has slowed, and adult employment remains well below its early-2000 peak.

Armed with RegData, Tabarrok and his co-author, Nathan Goldschlag, set out to show that regulations were at least partly to blame. But they couldn't. There was simply no correlation, they found, between the degree of federal regulation and the decline of business dynamism. The decline was seen across many different industries, including those that are heavily regulated and those that are not. They tried two other independent tests that didn't rely on RegData, and came to the same conclusion: an increase in federal regulation just could not explain what was going on.

An idea that is gaining attention, is that rising corporate concentration may be a more likely cause of decreased dynamism in the economy.

April 20, 2018
'A factory of bad ideas':
How Scott Pruitt undermined his mission at EPA

Has the thread connecting Scott Pruitt to his job just frayed a bit. With all the negative press attention he has attracted, many speculate that Pruitt only holds onto his job because he is doing what Trump wants him to do, and so Trump has been willing to keep him in his job. However, now that Andrew Wheeler has been confirmed as the Deputy Administrator, this Washington Post article speculates that he may be just one bad headline away from dismissal. it says:

"The low-key Wheeler - a former staffer in EPA and the Senate - was sworn in Friday, and his arrival could make Pruitt expendable should more embarrassing revelations surface, according to people inside and outside the administration."

Washington Post: A factory of bad ideas: How Scott Pruitt undermined his mission at EPA

April 20, 2018
Lamar Smith pitched Pruitt on 'secret science.'
Now it's happening

This article in E&E News is another on Pruitt's ban on the use of "secret science" in EPA decision making. As used by people pushing the policy, "secret science" is anything where any data is not available to the public. This includes medical or health studies where the names and other confidential information of people studied is not available.

In addition to discussing how this is being implemented at EPA, the article notes that Nancy Beck, the AA for Chemical Safety and Pollution Prevention, has raised concerns about the effects of the policy on pesticides registrations and TSCA implementation. She notes that a requirement that underlying data be published would require a whole new arm of the publishing industry. Publication is very different than making the data available to other "legitimate researchers" and requiring publication would be very expensive.

There is also the issue of dealing with confidential business information (CBI). It would appear that information submitted as CBI could not be used in EPA decision making under the policy.

Beck came to EPA from the American Chemistry Council, and thus may be more sensitive to industry concerns about cost and CBI than people with strictly political backgrounds.

E&E News: Smith pitched Pruitt on 'secret science.' Now it's happening

April 20, 2018
**Pruitt has "walked away 100 percent" from
EPA job, says Michael Bloomberg**

Very interesting interview with Michael Bloomberg on Face the Nation on April 15th.

"His policies are not good for the world. To debunk science and walk away from it is just ridiculous. Even if you don't believe it. If there's a possibility that it's right you have to take prophylactic actions to prevent a disaster," Bloomberg told "Face the Nation" moderator Margaret Brennan.

With the support of President Trump, Pruitt's agency has gutted the core of climate change regulations, arguing the move would restore lost coal jobs and reduce electricity rates.

"His job is to protect the environment and he has walked away 100 percent from that saying the environment doesn't need protection, I'm going to protect jobs," Bloomberg said, "that's not his job."

CBS News: Pruitt has "walked away 100 percent" from EPA job, says Michael Bloomberg

April 21, 2018
**Scott Pruitt Before the E.P.A.:
Fancy Homes, a Shell Company and Friends With Money**



Another story on Scott Pruitt's ethically questionable dealings, this one going back to his time as a state senator in Oklahoma.

Washington Post: Scott Pruitt Before the E.P.A.: Fancy Homes, a Shell Company and Friends With Money

April 19, 2018
Trump's EPA argues more people will die in car accidents

unless California fuel rules are weakened



According to the LA Times, the EPA under Scott Pruitt is taking a cue from auto dealers and free-market think tanks skeptical of mainstream global-warming science and tossing aside reams of federal and California data showing the fuel economy standards are perfectly safe. Instead, Pruitt's directive this month to potentially scale back the fuel standard says "an important factor" is the need to reexamine safety issues.

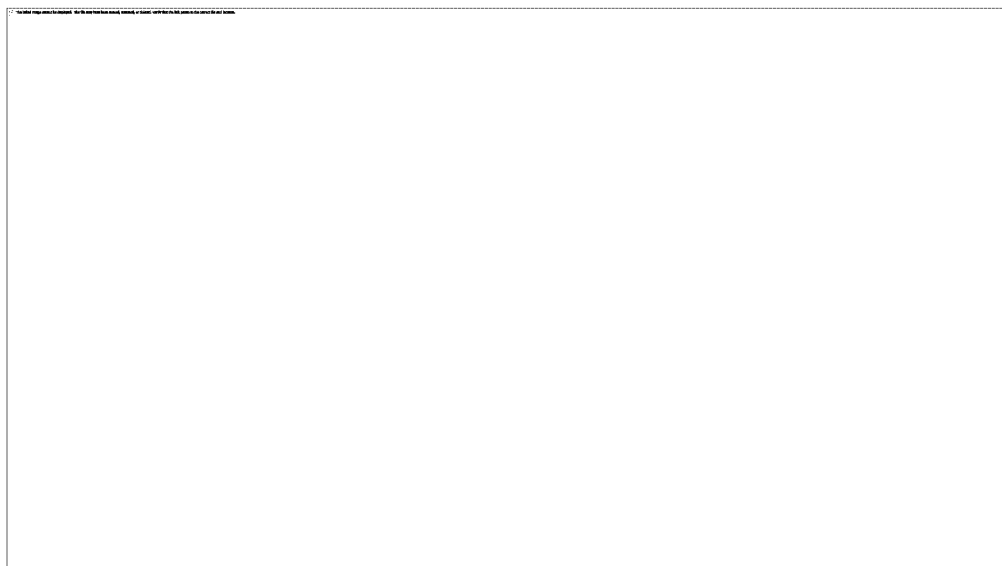
The agency is preparing to make the case that tough fuel economy rules could effectively force automakers to sell smaller, lighter and thus less crash-worthy vehicles. That, in turn, would lead to more crash-related deaths. And it warns the rules could drive up the cost of cars to the point that consumers will put off buying new, safer models equipped with life-saving technology improvements.

This effectively ignores what has actually happened. In spite of much higher fuel economy averages and much higher populations, traffic deaths are down from over 54,000 per year in the early 1970s to about 37,00 in 2016 (up from less than 33,000 in 2010 and 2011). Deaths per million vehicle miles traveled have fallen from 4.74 in 1970 to 1.18 in 2016. So higher mileage standards have not resulted in more dangerous cars.

LA Times: Trump's EPA argues more people will die in car accidents unless California fuel rules are weakened

April 20, 2018

If you are deciding where to go for your next vacation, read this:
14 Places Most Affected by Climate Change



How many of these places have you been? All are threatened by climate change, either by warming changing their local environment, or sea level rise flooding them, but they may cease to exist as they do now during our children's or grandchildren's lifetime. In some cases, other human intervention is exacerbating the problem (e.g. taking water for irrigation and consumption has reduce inflow of water to the Dead Sea to 5% of what it used to be.)

Conde Naste Traveler: 14 Places Most Affected by Climate Change

Other News Of Interest

Reminder: Voting for Members of the EPA-AA Board is now Open.
Candidate Statements and a link to the ballot were emailed on March 30, 2018

EPA Alumni Association Job Center - Our new Job Center (linked below) features jobs that employers have listed specifically aimed at current EPA employees and alumni. In addition, we provide links to over 1000 external job banks that are offering environmentally-relevant jobs. Please help us make our Job Center a success by:

- Telling prospective employers about the opportunity to list their jobs for free, and
- Tell current employees and alumni about the Job Center and ask them to help spread the word.

[Link to Job Center Web Site](#)

Major EPA Rules Open for Comment

Save EPA (<http://www.saveepaalums.info/>) is tracking significant rules open for public comment. They also have, for each of the rules, prepared suggested comments to help a commenter prepare their own comments and submit them to EPA. They also have prepared a "A PRACTICAL GUIDE FOR RESISTING THE TRUMP DE-REGULATORY AGENDA," that can be found at at this link:
[A PRACTICAL GUIDE FOR RESISTING THE TRUMP DE-REGULATORY AGENDA](#)

STATUS OF EPA AND CLOSELY RELATED RULES TARGETED FOR ROLLBACK

The link leads to a list of EPA and other agencies enviromental rules that are targeted for rollback by the Trump administration. Agencies include EPA, DOE, BLM, and NHTSA.

[Status of Rule Rollback Proposals](#)

HEATH AND ENVIRONMENTAL SAFEGUARDS FOR COAL ASH DISPOSAL

Deadline for public comment: April 30, 2018

Public Hearing: April 24, 2018

Start time: 9 a.m. (EDT)

**Location: DoubleTree by Hilton Hotel,
300 S Army Navy Drive,
Arlington, Virginia 22202**

Coal ash (or coal combustion residuals, CCR) is one of the largest categories of industrial waste in the United States. Created when coal is burned by utilities to produce electricity, coal ash includes mercury, arsenic and other hazardous contaminants. According to the EPA, 470 power plants generated about 110 million tons of coal ash in 2012. When not managed properly, the storage and disposal areas for coal ash can pose serious environmental and health risks. For example, a 2008 spill in Tennessee and another spill in 2014 in North Carolina had devastating impacts on watersheds, nearby homes, and public health. As of 2014, there have been 208 known cases of coal-ash spills and contamination.

In 2015, the EPA issued regulations to reduce the risks of coal ash disposal by requiring monitoring and corrective action for leaks into the groundwater and air; setting restrictions for where coal ash landfills and surface impoundments could be located; and creating liner design criteria for these disposal units. The rule also set out recordkeeping and reporting requirements to better inform the public of the risks and closure requirements for old disposal units. In 2016, Congress passed the Water Infrastructure Improvements for the Nation (WIIN) Act, which provided enforcement authority to the states and federal government over these facilities. Trump Proposal to Roll Back Coal Ash Rule

In response to requests from the utility industry, the Trump Administration is proposing the first of two rules that would weaken several provisions of the 2015 coal ash rule. This proposal would "incorporate flexibilities" into the performance standards for these disposal units, essentially letting states take actions that set less stringent standards for cleanup, groundwater monitoring, and siting of disposal facilities.

More specifically, the rule would allow states to set less strict groundwater standards for certain contaminants rather than cleaning up to background levels. States would also be able to determine that remediation of spills and leaks would not be necessary in certain circumstances. Groundwater monitoring could be modified and, in some cases, suspended if a demonstration could be made that there is no migration of pollutants. The rule would also allow states to reduce the time currently required to monitor corrective actions and post-closure of sites. It would also allow the use of coal ash in construction of cover systems for disposal units.

The proposed rule also responds to various issues remanded by a court in 2016. For example, it adds boron to the list of contaminants that must be monitored and it clarifies the types of woody and grassy vegetation that can be used for slope protection.

Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Amendments to the National Minimum Criteria (Phase One); Proposed Rule

[EPA Web Site for Coal Ash \(Lots of links\)](#)

BLM METHANE AND WASTE PREVENTION RULE

Deadline for public comment: April 23, 2018

The Bureau of Land Management (BLM) issued a rule in November 2016 to reduce waste of natural gas from flaring, venting, and leaks from oil and gas production on public and tribal lands. The requirements are designed to limit waste of federal natural gas resources and avoid loss of royalty payments to federal, state and tribal governments for the sale of their resources. The rule has the additional benefit of reducing air pollutant emissions that drive smog and climate change. Methane is the dominant component of natural gas. The rule replaced old and ineffective regulations that had not been updated in nearly 40 years.

[BLM Methane and Waste Prevention proposed rule rollback at Regulations.gov](#)

[Rule in Federal Register](#)

REPEAL OF THE CLEAN POWER PLAN

Deadline for Public Comment Extended: April 26, 2018

A public hearing was held on November 28 and 29, 2017, in Charleston, WV. EPA has announced three additional "listening sessions":

- February 21, 2018 - Kansas City, MO
- February 28, 2018 - San Francisco, CA
- March 27, 2018 - Gillette, WY

On October 16, 2017, The EPA proposed to repeal the Clean Power Plan that was finalized on October 23, 2015. The basis for the repeal is a revised interpretation Section 111(d) of the Clean Air Act (CAA) that says that EPA does not have the authority to regulate carbon dioxide emissions under the CAA. In particular, the Trump administration interpretation of the CAA is that only changes made at the fossil fuel plants themselves (inside the fence line) are consistent with the language of the Clean Air Act. Therefore, the Administration says that only "inside the fence line" actions should be used to set standards under the Clean Air Act even though, those changes are relatively expensive for the minimal amount of CO2 emissions they reduce.

When issuing the CPP in 2015, EPA recognized that the power generation system in the United States is interconnected, and reasoned that the "best system of emission reduction" would include both making individual plants more efficient, and substituting increased generation from lower-emitting or zero-emitting plants - such as natural-gas-fired plants and solar and wind generation - for some higher-emitting fossil-fuel-fired generation. These emission reduction methods are reflected in the CPP's power plant CO2 emission rates and corresponding state emission goals.

[Save EPA's rule discussion and suggested comments](#)

Proposed Rule in the Federal Register

Air Pollution Controls for the Oil and Gas Sector - Existing Equipment

Deadline for Public Comment: April 23, 2018

The Trump EPA has proposed to withdraw guidelines that assist states in controlling air pollution from the oil and natural gas industry and trigger related clean air planning requirements in many areas with ozone smog problems. The withdrawal would set back efforts to control air pollution from existing equipment in the oil and gas industry.

EPA says the oil and gas sector is the largest industrial source of emissions of volatile organic compounds (VOCs), a group of chemicals that react in the atmosphere to form ground-level ozone (smog). Exposure to ozone is linked to a wide range of health effects, including aggravated asthma, increased emergency room visits and hospital admissions, and premature death.[i]

If left in place, EPA estimates, the guideline would result in pollution reductions each year of more than 64,000 tons of smog-forming VOCs, nearly 200,000 tons of climate-changing methane, and 2,400 tons of hazardous air pollutants linked to a variety of serious health effects.

This weekly summary of news about the transition at EPA is sent only to Alumni Association members who have subscribed. If you decide you no longer wish to receive these newsletters, please drop us a note at

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THE WALL STREET JOURNAL

The EPA Cleans Up Its Science

Now Congress Should Act To Lock In Place Data Transparency

Steve Milloy

March 26, 2018

<https://on.wsj.com/2IV9LeH>

The Environmental Protection Agency will no longer rely on “secret” scientific data to justify regulations, Administrator Scott Pruitt announced last week. EPA regulators and agency-funded researchers have become accustomed to producing unaccountable, dodgy science to advance a political agenda.

The saga began in the early 1990s, when the EPA sought to regulate fine particulate matter known as PM2.5—dust and soot smaller than 2.5 microns in diameter. PM2.5 was not known to cause death, but by 1994 EPA-supported scientists had developed two lines of research purporting to show that it did. When the studies were run past the EPA’s Clean Air Science Advisory Committee, it balked. It believed the studies relied on dubious statistical analysis and asked for the underlying data. The EPA ignored the request.

As the EPA prepared to issue its proposal for PM2.5 regulation in 1996, Congress stepped in. Rep. Thomas Bliley, chairman of the House Commerce Committee, sent a sharply written letter to Administrator Carol Browner asking for the data underlying studies. Ms. Browner delegated the response to a subordinate, who told Mr. Bliley the EPA saw “no useful purpose” in obtaining the data. Congress responded by inserting a provision in a 1998 bill requiring that data used to support federal regulation must be made available to the public via the Freedom of Information Act. But it was hastily written, and a federal appellate court held the law unenforceable in 2003.

The controversy went dormant until 2011, when a newly Republican Congress took exception to the Obama EPA's antioil rules, which relied on the same PM2.5 studies. Again the EPA was defiant. Administrator Gina McCarthy refused requests for the data sets and defied a congressional subpoena.

Bills to resolve the problem died in the Senate. Democrats argued that requiring data for study replication is a threat to intellectual property and an invasion of medical privacy. In fact, the legislation would protect property by requiring a confidentiality agreement, and no personal medical data or information would have been released.

This sort of data is already routinely made public for research use. In 2012 I was desperate for a way around the Obama EPA's secrecy on the PM2.5 issue, I found out in 2012 that I could get California death-certificate data in electronic form. The state's Health Department calls this sort of data "Death Public Use Files." They are scrubbed of all personal identifying and private medical information. Some of my colleagues used this data to prepare a 2017 study, which found PM2.5 was not associated with death.

The best part is that if you don't believe the result, you can get the same data for yourself from California and run your own analysis. Then we'll compare, contrast and debate. That's how science is supposed to work.

It would be better if Congress would pass a law requiring data transparency. A future administrator may backslide on the steps Mr. Pruitt is taking. In the meantime, we have science in the sunshine.

[To Read The Full Article Click Here](#)

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Subject: Ban On "Secret Science" In EPA Regulation Makes Sense

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THE OKLAHOMAN

Ban On "Secret Science" In EPA Regulation Makes Sense

Editorial

March 26, 2018

<http://newsok.com/article/5588210/ban-on-secret-science-in-epa-regulation-makes-sense>

The Environmental Protection Agency has announced it will now base new regulations only on the findings of scientific studies whose data and methodology are made public so they can be subjected to independent review. That's a sound move in line with basic scientific transparency and professionalism.

Yet it's being treated as a sign of impending apocalypse by some on the left, which says much about the questionable validity of that group's policy prescriptions.

In an interview with The Daily Caller News Foundation, Administrator Scott Pruitt said the EPA will end its use of studies that do not publish underlying data, only conclusions. "Otherwise, it's not transparent. It's not objectively measured, and that's important," Pruitt said.

In the past, the EPA has advanced air-quality regulations that imposed massive costs based primarily on the findings of two studies done in the 1990s that linked fine particulate pollution to premature death. Neither study made associated data public.

U.S. Rep. Lamar Smith, R-Texas and chairman of the House Committee on Science,

Space and Technology, has long criticized the use of “secret science” and authored legislation to curtail its use by regulators. Last year, Smith said the EPA had “routinely relied on questionable science based on nonpublic information that could not be reproduced, a basic requirement of the scientific method.”

“Americans deserve to see the science for themselves,” Smith said. “If the EPA has nothing to hide, why not make the scientific data it uses for its regulations publicly available? What was the EPA hiding?”

That will strike most people as a fair question. But to some activists, the idea that science should involve review and scrutiny is apparently anathema. In response to a prior effort to ban “secret science” at the EPA, Andrew Rosenberg, director of the Union of Concerned Scientists’ Center for Science and Democracy, said transparency would “gut the EPA at the expense of public health and safety.”

That same group has claimed release of data would require publicizing the confidential patient data of individuals. But Steve Milloy, publisher of JunkScience.com and a senior fellow at the Energy and Environmental Legal Institute, notes that California already makes similar data available in its “Public Use Death Files,” and that has been accomplished without violating patient privacy.

Other critics object that there are costs involved in scrubbing data sets so patient privacy is protected. Perhaps, but that doesn’t mean the public should be kept in the dark about the data and methods used to justify literally billions in new regulatory burden.

Scientific studies are as susceptible to human error and even outright fraud as any other endeavor — particularly when such studies are used in the political realm. Facilitating transparency and independent review will reduce the chances of bad science harming Americans with half-baked regulations, and should enhance the case for regulations when the underlying science has withstood independent scrutiny.

Given the stakes for public health and the national economy, Americans must be assured government regulations are based on sound science, not someone’s “trust me” assurances.

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Subject: First Move: Wheeler's New Approach • Keeping Calendars Public • 'Secret'
Science Gets Public Airing

What you
need to
know to
start your
day.

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Wheeler's New Approach • Keeping Calendars Public • 'Secret' Science Gets Public Airing

By Marissa Horn

Scott Pruitt's agenda may never go out of style, at least under a GOP president.

But the way that agenda was delivered to the public during Pruitt's 503 days at the EPA is ending, the EPA's acting administrator told Bloomberg Environment in an exclusive [interview](#) yesterday in Canonsburg, Pa.

Later this week, we'll be digging into new acting chief Andrew Wheeler's comments on environmental permitting, enforcement, and a topic that marks an about-face for an agency that [barred](#) three reporters from entering a chemical summit in May—communication.

NOT-SO SECRET CALENDAR: Speaking of Wheeler, [Abby Smith](#) took a look at whom he spoke with during his first week at the EPA.

In another shift from Pruitt's tenure at the agency, Wheeler is updating his calendar daily. Wheeler's anticipated forthrightness—both about his day-to-day

schedule and the EPA's policymaking process—could give regulated industries more clarity, attorneys and consultants say.

For updates, follow [Abby](#) on Twitter and look for the story later today on our [website](#).

SCIENCE TRANSPARENCY: The EPA proposal to [ensure transparency](#) in the science it considers when writing regulations will be the subject of a public hearing today.

Among those speaking in favor of the measure is the U.S. Chamber of Commerce, which according to its written testimony will praise EPA “for finally addressing a longstanding problem inherent in much of its regulatory decision-making processes.” [Sylvia Carignan](#) is tracking.

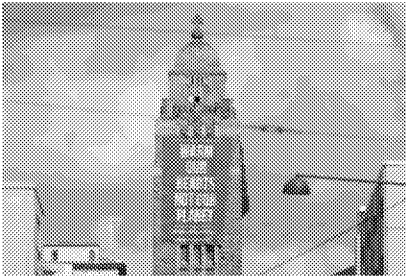
OTHER STORIES WE'RE COVERING

- The House is expected to take up its second “minibus” package, which would provide more than \$35 billion for the EPA, Interior Department, and other environmental agencies for the coming fiscal year. [David Schultz](#) is covering.
- Wyoming's John Barrasso, who heads the Senate's environment panel, gives fellow senators a push toward thinking about changes to the Endangered Species Act in a hearing today. Follow [Alan Kovski](#) for the latest updates and look for his story [later today](#).
- Lawmakers will lock horns over President Trump's list of 35 critical minerals. Democrats on the Senate Energy and Natural Resources committee are expected to argue the list is a giveaway to the mining industry, while Republicans are likely to counter that streamlined permitting is important for national security. [Stephen Lee](#) has you covered on the hearing.
- Authors from [Wiley Rein LLP](#) point out in an Insights [article](#) five “hot spot” areas that a historic upswing in private actions are targeting in the nation's toxic chemicals law, which was updated in 2016.

QUOTE OF THE DAY

“Anybody who buys on Amazon cannot give me the line that they're environmentally responsible consumers.”

—Yossi Sheffi, engineering professor focusing on supply chain management at the Massachusetts Institute of Technology.



A banner by environmental non-governmental organization Greenpeace is fixed at the Kallio Church tower in Helsinki, Finland, on July 16 ahead of a meeting between President Donald Trump and Russian President Vladimir Putin.

Photographer: Alessandro Rampazzo/AFP/Getty Images

AROUND THE WEB

- Almost the entire Gulf of Finland has been infested with a blue-green algae, the Finnish Environment Institute reports.
- Plutonium went missing in San Antonio more than a year ago, and the federal government still doesn't know where it is.
- As Trump's trade war heats up, a team of trade and climate policy analysts is proposing a new way to counter protectionism that could prod the U.S. back into action on the climate at the same time.
- See the before and after of Louisiana's ambitious effort to rebuild barrier islands by bulking their skeletal remains with tons of sand dredged from the Gulf of Mexico and the Mississippi River.

TODAY'S EVENTS

- **All Day • Pro Summit** • Politico Pro Summit features speakers including California Air Resources Board Chairman Mary Nichols and Murray Energy CEO Robert E. Murray.
- **10 a.m. • Energy** • House science committee's energy and environment panels hold hearing on fossil energy technologies.
- **10 a.m. • Tribal Energy** • House Oversight and Government Reform's interior panel talks about reducing barriers to opportunity for tribal energy resources.
- **10 a.m. • Federal Lands** • House Natural Resources' federal lands panel holds hearing on eight federal lands bills.

- **10 a.m. • FEMA • Atlantic Council** [holds discussion](#) with Daniel Kaniewski, the Federal Emergency Management Agency's deputy administrator, on engaging communities in preparing for and recovering from catastrophes.
- **12 p.m. • Hazardous Waste • Environmental Law Institute** [holds seminar](#) on hazardous waste laws.
- **1 p.m. • New Source Review • The House Energy and Commerce** environmental panel [considers bill](#) that changes the way industrial increases in emissions are calculated when the plants are either modified or constructed.
- **1 p.m. • Coal Combustion • The Air & Waste Management Association** kicks off the first part in a three-part webinar [series](#) looking at the history of coal combustion residual regulations.

For all of today's Bloomberg Environment headlines, visit [Environment & Energy Report](#)

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Subject: Morning Energy: Spotlight on FERC at Pro summit — Hitching a ride on the 'minibus' — 'Secret science' out in the open

By Kelsey Tamborrino | 07/17/2018 05:43 AM EDT

With help from Emily Holden, Anthony Adragna, Colin Wilhelm and Darius Dixon

SEE YOU THERE: Today's the day — POLITICO Pro is hosting its second annual Pro summit, featuring one-on-one conversations with newsmakers across the policy landscape, including two sessions on energy.

FERC Commissioner Cheryl LaFleur will sit down this afternoon with our own Darius Dixon, before the regulatory body is deadlocked next month following the exit of GOP Commissioner Rob Powelson. LaFleur, a Democrat, has served under presidents from both parties and experienced the agency in almost every configuration — whether it has all five commissioners in place, or just one. There's no shortage of topics to chew over: the potential impact of an Energy Department coal and nuclear rescue plan, the heated rhetoric against states that stand in the way of pipelines, and whether FERC is "on the wrong side of history" when it comes to climate change. Darius' interview with LaFleur starts around 2 p.m.

Also on tap: California Air Resources Board Chairwoman Mary Nichols, Murray Energy CEO Bob Murray and the Council on Foreign Relations' Amy Myers Jaffe will participate in a panel this morning on America's "energy future." Nichols, for one, has been heavily involved in discussions with the Trump administration over car rules that the White House is considering rolling back. Expect questions related to the administration's efforts to pare back regulations and increase oil, gas and coal production — and an in-depth conversation on what that means for free market forces and renewables.

See the full agenda [here](#) and watch the livestream [here](#).

WELCOME TO TUESDAY! I'm your host, Kelsey Tamborrino. Citizens' Climate Lobby's Brett Cease was first to correctly identify the two presidents who threw out the first pitch at an All-Star game in D.C.: Franklin D. Roosevelt in 1937 and John F. Kennedy in 1962. For today: Which state or states have just one consonant in its spelling? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytm](#), [@Morning_Energy](#) and [@POLITICOPro](#).

JUST RELEASED: [View the latest POLITICO/AARP poll](#) to better understand Arizona voters over 50, a voting bloc poised to shape the midterm election outcome. Get up to speed on priority issues for Hispanic voters age 50+, who will help determine whether Arizona turns blue or stays red.

HITCHING A RIDE ON THE 'MINIBUS': The House Rules Committee late Monday made 70 amendments to the EPA and Interior title of the spending minibuss, [H.R. 6147 \(115\)](#). The amendments focus on blocking a host of Obama-era environmental regulations even as the Trump administration is in the process of rolling back many of those. Some of the amendments that caught ME's eye:

— **Diesel emissions grants:** Rep. [Gary Palmer's amendment](#) would eliminate the popular bipartisan Diesel Emissions Reduction Grant program used to retrofit diesel engines like those in school buses,

— **WOTUS:** Rep. Don Beyer's amendment would remove language blocking the Obama administration's Waters of the U.S. regulation,

— **Obama-era methane rule:** Rep. Markwayne Mullin's amendment would block enforcement of the Obama-era regulation aimed at curbing methane emissions from new oil and gas sources, which the Trump administration is already reconsidering,

— **Social cost of carbon:** Another amendment from conservatives would bar the use of the social cost of carbon in rulemakings,

— **Trailer efficiency:** Reps. Barry Loudermilk and Morgan Griffith's amendment would bar EPA from applying stricter fuel efficiency and greenhouse gas emissions standards to certain truck trailers,

— **Chesapeake Bay:** Rep. Bob Goodlatte's effort would limit EPA's ability to go after states that miss Chesapeake Bay cleanup milestones,

— **Ozone:** Rep. Glenn Grothman's amendment would block implementation of EPA's 2015 tightened ozone standard,

— **Coal ash:** A Democratic amendment would block the Trump EPA from revisiting an Obama-era coal ash regulation,

— **Endangered Species Act riders:** Several measures would bar the administration from issuing or enforcing Endangered Species Act rules relating to species like the lesser prairie chicken and Preble's meadow jumping mouse,

— **Attorney fees:** An amendment from Reps. Jason Smith and Greg Gianforte would block attorney fees from being awarded in any Clean Air Act, Clean Water Act or Endangered Species Act settlement, and,

— **Inspectors general:** Nothing related to former Administrator Scott Pruitt was made in order, but the House will consider an amendment from Rep. Raúl Grijalva that would increase the budget of the Interior Department's inspector general by \$2.5 million.

Read the full list of amendments made in order to the measure here.

'SECRET SCIENCE' OUT IN THE OPEN: EPA's controversial proposal to consider only research with publicly available data gets a public hearing at agency headquarters today starting at 8 a.m. Nearly 70 health, medical, academic and science groups — including the American Lung Association, American Heart Association, American Medical Association and American Academy of Pediatrics — oppose the plan, which they say could hamstring public health and environment protections.

EPA's Science Advisory Board voted unanimously to review the proposal, which Pruitt said was meant to bolster transparency. Paul Billings, national senior vice president of advocacy at the American Lung Association, called the rule a "coordinated effort to ignore the science that is inconvenient to the EPA's agenda," and compared it to lobbying efforts by the tobacco industry in the 1990s to exclude studies that showed secondhand smoke could kill.

What's at stake? The proposal could move forward quickly enough to allow EPA to roll back certain air quality standards currently under review. According to the Natural Resources Defense Council, the plan could undercut computer models meant to test chemicals under the new Toxic Substances Control Act and could toss

out landmark studies that relied on personal health records following extraordinary events, including when Hiroshima and Nagasaki victims were tested over time to find out the effects of radiation on humans.

The meeting will run until 8 p.m. or an hour after the last of more than 100 registered speakers has commented. Speakers, aside from many environment and public health groups, include the American Petroleum Institute, the U.S. Chamber of Commerce, the American Chemistry Council, FreedomWorks Foundation and climate science critic Steve Milloy. Dan Byers of the Chamber of Commerce's Global Energy Institute is expected to applaud the agency's efforts and commend EPA for going through the formal public comment and rulemaking process. "It is one thing to be cavalier about transparency principles when their application has little or no import to public policy, but federal rules that impact millions of people and billions of dollars should be held to a higher standard," he is expected to say. Also registered are Reps. Paul Tonko, Suzanne Bonamici and Dan Lipinski. Comments can be submitted until Aug. 16.

Related reading: Competitive Enterprise Institute senior fellow Angela Logomasini looks at the science transparency rule in analysis published today. "The rule is actually far more modest and flexible than depicted by its critics, and its goals are in fact achievable," Logomasini writes. Read it here.

FOR THE RECORD: The House Rules Committee meets at 3 p.m. this afternoon to formulate a rule on an anti-carbon tax resolution, H. Con. Res. 119 (115), that calls a tax on carbon released from fossil fuels "detrimental to the United States economy." The Rules panel will tee up a vote later this week on the resolution, which is led by Majority Whip Steve Scalise and would put a range of lawmakers — most notably the Climate Solutions Caucus — on the record on the issue.

WHERE'S ZINKE? Interior Secretary Ryan Zinke will deliver remarks this morning at the first meeting of the "Made in America" Outdoor Recreation Advisory Committee. The committee is tasked with advising the secretary on "public-private partnerships across all public lands, with the goal of expanding access to and improving infrastructure on public lands and waterways." See the meeting agenda.

AMERICA'S PLEDGE STILL WORKING ON PLEDGES: Michael Bloomberg and California Gov. Jerry Brown, the co-chairs of climate organization "America's Pledge," have unveiled a preview of the report they will release at the Global Climate Action Summit in San Francisco in September, detailing "bottom-up" opportunities for climate action sans federal leadership. The list is familiar: boosting renewables, accelerating coal retirements, retrofitting buildings for energy efficiency, electrifying building energy use, accelerating electric vehicle adoption, phasing out HFCs, preventing methane leaks at the wellhead, reducing methane leaks in cities, reducing emissions from land and starting carbon markets.

Vice Chairman Carl Pope said the group still plans to debut a quantitative analysis outlining what state and local governments are already doing, what they have committed to and what they are keying up. "We have every reason to believe the rest of the world is watching this very closely," Pope said, noting that the U.N.'s top climate official, Patricia Espinosa, mentioned the group and summit by name at the Vatican earlier this month. Read it here.

ESA GETS ITS DAY: Proposed tweaks to the Endangered Species Act will be front and center at a Senate Environment and Public Works hearing this morning. The hearing will feature testimony from Wyoming Gov. Matt Mead, Colorado Parks and Wildlife's Bob Broscheid and Virginia's Secretary of Natural Resources Matthew J. Strickler, and will focus on a discussion draft released by Chairman John Barrasso earlier this month aimed at changing the statute. **If you go:** The hearing kicks off at 9:45 a.m. in 406 Dirksen. Livestream here.

TAKEN BY STORMWATER: The House on Monday passed by voice vote H.R. 3906 (115), the Innovative Stormwater Infrastructure Act of 2017, which would "establish centers of excellence" for stormwater control infrastructure. The legislation, introduced last year by Democratic Rep. Denny Heck, directs EPA to create a

stormwater infrastructure funding task force to make recommendations on the availability of public and private funding for stormwater infrastructure.

DOE ISSUES FIRST TRIBAL LOAN GUARANTEE: The Energy Department will issue its first solicitation for the Tribal Energy Loan Guarantee Program today. The program provides up to \$2 billion in partial loan guarantees to support energy development in Native American and Alaska Native communities. According to DOE, today's solicitation marks more than \$40 billion in energy infrastructure loans and loan guarantees from DOE's Loan Programs Office in five areas.

HOUSE PANEL TO HOLD GRID HEARING: House Natural Resources will hold a hearing on July 25 on Puerto Rico's electric grid recovery and possible improvements to make it more efficient and resilient to future hurricanes. On top of the devastation caused by Hurricane Maria last year, Puerto Rico's electric utility owes bondholders \$9 billion, and most of its leadership departed last week after clashes with Gov. Ricardo Rosselló over executive compensation and political control of the utility, which is quasi-governmental.

MAKING THE GRADE: The Environment America Research & Policy Center is out today with its state-by-state report card, "Renewables on the Rise," which details increases in solar, wind, energy efficiency, electric vehicles and battery storage. The report says the U.S. now produces almost six times as much renewable electricity from wind and solar than it did in 2008. It also found that in March of last year, wind and solar produced 10 percent of the United States' electricity — marking a first. On the state level, the report said California, Arizona, North Carolina, Nevada and Texas saw the greatest total increases from 2008 until 2017 in solar energy generation. See the report [here](#) and a state-by-state interactive map [here](#).

YOU DOWN WITH TIP? A bipartisan group of four senators wrote to Energy Secretary Rick Perry on Monday in support of the Western Area Power Administration's Transmission Infrastructure Program, which was axed under the Trump administration's fiscal 2019 budget proposal. "TIP is one of the few federal programs that directly supports new and upgraded electric transmission," according to the letter, signed by Sens. Catherine Cortez Masto, Martin Heinrich, Dean Heller and Cory Gardner.

HOUSE PLANS FLOOD INSURANCE VOTE: The House is planning to vote next week to extend the National Flood Insurance Program, ahead of its July 31 expiration, sources familiar with the matter tell Pro Financial Services' Zachary Warmbrodt. There are already a few options on the table for the program: one from Financial Services Chairman Jeb Hensarling, who has been trying to put together an extension bill that includes reforms, and a new bill introduced by Scalise and Rep. Tom MacArthur that would reauthorize the program through Nov. 30. Read [more](#).

FOR YOUR RADAR: Republican Sen. Chuck Grassley introduced bipartisan legislation on Monday targeting price fixing by OPEC. The bill would amend the Sherman Act to make oil-producing and exporting cartels illegal, and was co-sponsored by Sens. Amy Klobuchar, Mike Lee and Patrick Leahy. "It's long past time to put an end to illegal price fixing by OPEC," Grassley said in a statement. Read the legislation [here](#).

MAIL CALL! National Rural Electric Cooperative Association CEO Jim Matheson sent a letter to the leadership of the Energy and Commerce Environment Subcommittee on Monday in support of legislation to reform the New Source Review permitting program.

— **More than 100 Democrats** signed onto a letter to members of both House and Senate Armed Services committees today to urge them to oppose any provisions to the National Defense Authorization Act that would "have widespread, negative consequences for the conservation of our imperiled wildlife and public lands." Read the letter [here](#).

— **Iowa's congressional delegation** invited acting EPA Administrator Andrew Wheeler to their state to discuss the Renewable Fuel Standard. Read it [here](#).

What role will Hispanic voters over 50 play in Arizona this Fall? Read POLITICO Magazine's new series "The Deciders" which focuses on this powerful voting bloc that could be the determining factor in turning Arizona blue.

QUICK HITS

- "Puerto Ricans return to power grid, but fear for long term," The Associated Press.
- "Oil boom in Southern New Mexico ignites groundwater feud with Texas," Water Deeply.
- "In N.Y., farmers think about what might have been," E&E News.
- "Same agenda, different style, acting EPA head pledges," Bloomberg Environment.

HAPPENING TODAY

8:30 a.m. — POLITICO's Pro Summit, 999 Ninth St. NW.

8:45 a.m. — The United States Institute of Peace discussion on "Wildlife Poaching and Trafficking: Combating a Vital Source of Terrorism," 2301 Constitution Avenue NW.

9 a.m. — The Resilient Puerto Rico Advisory Commission discussion with the authors of the newly released "ReImagina Puerto Rico" report, 14th and F St. NW.

9 a.m. — The National Academy of Sciences' Board on Atmospheric Sciences and Climate meeting to discuss a research agenda for adaptation science, 2101 Constitution Ave. NW.

9:45 a.m. — Senate Environment and Public Works Committee hearing on "The Endangered Species Act Amendments of 2018," 406 Dirksen.

10 a.m. — House Natural Resources Federal Lands Subcommittee hearing on federal land bills, 1324 Longworth.

10 a.m. — The Atlantic Council discussion on "Ready and Resilient," focusing on disaster preparedness, 1030 15th St. NW.

10 a.m. — House Oversight Interior, Energy and Environment Subcommittee hearing on "Tribal Energy Resources: Reducing Barriers to Opportunity," 2247 Rayburn.

10 a.m. — House Science Energy and Environment Subcommittees joint hearing on "The Future of Fossil: Energy Technologies Leading the Way," 2318 Rayburn.

10 a.m. — Senate Energy and Natural Resources Committee hearing on the Interior Department's final list of critical minerals, 366 Dirksen.

12:30 p.m. — The Washington Institute for Near East Policy discussion on "Reimplementing Iran Sanctions: Where, How and How Much?" 1111 19th St. NW.

12:30 p.m. — Sens. Ed Markey and Tom Carper press conference on Supreme Court nominee Brett Kavanaugh, S-115.

1 p.m. — EPA meeting on pesticide health and safety, Rosslyn, Va.

1 p.m. — House Energy and Commerce Environment Subcommittee markup of H.R. 3128 (115), 2322 Rayburn.

3 p.m. — House Rules Committee meets to formulate a rule on H. Con. Res. 119 (115), H-313.

THAT'S ALL FOR ME!

To view online:

<https://subscriber.politicopro.com/newsletters/morning-energy/2018/07/spotlight-on-ferc-280874>

Stories from POLITICO Pro

House plans vote to keep flood insurance program going Back

By Zachary Warmbrodt | 07/16/2018 06:49 PM EDT

The House is planning to vote next week to extend the National Flood Insurance Program before leaving town ahead of the program's July 31 expiration, sources familiar with the matter said.

House Financial Services Chairman Jeb Hensarling (R-Texas) has been trying to put together an extension bill that includes reforms, sources said. Another option is a new bill introduced by House Majority Whip Steve Scalise (R-La.) and Rep. Tom MacArthur (R-N.J.) that would reauthorize the program through Nov. 30.

In a statement, Scalise said it was important to keep working on a long-term flood insurance reauthorization but that his bill would take concerns about a lapse off the table for the remainder of hurricane season.

While the House has passed a five-year reauthorization and overhaul, the Senate hasn't reached agreement on its own bill amid disputes over how to retool the program. It's unclear if the Senate would be able to pass anything other than a clean, short-term reauthorization at this stage. Sources said Sen. John Kennedy (R-La.) was planning to try to hotline an extension through January.

To view online click here.

[Back](#)

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Subject: Morning Energy: Second 'minibus' pulls in — The great California divide — Trump-Putin meeting's energy potential

By Kelsey Tamborrino | 07/16/2018 05:42 AM EDT

With help from Daniel Lippman

SECOND 'MINIBUS' PULLS IN: With negotiations still stalled on the first fiscal 2019 "minibus" funding bill, the House Rules Committee will meet today on the second minibus, which means debate on a host of thorny, energy-related issues. The measure, H.R. 6147 (115), combines funding for Interior-Environment with Financial Services, and while not as controversial as some of the other spending bills the House is slated to take up, it'll offer lawmakers ample opportunity to zero in on the indiscretions of former EPA Administrator Scott Pruitt, as well as address issues like what coastlines should be exempt from offshore drilling.

House Republican leaders are aiming to keep any fighting off the floor by curtailing the amendments to the two-bill package, Pro's Lauren Aratani reports. And because the Rules panel will likely seek a "structured" rule, the most controversial tweaks are expected to be cast aside. Still, Democrats will use debate over the spending bill to rehash Pruitt's missteps, Lauren reports, and pursue continued investigation into allegations that he misused taxpayer money.

The panel begins work today on more than 160 proposed amendments submitted last week to the Interior-Environment portion, including one to ensure EPA's inspector general will continue its investigations into Pruitt, and another that would bar funds from being used to install a private phone booth in or near the office of the Interior secretary. Another proposed tweak would require EPA to publicly disclose all funds used for top-level travel, within 10 days of each trip — a clear call to Pruitt's tenure at EPA.

ME is also keeping an eye on an amendment from Democratic Rep. Paul Tonko that would bar EPA from using money to adopt a rule that would keep the agency from using research without publicly disclosed data, as Lauren highlights. Dozens of lawmakers from both parties have also sponsored amendments that would bar federal funds from being used to support offshore drilling in various locations off the nation's coasts, as the White House seeks to expand exploration for oil and gas. Read more here.

GOOD MONDAY MORNING! I'm your host, Kelsey Tamborrino. The League of Conservation Voters' Gene Karpinski was first to identify Hawaii as the state that does not have a straight line forming part of its border. Today's question comes from Bracewell's Frank Maisano in honor of this week's All-Star game: Which presidents threw out the first pitch at an All-Star game in D.C.? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](https://twitter.com/kelseytam), [@Morning_Energy](https://twitter.com/Morning_Energy) and [@POLITICOPro](https://twitter.com/POLITICOPro).

JUST RELEASED: View the latest POLITICO/AARP poll to better understand Arizona voters over 50, a voting bloc poised to shape the midterm election outcome. Get up to speed on priority issues for Hispanic voters age 50+, who will help determine whether Arizona turns blue or stays red.

What role will Hispanic voters over 50 play in Arizona this Fall? Read POLITICO Magazine's new series "The Deciders" which focuses on this powerful voting bloc that could be the determining factor in turning Arizona blue.

THE GREAT CALIFORNIA DIVIDE: California Democrats rebuked Sen. Dianne Feinstein this weekend and endorsed her progressive opponent, state Sen. Kevin de León, who has been embraced by climate hawks among other liberal activists in his long-shot bid to keep Feinstein from winning a fifth term. The vote offers a glimpse into the dynamics in the state Democratic party, POLITICO's Carla Marinucci and Jeremy B. White report, where infighting between moderate and progressive factions has taken over.

The decision to endorse de León delivers a much-needed lifeline to the struggling campaign of the state Senate president pro tem, who came in second in California's jungle primary earlier this year to earn a spot against Feinstein in November. De León has made climate and environmental policy keystone issues and has been endorsed by Climate Hawks Vote, 350 Action, 350.org's Bill McKibben and billionaire environmentalist Tom Steyer. The nod from the state party ensures his campaign valuable voter outreach information and the potential for an infusion of federal campaign cash, Carla and Jeremy report.

Feinstein on Saturday downplayed the symbolism of the de León endorsement. "This was not a close primary election, and there were 32 people on the ballot," she said of the June vote. "I take nothing for granted ... we work hard." For his part, de León told POLITICO on Saturday that he thinks "it's always good to have younger generations rise up and assume positions of leadership."

Still, the vote draws attention to the deepening divide between in state's Democratic party and what action Feinstein is taking to lessen the pressure. Last week, the California Democrat told E&E News she supports a ban on fracking in the state, something she had previously stopped short of saying. As the ranking Democrat on the Senate Judiciary Committee, Feinstein has also touted her importance in the effort to oppose Brett Kavanaugh's nomination to the Supreme Court — another issue closely watched by environmentalists and industry alike.

Climate Hawks Vote Founder R.L. Miller said in a statement the group appreciated Feinstein's "new position on fracking," but highlighted de León's potential in California. "Kevin de Leon has shown vision, courage, and tenacity," Miller said. "He's an extraordinary leader for extraordinary times, moving California toward a bright future with bills like his SB 100 (100 percent clean energy by 2045) and SB 54, the California Values Act (sanctuary state) that was just upheld in court." Read more.

TRUMP-PUTIN MEETING'S ENERGY POTENTIAL: The president is in Helsinki today for his highly anticipated meeting with Russian President Vladimir Putin. While the two have met before on the sidelines of other events, today's confab will be the first meeting between the two presidents, Jon Huntsman, the U.S. ambassador to Russia, said Sunday. Unlike official presidential summits, the meeting in Helsinki will not feature a joint statement or any predetermined policy results. "You don't know what's going to come out of this meeting, but what it will be is the first opportunity for these presidents to actually sit down across a table, alone and then with their teams, to talk about everything from meddling in the election, to areas where we have some shared interests," Huntsman said.

Of course, President Donald Trump made news last week on the Russian energy front at a breakfast meeting with NATO chief Jens Stoltenberg where he said Germany is "totally controlled by Russia" and specifically called out the controversial Nord Stream 2 gas pipeline project. Energy Secretary Rick Perry said last week Trump thinks the "Nord Stream 2 is not in the European Union's best interest, and my bet is he'll be more than happy to tell President Putin that straight to his face," Axios reported. The State Department told Reuters last week that Western firms invested in the pipeline were at risk of sanctions, although Perry told reporters that sanctions would be "kind of the last place we would like to land" but said they were an option.

WHERE'S WHEELER? Marking another departure from the Pruitt era at EPA, the agency gave a heads-up that acting Administrator Andrew Wheeler will be in Canonsburg, Pa., this afternoon. Wheeler will be in the area to attend a meeting of the Washington County Chamber of Commerce, alongside Region 3 Administrator Cosmo Servidio.

ON TAP THIS WEEK: The Rules Committee will meet Tuesday to consider a resolution, H. Con. Res. 119 (115), that calls a carbon tax "detrimental" to the U.S. economy and "not in the best interest" of the country. The meeting tees up a likely vote later this week on the non-binding resolution, following a recent push by conservative groups to take up the measure. The legislation is led by Majority Whip Steve Scalise, Pro's Anthony Adragna reports, and could offer an interesting vote for Climate Solutions Caucus members, who have yet to weigh in on specific solutions for addressing climate change.

EPA ETHICS OFFICIAL DEFENDS FOIA PROCESS: Kevin Minoli, EPA's principal deputy general counsel, replied last night to the top Democrat on the House Oversight Committee, who on Friday pressed for a subpoena over the agency's handling of FOIA requests. In his letter, Minoli offers to brief Congress on the agency's FOIA Expert Assistance Team that was created in 2013 to "make the FOIA process at EPA better." While Minoli's letter acknowledges "EPA's FOIA program is far from perfect," he highlights the work of the FEAT and other offices, writing that they have "laid a foundation from which EPA's FOIA program could be a model of what a FOIA program should be, not an example of what a FOIA program should not be." Read the letter.

MAIL CALL! Thirteen attorneys general on Friday demanded in a letter to Wheeler that his agency withdraw an order to manufacturers of glider trucks that the agency will not enforce a strict 300-unit production cap for 2018 and 2019, which was issued by Pruitt on his last day. The AGs call the move "clearly unlawful" and a violation of EPA's policy against "no action assurances." In a statement, New York AG Barbara Underwood said Pruitt gave "a parting gift to polluters on his very last day as EPA Administrator — bolstering the Trump Administration's legacy of siding with corporations over people." New York, along with California, Connecticut, Illinois, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Oregon, Pennsylvania, Vermont and Washington, signed onto the letter, as did the Pennsylvania Department of Environmental Protection and the California Air Resources Board.

— **GOP Reps. Greg Walden, Gregg Harper and John Shimkus** wrote to Wheeler on Friday, seeking additional information on EPA's process for reviewing grant applications. Read the letter here.

CLEARPATH ACTION BACKS UPTON: Jay Faison's ClearPath Action Fund will announce its endorsement of Michigan Rep. Fred Upton today. The clean energy advocacy group will begin running digital ads backing the Michigan Republican as part of a six-figure effort for his reelection. Upton, who is the chairman of Energy and Commerce's Energy Subcommittee, "has an accomplished record of shepherding many bills hitting every facet of clean energy innovation," Faison said in a statement.

MOVERS, SHAKERS: Matthew Mailloux, managing director at the American Conservation Coalition, joined the New Hampshire Office of Strategic Initiatives as Gov. Chris Sununu's energy adviser.

— **Katie Valentine** is now a media relations associate at the Conservation Fund. She is the former deputy climate editor at ThinkProgress.

QUICK HITS

— "California is preparing for extreme weather. It's time to plant some trees," The New York Times.

— "Energy execs set fundraiser for Fla. Gov. Rick Scott," E&E News.

— "Widespread unrest erupts in southern Iraq amid acute shortages of water, electricity," The Washington Post.

— "Fill 'er up, or plug it in? Oil, utilities fight to fuel vehicles of the future," The Wall Street Journal.

— "Pence family's failed gas stations cost taxpayers \$20M+," The Associated Press.

— "National parks could get much-needed money for upkeep through bipartisan bill," [ABC News](#).

HAPPENING THIS WEEK

MONDAY

Noon — The National Iranian American Council [briefing](#) on "Joint Comprehensive Plan of Action (JCPOA) 2.0: Iran, Europe, Trump, and the Future of the Iran Deal," SVC-210.

2 p.m. — The Environmental and Energy Study Institute holds a [briefing](#) on safely decommissioning nuclear power plants, HC-8.

4 p.m. — The Institute of World Politics lecture on "Energy Trends: Nuclear and Non-nuclear," 1521 16th St. NW.

5 p.m. — House Rules Committee meets to formulate a rule on [H.R. 6147 \(115\)](#), the "Interior, Environment, Financial Services, and General Government Appropriations Act, 2019," H-313.

6:45 p.m. — Smithsonian Associates [discussion](#) on "Making Sense of Climate Change," 1100 Jefferson Drive SW.

TUESDAY

8:30 a.m. — POLITICO's [Pro Summit](#), 999 Ninth St. NW.

8:45 a.m. — The United States Institute of Peace [discussion](#) on "Wildlife Poaching and Trafficking: Combating a Vital Source of Terrorism," 2301 Constitution Ave. NW.

9:45 a.m. — Senate Environment and Public Works Committee [hearing](#) on "The Endangered Species Act Amendments of 2018," 406 Dirksen.

10 a.m. — House Natural Resources Federal Lands Subcommittee [hearing](#) on federal land bills, 1324 Longworth.

10 a.m. — The Atlantic Council discussion on "Ready and Resilient," focusing on disaster preparedness, 1030 15th St. NW.

10 a.m. — House Oversight Interior, Energy and Environment Subcommittee [hearing](#) on "Tribal Energy Resources: Reducing Barriers to Opportunity," 2247 Rayburn.

10 a.m. — House Science Energy and Environment Subcommittees [joint hearing](#) on "The Future of Fossil: Energy Technologies Leading the Way," 2318 Rayburn.

10 a.m. — Senate Energy and Natural Resources Committee [hearing](#) on the Interior Department's final list of critical minerals, 366 Dirksen.

1 p.m. — EPA [meeting](#) on pesticide health and safety, Rosslyn, Va.

WEDNESDAY

9 a.m. — EPA public hearing on "Proposed Renewable Fuel Standards for 2019, and the Biomass-Based Diesel Volume for 2020," Ypsilanti, Mich.

9 a.m. — House Energy and Commerce Energy Subcommittee hearing on "Powering America: The Role of Energy Storage in the Nation's Electricity System," 2322 Rayburn.

10 a.m. — Senate Commerce Committee hearing on "SHARKS! — Innovations in Shark Research and Technology," 253 Russell.

10 a.m. — House Transportation Economic Development, Public Buildings and Emergency Management Subcommittee hearing on "Are We Ready? Recovering from 2017 Disasters and Preparing for the 2018 Hurricane Season," 2167 Rayburn.

10:30 a.m. — The Center for Strategic and International Studies discussion on "Digitalization in the Industrial Sector: Implications for Energy, Technology, and Policy," 1616 Rhode Island Ave. NW.

2:30 p.m. — Senate Indian Affairs Committee hearing on three bills, including S. 3168 (115), to amend the Omnibus Public Land Management Act of 2009 to make Reclamation Water Settlements Fund permanent, 628 Dirksen.

1 p.m. — The Atlantic Council discussion on "Oil and Iran: How Renewed Sanctions Will Affect Iran and World Markets," 1030 15th St. NW.

THURSDAY

9 a.m. — The Atlantic Council discussion on "Finnish Perspectives on Energy Security in Europe," 1030 15th St. NW.

10 a.m. — Senate Environment and Public Works Committee hearing on nomination of Mary Bridget Neumayr to be a member of the Council on Environmental Quality, 406 Dirksen.

12 p.m. — The Woodrow Wilson Center's China Environment Forum discussion on "Aiming Low: Wielding New Low-carbon Tools to Help Chinese and U.S. Cities Peak Carbon," 1300 Pennsylvania Ave. NW.

FRIDAY

10 a.m. — The Middle East Policy Council briefing on "Withdrawal from the Joint Comprehensive Plan of Action (JCPOA): Options for the Trump Administration," 562 Dirksen.

CORRECTION: The July 13 edition of Morning Energy incorrectly attributed a statement related to Yucca Mountain. It came from Rep. Dina Titus.

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Stories from POLITICO Pro

Lawmakers battle over busting budget to pay for veterans health care [Back](#)

Spooking House conservatives and risking a presidential veto, Senate spending leaders are proposing to blow past budget limits to fund a popular private health care program for military veterans.

Minutes before they were to meet on Thursday, congressional appropriators canceled their first public conference talk that had been intended to settle differences in three of the 12 annual spending bills President Donald Trump must sign by Sept. 30 to avert a government shutdown. One of the three provides for spending on veterans.

The 11th-hour cancellation came amid a cross-Congress showdown over how to pay for a program that allows some veterans to spend taxpayer money on private doctors and hospitals. The question is whether to break budget limits, known as caps, to come up with the cash.

"They canceled the meeting. But it's all about the VA," Senate Appropriations Chairman Richard Shelby (R-Ala.) told reporters Thursday, apparently referring to GOP leaders. "Do we break the caps? Do we prorate everything else? Do we cut other veterans programs to fund this? We got a shortfall, and we got to work it out. And we're not there yet."

Congress needs to approve \$1.6 billion for fiscal 2019, plus nearly \$18.2 billion more in the two years thereafter, to fully fund what has been authorized for the VA Choice program and its successor within the new VA Mission Act.

The suggestion that Congress "break the caps" set by the budget deal, H.R. 1892 (115), struck this year is already irking House conservatives, who would be loath to vote on any final spending bill that goes above those limits — even in the face of an impending shutdown this fall. The idea likely would not play well, either, in talks with a White House that was already seen as surprisingly conciliatory in signing that grand budget deal.

Money for veterans programs comes with special political protections, however, since policymakers want to avoid the uncomfortable optics of fighting funding for those who have served in the military. And top Democrats are already trying to use that perception to their advantage.

"You don't go to a veterans assembly and say 'We're not going to help the veterans,'" Sen. Patrick Leahy (D-Vt.), ranking Democrat on the Senate Appropriations Committee, said Thursday.

The administration has been heavily involved in discussions for weeks. The White House budget office has argued that any extra VA money would be akin to breaking this year's budget deal.

"It's obviously critically important to give veterans the resources they need, and we think that can happen inside the existing caps," according to a senior administration official.

Leahy planned to offer an amendment during the conference meeting that would have added funding for the veterans health care program. The meeting was then postponed, he said, because negotiators didn't want to go on record against doling out that cash. A GOP aide said that Republicans weren't expecting any amendments in Thursday's meeting, the first time negotiators would meet face-to-face.

"A lot of the people were I think concerned, I'm told, that they'd have to vote today," Leahy said.

The issue isn't as simple as supporting or opposing money for VA Choice, though.

The funding problem began last month, when Congress enacted a bill, S. 2372 (115), that created a budget gap by switching the program's community care services from the mandatory side of the ledger to the discretionary side.

Democrats — as well as some Republican appropriators — are in favor of exempting the new money from Congress' strict spending caps. But many Republicans, including White House officials, say the cash should come out of the government's already-determined budget, even if that means trimming the topline for other programs.

That means Congress would need to divert hundreds of millions of dollars from other programs into the veterans health care program, which until this year, was funded automatically.

For their part, House lawmakers have already agreed to pay for part of the program without blowing through budget limits. The veterans spending bill, H.R. 5786 (115), that the House passed last month as part of a three-bill minibus would fully fund the program for fiscal 2019.

In a statement to POLITICO on Thursday, House Speaker Paul Ryan called out Leahy by name, saying the Senate spending bill "neglected" to fund the VA program despite the House's action.

"This attack is the height of hypocrisy," said a senior House GOP aide. "Democrats are scrambling to cover up the fact they have not kept their promises as the House did."

House GOP leaders have repeatedly refused to adjust Congress' current spending cap to pay for the additional discretionary spending on the veterans program. Instead, Republicans agreed to pitch in that \$1.1 billion by reshuffling existing money from the House's funding bill for the Department of Homeland Security.

Their Democratic counterparts, led by Rep. Nita Lowey (D-N.Y.), have protested the move, arguing that it will shortchange other domestic programs. Lowey's own caps-busting amendment was rejected by the spending committee.

The fight over the budget caps has been long simmering and nearly broke out into the open earlier this summer.

Shelby had long backed Leahy's amendment to surpass the caps, but the GOP chairman was forced to shelve his support for bringing it to the floor at the last minute after several conservatives raised issues with it, according to Senate aides.

Shelby even declared on the Senate floor in May that he would support a plan that exceeds the caps, warning that Congress' newest version of the veterans law authorized large sums of spending "without providing any way to pay for it under the spending caps."

"Fortunately, there is existing law and ample precedent for adjusting spending caps to reflect changes resulting from a shift in mandatory spending to discretionary spending," Shelby said on the floor.

Anthony Adragna and John Bresnahan contributed to this report.

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Pruitt scales back EPA's use of science [Back](#)

By Emily Holden and Annie Snider | 04/24/2018 03:28 PM EDT

Environmental Protection Agency chief Scott Pruitt announced Tuesday he would seek to bar the agency from relying on studies that don't publicly disclose all their data, a major policy change that has long been sought by conservatives that will sharply reduce the research the agency can rely on when crafting new regulations.

The unveiling of the proposed rule delivers a win to Republicans like House Science Chairman Lamar Smith (R-Texas), who unsuccessfully pushed legislation to impose the same type of change. The move also demonstrates Pruitt's persistence in pursuing President Donald Trump's anti-regulation agenda just two days before the embattled EPA chief is due to face fierce questioning from lawmakers about his hefty spending, expanded security detail and cheap condominium rental from the wife of an energy lobbyist.

At an invitation-only meeting at EPA headquarters with Smith, Sen. Mike Rounds (R-S.D.) and other supporters of the policy, Pruitt said the proposed rule was critical in ensuring that the agency was transparent about how it is making decisions to justify costly new regulations. It is the latest step Pruitt has taken to fundamentally shift the agency's approach to science.

"It is a codification of an approach that says as we do our business at the agency the science that we use is going to be transparent, it's going to be reproduceable, it's going to be able to be analyzed by those in the marketplace. And those who watch what we do can make informed decisions about whether we've drawn the proper conclusions or not," Pruitt said.

Text of the proposed rule was not immediately available.

The proposal, based on legislation pushed by Smith, is intensely controversial, and scientists and public health groups say it will prevent federal regulators from enacting health and safety protections. Nearly 1,000 scientists, including former EPA career staffers, signed a [letter](#) opposing the policy sent by the Union of Concerned Scientists to Pruitt on Monday.

Their primary concern was that many of the country's bedrock air and water quality regulations are based on research that cannot disclose raw data because it includes the personal health information.

But industry has its own version of the same problem. EPA often relies on industry studies that are considered by companies to be confidential business information when determining whether new pesticides and toxic chemicals are safe to use. Internal EPA emails obtained under the Freedom of Information Act show that EPA political officials, including Nancy Beck, who became the chief of the agency's chemical safety office last year after working for years at a chemical industry lobbying group, worried that the new policy would limit the agency's ability to consider industry data or would force companies to make this proprietary data public.

"We will need to thread this one real tight!" Richard Yamada, political official who led work on the new policy wrote to Beck after she raised the concerns.

It was not immediately clear if the new proposed rule included measures to address those concerns.

Rush Holt, CEO of the American Association for the Advancement of Science, said Pruitt's changes could keep the agency from revising public health regulations as problems arise or new data comes to light.

"On the surface it sounds so innocuous or even beneficial. What could be wrong with transparency? Well it's clear to me that this is not based on an effort to be transparent. It is rather based on an effort to be just the opposite," he said.

"EPA is particularly important because when science is misused, people die," he added.

Pruitt has been discussing the new scientific policy publicly for weeks, but it only went to the White House for interagency review last week. Such swift review is very rare for the Office of Management and Budget, which often takes months to vet a new policy. At least one group, the Environmental Defense Fund, has requested a meeting with OMB officials to discuss the rule, but OMB's website shows that no meetings have been scheduled with interested groups.

Many public health studies can't be replicated without exposing people to contaminants, and environmental disasters such as the Deepwater Horizon oil spill cannot be recreated, the group said, raising intellectual property, proprietary and privacy concerns.

Pruitt's predecessor Gina McCarthy, and her air chief Janet McCabe, in an op-ed in The New York Times in March said concerns about studies are dealt with through the existing peer-review process, which ensures scientific integrity.

"[Pruitt] and some conservative members of Congress are setting up a nonexistent problem in order to prevent the E.P.A. from using the best available science," they said.

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Net neutrality, offshore drilling, tax-free churches: What's dredged up in the latest spending debate [Back](#)

By Lauren Aratani | 07/16/2018 05:03 AM EDT

House leaders will bring two more spending bills to the floor this week, still aiming to pass all 12 of the fiscal 2019 measures before federal cash runs out on Sept. 30. Albeit a softball compared to the more controversy-packed funding bills, this second "minibus" provides ample opportunity for political potshots and fiery policy debate.

House Republican leaders are expected to keep much of that fighting off the floor by curtailing amendments to the two-bill package, H.R. 6147 (115), which includes funding for the Interior Department, EPA, IRS, SEC and General Services Administration — among several other agencies — as well as federal courts and Washington, D.C.

But issues such as federal jobs for young immigrants, financial transactions with marijuana vendors and the indiscretions of former EPA Administrator Scott Pruitt are sure to come up as GOP leaders prep for floor debate.

The House Rules Committee is set to meet Monday night to wade through the more than 240 proposed amendments to the Financial Services, H.R. 6258 (115), and Interior-Environment titles. Because the panel will likely seek a "structured" rule, the most controversial tweaks are expected to be cast aside before the legislative duo is called up for floor debate. What to watch:

Sticking it to Scott Pruitt

Though Pruitt is EPA administrator no more, Democrats will use this week's spending bill to rehash his missteps and pursue continued investigation into allegations that he misused taxpayer money. One proposed amendment would withhold funds for finalizing any EPA rules Pruitt initiated, until the agency's inspector general completes its investigations into the former administrator's spending.

Another proposed tweak would require the EPA to publicly disclose all funds used for top-level travel, within 10 days of each trip.

The bill already includes a committee-approved, tongue-in-cheek provision that would bar the EPA's chief from purchasing fountain pens that cost more than \$50, following reports that Pruitt spent \$3,230 on especially pricey writing tools. And an amendment has been proposed that would essentially bar the Interior secretary from installing a private phone booth, after Pruitt spent \$43,000 on a soundproof stall.

Supporting the marijuana economy

More than 20 co-sponsors — from both sides of the aisle — have piled on in support of an amendment that would prevent financial institutions from being penalized for serving legal marijuana businesses.

Disputing research requirements

Rep. Paul Tonko (D-N.Y.) has drafted an amendment that would bar the EPA from using money to adopt a rule that would keep the agency from using research without publicly disclosed data. Conservatives argue that the rule brings transparency to scientific research, but many scientists contend that the stipulation would allow the agency, under the guise of transparency, to pick and choose which research it will use for regulations.

Protecting employment for DREAMers

An amendment by Rep. Pete Aguilar (D-Calif.), and another by Rep. Darren Michael Soto (D-Fla.), would ensure immigrants protected under the Deferred Action for Childhood Arrivals program are eligible for federal employment. Although some moderate Republicans have voiced support for that effort, chances of action have grown slim after House Republicans failed last month to bring GOP immigration proposals to the floor.

Stopping offshore drilling

Dozens of lawmakers from both parties have sponsored amendments that would bar federal funds from being used to support offshore drilling in various locations off the nation's coasts, as the White House seeks to expand exploration for oil and gas.

Curtailing church donations

Several Democrats have endorsed an amendment by Rep. Debbie Wasserman Schultz (D-Fla.), and another by Rep. John Lewis (D-Ga.), that would seek to continue enforcement of the current prohibition on tax-exempt nonprofit organizations endorsing or donating to political candidates. House Republicans have included language in the Financial Services title that would basically ban the IRS from rooting out churches that break that rule.

Reviving net neutrality

Democrats have proposed an amendment that would restore the FCC's net neutrality rules, after the commission's repeal took effect this month.

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Billionaire Steyer endorses de León over Feinstein [Back](#)

By David Siders | 04/18/2018 11:53 AM EDT

LOS ANGELES — Tom Steyer, the billionaire Democratic mega-donor, is endorsing Kevin de León in his longshot bid to unseat California Sen. Dianne Feinstein, the latest rebuke of Feinstein from her party's increasingly agitated left flank.

Steyer's endorsement - if followed by outside spending - could improve de León's standing in a race that he has so far failed to make competitive. Feinstein, a centrist Democrat, holds a massive advantage over the progressive state senator in both fundraising and public opinion polls.

"I have known Sen. de León for years and have fought alongside him on immigrant rights, expanding health care, and climate change," Steyer said in a prepared statement. "Our work together on behalf of all Californians has assured me that he would be a champion of California's priorities and values. Kevin de León has proven himself to be the best of the next generation, and I am proud to support him for U.S. Senate."

The endorsement was not unexpected. Steyer once considered challenging Feinstein himself, and he has appeared on cable television previously as a near-surrogate for de León. Earlier this year, Steyer described the contest on MSNBC as "incrementalism versus visionary thinking in the Democratic Party."

Lauded by many young, progressive activists in California, de León in February deprived Feinstein of her own state Democratic Party's endorsement, outpolling her by 17 percentage points in the delegate vote.

But the state senator remains largely unknown to the broader electorate in California. Feinstein leads him 42 percent to 16 percent among likely voters, according to a Public Policy Institute of California poll last month.

The race between Feinstein and de León is unlikely to be decided before November. With no prominent Republican running in the state's top-two primary in June, Feinstein and de León are both expected to advance to the general election.

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Feinstein: I'm equipped to lead anti-Kavanaugh brigade [Back](#)

By Carla Marinucci | 07/14/2018 01:39 PM EDT

OAKLAND, Calif. — Sen. Dianne Feinstein, the ranking Democrat on the Senate Judiciary Committee, said Saturday that the vetting process for the confirmation of Brett Kavanaugh to the Supreme Court will be "incredibly difficult," and that her staff is reading nearly 1 million documents that she said could give red-state Democrats reason to oppose his nomination.

Feinstein made her toughest comments to date about opposing Kavanaugh's nomination while addressing a "Unity Breakfast" of her supporters at a California Democratic Party executive Committee meeting in Oakland. State party activists will decide later Saturday on an endorsement in Feinstein's race against progressive state Sen. Kevin de León.

Reminding supporters of her seniority in the Senate and her leadership position on the Judiciary Committee, Feinstein said she has helped write the party's modern-day battle plan for a Supreme Court confirmation. She said that she has sat in on more than 10 confirmation hearings for Supreme Court justices since she was elected in 1992. But Kavanaugh's nomination, Feinstein said, "is beyond, [it is] different from all of them. ... Because this man will be the deciding vote on most things we hold most dear."

"This president has said he would appoint the person that would take down Roe [v.Wade] ... and I take him at his word," she said.

Feinstein told Democrats that now, as the nomination process goes forward, "we have a massive effort going ... We collect information from everywhere," including the Bush Presidential archives.

"The vetting process of this justice is going to be incredibly difficult... it's estimated that 1 million pieces of paper that our staff is going to need to go through prior to a hearing," she said. "I can tell you this: That it is really key and critical that Democrats, including those in difficult states, get the support of our party so that they can do the right thing in this vote..."

Feinstein noted that "we have five Democratic [senators up for reelection] from states that Donald Trump won [by large margins], and this makes this vote difficult for them," she said. "For me, it's not difficult at all. But I'm the lead Democrat on the committee, and we will put together a kind of message, I hope, for the American people which will enable those Democrats to vote along with us."

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Feinstein gets progressive smackdown [Back](#)

By Carla Marinucci and Jeremy B. White | 07/15/2018 08:01 AM EDT

California Democrats, torn by infighting between moderate and progressive factions, rebuked Sen. Dianne Feinstein's bid for a fifth term — for the second time this year.

The state party's executive committee voted Saturday to endorse progressive state Sen. Kevin de León in the general election, signaling what many fear will be a divisive Democrat-on-Democrat battle going toward the fall in California, where the party hoped to put the focus on a host of crucial congressional races that could determine control of the House of Representatives.

The endorsement delivers a lifeline to de León's struggling campaign — and the party's imprimatur, which is accompanied by valuable access to slate cards, email lists and voter outreach machinery that will allow him to reach an estimated 2 million Democratic voters. And he could also get an infusion of federal campaign cash shared with the party, party officials said.

Feinstein, who was also snubbed in February at the annual state convention where party activists declined to endorse her bid for reelection, had pleaded for party unity prior to Saturday's vote. She asked the executive committee of the California Democrats, the nation's largest state Democratic Party, to choose "no endorsement" — what many saw as a strategic defense to head off an aggressive challenge for the party's endorsement by de León.

And in an effort to frame the endorsement clash in the context of the national political landscape, the senator's team circulated a "no-endorsement" plea signed by a half-dozen Democrats whose campaigns in contested California districts are a linchpin of the national party's strategy to retake the House.

The final vote gave de León 217 votes, or 65 percent — beating the 60 percent required threshold — versus 94 votes, or 28 percent, for the "no endorsement" urged by Feinstein, and 22 votes, or 7 percent, for the senator herself.

The Senate contest pits two contrasting pols: Feinstein — at 85, the oldest member of the Senate — and De León, 51, a former state Senate president pro tem and son of a single immigrant mother. She is a centrist long at odds with her state party's leftist activist grass roots, while he is a progressive who has called for new "bold leadership" from Democrats unafraid of confronting President Donald Trump head-on.

"I think it's always good to have younger generations rise up and assume positions of leadership," de León told POLITICO on Saturday.

His fight, he said, was not about "a gender issue ... it's not an age issue." Pointing to progressive icons Sens. Elizabeth Warren and Bernie Sanders, de León said, "it's about the right values."

The weekend's nail-biter over the party's Senate general election endorsement underscored the depths of the bitter divisions still lingering from the 2016 battles between more progressive backers of Sanders' presidential bid and the more centrist faction of Hillary Clinton supporters in the nation's most populous state.

Although the endorsement involved just a small circle of the most activist voters — a 313-member executive committee in a party that represents 8.4 million voters — many Democratic insiders said it carried potentially dangerous implications for the party beyond the state's borders.

Not only did the internal battle threaten to extend the rift among Democrats in California — a traditional mother lode of campaign contributions — many Democratic leaders, including former state chair Art Torres, worried about the prospect of a circular firing squad.

"We have the opportunity to change the nature and the control of the House," said Torres, a Feinstein backer, adding that a de León endorsement threatened that Democrats "won't have enough federal money to put into those congressional campaigns."

"Federal money is the hardest to raise," he said, "and if the party is going to spend money on a U.S. Senate campaign — why do it?"

For de León's campaign, snagging the party's endorsement was widely seen as his last shot at making a serious run at Feinstein. California's senior senator pummeled him by 32 percentage points in the June all-party primary, winning more than 70 percent of the Democratic vote in a contest in which 32 candidates competed.

She has also dramatically outraised him: Feinstein reported \$10.3 million cash on hand at the end of March, compared with \$672,330 for de León, according to campaign finance reports.

But de León has gained traction among the party's far left as the author of the controversial SB54, the California Values Act, also known as the "sanctuary state" law. The legislation, aimed at curtailing the cooperation of local law enforcement with federal immigration officials, was recently largely upheld by a federal judge's ruling.

De Leon has also called for abolishing the Immigration and Customs Enforcement agency and impeaching Trump — a position that is shared by his friend, wealthy Democratic activist Tom Steyer.

In making the rounds this weekend in caucus meetings at Oakland's Marriott Hotel, Feinstein repeatedly reminded Democrats of her seniority in Washington, her legislative leadership on issues like the assault weapons ban, and of what she vowed will be her pivotal role as the ranking Democrat on the Senate Judiciary Committee — which will weigh Trump's nomination of Brett Kavanaugh to the Supreme Court.

Feinstein on Saturday downplayed the symbolism of a de León endorsement and her difficulty with the party's grass roots, insisting it would have no effect on her campaign. "This was not a close primary election, and there were 32 people on the ballot," she said of the June contest. "I take nothing for granted ... we work hard."

"I think people understand I'm now ranking on Judiciary, going into one of the biggest moments that this party has — the decisive Supreme Court justice," she said. "This is a very big deal because this affects the life of every American going forward. So who that Supreme Court seat goes to is all-important."

Asked why her decades of accomplishments in public office haven't earned her an easy endorsement from her party in her bid this year, Feinstein jokingly shrugged: "Well, that thought occurred to me — but I wiped it out of my mind completely."

In a measure of the contest's intensity, party members said they were inundated with appeals from both camps in recent days, and Feinstein's call for neutrality irked some pro-de León inhabitants of the party's progressive wing.

"Delegates are very angry at the constant barrage of emails we've gotten from people who have endorsed Dianne Feinstein telling us not to endorse," said R.L. Miller, a prominent environmental activist who was wearing one of a profusion of "United4KDL" stickers.

In caucus meetings and in hallways where he made the rounds, de León argued that Trump's recent actions on immigrant family separations, the Supreme Court and environmental policy demanded unfailingly tough action and confrontation from Democrats in Washington. And — without ever naming Feinstein — he repeatedly drew a sharp contrast with her centrist approach and more conciliatory style on Capitol Hill.

"We need bold leadership in Washington today," de León told a meeting of the Women's Caucus. "Brett Kavanaugh is in a position to take away the rights of every American. ... That's why we have to shut the Senate down — and never allow this individual to come to the Senate floor," he said to cheers. "This is where you need the courage of your convictions — to not be on the sidelines, but on the front lines because what's at stake is a generation of power."

Steyer also drew cheers from the Democratic crowd in Oakland when he delivered a similar message to Democratic lawmakers on Capitol Hill: "If you don't have what it takes to lead now, when we are totally under the gun, then don't come asking for support later," he said. "Lead, follow or get out of the way."

Feinstein has appeared to respond to progressive pressures as the campaign has unfolded. She moved left on a pair of issues where her moderation has long stood out in California: she endorsed legalizing marijuana, reversing her longtime opposition, and renounced her prior embrace of the death penalty.

Bill Carrick, Feinstein's campaign strategist, downplayed the importance of this weekend's vote, saying that the opposition of the party's far left to Feinstein is "not a surprise; we've been through this in the past."

Carrick noted that de León "got the lowest total of any candidate" ever in a top-two primary race, while "she won every county, 70 percent of the Democrats, every congressional district of every kind of demographic that exists in California. So I think we're in good shape."

Still, he acknowledged that it would have been "much better for the Democratic Party" to present a unified front as the November election approaches, and to have avoided an endorsement fight.

Despite the passion of progressive voters, he said, a political reality exists even in solidly blue California. "We can't be naïve about these swing districts," he said. "The idea that suddenly we vaporize the Republicans in these districts and just walk in, is just crazy. They're all going to be very, very close districts."

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U.S. ambassador: Trump-Putin meeting 'isn't a summit' [Back](#)

By Quint Forgey | 07/15/2018 10:53 AM EDT

President Donald Trump's highly anticipated meeting on Monday in Helsinki with Russian President Vladimir Putin is just that — only a meeting, the U.S. ambassador to Russia said Sunday.

"It isn't a summit. I've heard it called a summit. This is a meeting," Jon Huntsman said on [NBC's "Meet the Press."](#)

"In fact, it's the first meeting between the two presidents," Huntsman added. "They've had some pull-asides, one at the G-20 in Hamburg and the other at the APEC Ministerial in Da Nang, Vietnam, but this is really the first time for both presidents to actually sit across the table and have a conversation."

Unlike previous presidential summits — such as Ronald Reagan's visit to China in 1984, Huntsman said — Trump and Putin's get-together in Helsinki will not feature a state dinner, a joint statement or any predetermined policy deliverables.

"You don't know what's going to come out of this meeting, but what it will be is the first opportunity for these presidents to actually sit down across a table, alone and then with their teams, to talk about everything from meddling in the election, to areas where we have some shared interests," Huntsman said.

Huntsman also said recent developments in special counsel Robert Mueller's investigation of Russian interference in the 2016 presidential election, including the Friday indictment of 12 Russian military officials for hacking the Democratic National Committee, will be a part of Monday's talks.

"That now makes probably almost 30 Russians who have been rolled up by the Mueller indictment. That investigation continues," Huntsman said. "The bigger picture is we need to hold the Russians accountable for what they did, their malign activity throughout Europe as well. That's a part of the conversation that needs to take place."

But Huntsman wouldn't say whether Trump would push Putin for the extradition of the dozen Russian military officers to stand trial in the United States.

"I don't know if he'll make the ask, but it may be part of the agenda. It may be part of their bilateral meeting together. We'll have to see," Huntsman said, adding that the FBI office and the U.S. Embassy in Moscow would work to advance that goal.

"That doesn't necessarily mean that the Russians are going to follow through with it," Huntsman cautioned. "But we'll see if those steps will be taken."

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House to vote on whether carbon tax 'detrimental' to economy [Back](#)

By Anthony Adragna | 07/13/2018 01:18 PM EDT

The House Rules Committee will meet Tuesday to tee up chamber consideration of a resolution, [H. Con. Res. 119 \(115\)](#), arguing a carbon tax would be "detrimental" to the U.S. economy and "not in the best interest" of the country, according to [a notice](#).

Nineteen conservative groups, including the Competitive Enterprise Institute, American Energy Alliance and Americans for Tax Reform, sent House leadership [a letter](#) earlier this week urging them to take up the resolution.

The non-binding resolution is led by Majority Whip [Steve Scalise](#) and may be an interesting vote for members of the Climate Solutions Caucus. That bipartisan group's ranks have swelled to more than 80 lawmakers, but members have yet to weigh in on specific solutions for how to address climate change.

WHAT'S NEXT: The Rules Committee will [meet](#) on the resolution July 17 at 3 p.m.

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Subject: Afternoon Energy: WOTUS going on — Zinke on California fires, climate change — NRDC pans EPA transparency rule

By Garrett Ross and David Beavers | 08/16/2018 05:22 PM EDT

WOTUS GOING ON: The Trump administration violated administrative legal requirements when it delayed the start of the Obama administration's Waters of the U.S. rule by two years, a federal judge ruled today, meaning the rule will now go into effect for about half the country, Pro's Alex Guillén reports. The judge said EPA and the Army Corps of Engineers had unlawfully declined to consider any comments addressing substantive issues related to WOTUS or an earlier 1982 version when it proposed delaying the rule to give the agencies more time to repeal and replace it.

Judge David Norton of the U.S. District Court for South Carolina ruled that was a fatal flaw and wrote that delaying the WOTUS rule has the effect of reverting to the 1982 rule. Norton's injunction means the Obama-era rule will take effect in 26 states. The other 24 are covered by two different injunctions.

WOTUS may be blocked nationwide again if the rule's opponents get their way: A federal court in Texas has yet to rule on a February request from three states asking for a national injunction. The administration is working to finalize its repeal of the Obama WOTUS rule, and EPA and the Corps are expected to propose a replacement rule in the near future. Read more here.

Welcome to Afternoon Energy! We're your hosts Garrett Ross and David Beavers. Send suggestions, news and tips to gross@politico.com, dbeavers@politico.com, mdaily@politico.com and njuliano@politico.com, and keep up with us on Twitter at [@garrett_ross](https://twitter.com/garrett_ross), [@davidabeavers](https://twitter.com/davidabeavers), [@dailym1](https://twitter.com/dailym1), [@nickjuliano](https://twitter.com/nickjuliano), [@Morning_Energy](https://twitter.com/Morning_Energy) and [@POLITICOPro](https://twitter.com/POLITICOPro).

ZINKE ON CALIFORNIA FIRES, CLIMATE CHANGE: Interior Secretary Ryan Zinke said the "devastation in the California fires is the worst I've ever seen," during an appearance on Fox Business today. "And, the debate, whether it's from climate change or not from climate change is irrelevant to what's occurred. It doesn't relieve you the responsibility to manage the forest." He went on to criticize those who "are claiming to protect our habitat are the same ones who are watching the habitat burn year after year."

On the subject of climate change in general, Zinke contends that the jury is still out. "It's clear in the forest fires the temperatures are being elevated, and the fire season has extended, it's longer. There's no dispute about that, and there's no dispute that the climate is changing, although it has always changed. Whether man is the direct result, how much of that result is, that still is being disputed." Watch the full clip here.

The topic was also broached during President Donald Trump's Cabinet meeting today, where Zinke reiterated that the forests had been mismanaged for decades. "It is a matter of gross mismanagement," he said, according to Bloomberg. Trump chimed in as well: "Ryan was saying it's not a global warming thing it's a management issue," the president said. Read more here.

HOLD YOUR COMMENTS: In advance of today's deadline for commenting on EPA's "scientific transparency" rule, the Natural Resources Defense Council submitted 127 pages of comments opposing the plan, which would prohibit the use of studies that don't publicly disclose their data. The environmental group pans the so-called secret science proposal as an "attack on science" in its comments, adding that "neither the

Proposal nor docket contains any factual, scientific, technical, logical, or legal support for the suggestion that science and data that are 'publicly available in a manner sufficient for independent validation' are necessary elements for the 'validity,' 'reliability,' or 'transparency' of scientific information."

SEE YOU IN COURT: The Center for Biological Diversity filed a lawsuit today against the Trump administration for allegedly failing to protect the West Coast habitat of the remaining Southern Resident Killer Whale population, which is down to 75. The [lawsuit](#), filed in the U.S. District Court for the Western District of Washington, names Secretary of Commerce Wilbur Ross and National Marine Fisheries Service West Coast Regional Administrator Barry Thom as defendants. The environmental group filed a petition in 2014 to expand the whale's habitat to protect their winter feeding areas but says in the lawsuit that no action has been taken.

TAKING MEETINGS: Senate Energy and Natural Resources Chairwoman [Lisa Murkowski](#) (R-Alaska) will sit down with Supreme Court nominee Brett Kavanaugh for a chat next week, according to [E&E News'](#) [Geof Koss](#).

GLICK 'AT A LOSS': FERC Commissioner Richard Glick Wednesday said he's "at a loss" over controversial [comments](#) made by commission chief of staff Anthony Pugliese that FERC is working with the White House, Department of Energy and the National Security Council to identify power plants that are critical to the grid as part of the administration's effort to prop up the coal industry, [Utility Dive reports](#). "I would like to know what they're doing," Glick said, referring to the FERC staff. "I think Commissioner [Neil] Chatterjee would like to know what they're doing and so would Commissioner [Cheryl] LaFleur, so I just thought I'm kind of at a loss right now trying to figure out what they are doing."

IN DENIAL: A Washington state board dealt another blow to a proposed coal project in Longview, upholding the denial of a water quality permit for the Millennium Bulk Terminals facility, [The Daily News reports](#). "The State Department of Ecology in 2017 denied Millennium's application for a Clean Water Act certification, citing 'unavoidable and significant adverse environmental impacts associated with construction and operation of the project,' according to the Pollution Control Board ruling. Millennium spokesperson Wendy Hutchinson said Ecology's decision was based on Millennium's planned train traffic, not impacts to water quality. 'We feel it was an improper application of the Clean Water Act,' she said. 'We're confident that the law is on our side. It's black and white in the Clean Water Act. The question the state was asked was does this harm water quality. It does not.'" [Read more here](#).

FOR YOUR RADAR: Quartz and the Texas Observer embarked on a nine-part investigative series today exploring the nexus of climate change effects on water at the U.S.-Mexico border. "Climate change is already driving water scarcity, a global problem that transcends politics, nationality, borders — and demands a solution that does the same. Shallow Waters investigates the Texas-Mexico border, one of the fastest-growing regions in North America, and a microcosm of a larger story of climate-change conflict, where our survival depends on cross-border cooperation," says the introduction for the series. The first installment is a deep-dive on relations between the two nations in the context of access to water, complete with interactive graphics and illustrations. [Read it here](#) and keep up with the series [here](#).

QUICK HITS:

- Turkey's energy bill soars as its currency tumbles, [Wall Street Journal](#).
- The energy sector is 'off the charts oversold,' [MarketWatch](#).
- Economy a Strength for Trump; Russia, Environment Weaknesses, [Gallup](#).
- Trees are migrating west to escape climate change, [Popular Science](#).

WIDE WORLD OF POLITICS:

- Trump scraps Obama rules on cyberattacks, giving military freer hand.
- Pentagon punishes reporters over tough coverage.
- Trump irks GOP by praising 3 candidates in 1 Senate race.

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Stories from POLITICO Pro

Judge restores WOTUS rule in 26 states [Back](#)

By Alex Guillén | 08/16/2018 03:20 PM EDT

A federal judge today ruled that the Trump administration violated administrative legal requirements when it delayed the start of the Obama administration's Waters of the U.S. rule by two years — a move that means the rule will now go into effect for about half the country.

The judge said EPA and the Army Corps of Engineers had unlawfully declined to consider any comments addressing substantive issues related to WOTUS or an earlier 1982 version when it proposed delaying the rule to give the agencies more time to repeal and replace it.

That was a fatal flaw, ruled Judge David Norton of the U.S. District Court for South Carolina, a George H.W. Bush appointee. Delaying the WOTUS rule has the effect of reverting to the 1982 rule, he wrote.

Norton's injunction means the Obama-era rule will take effect in 26 states. The other 24 are covered by two different injunctions, one issued to 13 states in 2013 and one issued to another 11 states in June.

However, WOTUS may be blocked nationwide again if the rule's opponents get their way. In another WOTUS lawsuit in a federal court in Texas, three states in February asked for a nationwide injunction of WOTUS. That court has yet to decide on the matter.

WHAT'S NEXT: The Trump administration is working to finalize its repeal of the Obama WOTUS rule. And EPA and the Corps are expected to propose a replacement rule in the near future.

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Fears grow of political influence at FERC [Back](#)

By Darius Dixon | 08/09/2018 05:36 PM EDT

Environmentalists and consumer advocates are raising fears about the politicization of FERC following controversial comments from the chairman's chief of staff and news that an architect of the Trump administration's coal and nuclear assistance plan is set to be nominated for the independent commission.

Consumer group Public Citizen called on FERC Chairman Kevin McIntyre to oust his top aide, Anthony Pugliese, who was quoted Thursday criticizing New York state. Pugliese told a nuclear industry conference on Tuesday that he would "pick on New York because I enjoy doing that" and went on to criticize the state's resistance to new pipelines, E&E News reported based on a recording obtained from Atomic Insights' Rod Adams.

"It can be very frustrating from my perspective, from FERC's perspective, from the administration's perspective, when you have states who are unwilling to — they have no desire to put infrastructure in the ground regardless of what it is," Pugliese told a meeting of the American Nuclear Society in Florida on the tape, which POLITICO confirmed Thursday.

Tyson Slocum, Public Citizen's energy program director, urged McIntyre to obtain Pugliese's "immediate resignation" because his criticism of New York undermines FERC's commitment to be an unbiased regulator.

"An apology from Mr. Pugliese is insufficient, as the damage to FERC's reputation has already been done," Slocum wrote in a letter to McIntyre. "Only Mr. Pugliese's immediate resignation can suffice."

Meanwhile, environmentalists pounced after POLITICO reported Wednesday that Energy Department policy chief Bernard McNamee is in line to be nominated for a leadership spot opening up at the end of the week. McNamee helped Energy Secretary Rick Perry roll out a proposal to FERC last year to prop up coal and nuclear power plants, and he is a strong proponent of expanded fossil fuel use.

"It's outrageous that someone so clearly biased, who has championed an expensive and unnecessary bailout for millionaire Trump supporters, is even being considered as a commissioner to this independent agency, and we'll do everything we can stop his nomination," Mary Anne Hitt, the senior director of the Sierra Club's Beyond Coal Campaign, said in a statement.

McNamee would replace outgoing FERC Commissioner Rob Powelson, who is leaving to become head of a water industry trade association. Powelson, a Republican former Pennsylvania state regulator, was one of the leading critics of the Trump administration's efforts to save struggling coal and nuclear plants.

But not everyone was convinced that McNamee's ascension would guarantee FERC's endorsement of coal and nuclear subsidies.

"It is highly unlikely that McNamee's nomination to fill departing Commissioner Powelson's spot will change FERC's overall thought process on the coal/nuclear bailout issue," Rabeha Kamaluddin, a partner with law firm Dorsey & Whitney who works with FERC, said in a statement. "None of the other four FERC commissioners agree that the country's power grid faces a dire enough emergency to justify a plan to invoke national security to save coal/nuclear plants."

However, the authority to declare a grid emergency rests with the president and DOE, not regulators at FERC.

Pugliese, already the most public-facing and outspoken FERC chief of staff in recent memory, also said at the nuclear conference this week that the agency was working with DOE, the Pentagon, and the National Security Council to "identify the plants that we think would be absolutely critical" in case of a disaster — an effort critics see as a precursor to seeking interventions in the power markets.

He also expressed support for keeping nuclear plants online and raised fears of natural gas pipeline vulnerabilities that echoed other members of the Trump administration.

"It is incredibly important to the national security of the United States that we ensure that some of these critical assets like these nuclear plants do not go the way of ... the dodo bird," Pugliese said. There are adversarial countries, he added, "who see, for example, pipelines as an area of great opportunity" for attack.

Public Citizen's Slocum said he plans to submit filings with FERC arguing that the agency's work with another department to identify specific power plants as critically important "needs to be part of the public docket record."

"FERC can't be doing all this work with DOE on an issue directly related to an active docket," he said in an email.

The agency itself sought to downplay Pugliese's comments about coordinating with other agencies to select power plants, but FERC said nothing about this criticisms of New York state, which has used Clean Water Act certifications to block pipeline projects.

"In response to a question after the speech, the Chief of Staff was simply stating that the federal government is working to ensure that important critical infrastructure, like hospitals, remains operational," FERC said in a statement. "FERC is an independent agency and therefore has not assisted in the development of policy but provides technical assistance as subject matter experts."

Just last month, Pugliese rattled many people at FERC and those who do business with it when he did an interview with a conservative Breitbart radio program where he similarly criticized Democrats in the Northeast over natural gas pipelines. His statements this week have only fueled concerns from industry lawyers, agency staff and former officials that he's speaking out in a way that has long been frowned upon for FERC staff in the past.

In his speech to ANS this week, Pugliese also asked members of Congress to "put pressure" on Senate Majority Leader Mitch McConnell to speed up the confirmation of a new FERC commissioner, though he did not name McNamee.

During his brief time as FERC chairman last summer, Commissioner Neil Chatterjee, a former McConnell aide, hired Pugliese into the chief of staff position, traditionally a high-importance but low-profile job at the agency. McIntyre in turn chose to keep Pugliese on board when he took over the chairmanship in December.

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Pentagon punishes reporters over tough coverage [Back](#)

By Jason Schwartz | 08/16/2018 05:05 AM EDT

The Pentagon's top spokesperson was ostensibly seeking to make peace with the media when she headed down to the building's press bullpen about three weeks ago for an off-the-record discussion on how to improve relations.

But the meeting quickly grew combative, according to three people who were in the room. When reporters raised issues like vanishing access to Defense Secretary Jim Mattis and other top officials, Dana White pushed back by criticizing the accuracy of press corps members' reporting.

She made clear, according to the reporters present, that she was watching what they wrote and put on-air — with the implication that there would be repercussions for stories she and her staff did not like.

White and the Pentagon's press operation have already restricted access to briefings, interviews and travel with Mattis. But in recent weeks, several reporters said that they increasingly feel as though individual journalists are being retaliated against for stories they've written, losing yet more access. In one case this spring, officials pulled away a reporter's plum opportunity to embed with U.S. troops overseas following a story they found too critical.

Another example involved the military-news outlet Defense One, which was left out of a media roundtable with the deputy secretary of defense earlier this month to help roll out President Donald Trump's proposed Space Force. The slight came after a Defense One reporter got an early scoop on plans to set up the new branch, breaking the story before the Pentagon was ready for it to go public.

Kevin Baron, the executive editor of the site, confirmed that none of his reporters were invited to the briefing and said that White had conceded to him in an email that the snub was due to the initial story.

Baron said White apologized for the incident in the email, saying that she was not aware that Defense One had been singled out and that the decision was made unbeknownst to her office's leadership. The briefing had been organized out of the deputy secretary of defense's office.

"It seems Defense One was deliberately left out of a briefing in retaliation for our reporting," Baron said, adding that he had been assured that "we would be included to all future, relevant briefings."

Baron said he was pleased with how the situation was resolved and that White addressed it with him promptly.

White declined to comment, other than to offer a statement through Pentagon spokesman Charles Summers: "We are guided by the principles of information and committed to ensuring the accessibility of timely and accurate information to the media, the Congress and the American people. And we prioritize diversity of reporting during engagements and travel with Secretary Mattis and all of our senior leaders in the Department of Defense."

After initially declining to comment further, Summers called back to more forcefully deny any retaliation against reporters, though he said he had not seen the email Baron said White sent him and could not address it.

"There is no retaliation," Summers said, adding that while some reporters might feel they are invited on fewer foreign trips with Mattis than they were in previous administrations, that was because the department was seeking to include more "regional media and bring non-traditional media."

"The notion that someone doesn't have access or someone is shut out, that's absolutely not accurate," Summers added.

Still, Pentagon reporters say that the sorts of tactics they're noticing, coupled with eroding access to top Defense Department officials, make it increasingly difficult to provide information to Americans about the activities of the Defense Department, a huge sector of the Trump administration that controls billions of dollars in spending and oversees U.S. troops at home and abroad.

"There is a climate of punitiveness here if you don't write what they like," one reporter said.

Another reporter said: "It's not unusual for an administration to monitor what reporters are doing and reporters produce. What's unusual now is it's being used to evaluate whether we'll be included in things or invited to things. ... It's never been so overt."

White, a political appointee who previously worked for The Heritage Foundation and in Republican politics, has also been accused of retaliating against her own staff: On Tuesday, CNN broke the news that she is being investigated by the Defense Department inspector general for allegedly using staff members to run personal errands, such as picking up dry-cleaning or lunch, and helping her with personal business, including filling out mortgage paperwork. In addition, CNN reported that she is accused of retaliating against staffers who complained by having them transferred.

Reporters say they see similar treatment applied to their colleagues by White and others in her department. Several Pentagon reporters said NBC News' Courtney Kube has not been invited to multiple briefings and has been left off emails alerting reporters about press opportunities. Kube has written about issues in Mattis' relationship with President Donald Trump, earning the particular ire of the defense secretary, who derided one of her stories as "fiction" to other reporters.

Kube did not respond to a request for comment.

Reporters who find themselves left out of briefings or excluded from traveling with the press secretary — seemingly with little explanation — have been left to wonder if it was something they said or wrote. For instance, after The New York Times published a story on the death of four American soldiers in Niger — ahead of the official Pentagon report on the subject — there was a background briefing to prepare reporters for the Pentagon's assessment. Two reporters from other outlets who were in the room told POLITICO that, when they looked around, it struck them as odd that nobody from the Times was present.

Times Washington Bureau Chief Elisabeth Bumiller declined to comment.

"There have been individual cases where people have been told we don't like your coverage," one reporter said. "You'll say to someone innocuously, 'Are you going to that briefing?' and that's how you'll discover they weren't invited. You don't know. You find out by accident you weren't invited."

Mattis occasionally strolls into the Pentagon press bullpen to talk with reporters and, when he does, his staff usually sends out an email to give reporters a heads-up — but the message typically does not reach everybody. As a result, reporters have started alerting one another when such a note goes out.

The issues extend beyond briefings. The Washington Post's Dan Lamothe had a rare opportunity to embed with U.S. Special Forces in Afghanistan in May pulled away after officials objected to an April story he wrote on Afghan commandos, according to reporters familiar with the situation.

The story in question was a straightforward account of how the Afghan military, by increasing its number of elite commando troops, was depleting its conventional army ranks. But officials took issue with the tone and some of the quotes used, the reporters said.

Securing that type of embed with special forces requires intense planning and consideration of risk on both sides, said a reporter from a different outlet, who called it "a hell of a thing to get." To have the opportunity revoked, the reporter said, "is as egregious as it is unusual."

Lamothe was able to embed with other units — salvaging the trip he had planned — but he lost out on his front row seat on the elite U.S. forces.

In a statement to POLITICO, Lamothe said: "During a reporting visit in April to cover U.S. troops in Afghanistan, I was offered a rare opportunity to embed with U.S. Special Forces fighting Islamic State militants in Afghanistan. While preparing for that assignment in May, I was told that the Special Forces embed offer was revoked. I traveled back to Afghanistan a short time later, and instead accepted offers to embed with the Army's new security force adviser brigade and U.S. military advisers who train the Afghan air force. I stand by my reporting, and thank the units that allowed me to spend time alongside them."

It's not clear whether that decision was made by Pentagon civilian staff or by the military. But Baron said tensions have grown to the point that any snub of a news organization raises questions of retribution.

"Because of the preexisting climate, people start to wonder if it's retaliation more than I think you would normally," he said. "I worry, because I've heard that it may be happening to other reporters, and I worry what kind of signal it sends to the rest of military bases around the world."

In many realms of journalism, it's not unheard of for a company or an agency to cut off a reporter after a tough story. Last month, controversy erupted after the White House banned CNN reporter Kaitlan Collins from covering a Rose Garden event, because officials were unhappy with questions she shouted at Trump during an Oval Office photo op.

But given the gravity of their beat, Pentagon reporters have traditionally stayed above the political fray. Journalists who work out of the Pentagon's press center are free to roam most areas of the building, and many have worked there for years, allowing them to build strong relationships, especially with the nonpolitical staff. But much of that has eroded under Trump. Many believe Mattis has avoided the press in part to stay out of the president's cross hairs.

Hired in April 2017, White alienated many in the Pentagon — inside and outside the press corps — by forcing out a popular military spokesman, Col. Steve Warren, shortly after coming on the job. Her relationship with the press has been difficult since, all the way through to the accusations of retribution.

"It's definitely a change of past practice from previous administrations and defense secretaries," said Baron, the Defense One executive editor. "It's not something that we're used to at the Pentagon. Things are just different at the Pentagon. These are veteran reporters who cover life and death and war and peace."

One former Pentagon spokesman said retaliation for stories "should not be in the toolbox."

"You should have good healthy relationships with the press corps covering your agency," the former spokesman said. "If you invest in those relationships, you won't even have to get to the point of retaliation."

He added, "Like war itself, it should be the last option."

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Trump irks GOP by praising three candidates in one Senate race [Back](#)

By James Arkin and Alex Isenstadt | 08/16/2018 05:07 AM EDT

In Arizona's Republican Senate primary, front-runner Martha McSally is airing ads featuring a video clip of President Donald Trump calling her "the real deal." Her main challenger, Kelli Ward, is circulating mailers featuring a photo of her smiling alongside the commander-in-chief. The third-place candidate, Joe Arpaio, carries the rare distinction of having received a criminal pardon from Trump: The ex-sheriff recently sent a video of the president praising him to potential donors.

None of the three actually has Trump's endorsement. But all of them are acting like they do — and the president seems just fine with it, even if many in his party are not.

The president's decision so far to withhold his endorsement has led to a total muddle, prolonging the GOP slugfest in one of the most important Senate races in the country and allowing the presumed Democratic nominee, Kyrsten Sinema, to get a free pass.

With the Aug. 28 primary less than two weeks away, establishment Republicans have grown increasingly anxious that they're squandering a critical window of time to define Sinema, who faces a nominal primary opponent. She's spent millions of dollars running positive TV ads to boost her image and set the terms of the general election, while no Republican groups have countered.

The race is critical to both parties' hopes of controlling the Senate, as Republicans defend a 51-49 majority: If Democrats can capture Arizona for the first time in three decades, it will give them a legitimate opening to retake the chamber this fall.

"[Sinema has] used the time well and quite frankly it's shocking to me that it's gone uncontested," said Chuck Coughlin, a veteran Republican strategist based in Phoenix. "She's done a good job of narrating her candidacy and they've given her a blank canvass to work on. I think it's a problem for whoever the Republican nominee is," adding that he expects McSally to prevail in the primary.

Dan Eberhart, a major Republican donor based in Phoenix who supports McSally, said while the leading Republican candidate is working hard, "Basically nobody is happy that she hasn't either put Ward away or aimed her fire at Sinema."

There are indications McSally still sees Ward as a threat. Her campaign this week went up with two TV ads going after Ward, and a pro-McSally super PAC has been hitting Ward with several attack ads.

Most Republicans are confident in polling showing McSally ahead, particularly with early voting by mail well underway. Coughlin said he thinks the anti-Ward ads are being aired "out of an abundance of caution."

Still, during a recent phone call, NRSC Chairman Cory Gardner asked the president to endorse McSally, something GOP officials believe would have essentially locked down the race for the congresswoman. But Trump did not give him a yes or no answer.

McSally traveled to New York this week to be on site for Trump signing a defense spending bill. The president gave her a shoutout during his speech, but not an endorsement.

"There's another member of Congress here today who is not only an Air Force veteran, but the first woman ever to fly a fighter jet in combat in U.S. history and I have gotten to know her very well and she is terrific," Trump said of McSally.

McSally's team was quick to highlight the clip in a news release and on Twitter.

While the president has refused to take sides in the contest, Trump aides have been frustrated by Ward's continued efforts to imply she has the president's support. Ward recently sent out a mailer to voters showing her photographed with the president, rankling White House aides.

The mailer also included an image of a tweet in which Trump said, "Great to see that Dr. Kelli Ward is running." But the mailer cut off the rest of the president's tweet, which was sent in August 2017.

"Great to see that Dr. Kelli Ward is running against Flake Jeff Flake, who is WEAK on borders, crime and a non-factor in Senate. He's toxic!" Trump wrote in the full tweet. (A spokesman for Ward defended the mailer to AZCentral.com, which first reported the omission, saying the message of the tweet remained the same.)

People close to the president say not to expect any firm endorsement in the contest.

"President Trump has not endorsed anyone in the GOP Senate primary in Arizona and any photos or other general expressions of support shouldn't be read as such," said someone familiar with the operations of the Trump campaign. "He likes all of the candidates in the race very much and looks forward to supporting our nominee in the fall campaign to replace Jeff Flake in the Senate."

Two senior Republicans in the state say they expect Trump to hold a post-primary "unity" rally, though the White House hasn't yet announced any plans for an Arizona trip.

In a statement to POLITICO, Arpaio said he was not bothered by the efforts by Republican leaders to secure a Trump endorsement for McSally.

"At this time my only comment is my relationship with the President speaks for itself. It is no secret that Mitch McConnell and the Establishment do not want me in the US Senate," he said.

Ward, in an interview in Washington last month, said much the same.

"I know that the Mitch McConnell faction and the establishment pushes [McSally] out as much as they can because that's their insider advantage that I don't have," she said.

While Republicans continue to slug it out, Sinema's campaign has run free on the airwaves. She's spent more than \$4 million on TV, running six different ads on health care, her work with veterans and her "record of independence." Her first ad, launched in April, featured her brother, who is a veteran and police officer.

One-third of Arizona voters don't identify with either party, and Sinema's ads have been aimed squarely at those voters — none of them mention the word "Trump" or "Democrat." The ad campaign has been so sustained that going "negative against her is going to be extremely difficult," said veteran Arizona Democratic strategist Andy Barr.

Travis Smith, a consultant for McSally's campaign, brushed aside concern about Sinema owning the airwaves all summer. He said internal polling between April and July showed only a small uptick in Sinema's favorability rating, while her negative ratings also rose by a slightly higher amount.

National Democrats haven't had to spend to boost Sinema. Instead, a super PAC, Red and Gold, which was formed this month and hasn't filed any information on its donors, has spent \$1.6 million airing anti-Mcsally ads.

Defend Arizona, a pro-McSally super PAC, launched an ad Wednesday pushing back on the Democratic primary meddling. The group has also been running multiple attack ads against Ward.

"We are focused first on the primary," said Barrett Marson, a spokesman for Defend Arizona, "and then we will focus on Kyrsten Sinema's liberal record."

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By Kelsey Tamborrino | 08/16/2018 05:43 AM EDT

With help from Ben Lefebvre and Annie Snider

A NUMBERS GAME: The White House's plan to rewrite the Obama administration's cornerstone climate rule for power plants may be based on some fuzzy math, setting up a potentially brutal court battle for the Justice Department. The legally risky strategy, POLITICO's Alex Guillén and Emily Holden report, calls for redoing the calculations of how much the rule would cost and who would benefit.

EPA's proposed replacement plan is expected to be unveiled any day now and will likely downplay a key feature of the Obama-era greenhouse rule: the money saved by using less electricity. Some expect EPA will also count only a fraction of the improvements in public health from reduced smog and soot pollution, Alex and Emily report, and it won't consider any benefits from slowing climate change outside the U.S.

In doing so, President Donald Trump's EPA will argue that the Obama-era rule had higher costs and fewer benefits than previously stated, a change to help improve the comparison when it unveils its own proposal. The Obama administration had estimated that the benefits from its rule would outstrip the costs by \$26 billion to \$45 billion by 2030, though supporters of that version say those net benefits could be even higher now.

In fact, math could become vital to the success or failure of several of Trump's rules. Critics say similarly fuzzy math underlies other Trump administration proposals to reverse or stymie action on climate change, such as a recent plan by EPA and the Department of Transportation to halt a planned tightening of fuel efficiency standards for cars and trucks. "They are cooking the books on technical analysis to try to justify preconceived conclusions that these regulations are bad," said David Doniger, senior strategic director of the Natural Resources Defense Council's climate program who was influential in the Obama EPA's crafting of the original rule. Read more.

GOOD THURSDAY MORNING! I'm your host, Kelsey Tamborrino. Many of you knew, but ClearView Energy Partners' Mitch Huber was the first to correctly answer that it's Loretta and Linda Sanchez who were the first and only sisters to serve simultaneously in Congress. For today: How many current senators are also former mayors? Bonus points if you can name them. Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](https://twitter.com/kelseytam), [@Morning_Energy](https://twitter.com/Morning_Energy) and [@POLITICOPro](https://twitter.com/POLITICOPro).

DO THAT AGAIN: The Trump administration was ordered Wednesday to update an environmental study of the Keystone XL pipeline despite its contention the alternative route picked last year by Nebraska regulators didn't require an updated environmental impact statement. Instead, Judge Brian Morris of the U.S. District Court for Montana ordered the State Department to go back to its 2014 EIS to take into account the new route, Alex reports for Pros. Morris said the State Department still has a "meaningful opportunity to evaluate" the alternative route that was picked in Nebraska. However, he declined environmentalists' request that Trump's permit be vacated.

STATES' RIGHTS GET TRICKY OVER WATER: The roiling debate over states' right to halt development projects over their water quality effects heads to the Senate Environment and Public Works Committee today. The panel will hold a legislative hearing on a bill from Chairman John Barrasso, S. 3303 (115), the Water Quality Certification Improvement Act of 2018. The measure would limit states' authority under Section 401 of the Clean Water Act, which requires states to certify that projects won't harm their water quality standards before the federal government issues a permit. In recent years a handful of Democratic-led states have used that authority to block natural gas pipelines. Republican Maryland Gov. Larry Hogan is also using the authority to try to force Exelon Corp. to clean up nutrient pollution flowing through one of its dams that harms the Chesapeake Bay.

GOP lawmakers have backed earlier efforts to limit or remove the authority, including in this year's House Appropriations bill, House and Senate energy legislation and standalone bills. But the Western Governors Association, which represents a number of Republican governors, has come out in opposition to reining in states' authority, and the Environmental Council of the States warned Wednesday that such moves could have unintended consequences. **If you go:** The hearing begins at 10 a.m. in 406 Dirksen.

NOMINATIONS ON TAP: Two nominees to the Energy Department will testify before the Senate Energy and Natural Resources Committee this morning: Bill Cooper to be general counsel and Lane Genatowski for director of the Advanced Research Projects Agency-Energy, which the Trump administration has sought to eliminate.

Who are they? Cooper serves as senior counsel and director of the McConnell Valdés law firm. Prior to that he was a subcommittee staff director for House Natural Resources, with a particular policy focus on the National Environmental Policy Act that the White House has sought to change up. Cooper also previously was president of the Center for Liquefied Natural Gas and counsel to the House Energy and Commerce Committee. His credentials have earned him the backing of industry groups, including the Air-Conditioning, Heating, and Refrigeration Institute, the Interstate Natural Gas Association of America, and the Electric Reliability Coordinating Council.

— **Genatowski hails from** a banking background. He's managing partner in investments at Dividend Advisors, a firm he founded in 2012. Genatowski before that was an energy investment banker at JPMorgan Chase and other Wall Street giants. His résumé lines up with others in Rick Perry's Energy Department, which has focused more on businessmen with energy-sector experience. **If you go:** The hearing kicks off at 10 a.m. in 366 Dirksen.

RESCISSIONS — TAKE TWO: The Trump administration is once again weighing a so-called rescissions package to force Congress to roll back federal spending, with just weeks to go until the next budget deadline, Pro's Sarah Ferris and John Bresnahan report. Senate Appropriations Chairman Richard Shelby said Wednesday he was told about the idea: "I heard they were thinking about one, but I haven't seen it." But a Senate leadership source said OMB chief Mick Mulvaney has already begun moving ahead on the effort.

FLORIDA DRILLING BITS: To drill or not to drill off the Florida coast is a question once again heating up the state's election campaigns. Gwen Graham, the current front-runner in the Democratic gubernatorial primary field, sent out a message titled "Drilling 75 Miles off Florida's Beaches is Insane" after a POLITICO report highlighted the idea as one that oil industry lobbyists are pushing to have included in the Interior Department's upcoming offshore drilling plan. Sunshine State Democratic Sen. Bill Nelson took the story to the Senate floor to try to whack current Gov. Rick Scott, who is running to replace him and earlier this year got help from Trump on the drilling issue.

REMEMBRANCE OF TARBALLS PAST: Former Florida Lt. Gov. Jeff Kottkamp is catching heat for his statement at a pro-drilling rally in Tallahassee that oil from the Deepwater Horizon spill "didn't even reach the shores of Florida." The remark, as first reported in the Florida Phoenix, may have surprised those who

remember former Gov. Charlie Crist squatting over oil-stained beaches in Pensacola. Kottkamp, who was speaking as co-chair of Explore Offshore Florida, went on to say "tarballs are naturally occurring." Earthjustice staff attorney Bradley Marshall called it "absurd to claim the Deepwater Horizon spill did not reach Florida" given the damage the state experienced. "That's why so many of Florida's leaders, regardless of what political party they belong to, have been so protective of our coasts all these years," he said in a statement.

WHAT'S THE RISK? EPA acting Administrator Andrew Wheeler delivered a video address at the National Environmental Justice Advisory Council's public meeting in Boston on Wednesday where he acknowledged the need for improvement in risk communication and noted the agency owes it to the American public to improve. "How well or how poorly we communicate risk disproportionately impacts those on the lower end of the socioeconomic ladder," he said. "We have fallen short in the past from our response to the Gold King Mine in Colorado, to the Kanawha River in West Virginia, to Flint, Mich." Watch it here.

CASE CLOSED: Interior's Office of Inspector General has closed its investigation into an allegation made against National Park Service officials. The claim centered around references to human-caused climate change in a report on sea-level rise and storm surge projections that officials allegedly sought to remove. The watchdog office said Wednesday that shortly after it opened the investigation, the NPS "published the report with all original references to human-caused climate change," thus prompting it to close its probe.

'SECRET' AGENTS: Comments are due today on EPA's proposed "scientific transparency" rule, which would ban the use of studies that don't publicly disclose all their data. Experts have said that plan could prohibit the use of vital studies on how pollutants affect human health because researchers typically promise to keep subjects' health information confidential. But conservatives have long accused the agency of relying on "secret science," prompting former Administrator Scott Pruitt to unveil the proposal in the name of transparency.

Under the wire: With the comment deadline approaching, nearly 80 groups, including the Union of Concerned Scientists, Sierra Club and Moms Clean Air Force, signed onto a letter Wednesday calling on Wheeler to withdraw the so-called secret science proposal. Separately, 66 health and medical organizations sent comments to Wheeler in opposition to the proposed rule. That's not to say there isn't support for the proposal; several comments posted Wednesday echoed the refrain that scientists should be required to "show your work."

AFTER THE STORM: The nonprofit Environmental Integrity Project released a new report today leading up to the one-year anniversary of Hurricane Harvey's widespread destruction in Texas. Using records from the Texas Commission on Environmental Quality, the report looks at air pollution during and after the storm as well as the government's and industries' response, and makes recommendations for the future. The "Preparing for the Next Storm" report found that all five of the largest industrial air pollution releases during Harvey were in the Houston area — with the Magellan Galena Park Terminal the biggest polluter, releasing 2,472,402 pounds of air pollution.

Harvey also triggered the release of at least 8.3 million pounds of unpermitted air pollution from petrochemical plants, according to the EIP report. And in the nine months after Harvey, "18 companies revised their air pollution reports to the state to erase 1.7 million pounds of unpermitted emissions during Hurricane Harvey," the report found.

LET'S MAKE A DEAL: Trump might soon strike a deal with Mexico on NAFTA, even as a trade war plays out with the rest of the world, POLITICO's Megan Cassella reports. The apparent turnaround after months of stalemate arrives as Mexican Secretary of Economy Ildefonso Guajardo visited Washington on Wednesday to hammer out some of the most contentious issues on NAFTA. "Both U.S. and Mexican officials now say they could be on the verge of announcing a preliminary agreement on everything from complicated automotive rules to environmental regulations by the end of August," Megan reports.

CATCHING FIRE: Agriculture Secretary Sonny Perdue will join Senate Energy ranking member [Maria Cantwell](#) and Sens. [Steve Daines](#) and [Ron Wyden](#) to unveil a new federal plan for addressing wildfires. Earlier this year, Perdue and Cantwell [worked together](#) on a commitment to use unmanned aircraft technology this fire season, and the Washington Democrat will likely highlight similar tools and technology today. Watch the [livestream here](#).

POLL: CLIMATE A FACTOR FOR MOST: Slightly more than half (53 percent) of U.S. voters believe climate change is a factor in making the ongoing California wildfires more extreme, while 39 percent say it's not, according to a new poll from Quinnipiac University [released](#) Wednesday. Sixty-four percent of voters said they think the country is not doing enough to address climate change, the national poll found. Eighteen percent of voters say the U.S. is doing enough to address the issue, while 10 percent say the U.S. is doing too much.

— **On a related note**, the Natural Resources Defense Council launched [a tracker](#) this week to see where every state's lawmakers stand on offshore drilling.

QUICK HITS

— "A coal company and Interior teamed up to save a power plant," [E&E News](#).

— "FirstEnergy Solutions takes next step toward closure of nuclear power plants," [Akron Business Journal](#).

— "A rising concern? After straws, balloons get more scrutiny," [The Associated Press](#).

— "Will Washington State Voters Make History on Climate Change?" [The Atlantic](#).

HAPPENING TODAY

10 a.m. — Senate Environment and Public Works Committee [hearing](#) on clean water, 406 Dirksen.

10 a.m. — Senate Energy and Natural Resources Committee [hearing](#) to consider DOE nominees, 366 Dirksen.

10 a.m. — American Petroleum Institute conference call briefing on efforts "to reform the broken Renewable Fuel Standard that threatens to reverse America's energy progress."

12:45 p.m. — Senate Energy and Natural Resources ranking member [Maria Cantwell](#) and Agriculture Secretary Sonny Perdue [unveil](#) a federal plan for addressing wildfire, Senate Room S-115.

THAT'S ALL FOR ME!

To view online:

<https://subscriber.politicopro.com/newsletters/morning-energy/2018/08/trumps-not-so-simple-math-319039>

Stories from POLITICO Pro

Exclusive: Draft details Trump's plan for reversing Obama climate rule [Back](#)

By Emily Holden | 08/14/2018 07:46 PM EDT

The Trump administration is preparing to unveil its plan for undoing Barack Obama's most ambitious climate regulation — offering a replacement that would do far less to reduce the greenhouse gas emissions that are warming the planet, according to POLITICO's review of a portion of the unpublished draft.

The new climate proposal for coal-burning power plants, expected to be released in the coming days, would give states wide latitude to write their own modest regulations for coal plants or even seek permission to opt out, according to the document and a source who has read other sections of the draft.

That's a sharp contrast from the aims of Obama's Clean Power Plan, a 2015 regulation that would have sped a shift away from coal use and toward less-polluting sources such as natural gas, wind and solar. That plan was the centerpiece of Obama's pledge for the U.S. to cut carbon dioxide emissions as part of the Paris climate agreement, which President Donald Trump has said he plans to exit.

The Environmental Protection Agency acknowledges that both carbon emissions and pollutants such as soot and smog would be higher under its new proposal than under the Clean Power Plan. And Trump's critics call it a recipe for abandoning the effort to take on one of the world's most urgent problems.

The proposal would be "another, more official, sign that the government of the United States is not committed to climate policy," said Janet McCabe, EPA's air chief under Obama.

McCabe said based on a description of the proposal, it would offer "a significant amount of discretion to states to decide that nothing at all needs to be done."

Many red states and several companies sued over the Clean Power Plan, and a federal appeals court was nearing a decision when Trump's EPA asked for time to rewrite the rule. McCabe said the proposal could be meant to eat up time and stall a future president from quickly regulating greenhouse gases.

EPA was widely expected to write a far less stringent replacement rule. Trump promised to nix the Clean Power Plan and exit the Paris deal during his campaign. But the draft offers the first look at the specifics since the agency released a broader notice that it would reconsider the rule in April.

The White House Office of Management and Budget has finished reviewing the draft and sent it back to EPA this week.

The rule would allow states to write rules to make coal plants more efficient, enabling them to burn less coal to produce the same amount of electricity. But that could be bad for the planet, people familiar with state air programs say, by making it cost-effective for power companies to run those plants more often.

EPA looked at the outcomes of various scenarios that could be possible from state-proposed plans in 2025, 2030 and 2035, implying that the plans could be in place before 2025.

Obama's plan was meant to see greenhouse gas emissions from the U.S. power sector fall to 32 percent below 2005 levels by 2030. The nation has already achieved much of that reduction because of trends such as the closures of dozens of older coal plants.

EPA intends to argue that the Obama administration rule illegally sought to regulate the broader power sector, beyond coal plants, and that the compliance costs would have been big and the climate benefits negligible, according to the draft POLITICO reviewed.

Environmental advocates and blue states plan to wage war on the proposal once it is final. But while the legal fights play out, the regulation will be a placeholder that could stall a future president from regulating power plants.

States will be able to present reasons for why they don't want to regulate coal plants, including considering how many more years they have left before they would probably shut down, according to a source who reviewed a different section of the document.

In another contentious portion of the proposal, EPA is looking at letting states decide whether they want to adopt changes to pollution reviews that kick in when a plant makes upgrades. Existing rules are meant to keep plants from making changes that cause more pollution.

Conservatives and industry groups have long argued that the review process, called New Source Review, makes it too expensive for operators to make improvements to plants.

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The key to Trump's climate reversal? New math [Back](#)

By Alex Guillén and Emily Holden | 08/16/2018 05:06 AM EDT

The Trump administration's attempt to reverse Barack Obama's most sweeping climate regulation rests on a legally risky strategy — redoing the calculations of how much the rule would cost and who would benefit.

The EPA's proposed replacement is expected to downplay the money that people and businesses would save from using less electricity, a key feature of the Obama-era greenhouse rule for power plants. People tracking the issue also expect that the agency will count only a fraction of the improvements in public health from reduced smog and soot pollution, and won't consider any benefits from slowing climate change outside the U.S.

The upshot: President Donald Trump's Environmental Protection Agency will argue that the Obama administration's rule had more costs and fewer benefits than previously stated, a change to help improve the comparison when it unveils its own, much less ambitious power plant proposal as soon as next week.

The Obama administration had estimated that the benefits from its 2015 rule would outstrip the costs by \$26 billion to \$45 billion by 2030.

Supporters of the Obama version say those net benefits could be even higher now, because states are on track to meet the climate goals and the costs of clean energy have continued to plummet. And they warn that repealing the regulation could keep older, more expensive coal-fired power plants in operation, adding to consumers' costs.

The math could be crucial to the success or failure of a number of Trump rules. That could make the rollbacks legally vulnerable when environmental advocates and states sue to overturn Trump's action, critics of the new proposals say.

"They are cooking the books on technical analysis to try to justify preconceived conclusions that these regulations are bad," said David Doniger, the senior strategic director of the Natural Resources Defense Council's climate program who was influential in the Obama EPA's crafting of the original rule.

EPA did not respond to a request for comment on Wednesday.

Trump administration lawyers reviewing the replacement are already struggling with how to defend a rule that could cost electricity users money but would not do much to address climate change or air pollution, according to a person aware of conversations between the White House and the Justice Department. DOJ would be charged with defending the rule in court.

POLITICO has examined a portion of the agency's unpublished draft of the new rule, which would allow states to write their own modest regulations for coal plants or even let plant operators seek to opt out entirely, according to a source with knowledge of the broader proposal.

The proposed rewrite of the power plant rule is part of a pattern: Critics say similarly fuzzy math underlies other Trump administration proposals to reverse or stymie action on climate change, such as a recent plan by EPA and the Department of Transportation to halt a planned tightening of fuel efficiency standards for cars and trucks.

Sean Donahue, an environmental lawyer who has represented groups like the Environmental Defense Fund, said he would expect a court to be "very skeptical" of any effort that looks as though EPA is trying to evade its obligation to regulate greenhouse gases. But he conceded that will depend on the details of EPA's power plant proposal.

"If it were one or two technical judgments where there's a difference between this administration and the last one, or this administration and prior consistent practice, that would be one thing," Donahue said. "But it's many, many things, all pointing the same way, all pointing toward rolling back greenhouse gas mitigation efforts."

Trump has repeatedly expressed doubts about man-made climate change, and much of his Cabinet shares a similar view. In contrast, the federal government's own scientific assessment finds that human-caused climate change will not only raise temperatures but also make extreme weather more dangerous and lift sea levels by 1 to 4 feet by the end of the century.

Kate Larsen, director of economic research firm Rhodium Group, said the Trump administration's justifications for unraveling climate change policies are symptomatic of its broader governing principles.

"A decision we make today is narrowly focused on the impacts to myself and my immediate neighbor in the next week, but you're not taking into account impacts next year and the following year to yourself, your neighbor, the entire community," she said.

Environmental experts are also scrutinizing the auto rule proposal, released earlier this month, which would freeze the Obama administration's aggressive fuel economy standards after 2020 and dial back EPA greenhouse gas rules to match.

EPA and DOT's National Highway Traffic Safety Administration argued that the freeze would save billions of dollars in costs. Critics say the administration overestimated compliance costs of the Obama-era auto targets by as much as fourfold, which could significantly tip the cost-benefit analysis in their favor. Another claim that the Trump rollback would save more than 1,000 lives per year — yielding benefits of \$77 billion — has also drawn skepticism.

On Tuesday, EPA released a June memo that showed agency staff criticizing a number of "unrealistic" aspects of NHTSA's modeling. They disagreed with the proposal's fatality figures, with EPA staff estimating deaths would increase slightly under the freeze. And they thought the rule overestimated compliance costs and the time needed to recoup those costs in fuel savings, all factors that boosted benefits and lowered costs for the proposed freeze. Both EPA and NHTSA dismissed the memo as only one part of a complex review process.

The administration and industry groups have blasted the Obama administration's use of "co-benefits" — the benefits in improved health or reduced pollution that arise even when they're not the primary aim of a regulation. (One example: Cutting coal plants' carbon dioxide pollution under the power plant regulation would't do much directly to improve people's health, but it would reduce smog.) But Donahue argued that Trump's regulators sometimes lean on co-benefits to help build the case for their rollbacks.

For example, NHTSA's modeling credits changes in consumer behavior as the overwhelming factor behind all the lives that the Trump administration contends its auto rollback would save. The agencies argue that under the previous Obama rule, drivers would be more likely to remain in older, more dangerous cars than purchase more expensive, safer ones.

That "would seem to be a co-benefits argument, since the EPA doesn't have, and NHTSA doesn't have, the authority to regulate used cars," said Donahue, who called the paradox "sort of entertaining."

Counting co-benefits is a long-standing practice for federal regulators, but energy industry groups and Republican state officials grew incensed by the Obama administration's use of it to justify major regulations.

"The co-benefits thing has ballooned into the biggest scandal in environmental regulation," said the conservative Competitive Enterprise Institute's Myron Ebell, who led Trump's post-election transition team at EPA. "You get very small direct benefits, but you make up, essentially, a lot of co-benefits."

Still, he contended that EPA's withdrawal of Obama's power plant rule would eliminate a huge amount of costs in the coming years, saying Obama's regulation represented "just the first emissions cuts."

"There were going to be more beyond that if the Obama administration had been succeeded by the Clinton administration," Ebell said. He added: "By cutting it off in the way that they're doing, we're avoiding immense future costs."

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Keystone XL pipeline wins green light in Nebraska — but may face new hurdles [Back](#)

By Ben Lefebvre | 11/20/2017 11:25 AM EDT

Nebraska regulators approved the Keystone XL pipeline Monday, but only if it is built along a new path that may force the project developer to jump through a new set of regulatory hoops.

The 3-2 vote by the Nebraska Public Service Commission gave the green light to a different route than the one preferred by Keystone developer TransCanada, moving it east to run partially alongside the original Keystone pipeline and through a portion of the state's ecologically sensitive Sandhills area as well across the Ogallala Aquifer.

The Trump administration is evaluating whether it would have to re-approve the controversial pipeline to account for the new route. But activists who have spent the better part of a decade fighting to block Keystone said the decision throws the whole project into jeopardy, while TransCanada, the company seeking to build the project, said only that it is evaluating its next steps.

"This decision today throws the entire project into a huge legal question mark," said Jane Kleebe, the activist who led the opposition to the pipeline and who is now Nebraska Democratic Party chair. "TransCanada will have to go back to the State Department because that route has never been reviewed by the feds."

The State Department said it is reviewing the PSC decision for just such a possibility.

"We won't know about any impacts until we learn precisely the extent of any changes, something we are currently engaged in," State Department spokesman Vincent Campos said.

TransCanada President and CEO Russ Girling said the company "will conduct a careful review of the Public Service Commission's ruling while assessing how the decision would impact the cost and schedule of the project."

Former President Barack Obama had blocked the permits for the pipeline in 2015, citing the oil sands' impact on climate change, but President Donald Trump quickly reversed that decision after taking office. Keystone XL is designed to transport up to 830,000 barrels per day of crude from Canada's oil sands and North Dakota's shale fields to oil refineries on the Gulf Coast.

The Nebraska PSC vote comes as TransCanada adds new crews to its cleanup operations in South Dakota, where the original Keystone Pipeline ruptured last week and released 210,000 gallons of oil. But Nebraska law bars the regulators from considering spills or pipeline safety in its decision-making process.

Environmentalists and landowners who opposed Keystone XL's construction have promised to try to overturn the commission's decision.

"We will appeal," Kleebe said. "We will challenge a foreign corporation being given eminent domain in the county courts, with every intent to bring it to the Supreme Court if needed."

Even with the approval, the project, whose costs to build the nearly 1,200 mile artery have ballooned to \$8 billion, is still not ready to be built since TransCanada is gauging the economics of the huge investment. Though prices for oil have rebounded moderately in recent months, and while TransCanada has said demand for space on the pipeline is strong, it's not yet clear that enough companies will commit to the 20-year contracts required to reserve space on it.

The opposition to Keystone XL had been a rallying cry for green activists who have long said mining Canada's oil sands would be a disaster for global climate change, releasing vast amounts of carbon dioxide into the atmosphere.

But supporters have said tapping the oil fields in Alberta is no worse than the oil production in Venezuela, where much of the heavy sour crude that is shipped to U.S. refineries comes from now.

Many in the oil industry, however, no longer see the Keystone XL pipeline as crucial to the U.S. refineries as they once did, especially since the railroad sector stepped in to offer a more flexible — though more expensive — way to ship the oil.

"There's not going to be a parade thrown, although everyone in the industry is going to be grateful," said Tyler Nelson, an energy lobbyist for Cornerstone Government Affairs. "It should have been done years ago. But now a lot of people want it to be over with and done and move on."

The pipeline may struggle to succeed in the oil business. Energy markets have made the Alberta oil sands less attractive, with ExxonMobil, ConocoPhillips and others pulling out of the region to concentrate on U.S. oil

shale development in Texas. Meanwhile, rival pipeline company Enbridge has expanded its pipeline system delivering Canadian crude to the U.S.

Critics have pointed to the recent shale oil boom as a reason that supply from the Canadian and North Dakota fields is in less demand, and they argue that much of the oil from Keystone XL could end up on tankers bound for export. U.S. oil production is on target to average more than 9 million barrels a day this year, nearly double what it was when TransCanada first proposed the massive pipeline.

If TransCanada gives its final approval to go ahead, construction would not start until 2019 at the earliest, Paul Miller, TransCanada's president of liquids pipelines, said during a conference call earlier this month.

The pipeline already is the focus of a court challenge stemming from Trump's State Department approving the project. A coalition of groups is arguing the State Department did not do due diligence before approving the cross-border pipeline in March. The case is still in the beginning stages, with a decision pending from the U.S. District Court of Montana on a Trump administration motion to dismiss.

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Judge orders Trump administration to update Keystone XL environmental study [Back](#)

By Alex Guillén | 08/15/2018 08:17 PM EDT

A federal judge today ordered the Trump administration to update its environmental study of the Keystone XL pipeline.

Nebraska regulators last year picked an alternative route through the state after the pipeline was approved by President Donald Trump. Now the State Department must update its previous 2014 environmental impact statement to take that route into account, ruled Judge Brian Morris of the U.S. District Court for Montana.

The Trump administration argued that it did not need to update the EIS, despite Nebraska regulators' decision to pick the alternate route.

But Morris concluded that the State Department still has a "meaningful opportunity to evaluate" the alternative route that was picked in Nebraska. "Federal Defendants cannot escape their responsibility under NEPA to evaluate the Mainline Alternative route," he ruled.

The approved route differs from the one studied in the 2014 EIS by crossing different counties and bodies of water and requiring an extra pump station and electric infrastructure, Morris noted.

However, Morris declined environmentalists' request that Trump's permit be vacated, at least for now.

TransCanada does not plan to start construction before the second quarter of 2019, he said, giving the Trump administration sufficient time "to supplement the EIS in a manner that allows appropriate review before TransCanada's planned construction activities." Morris said he would revisit the issue if "circumstances change" and he is unable to review the new supplemental EIS before TransCanada begins construction.

WHAT'S NEXT: Morris ordered the State Department to propose a schedule to supplement the EIS.

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Trump administration to make a second try on spending cutbacks [Back](#)

By Sarah Ferris and John Bresnahan | 08/15/2018 07:15 PM EDT

The Trump administration is eyeing a second attempt to force Congress to roll back federal spending, after its last attempt collapsed in the GOP-led Senate, according to the chairman of the Senate Appropriations Committee as well as a Senate leadership source.

The Office of Management and Budget is said to be considering a second package of so-called rescissions, with just weeks to go until Congress' next budget deadline.

OMB officials did not return a request for comment and it's not known yet what spending the White House might try to cut or eliminate this time around.

Senate Appropriations Chairman Richard Shelby said today he was told about the idea. "I heard they were thinking about one, but I haven't seen it," Shelby (R-Ala.) told POLITICO.

OMB chief Mick Mulvaney has already begun moving ahead, according to the Senate leadership source.

Budget hawks, led by Mulvaney, fought hard for the last package, H.R. 3 (115), which would have pulled back \$15 billion in already-approved federal dollars. That bill ultimately tanked in the Senate, coming up just one vote shy on a procedural vote.

If the White House moves quickly, its next rescissions package could arrive in the middle of a separate major funding fight on Capitol Hill. Lawmakers have until Sept. 30 to send roughly \$1.4 trillion in fiscal 2019 funding to President Donald Trump's desk or risk a funding lapse.

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Oil companies ask Florida lawmakers to unlock offshore drilling [Back](#)

By Ben Lefebvre | 08/15/2018 05:01 AM EDT

Oil and gas companies are aggressively lobbying Florida lawmakers to agree to allow offshore drilling in the eastern Gulf of Mexico — seeking to break decades of bipartisan opposition in a state that has long viewed oil spills as an existential threat to its tourist economy.

The effort, which would potentially bring oil rigs as close as 75 miles to Florida beaches, comes just seven months after Interior Secretary Ryan Zinke promised that the state was "off the table" for offshore drilling. And it could complicate Republican Gov. Rick Scott's campaign to unseat Democratic Sen. Bill Nelson, whose opposition to drilling off the coast has been a main theme of his decades in Congress.

But the expansion would aid President Donald Trump's effort to increase U.S. oil and gas production, in what he calls a bid for American "energy dominance."

Gaining access to the millions of barrels of oil and natural gas off Florida's west coast is a top priority for Exxon Mobil, Chevron, Shell and other companies.

Energy lobbyists and trade associations believe Zinke left some wiggle room in his comments, and they are trying to persuade Florida lawmakers to sign on to possible compromises, including allowing drill rigs to operate up to 75 miles off the state's Gulf coast, lawmakers and industry sources said. That would be down from more than 200 miles under an existing drilling moratorium.

Zinke's tweet exempting Florida — which critics charge was simply a political gift for Scott's Senate campaign — and his subsequent statement that he was "removing Florida from consideration for any new oil and gas platforms" shouldn't be read as official Interior policy, said Randall Luthi, president of the trade group National Offshore Industry Association, which is pressing for access to the waters.

"Secretarial tweets and statements to Congress are outside the administrative process, but certainly are indicators of where the Secretary and evidently the White House might end up," Luthi said in a statement to POLITICO. "The Eastern Gulf of Mexico is ripe for some kind of a reasonable compromise."

The Gulf of Mexico Energy Security Act of 2006 put a moratorium on oil and gas exploration in the eastern Gulf until June 2022. Department of Defense offshore training zones put another large part of those waters out of contention for drilling.

Interior's first draft plan included opening up every acre of federal water to oil and gas companies, however. Zinke has implied in later conversations with coastal state governors, senators and trade associations that the final plan wouldn't necessarily include drilling off the coasts of New Jersey, Delaware, Maine, but his plan to announce a final decision this fall could delay unpopular decisions — including possibly opening up the waters off southern California and the Mid-Atlantic region — until after the midterm elections, sources said.

The most aggressive plan industry lobbyists have brought to lawmakers calls for allowing drilling platforms within 75 miles of Florida's Gulf coast, an idea that Interior itself floated in its draft plan. Buffer zones going out as far as 125 miles have also been discussed, sources said. Either could technically adhere to Zinke's promise not to open Florida's waters, since the state's jurisdiction only extends nine nautical miles from the shoreline. Interior proposed the use of so-called exclusion zones for the eastern Gulf of Mexico and the Atlantic coast in its draft plan.

One lobbyist working the issue told POLITICO that Zinke and Scott were careful to "not say the entire Eastern Gulf," was off the table during their press conference at the Tallahassee airport in January.

"There are some Republicans who are prepared to make a deal. Seventy-five miles is the expected buffer, but folks might be willing to throw it a little further," said the lobbyist, speaking anonymously to frankly discuss ongoing negotiations.

That reduced buffer zone would please the oil industry because most of the oil and gas reserves in the eastern Gulf are believed to be in the waters south of Alabama and the Florida Panhandle, said a person at one oil and gas company who was not authorized to discuss the draft plan.

"I think we could live with 75 miles," the person said. "I think that wouldn't hurt anyone."

The idea so far has failed to gain much traction with at least two Florida Republicans who said they have been inundated with industry requests to open the area to drilling.

Florida Republican Rep. Matt Gaetz said he opposes the idea on national security grounds, given that the Defense Department uses a large part of the eastern Gulf for training exercises.

"It seems every week the oil and gas industry is working to obtain permission to crack the Destin Dome," Gaetz said in an interview with POLITICO, referring to one offshore site believed to hold large amounts of natural gas. "That would be devastating to our national security. I don't have a nuanced view on this. I am opposed."

Gaetz said he has raised his concerns on several occasions with Zinke, who he said has not pushed for a specific policy but has espoused an expansion of oil and gas drilling in general.

"I've had meetings with the secretary on this," Gaetz said. "I've had spirited conversations with him. I would not say he was wedded to any particular plan. He was trying to advance the cause of energy exploration."

An Interior spokeswoman did not answer questions about Zinke's meetings with Florida lawmakers or the possibility of establishing a 75-mile buffer zone.

"Secretary Zinke regularly meets with and communicates with many members on both sides of the aisle, coastal and non-coastal," the spokeswoman said in a written statement. "Members often discuss relevant issues pertaining to their districts and states as appropriate."

Republican Rep. Francis Rooney, who opposed drilling off the Florida coast during his 2016 campaign, said the industry has also been reaching out to him. Industry representatives have suggested several compromises, including a 100-mile buffer zone, he said, though he has rejected that plan, saying currents could carry any spilled oil from that part of the Gulf onto state beaches.

Instead, Rooney, who had served on the board of the oil and gas company Laredo Petroleum, offered to allow drilling 200 miles off the coast, west of the area where the military conducts training.

"The oil people have brought up several different things and I have been pretty much recalcitrant in negotiating with them," Rooney told POLITICO. "I think we need a clear delineation of where they will drill and not drill, and we don't need them drilling east of that military mission line."

Environmentalists also oppose any drilling, saying a buffer zone wouldn't protect Florida's beaches and tourism economy.

"The Deepwater Horizon disaster that spoiled Florida's coastline was 200 miles from its shore," said Diane Hoskins, director of environmental group Oceana, referring to the 2010 deepwater gusher that took months to plug. "A 75-mile buffer would be a cold comfort for Floridians."

Alexandra Glorioso contributed to this report.

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Trump delivers a Senate race sweetener to Scott [Back](#)

By Marc Caputo, Ben Lefebvre, Matt Dixon and Bruce Ritchie | 01/09/2018 11:24 PM EDT

Donald Trump delivered a big political contribution to Rick Scott on Tuesday as the Florida governor contemplates a bid for U.S. Senate: a pledge to spare Florida from administration plans to expand offshore oil drilling nationwide.

The surprise announcement from Secretary of Interior Ryan Zinke — who went to the trouble of flying to Tallahassee to stand beside Scott — outraged environmentalists and Democrats who insist the decision was a political ploy that unlawfully gave preferential treatment to Florida, a swing state that voted for Trump and that's home to his so-called "Winter White House" escape at Mar-a-Lago in Palm Beach.

Zinke made sure that the term-limited governor got all the credit. In response to a question about what was the final determining factor in his decision, Zinke said: "The governor."

"You have a tremendous governor that is straightforward, easy to work for, says exactly what he means. And I can tell you Florida is well-served," Zinke said.

Zinke's glowing endorsement of Scott has become de facto policy for Trump, who has tried for more than a year to woo Scott publicly and privately to run for U.S. Senate against Democratic incumbent Bill Nelson. The veteran senator is one of the most vocal opponents of offshore oil-drilling in Florida, an issue that typically enjoys broad bipartisan support in a state whose economy depends heavily on tourism and development along 1,300 miles of coastline.

Scott used to be an exception to the blanket opposition to offshore oil drilling. In 2010, the then-political newcomer voiced more support for oil exploration, but the position became a political liability in the state after the Deepwater Horizon oil spill coated some Florida beaches with tar balls and damaged tourism in parts of the Gulf.

A 2016 University of South Florida-Nelson poll found that 47 percent of state residents see offshore drilling as a move in the "wrong direction," a distinction that makes it one of the most unpopular policy proposals in the state.

So when Zinke announced last Thursday that the administration wanted to open vast new stretches of federal waters to oil and gas drilling, opposition was united in Florida — from liberal environmentalists to conservative lawmakers and even Scott, who issued a rare public denunciation of the policy.

At the time, Democrats and Nelson supporters highlighted the unpopular policy announcement by a president who's flagging in the polls. Nelson's campaign began fundraising off of the initial announcement to expand oil exploration.

One Republican insider, however, told POLITICO shortly after the initial announcement that the administration would scale the plan back somewhat to give Scott a political boost that would "be a big win, and it won't be Bill Nelson bringing it home."

As late as Tuesday, Nelson was still fundraising off the drilling announcement. "President Trump is about to hand a huge victory to the oil industry and put Florida's entire economy at risk," Nelson's campaign wrote. "He just announced plans to rollback offshore drilling regulations that were put in place after the 2010 Deepwater Horizon disaster, and open up nearly all federal waters to offshore oil drilling — including the eastern Gulf of Mexico."

But just before that email solicitation was sent out, Zinke was unexpectedly standing in Tallahassee's regional airport with Scott announcing the reversal to the Florida capital press corps.

Nelson said he was incredulous.

"I have spent my entire life fighting to keep oil rigs away from our coasts. But now, suddenly, Secretary Zinke announces plans to drill off Florida's coast and four days later agrees to 'take Florida off the table'? I don't believe it," Nelson said in a written statement. "This is a political stunt orchestrated by the Trump administration to help Rick Scott, who has wanted to drill off Florida's coast his entire career. We shouldn't be playing politics with the future of Florida."

Similarly, the Sierra Club of Florida said the decision was "a purely political move to aid the ambitions of Rick Scott." And the League of Conservation Voters called it a "publicity stunt."

Scott's spokesman, Jonathan Tupps, said oil-drilling opponents should not be upset.

"Senator Nelson and anyone else who opposes oil drilling off of Florida's coast should be happy that the governor was able to secure this commitment," he said. "This isn't about politics. This is good policy for Florida."

Tupps said that, contrary to claims by Scott's opponents, the governor and staff have frequently discussed Florida's opposition to more offshore oil drilling with the Interior Department. Scott personally raised the issue with Zinke in an October meeting in Washington, Tupps said.

Why Zinke suddenly reversed months of planning four days after announcing the new oil and gas exploration policy are unclear. Zinke also made his announcement via Twitter after a brief question-and-answer session with reporters in Tallahassee.

In reversing the policy for Florida, however, Zinke may have run afoul of the Administrative Procedure Act, critics said. That could give ammunition to California and Atlantic Coast states wanting to get on the same no-drill list -- the opposite of what President Donald Trump intended when he directed Zinke to expand oil companies' access to federal waters to boost U.S. energy production.

The American Petroleum Institute President Jack Gerard earlier in the day had applauded the Trump administration's plan to make all available federal waters available for drilling, saying "It represents a bold acknowledgement of the industry's advancements in technology to safely access U.S. energy resources."

Almost immediately after Zinke's announcement, lawmakers from other states took to Twitter to raise the specter of lawsuits, which could lead to courtroom entanglements for Interior's offshore drilling plan. The proposal was supposed to go into effect in 2019 and offer acres off the coast of Florida in late 2022 when a drilling moratorium officially ends.

"Under the Administrative Procedure Act, an agency can't act in an arbitrary and capricious manner. In this case, exempting Florida but not California (which has an even larger coastal economy) is arbitrary and capricious," Rep. Ted Lieu, a California Democrat and attorney, told POLITICO.

"So the agency would either have to not exempt Florida, or in the alternative, exempt Florida, California and any other state that can show the coasts are important to the state's tourism and economy."

California Attorney General Xavier Becerra also hammered that point on Twitter, echoing Scott's argument against drilling off the Florida coast to say "California is also 'unique' & our 'coasts are heavily reliant on tourism as an economic driver.' Our 'local and state voice' is firmly opposed to any and all offshore drilling. If that's your standard, we, too, should be removed from your list. Immediately."

In Virginia, U.S. Sen. Tim Kaine took a more low key approach. "Virginia's governor (and governor-elect) have made this same request [as Florida], but we have not received the same commitment. Wonder why..." he tweeted.

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Pruitt touts science policy as transparency as Democrats slam him for secrecy [Back](#)

By Emily Holden and Annie Snider | 04/26/2018 03:17 PM EDT

Embattled EPA Administrator Scott Pruitt sought to fend off criticisms he had clouded his activities within the agency in secrecy, pointing during Thursday's congressional hearing to the new science policy rolled out this week that he said is boosting transparency around new rules.

But that new policy, long a conservative priority, had Democrats howling that Pruitt had effectively given himself carte blanche to conceal studies that would not support his rollback of Obama EPA rules.

"The type of studies you want to exclude are the same kind of scientific studies that were used to prove that lead in pipes and paints harm children and that secondhand smoke is a dangerous carcinogen," said Rep. [Raul Ruiz](#) (D-Calif.). "You have demonstrated a disregard of true science [and] the scientific process," he said.

The discussion was one of the most substantive policy issues at [the hearing](#) of the Energy and Commerce subcommittee that focused largely on the scandals that have erupted around Pruitt in recent weeks.

The draft rule, which was announced at a closed event at agency headquarters on Tuesday, could have far-reaching effects that limit EPA's ability to rely on studies that don't have publicly available raw data when making decisions about air and water regulations. Scientists and public health advocates have argued the change could keep the agency from updating health protections based on new science since those studies typically redact subjects' personal information.

Pruitt's GOP supporters on the panel praised the move as a way to ensure that scientific data used to support new regulations was available for everyone to review.

"I've had a lot of constituents over the years who've been very concerned about decisions ... that get made by administrators or the bureaucracy and in some cases they can't get access to the underlying data that underpins the decisions," said Rep. [Greg Walden](#) (R-Ore.), chairman of the Energy and Commerce Committee.

Rep. [Paul Tonko](#) (D-N.Y.) called Pruitt "hypocritical" because the proposed rule gives broad authority Pruitt to grant exemptions from the new requirements, which he said Pruitt could use "without any transparency or accountability" for his decisions.

Tonko pointed to internal emails between top EPA officials initially released under the Freedom of Information Act that show the agency's top chemicals official, a former leading chemicals industry expert, expressing concerns about the impact the policy could have on companies' confidential business information.

"If EPA was assessing the safety of a chemical, you alone would have the power to selectively block public health studies that do not support your political priorities and allow ones that favor your friends in industry. Not only does this open the door to special treatment for industry over the public health, but you could also pick winners and losers among the industry types," Tonko said.

Pruitt argued the restrictions will apply equally to "all third party studies." He said both business and personal health information could be redacted, which experts have argued would be time-consuming and expensive.

Yogin Kothari, a Washington representative for the Union of Concerned Scientists, which has opposed the change, said Democrats were right to highlight the hypocrisy of the policy that he said was really about restricting science.

"What it highlights is a lack of transparency at the agency because he hasn't really talked about this or explained this or explained his thinking about this," Kothari said.

Frank Maisano, a spokesman for the lobbying firm Bracewell who attended the hearing, said Republicans on the committee appeared to be interested in hearing more about the policy.

"It's a topic that is different from what Democrats are talking about, it's a topic that's substantive," Maisano said. "It's a topic that many in the business community and many in the conservative community have been focused on for years."

EPA's proposal, based on long-sought legislation from House Science Chairman Lamar Smith (R-Texas), also drew support from Rep. Kevin Cramer (R-N.D.) who said it undercut Democrats who attacked Pruitt for secrecy while defending the agency previous use of "secret science."

"You've also been accused of hypocrisy, a lack of transparency, by people who are in the same breath defending secret science as a means of carrying out their political philosophy ... the irony is rich beyond rich with me," he said.

Quint Forgey contributed to this report.

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Mexico, U.S. may be heading toward NAFTA deal amid Trump's global trade war [Back](#)

By Megan Cassella | 08/15/2018 05:32 PM EDT

President Donald Trump could be poised to make a deal with Mexico on NAFTA even as he engages in a trade war with the rest of the world.

Mexican Economy Secretary Ildefonso Guajardo arrived in Washington on Wednesday — as he has every week for the past month — to hammer out some of the most contentious issues on NAFTA. U.S. and Mexican officials now say they could be on the verge of announcing a preliminary agreement on everything from complicated automotive rules to environmental regulations by the end of August.

The apparent turnaround after months of stalemate is a surprise outcome of discussions reaching their year anniversary on Thursday. And while the two sides have yet to bring Canada, the third partner in NAFTA, into the latest round, the negotiators' optimistic tone could signal that Trump may be ready to extinguish at least one trade conflagration before the midterms. That would placate Republicans who have been calling for a return to stability as the U.S. and China have been slapping tariffs on each other's exports, roiling international markets and burdening American farmers.

"We're settling in for the long haul with China, so we really need to release the pressure in our backyard," said Dan Ujcz, an international trade lawyer who specializes in Canada-U.S. matters. "I think that's a driving force for the U.S.' desire to get a deal right now."

To be sure, some major controversial issues remain unresolved, including the U.S. proposal to automatically terminate the pact after five years unless all three countries agree to renew it — an idea that Canada and Mexico have both rejected outright. And for the time being, at least, Canada still remains on the outside of the current talks.

But reaching even a bare-bones agreement on NAFTA before November's elections would hand a concrete victory to Trump, who would likely point to the revamped pact as a symbol that his strong-arm tactics have worked, industry sources and experts closely following the talks say. It would also allow U.S. trade officials to clear a major task off their agenda and dedicate more time to areas where U.S. Trade Representative Robert Lighthizer in particular has wanted to focus, primarily trade issues with China.

At the same time, Mexican negotiators are also under renewed pressure to get a deal after the country elected a new leader who takes office in December and who badly wants NAFTA to be signed and off his plate before then. Mexico has pointed to Aug. 25 as the date by which it must wrap up at least a preliminary agreement for outgoing President Enrique Peña Nieto to be able to sign the deal before he leaves office.

Those domestic politics have put Guajardo in a tough position, as he tries to appease the incoming Mexican administration and quickly wrap up a deal while still standing up firmly against some U.S. proposals that Mexico has repeatedly derided as unworkable.

"They're under a lot of pressure to just come up with anything, whatever it is," one source close to the talks said, requesting anonymity to speak freely about internal deliberations. "What I've been hearing from other Mexican parties is that Ildefonso was sort of distraught and frazzled by the fact that he's being asked to wrap it up, and that of course means making concessions that he wasn't ready to make. It lowers his negotiating potential."

Against that backdrop, sources close to the talks say Mexico appears to be poised to accept large swaths of a U.S. proposal involving the rules that govern North American-produced automobiles and dictate what percentage of each car must be sourced from within a NAFTA country to qualify for reduced duties under the agreement.

At the U.S.' urging, Mexico looks likely to agree to an increase in the overall amount of North American-sourced content that must be included in each automobile, and will accept a requirement that a certain percentage of each car must be produced by workers earning at least \$16 an hour, sources say. Mexico is also poised to accept mandates that a certain percentage of the steel, aluminum and plastic included in each vehicle is also sourced from a NAFTA country.

In exchange, the United States would be prepared to give up a controversial proposal that would have made it easier for American fruit and vegetable growers to make the case that Mexico is selling produce at unfairly low prices when crops are in season in a particular region, two sources with knowledge of the trade-off told POLITICO. The U.S. would also submit to Mexico's demand to leave a chapter largely untouched that contains rules on disputes between governments, one of the sources said.

"Essentially, there is a deal," one of the sources said.

At the same time, however, other major aspects of the renegotiation remain unfinished. Chief among them is the so-called sunset clause that the U.S. wants, which would end the pact after five years unless the parties opt to continue it. Several sources close to the talks say the sunset clause has hardly been discussed during the latest set of meetings between the U.S. and Mexico, and the two countries still remain on opposite sides.

And Canada will need to come to the table for a deal to be finalized. Officials from all three countries have sought to emphasize that the U.S.-Mexico engagement is not a sign of ill will toward Canada but is instead an attempt to work out bilateral issues before bringing Ottawa back into the fold.

But negotiators had expected that Washington and Mexico City would have made enough progress by now for Canadian Foreign Minister Chrystia Freeland to have joined the meetings in Washington. The more time that passes, the more likely it is that the strategy to put off a trilateral meeting could backfire, a source close to the talks said.

"Yes, there's U.S.-Mexico momentum — that's a positive message and great from Mexico's point of view," the source said. "But the longer it takes to bring in Canada, the less likely this is going to get done in the short term."

Still, any incremental progress, or even the fact that the U.S. and Mexico are continuing to engage in good-faith negotiations and regular meetings, has offered a signal of some hope to U.S. farmers, consumers and industry groups who have been worn out by months of uncertainty and pummeled by retaliatory tariffs imposed over the past few months.

Retailers and business groups are reluctant to throw their support at this point behind a deal that is still unfinished, particularly when a number of proposals that some have termed poison pills remain on the table.

But at the same time, "I think what all of our members want, what the business industry at large wants, is certainty," said Vanessa Sciarra, a former U.S. trade negotiator who now works as a vice president at the National Foreign Trade Council. "Anything that provides for greater clarity on trade relationships, particularly with Mexico and Canada ... would be helpful."

Adam Behsudi contributed to this report.

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Subject: Afternoon Energy: PJM seeks capacity auction delay — Former EPA staff slam 'secret science' proposal — More comments on cost-benefit

By David Beavers and Garrett Ross | 08/14/2018 04:03 PM EDT

With help from Emily Holden, Annie Snider and Daniel Lippman

PJM SEEKS CAPACITY AUCTION DELAY: PJM Interconnection filed a request with FERC today to delay its next capacity auction from May to August 2019, Pro's Darius Dixon reports. The move was prompted by FERC's June order declaring the market was unjust and unreasonable, and it didn't come as a surprise, since that order said such a delay was possible.

"We recognize that modifying the PJM capacity market as discussed herein would be a significant undertaking and that the next Base Residual Auction is scheduled to occur in May 2019. Accordingly, we note that PJM may file requests for waiver or other relief, as appropriate," the June 29 order states.

PJM must draft new rules that will need to be approved and potentially revised by FERC early next year. Read more here.

Welcome to Afternoon Energy! We're your hosts Garrett Ross and David Beavers. Send suggestions, news and tips to gross@politico.com, dbeavers@politico.com, mdaily@politico.com and njuliano@politico.com, and keep up with us on Twitter at [@garrett_ross](https://twitter.com/garrett_ross), [@davidabeavers](https://twitter.com/davidabeavers), [@dailym1](https://twitter.com/dailym1), [@nickjuliano](https://twitter.com/nickjuliano), [@Morning_Energy](https://twitter.com/Morning_Energy) and [@POLITICOPro](https://twitter.com/POLITICOPro).

FORMER EPA STAFF SLAM 'SECRET SCIENCE' PROPOSAL: The Environmental Protection Network, a group launched in January 2017 by former EPA staff, submitted comments to the agency today blasting the agency's proposal to restrict the use of scientific studies that contain non-publicly available data. "The impacts of this devastating proposal, should it be finalized, will fall on the most vulnerable in our country, including children (whose lungs are only just developing), asthma sufferers, older Americans, and people with heart and lung disease," the group writes. "When a federal agency proposes to make such massive changes, it has a legal obligation to explain clearly the purpose of the changes and justify them, following well-established legal standards. This proposal completely fails to make the case for why the changes are needed."

MORE COMMENTS ON COST-BENEFIT: A coalition of 13 state attorneys general and state environmental agency officials led by New York AG Barbara Underwood submitted a comment letter urging the EPA to abandon its proposed changes to how it performs cost-benefit analyses of regulations before Monday's comment deadline. In its comments, the group says the agency's notice of proposed rulemaking "signals yet another unsupported attempt to undermine EPA's mission to protect public health and the environment."

EXPANDING THE BATTLEFIELD: With the state pushing back on the Trump administration's auto emissions rollbacks, California industry leaders are beginning to plot new ways to curb environmental impacts, Bloomberg News reports. "'We're looking at other ways to reduce pollution by regulating either the purchase or use of cars and light trucks that don't involve setting standards on the vehicles themselves,' Mary Nichols, the head of the California Air Resources Board, said in an interview. 'That could be a whole bunch of things. Limits

on registrations. Fees and taxes.' The only impediment would be convincing residents to foot the bill. So far, 60 percent of the state's likely voters think emissions standards should go higher, even though most expect that fighting climate change will boost gasoline prices, according to a Public Policy Institute of California poll released last month. Just over half say they'd pay more for electricity from renewable sources." Read more [here](#).

IN 5 YEARS TIME: Even though the past four years have been the warmest ever recorded, a new study released today is projecting that the next five years will be "anomalously warm," The Washington Post reports. "'What we found is that for the next five years or so, there is a high likelihood of an anomalously warm climate compared to anomalously cold,' said Florian Sevellec, a scientist at France's National Center for Scientific Research, who co-authored the study published in Nature Communications with Sybren Drijfhout of the University of Southampton in the United Kingdom. ... It's important to underscore that the result is a forecast based on probability — not a certain outcome." The study forecast a 58 percent chance that the Earth's overall temperature from 2018 through 2022 will be "anomalously warm," and a 69 percent chance that the Earth's oceans will be. That also includes "a dramatic increase of up to 400 percent for an extreme warm event" during 2018 to 2022, it said. Read more [here](#).

SWAMP WATCH: American Ethane Company [terminated](#) its lobbying contract with Bold Strategies, following a [report](#) from E&E News that the company is nearly 90 percent owned by a trio of Russian oligarchs, including one with ties to alleged spy Mariia Butina. E&E made the discovery after Bold Strategies revised its lobbying forms to show American Ethane's foreign owners. Bold Strategies did not return a separate request for comment from POLITICO.

— **Swiss offshore drilling contractor** Transocean hired a pair of lobbyists at Miller & Chevalier to assist the company with "collection of debt from Nigerian Petroleum Development Company Ltd., including outreach to U.S. Embassy in Abuja," per a disclosure [filing](#).

MOVERS, SHAKERS: Byron Brown, former EPA deputy chief of staff for policy whose [last day](#) at the agency was Friday, has landed at international law firm Crowell & Moring. Brown will be a senior counsel in the firm's Environment & Natural Resources and Government Affairs groups.

— **The Solar Energy Industries Association** announced the hiring of two executives today: John Smirnow, to be general counsel and vice president of market strategy; and Tony Chen, to be SEIA's first vice president of business development. Smirnow, who previously served as SEIA's vice president of international trade, has most recently worked in private trade and customs law practice. Chen's previous solar industry experience includes stints at Cool Earth Solar and SolarCity.

QUICK HITS:

— "The Key to Big Profits in Clean Energy: Animal Fats," [Wall Street Journal](#).

— "Ford Fights Back Against Wall Street Calls to Cut Its Dividend," [Bloomberg](#).

— "SunPower pivots to 'solar energy services' upon existing utility-scale development," [Greentech Media](#).

— "Illinois Attorney General Lisa Madigan sues Trump Tower for violating clean water laws intended to protect Chicago River fish," [Chicago Tribune](#).

WIDE WORLD OF POLITICS:

— Trump campaign [files for arbitration](#) against Omarosa

— Wisconsin Democrats jump at chance to finally beat Walker

— Handler of alleged spy Butina tied to suspicious U.S.-Russia exchange program

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Stories from POLITICO Pro

PJM seeks 3-month delay to capacity auction [Back](#)

By Darius Dixon | 08/14/2018 12:50 PM EDT

PJM Interconnection is asking FERC for permission for a three-month delay its next capacity auction to August 2019 in light of FERC's June order declaring the market was unjust and unreasonable, according to a [filing today](#).

The one-time delay from May to August is warranted, PJM says, because of the "unique circumstances" created by FERC's order. PJM now faces a short window of time to draft new rules that must be approved and potentially revised by FERC by early January.

PJM said that the delay would push back the need for a final order from FERC until March 15.

Today's request does not come as a surprise since FERC's order said that such a delay was possible.

"We recognize that modifying the PJM capacity market as discussed herein would be a significant undertaking and that the next Base Residual Auction is scheduled to occur in May 2019. Accordingly, we note that PJM may file requests for waiver or other relief, as appropriate," the June 29 [order states](#).

That order was FERC's most significant move into a long-simmering conflict over state-level energy incentives for nuclear power and renewable energy, and it was approved by FERC, on a 3-2 vote.

WHAT'S NEXT: Initial responses from PJM and others to FERC order are due in two weeks. However, the Organization of PJM States has requested an extension that PJM itself endorsed.

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EPA's deputy chief of staff to depart [Back](#)

By Emily Holden and Alex Guillén | 08/09/2018 09:09 AM EDT

Byron Brown, EPA's deputy chief of staff for policy, will depart the agency Friday.

Brown was among the EPA staffers who had formerly worked for Sen. [Jim Inhofe](#) (R-Okla.), a list that also includes acting Administrator Andrew Wheeler and chief of staff Ryan Jackson. Brown previously was senior counsel on the Senate Environment and Public Works Committee.

At EPA, Brown worked on the rollback of Obama-era coal ash regulations and on efforts to streamline permitting.

"Byron has been with EPA since day one of the Trump Administration and has been an invaluable member of our staff. We wish him the best on his future endeavors and thank him for his dedication and hard work implementing President Trump's agenda." Wheeler said in a statement.

It was Brown's third stint at the agency, according to his LinkedIn profile. His wife works as a lobbyist for oil and gas company Hess Corporation.

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Trump campaign files for arbitration against Omarosa [Back](#)

By Rebecca Morin | 08/14/2018 11:51 AM EDT

Donald Trump's presidential campaign has filed for arbitration proceedings against former White House aide Omarosa Manigault Newman after she released a tell-all book from her time on the president's 2016 campaign and in the White House.

The move is the latest escalation between the former "Apprentice" star and the president, who has labeled Manigault Newman "wacky," "deranged" and a "dog" in posts to his Twitter account this week.

"Donald J. Trump for President, Inc. has filed an arbitration against Omarosa Manigault-Newman, with the American Arbitration Association in New York City, for breach of her 2016 confidentiality agreement with the Trump Campaign," a campaign official said.

While Manigault Newman has said that she refused to sign the White House's non-disclosure agreement, she did acknowledge during an interview with PBS on Monday that she signed one for Trump's 2016 presidential campaign and another one in 2003 when she was on "The Apprentice."

Those other NDAs have been described as more restrictive than the White House agreement, with potentially more legal heft.

A copy of the Trump campaign NDA that was obtained by POLITICO included a non-disparagement clause to ensure staffers did not release information, confidential or detrimental, about Trump, his business, his family members including grandchildren, and even family members' companies.

Trump tweeted Monday that Manigault Newman had signed a non-disclosure agreement, but did not specify if it was for the White House or his campaign.

During an interview on MSNBC on Tuesday afternoon, Manigault Newman said she does not believe she violated her 2016 agreement.

"I don't believe that I have violated, but I will leave it to the lawyers to sort that out," she said during her first interview since the arbitration move was announced. "It's interesting that he is trying to silence me, what is he trying to hide or be afraid of?"

Press secretary Sarah Huckabee Sanders said during a Tuesday press briefing that she would not disclose whether she signed an NDA but said it was common practice to have employees sign those type of agreements.

"I'm not going to get into the back and forth on who has signed an NDA here at the White House," she said. "I can tell you that it's common in a lot of places for employees to sign NDAs, including in government, particularly anyone with a security clearance."

When later pressed that the act is common for corporations rather than for government, Sanders said the White House's policy is consistent with past administrations.

"It's also, despite contrary opinion, it's actually very normal, and every administration prior to the Trump administration has had NDAs, particularly specific for anyone that had a security clearance," she later added.

It is illegal for those with security clearances to share classified information, but they typically would not sign an NDA.

Manigault Newman has made several media appearances this week to promote her new book "Unhinged," in which she claims that Trump regularly used racial epithets and is a "racist, misogynist and bigot."

The president has countered Manigault Newman's claims with attacks launched via Twitter as well as from his cable-news surrogates,

"When you give a crazed, crying lowlife a break, and give her a job at the White House, I guess it just didn't work out. Good work by General Kelly for quickly firing that dog!" Trump tweeted Tuesday morning.

Manigault Newman continued to push back on Tuesday afternoon, saying that she will continue to blow the whistle on Trump to expose him as "the misogynist and bigot that he is."

She added that she had been interviewed by special counsel Robert Mueller for his Russia probe, but would not provide any details of what she was asked.

"I will say that there is a lot of corruption that went on in both the campaign and the White House, and I'm gonna blow the whistle on all of it," she said.

In a Tuesday interview with "CBS This Morning," the former reality star released a recording she took of herself and campaign officials Katrina Pierson and Lynne Patton discussing during the 2016 campaign how to respond to an inappropriate comment Trump had said, but did not specify what words he had used.

Manigault Newman said on CBS, which aired the recording Tuesday morning, that the three staffers were discussing an alleged recording of Trump using the n-word from his time hosting NBC's "The Apprentice."

Pierson said in a statement that the rumors about the alleged tape were "always being circulated by Omarosa and her alone."

"In her secret tape-recording of me, it was one of many times that I would placate Omarosa to move the discussion along because I was weary of her obsession over this alleged tape," she continued. "That discussion was nothing other than sifting through unconfirmed rumors regarding the Apprentice tape and the transcript supports my statement. Omarosa fabricated the story by conflating numerous discussions."

The president also pushed back on Manigault Newman's claim Monday evening, writing online that "there are NO TAPES of the Apprentice where I used such a terrible and disgusting word."

Sanders said on Tuesday, however, that she could not "guarantee" whether Trump had actually used that word and that "the president addressed this question directly."

"I can tell you that I've never heard it," she said. "I can also tell you that if myself or the people in this building serving this country every single day doing our very best to help people all across this country and make it better, if at any point we felt that the president was who some of his critics claim him to be, we certainly wouldn't be here."

Earlier this week, Manigault Newman also released a recording taken in the White House Situation Room of chief of staff John Kelly firing her. She also revealed a recording of Trump expressing his surprise that Manigault Newman was leaving the White House, though the former White House aide has contended that Trump knew that she going to be fired.

Manigault Newman was fired from the White House in December 2017 after a tumultuous tenure during which she served as the administration's highest-profile liaison to the African-American community.

During Tuesday's briefing, Sanders said that Trump did talk to Kelly about giving him full authority to let Manigault Newman go if they could not get along.

"The president wanted to give her a chance, and he made clear when General Kelly came on and he voiced concerns that this individual didn't have the best interests of the White House and the president and the country at heart, the president said do what you can to get along," Sanders said. "And if you can't, he gave him full authority to carry out the decision to let her go."

Annie Karni and Andrew Restuccia contributed to this report.

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Wisconsin Dems jump at chance to finally beat Walker [Back](#)

By Daniel Strauss | 08/14/2018 05:14 AM EDT

Wisconsin Democrats on Tuesday will choose from a field that once swelled to over a dozen candidates — an array of businessmen, state legislators, the mayor of Wisconsin's most liberal city and the chief of the state firefighters union — to realize their long-elusive goal of defeating Republican Gov. Scott Walker.

But the clear frontrunner is state education superintendent Tony Evers, a 66-year-old white man who stands out in a year when Democrats have put forward high numbers of women, young people and first-time candidates for office. What Evers lacks in sizzle, Democrats are hoping he compensates for with a record of clashes with Walker over education that could energize his party and deny the Republican governor a third term.

After years of doing battle with unions and pushing conservative legislation, Walker may be the one Republican who gets Wisconsin Democrats as agitated as President Donald Trump does. And that, say some Democratic officials in the state, might be enough in a year like this.

"If there's a rub on Tony Evers, it might be that he's too nice," said Joe Wineke, a former Wisconsin Democratic Party chairman. "But I'm not convinced Midwestern nice is going to be a bad thing in the year of Trump."

While talk of rolling back Walker's accomplishments has dominated the Democratic primary, Republicans have already sought to define the terms of the campaign. The Republican Party of Wisconsin has already focused attack ads on four candidates: Evers, former Wisconsin Democratic Party chairman Matt Flynn, former state Rep. Kelda Roys, and Professional Firefighters of Wisconsin President Mahlon Mitchell.

"I do think this is our big opportunity. This is a favorable year for Democrats. It's a year in which women candidates and women voters are more energized and are being more successful than ever in modern political history," said Roys.

The Democratic primary has hardly been the bareknuckle brawl one might expect from a big field in a divided state. But it has split money and endorsements over a broad range of candidates, leading the Democratic Governors Association to task an operative with building fundraising infrastructure for the eventual primary winner, to assure the nominee is able to compete with Walker's campaign machine. That has given an edge to Evers, who has been elected statewide three times since 2009.

"We had a gubernatorial primary that really didn't ever take off, and so for that reason Evers is a perfectly acceptable statewide figure who's probably going to win," said Democratic pollster Paul Maslin.

Evers has also embodied the anti-Walker mood, bashing Walker as "anti-education" and vowing to bring back funding for after school program and kindergarten in the next 2019 and 2021 budget.

"To beat Scott Walker we need a stronger vision for our future. Instead of investing a billion dollars in handouts to companies like Foxconn, I'm going to invest in our kids and our workers," Evers said in an ad. The narrator adds: "What's best for our kids is best for our state."

The biggest criticism aimed at Evers came from Matt Flynn, another primary candidate, who's argued that Evers, along with Mitchell and Roys, have run ineffective campaigns and would lose decisively against Walker in a general election matchup. Flynn has accused Evers of being a "politically naïve" candidate.

Mitchell, the labor leader, has rallied most of the other major Wisconsin unions to his side. He has run as a pragmatic liberal candidate who, as an African American, can appeal to minorities in the state and rally labor unions like no other candidate in the field.

But Roys, a former state representative, has highlighted her appeal to female voters with endorsements from Sen. Kirsten Gillibrand (D-N.Y.) and her experience as the executive director of the NARAL Pro-Choice Wisconsin. Roys ran a celebrated primary ad that featured her breastfeeding her child.

As the Democrats have scrapped for votes within their party, Walker has been preparing for the sprint to the finish in the general election, amassing \$4.8 million already. Since it's never been completely clear who he will face in the general election, Walker and his team have worked to highlight his policy accomplishments, framing him as an education-focused governor, while also bashing as many of the Democratic candidates as possible.

"Scott Walker has delivered results and traveled the state tirelessly to share his vision with the people of Wisconsin, and now he's built a campaign to win," Walker senior adviser Brian Reisinger said in a statement. "Tens of millions of dollars in big government special interest money is lining up to distort his record of reform, but the governor will continue to offer a conservative model for others by running on his accomplishments and vision to keep Wisconsin working for generations to come."

Once there's a Democratic nominee, the contrast between Walker and the Democrat will crystallize, said Republican strategist Mark Graul.

"The governor has been in sort of a vacuum. Either you're for Scott Walker or you're not for Scott Walker. And after Tuesday I think it'll be 'either you're for Scott Walker or whether it be Evers or Roys or Mitchell,'" Graul said. "So there will be a clear contrast of what people's choices are going to be in November."

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Handler of alleged spy Butina tied to suspicious U.S.-Russia exchange program [Back](#)

By Josh Meyer | 08/14/2018 05:18 AM EDT

Six years before he was exposed for allegedly managing a covert agent on U.S. soil, the Russian politician Alexander Torshin hosted young Americans visiting Moscow as part of two cultural exchange programs, including one that has drawn the FBI's scrutiny.

The gregarious Torshin regularly hosted U.S. visitors in the ornate chambers of Russia's parliament, where he gushed about his love of guns, bourbon and America.

"He was friendly, traveled to the U.S. often and enjoyed sharing his experiences of visiting small-town America," recalls one participant who went on two trips sponsored by the Russian government.

A [photo](#) posted on Facebook by one of the exchange programs shows several young visitors, including the student body president of Princeton University, meeting with Torshin over tea and cookies. (The FBI is not known to have investigated that program. None of the students, or Torshin, has been accused of wrongdoing.)

It wasn't until years later that Torshin would emerge as a major figure in the Trump-Russia saga — a man whom federal prosecutors say oversaw the accused Russian operative Mariia Butina's efforts to infiltrate Republican Party circles, including the National Rifle Association, to push them toward more pro-Russia policies. Torshin himself has attended annual NRA meetings dating back to at least 2011.

Many of the first-class student exchanges were officially organized by the Russian Cultural Center in Washington, D.C., and included top-flight meals, airfare and hotel accommodations. But the center's exchange programs abruptly stopped in fall 2013, after FBI counterintelligence agents urgently located dozens of trip participants and told them the program was an elaborate cover for a Washington-based Russian spy recruiting effort.

The agents said the Russians had prepared dossiers on some of the most promising participants, two of the former students told POLITICO. They pressed for every detail of the program, including whom the students met, where they went and what they discussed. They also said that Russian government official who oversaw the program — from a mansion about a mile and a half from the White House — was a suspected spy and would be kicked out of the U.S. soon.

"They said they had a great degree of confidence that the trips were part of an effort to spot and assess future intelligence assets," the participant, a former student government leader and Russian-language student, said of the three FBI agents who questioned him for more than an hour. "They told us it was standard Russian spycraft."

The FBI's interest in that cultural exchange program for young American political and business leaders was reported at the time, including a single, passing reference to Torshin. But the details of his involvement in the exchanges is a new revelation, as is his participation in the second exchange program for student body presidents at American universities dating back to at least 2010.

The new detail fills out the picture of the Russian lawmaker — now deputy governor of his country's central bank — who is a longtime close ally of Russian President Vladimir Putin. It shows that Torshin's collaboration with Butina was not his first connection to a Kremlin-linked effort to recruit Americans, and underscores that covert Russian spy operations in the U.S. have been underway for years, well before Trump launched his 2016 presidential bid.

While Torshin is not identified by name in the Butina court filings, several sources close to the investigation told POLITICO he is the Russian official described as directing Butina's alleged efforts to establish "unofficial lines of communications with U.S. politicians and political organizations" and "to send reports, seek direction, and receive orders in furtherance of the conspiracy" from Moscow.

His name has also shown up in investigations by Congress, the Federal Election Commission and, reportedly, special counsel Robert Mueller, into Russia's attempts to interfere with the 2016 presidential election. Those include examinations of possible attempts to establish a back channel between Trump and Putin, as well as possible efforts to illegally funnel Russian campaign contributions to Trump.

But his meetings with American students earlier in the decade, coupled with the government's recent allegations in the Butina case, suggest that Torshin may be a more significant Kremlin operative, and for a longer time, than was previously understood.

"All of that needs to be explored now through the lens that Torshin is a handler for Russian intelligence operatives," said Max Bergmann, a State Department senior international security adviser in the Obama administration. "The suspicion has to be raised, given what is laid out in [the Butina] indictment, that this wasn't his first rodeo."

Torshin did not respond to requests for an interview, but has denied any wrongdoing related to the current investigations. The 29-year-old Butina, indicted by federal prosecutors in July, has pleaded not guilty to charges of acting as an illegal foreign agent — including, according to prosecutors, by using sex as a means of influence.

U.S. government Kremlinologists have tracked Torshin, 64, for years, at least since his first known visit to the U.S. in 2004.

As a rising star in Putin's United Russia Political party, Torshin became an ally of the Russian leader. Putin tapped him that same year to run a sensitive parliamentary investigation investigating the horrific terrorist siege of a school in the Russian town of Beslan; many observers considered the resulting report a whitewash that absolved Russian security forces.

By 2010, Torshin had become a leading United Russia voice in the Russian Duma, a trusted Putin aide on sensitive security issues and, most likely, a go-to ally for important missions that didn't fall under his official portfolio, according to Bergmann and other former officials.

Later that year, for instance, Torshin helped orchestrate a secret spy swap between the U.S. and Russia after the FBI arrested 10 Russian operatives who had been living undercover in America for years.

Also in 2010, Torshin met with a delegation of 15 student body presidents from American universities as part of an exchange program paid for, and sponsored by, a Russian government agency focused on "youth affairs."

Because the trip was designed to mirror a popular and high-profile congressional exchange program, the students were given a briefing by top White House and congressional Russia hands, including Michael McFaul, then the National Security Council's director for Russian affairs and later the U.S. ambassador to Russia.

On the conference call, which has not previously been reported, McFaul and others gave the students background about Russia — but also cautioned them to be on guard about unusual overtures, including from their Russian student counterparts, said one participating student who, like others interviewed for this article, spoke on the condition of anonymity because they fear the trips risk could taint their professional reputations. McFaul told POLITICO he doesn't recall the discussion, but his role in the pre-trip briefing was referenced in some university news releases at the time.

Thanks to the briefing, "we went in with our eyes open" about how, in Russia, even a friendly interest in sharing information or establishing long-term relationships, might not be what it seemed, the former student said. He added that the trip went smoothly and nothing appeared suspicious about meetings with Torshin and at least two other Putin allies connected to the current Trump-Russia saga.

The next March, Torshin met with another set of students on an exchange program organized through the same youth affairs agency, in the meeting posted on Facebook.

And the year after that, he met with older groups of young leaders sponsored by the Russian Cultural Center, according to the participant on two trips and another person who went on one exchange.

By the fall of 2013, the FBI was well into an investigation into that exchange program, and had come to believe it was a front for developing young Americans as assets, the two participants said. The D.C. chapter is just one of more than 80 Russian cultural and science centers in various countries that U.S. intelligence officials suspect of being a front for all manner of spy operations.

The cultural center trips were popular among well-connected young Washingtonians interested in spending a week in an exotic foreign country with everything, down to the visa application fee, covered by the sponsor.

But the young former student government leader, who went on two trips in 2012 and 2013, said the organizers also "recruited on their own and made the determination who to select."

"They had a specific type of person they were looking for," he said. "Future leaders."

When the FBI began contacting trip participants in late September and October of 2013, many were shocked at what the agents were telling them. The agents began by reading from a printed card with details of about what they were investigating, including how they believed Russian Cultural Center Director Yuri Zaitsev was overseeing the alleged spy recruitment operation, according to the two participants, both of whom shared details of their trips and FBI interviews with POLITICO.

The discussions were "very frank," according to one of the FBI's top counterintelligence officials at the time. The official said the agents' interviews were exhaustive, in part because Russian intelligence operatives excel at being unobtrusive and patiently laying the groundwork for relationships they hope to develop over years or even decades.

In hindsight, the second trip participant said there were indications that the group's extremely generous Russian hosts might have had ulterior motives.

During his interview, that participant told the FBI agents that he thought it was "unusual" that the group had been granted such high-level meetings, including with top-ranking officials from the Ministry of Foreign

Affairs. The agents were particularly interested in any details about those meetings, he said, "and why are these kids meeting with these super high-level people."

"It seemed like they were trying to foster the exchange in a professional and productive way," the second participant said. But, he added: "If one person out of a group of 20 becomes an asset for them, then I suppose it's worth it for them to pay the whole group for the trip."

After hearing from the FBI, some students backed out of the next scheduled trip. The former participant on two trips, who remains active in other efforts to promote U.S.-Russian relations, said he believed the FBI investigation — reported at the time by Mother Jones and the Washington Post — effectively ended the Russian Cultural Center exchange programs.

In all, the FBI believes that at least 125 people went on cultural exchange programs involving Zaitsev and the Russian Cultural Center, including grad students, non-governmental organization staffers, political aides to national and state officials and business executives. The former FBI official declined to comment on whether agents have investigated other cultural exchange programs, such as those sponsored by Moscow's youth affairs agency, that also included Torshin.

As Butina and Torshin allegedly ramped up their U.S.-based influence operation ahead of the 2016 presidential election, Butina attended numerous events at the Russian Cultural Center. She even met with the organization's director for a dinner that was caught on camera by FBI officials, as POLITICO recently reported.

That director was a suspected Russian intelligence operative just like his predecessor, Zaitsev, and also left the U.S. following FBI investigations, federal authorities allege in Butina's case. Both men denied wrongdoing.

Robert Driscoll, Butina's lawyer, scoffed at the notion that Torshin is a master spy, and said his client's connections to the Russian Cultural Center were merely social. He added that in his frequent talks with Butina, she has described Torshin as someone who genuinely has come to love America — especially Nashville, where the two attended an Alan Jackson country music concert while there for the NRA convention.

"My impression of him from knowing Mariia is that she viewed him as a mentor and as someone who was helpful to her, with her gun rights group and personally," Driscoll said. "He helped raise her profile, and she got to travel and attend different events with him."

The participant on two of the cultural trips said Torshin was especially popular with U.S. visitors, in part because he seemed most interested in small talk and sharing his tales of traveling to the far corners of the United States.

"He was always eager and happy to meet with Americans," he said.

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Message

From: Bolen, Brittany [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31E872A691114372B5A6A88482A66E48-BOLEN, BRIT]
Sent: 6/8/2018 5:33:50 PM
To: Letendre, Daisy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b691cccca6264ae09df7054c7f1019cb-Letendre, D]
Subject: Fwd: APPROVAL ...

Sent from my iPhone

Begin forwarded message:

From: "Woods, Clint" <woods.clint@epa.gov>
Date: June 8, 2018 at 1:03:52 PM EDT
To: "Bolen, Brittany" <bolen.brittany@epa.gov>
Subject: Re: APPROVAL ...

Deliberative Process / Ex. 5

On Jun 8, 2018, at 1:02 PM, Bolen, Brittany <bolen.brittany@epa.gov> wrote:

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Begin forwarded message:

From: "Yamada, Richard (Yujiro)" <yamada.richard@epa.gov>
Date: June 8, 2018 at 12:08:09 PM EDT
To: "Jackson, Ryan" <jackson.ryan@epa.gov>
Cc: "Wilcox, Jahan" <wilcox.jahan@epa.gov>, "Bolen, Brittany" <bolen.brittany@epa.gov>, "Block, Molly" <block.molly@epa.gov>, "Abboud, Michael" <abboud.michael@epa.gov>
Subject: Re: APPROVAL ...

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Deliberative Process / Ex. 5

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On Jun 8, 2018, at 11:42 AM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

Deliberative Process / Ex. 5

Ryan Jackson
Chief of Staff
U.S. EPA

Personal Matters / Ex. 6

On Jun 8, 2018, at 11:35 AM, Wilcox, Jahan
<wilcox.jahan@epa.gov> wrote:

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Coral Davenport
[mailto:coral.davenport@nytimes.com]
Sent: Friday, June 8, 2018 8:56 AM
To: Wilcox, Jahan
<wilcox.jahan@epa.gov>
Subject: Re: moment to chat?

Hey, there - can you send? Tks!

Coral Davenport
Energy and Environment
Correspondent
The New York Times
Washington Bureau
1627 I St. NW, Suite 700
Washington, DC 20006
coral.davenport@nytimes.com
O 202-862-0359
C 703-618-0645
Twitter @CoralMDavenport

On Jun 7, 2018, at 7:34 PM, Wilcox,
Jahan <wilcox.jahan@epa.gov>
wrote:

Deliberative Process / Ex. 5

On Jun 7, 2018, at
5:19 PM, Coral
Davenport
<coral.davenport@nytimes.com> wrote:

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0645
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On Jun
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2018,
at 5:14
PM,
Wilcox
, Jahan
<wilco
x.jahan
@epa.
gov>
wrote:

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Message

From: Bolen, Brittany [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31E872A691114372B5A6A88482A66E48-BOLEN, BRIT]
Sent: 4/23/2018 12:51:19 PM
To: Nickerson, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=148f2c1c05b54f358e29c59b841664aa-Wnicker]
Subject: EPA Response to OIRA Data Access Comments - 4-22-18.docx
Attachments: EPA Response to OIRA Data Access Comments - 4-22-18.docx; ATT00001.txt

Bill,
As we discussed, attached the latest version of the document to be reviewed for formatting and boilerplate text conformity by your staff. Can I can those edits by this afternoon?
Thanks,
Brittany

Message

From: Bolen, Brittany [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31E872A691114372B5A6A88482A66E48-BOLEN, BRIT]
Sent: 6/8/2018 4:16:46 PM
To: Letendre, Daisy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b691cccca6264ae09df7054c7f1019cb-Letendre, D]
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Date: June 8, 2018 at 12:08:09 PM EDT
To: "Jackson, Ryan" <jackson.ryan@epa.gov>
Cc: "Wilcox, Jahan" <wilcox.jahan@epa.gov>, "Bolen, Brittany" <bolen.brittany@epa.gov>, "Block, Molly" <block.molly@epa.gov>, "Abboud, Michael" <abboud.michael@epa.gov>
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Ryan Jackson
Chief of Staff
U.S. EPA

Personal Matters / Ex. 6

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From: Coral Davenport [<mailto:coral.davenport@nytimes.com>]
Sent: Friday, June 8, 2018 8:56 AM
To: Wilcox, Jahan <wilcox.jahan@epa.gov>
Subject: Re: moment to chat?

Hey, there - can you send? Tks!

Coral Davenport
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C 703-618-0645
Twitter [@CoralMDavenport](https://twitter.com/CoralMDavenport)

On Jun 7, 2018, at 7:34 PM, Wilcox, Jahan
<wilcox.jahan@epa.gov> wrote:

Deliberative Process / Ex. 5

On Jun 7, 2018, at 5:19 PM, Coral Davenport
<coral.davenport@nytimes.com> wrote:

Awesome, thank you. If someone cld
get back to me tonight or tomoro by
like 10 am that would be perfect.
Story is currently slated to run over
the weekend.

Coral Davenport
Energy and Environment
Correspondent
The New York Times
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1627 I St. NW, Suite 700
Washington, DC 20006
coral.davenport@nytimes.com
O 202-862-0359
C 703-618-0645
Twitter @CoralMDavenport

On Jun 7, 2018, at 5:14 PM, Wilcox,
Jahan <wilcox.jahan@epa.gov>
wrote:

What is your
deadline? I am going
to flag this for our
policy shop and circle
back.

From: Davenport, Coral
[mailto:coral.davenport@nytimes.com]

Sent: Thursday, June 7,
2018 3:53 PM

To: Wilcox, Jahan
<wilcox.jahan@epa.gov>
>

Subject: moment to
chat?

Hi, Jahan,

I'm working on a
story looking into
concerns by the
scientific community
that the Trump

administration is marginalizing and dismissing science. The story looks at examples from across the federal government, but many of them are at the E.P.A.

What are the administrator's responses to the following questions on this? Looking for fresh reax or would welcome your pointing me to specific remarks he's made on these. Overall, interested in his remarks on the allegation that he has reduced or ignored the role of science at the agency.

- Scientists are concerned that Mr. Pruitt has made multiple public statements on climate change that are at odds with decades of research on climate change, including research by the E.P.A.'s own scientists. Mr. Pruitt has said that carbon dioxide is not a primary contributor to global warming, and that scientists don't know how much humans contribute to global warming -- both statements that have been contested by the scientific community. What's his response?

- Critics say the proposed new "secret science" rule would ultimately have the impact of reducing the amount of scientific evidence that is used to formulate regulations that affect human health. Does this concern him?

- Can he speak to the criticism that in his efforts to change the Scientific Advisory Board, he has reduced the role of academic science and replaced it with industry-funded scientists? And that even with its new composition, the SAB has proposed re-examining the scientific basis for some of his proposed rule-makings?

- Critics say Pruitt's NAAQs memo to the CASAC, which would order the committee to take economic impacts of regulations into account, is both an effort to skirt provisions of the Clean Air Act which require the committee to focus on the public health impacts of regulations, and could lead to looser pollution rules that are not based in scientific evidence on the impact of certain

pollutants on human
health.

Can you send answers
to these and give a
call to chat about the
story?

Best,

Coral

--

Coral Davenport
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Environment
Correspondent
The New York Times
Washington Bureau
1627 I St. NW, Suite
700
Washington, DC
20006
coral.davenport@nytimes.com
O 202-862-0359
C 703-618-0645
Twitter
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Message

From: Bolen, Brittany [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31E872A691114372B5A6A88482A66E48-BOLEN, BRIT]
Sent: 4/18/2018 11:22:55 PM
To: 'William Lovell (lovell.william@epa.gov)' [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3b150bb6ade640f68d744fadcb83a73e-Lovell, Wil]
Subject: FW: Updated Data Access Draft
Attachments: Data Access Draft - EPA - 4-17-18 - CLEAN.docx; Data Access Draft - EPA - 4-17-18 - TRACK CHANGES VERSION.docx

From: Woods, Clint
Sent: Tuesday, April 17, 2018 12:25 PM
To: Bolen, Brittany <bolen.brittany@epa.gov>
Cc: Schwab, Justin <Schwab.Justin@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>
Subject: Updated Data Access Draft

Attached version addressed comments from SP, OMB, and you all - Note that one has changes tracked and the other is clean. Thanks!

Clint Woods
Deputy Assistant Administrator
Office of Air and Radiation, U.S. EPA

Personal Matters / Ex. 6

Message

From: Bolen, Brittany [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31E872A691114372B5A6A88482A66E48-BOLEN, BRIT]
Sent: 4/18/2018 8:28:25 PM
To: Nickerson, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=148f2c1c05b54f358e29c59b841664aa-Wnicker]
Subject: Data Access FRN
Attachments: Data Access Draft - EPA - 4-17-18 - CLEAN.DOCX

Bill –

I'll be calling you shortly to discuss this, but in the meantime can you please work towards uploading this into ROCIS? We'll also need to craft an EO 13771 waiver request.

Thanks,
Brittany

Message

From: Bolen, Brittany [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31E872A691114372B5A6A88482A66E48-BOLEN, BRIT]
Sent: 4/26/2018 2:33:42 PM
To: Liz Bowman (bowman.liz@epa.gov) [bowman.liz@epa.gov]
Subject: FW: SIGNED: Strengthening Transparency in Regulatory Science

From: Bolen, Brittany
Sent: Thursday, April 26, 2018 10:24 AM
To: Nickerson, William <Nickerson.William@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; 'Daisy Letendre (letendre.daisy@epa.gov)' <letendre.daisy@epa.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>; Konkus, John <konkus.john@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>
Subject: RE: SIGNED: Strengthening Transparency in Regulatory Science

Hello Nancy - as you may have seen, the point of contact for this proposal is ORD. I do not know the ORD communications staff, but copying Richard here for awareness.

Thank you,

Brittany

From: Grantham, Nancy
Sent: Thursday, April 26, 2018 10:19 AM
To: Bowman, Liz <Bowman.Liz@epa.gov>
Cc: Block, Molly <block.molly@epa.gov>; Letendre, Daisy <letendre.daisy@epa.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>; Konkus, John <konkus.john@epa.gov>; Nickerson, William <Nickerson.William@epa.gov>; Germann, Sandy <Germann.Sandy@epa.gov>
Subject: Re: SIGNED: Strengthening Transparency in Regulatory Science

Op - is there a suggested place on your pages? Thx ng

Sent from my iPhone

On Apr 26, 2018, at 10:15 AM, Bowman, Liz <Bowman.Liz@epa.gov> wrote:

Yes, that would be great. Can we put it on the appropriate place on the website?

From: Grantham, Nancy
Sent: Thursday, April 26, 2018 10:14 AM
To: Block, Molly <block.molly@epa.gov>; Letendre, Daisy <letendre.daisy@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>; Konkus, John <konkus.john@epa.gov>
Cc: Nickerson, William <Nickerson.William@epa.gov>; Germann, Sandy <Germann.Sandy@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>
Subject: Fwd: SIGNED: Strengthening Transparency in Regulatory Science

Folks are looking for a link on line for this - and op is saying we don't have yet - do we want to post this pdf someplace so we can link Tom it?

Thx ng

Sent from my iPhone

Begin forwarded message:

From: "Johnson, Laura-S" <Johnson.Laura-S@epa.gov>
To: "Jackson, Ryan" <jackson.ryan@epa.gov>, "Bowman, Liz" <Bowman.Liz@epa.gov>, "Lyons, Troy" <lyons.troy@epa.gov>, "Bennett, Tate" <Bennett.Tate@epa.gov>, "White, Elizabeth" <white.elizabeth@epa.gov>, "Bodine, Susan" <bodine.susan@epa.gov>, "Minoli, Kevin" <Minoli.Kevin@epa.gov>, "Leopold, Matt" <Leopold.Matt@epa.gov>, "Bowman, Liz" <Bowman.Liz@epa.gov>, "Wheeler, Andrew" <wheeler.andrew@epa.gov>, "Bolen, Brittany" <bolen.brittany@epa.gov>, "Orme-Zavaleta, Jennifer" <Orme-Zavaleta.Jennifer@epa.gov>, "Yamada, Richard (Yujiro)" <yamada.richard@epa.gov>
Cc: "Wooden-Aguilar, Helena" <Wooden-Aguilar.Helena@epa.gov>, "Grantham, Nancy" <Grantham.Nancy@epa.gov>, "Richardson, RobinH" <Richardson.RobinH@epa.gov>, "Hope, Brian" <Hope.Brian@epa.gov>, "Fonseca, Silvina" <Fonseca.Silvina@epa.gov>, "Hewitt, James" <hewitt.james@epa.gov>, "Abboud, Michael" <abboud.michael@epa.gov>, "Wilcox, Jahan" <wilcox.jahan@epa.gov>, "Gaines, Cynthia" <Gaines.Cynthia@epa.gov>, "Nickerson, William" <Nickerson.William@epa.gov>, "Lovell, Will (William)" <lovell.william@epa.gov>, "Kime, Robin" <Kime.Robin@epa.gov>, "Maguire, Kelly" <Maguire.Kelly@epa.gov>, "Blackburn, Elizabeth" <Blackburn.Elizabeth@epa.gov>
Subject: SIGNED: Strengthening Transparency in Regulatory Science

Good afternoon

Today, the Administrator signed the proposed rule "Strengthening Transparency in Regulatory Science."

This proposed regulation is intended to strengthen the transparency of EPA regulatory science. The proposed regulation provides that when EPA develops regulations, including regulations for which the public is likely to bear the cost of compliance, with regard to those scientific studies that are pivotal to the action being taken, EPA should ensure that the data underlying those are publicly available in a manner sufficient for independent validation.

In this notice, EPA solicits comment on this proposal and how it can best be promulgated and implemented in light of existing law and prior Federal policies that already require increasing public access to data and influential scientific information used to inform federal regulation.

Attached is the signed and dated proposed rule. For your convenience, please go to p. 19 for the Administrator's signature.

Please contact me if you have any questions.

Sincerely,
Laura

Laura S. Johnson | U.S. Environmental Protection Agency
Special Assistant, Office of the Administrator | Cell (202) 819-4941
Office (202) 566-1273 | johnson.laura-s@epa.gov

Message

From: Bolen, Brittany [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31E872A691114372B5A6A88482A66E48-BOLEN, BRIT]
Sent: 3/21/2018 3:09:18 PM
To: Bowman, Liz [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c3d4d94d3e4b4b1f80904056703ebc80-Bowman, Eli]
Subject: RE: For Approval: 'Secret Science' Statement

Deliberative Process / Ex. 5

From: Bowman, Liz
Sent: Tuesday, March 20, 2018 1:11 PM
To: Yamada, Richard (Yujiro) <yamada.richard@epa.gov>
Cc: Baptist, Erik <Baptist.Erik@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Woods, Clint <woods.clint@epa.gov>
Subject: RE: For Approval: 'Secret Science' Statement

Deliberative Process / Ex. 5

From: Yamada, Richard (Yujiro)
Sent: Tuesday, March 20, 2018 12:50 PM
To: Bowman, Liz <Bowman.Liz@epa.gov>
Cc: Baptist, Erik <Baptist.Erik@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Woods, Clint <woods.clint@epa.gov>
Subject: Re: For Approval: 'Secret Science' Statement

Deliberative Process / Ex. 5

Sent from my iPhone

On Mar 20, 2018, at 11:44 AM, Bowman, Liz <Bowman.Liz@epa.gov> wrote:

In light of Administrator Pruitt's recent comments about an upcoming announcement on science transparency, we are getting a lot of requests for comment. Below, please find a suggested response:

Deliberative Process / Ex. 5

Liz Bowman
U.S. Environmental Protection Agency (EPA)
Office: 202-564-3293

Message

From: Bolen, Brittany [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31E872A691114372B5A6A88482A66E48-BOLEN, BRIT]
Sent: 3/21/2018 3:00:18 PM
To: Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]
Subject: Honest Act

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

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

“(A) the best available science;

“(B) specifically identified; and

“(C) publicly available online in a manner that is sufficient for independent analysis and substantial reproduction of research results, except that any personally identifiable information, trade secrets, or commercial or financial information obtained from a person and privileged or confidential, shall be redacted prior to public availability.

“(2) The redacted information described in paragraph (1)(C) shall be disclosed to a person only after such person signs a written confidentiality agreement with the Administrator, subject to guidance to be developed by the Administrator.

“(3) Nothing in the subsection shall be construed as—

“(A) requiring the Administrator to disseminate scientific and technical information;

“(B) superseding any nondiscretionary statutory requirement; or

“(C) requiring the Administrator to repeal, reissue, or modify a regulation in effect on the date of enactment of the Honest and Open New EPA Science Treatment Act of 2017.

“(4) In this subsection—

“(A) the term ‘covered action’ means a risk, exposure, or hazard assessment, criteria document, standard, limitation, regulation, regulatory impact analysis, or guidance; and

“(B) the term ‘scientific and technical information’ includes—

“(i) materials, data, and associated protocols necessary to understand, assess, and extend conclusions;

“(ii) computer codes and models involved in the creation and analysis of such information;

“(iii) recorded factual materials; and

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

“(5) The Administrator shall carry out this subsection in a manner that does not exceed \$1,000,000 per fiscal year, to be derived from amounts otherwise authorized to be appropriated.”.

Brittany Bolen

Deputy Associate Administrator, Office of Policy

U.S. Environmental Protection Agency

(202) 564-3291

Bolen.Brittany@epa.gov

Message

From: Bolen, Brittany [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31E872A691114372B5A6A88482A66E48-BOLEN, BRIT]
Sent: 3/19/2018 9:01:05 PM
To: 'William Lovell (lovell.william@epa.gov)' [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3b150bb6ade640f68d744fadcb83a73e-Lovell, Wil]

Attachments: **Deliberative Process / Ex. 5**

Brittany Bolen

Deputy Associate Administrator, Office of Policy

U.S. Environmental Protection Agency

(202) 564-3291

Bolen.Brittany@epa.gov

Briefing: Update on Data Transparency Guidelines
Tuesday, March 20, 2018
10:45 – 11:30am – Administrator's Office

Update

Following our last briefing, staff made edits to the draft memo and transitioned the document into a Federal Register notice for public comment. The draft notice was submitted to OMB for review last Wednesday. Staff received OMB's initial feedback on a call yesterday afternoon. An updated version, which incorporates some edits from the OMB call, is attached for your review.

Key Provisions

Next Steps

In coordination with OPA, OPE, and OCIR, we are planning a signing ceremony on April 12.

Attendees

- Ryan Jackson
- Brittany Bolen
- Richard Yamada
- Nancy Beck
- Clint Woods
- Justin Schwab

Message

From: Bolen, Brittany [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31E872A691114372B5A6A88482A66E48-BOLEN, BRIT]
Sent: 3/9/2018 9:44:03 PM
To: Lovell, Will (William) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3b150bb6ade640f68d744fadcb83a73e-Lovell, Will]
Subject: Fwd: ATTORNEY-CLIENT, ATTORNEY WORK PRODUCT
Attachments: OGC comments (legal) REDLINE 3.8.18 ry edits cw bb.docx; ATT00001.htm

Can you please print a clean and marked up copy of this and make 7 copies of each for my 5pm?

Sent from my iPhone

Begin forwarded message:

From: "Bolen, Brittany" <bolen.brittany@epa.gov>
Date: March 9, 2018 at 3:10:09 PM EST
To: "Jackson, Ryan" <jackson.ryan@epa.gov>, "Yamada, Richard (Yujiro)" <yamada.richard@epa.gov>, "Schwab, Justin" <schwab.justin@epa.gov>, "Leopold, Matt" <Leopold.Matt@epa.gov>
Cc: "Beck, Nancy" <beck.nancy@epa.gov>, "Feeley, Drew (Robert)" <Feeley.Drew@epa.gov>, "Woods, Clint" <woods.Clint@epa.gov>

Attorney Work Product / Ex. 5

From: Jackson, Ryan
Sent: Wednesday, March 7, 2018 6:30 PM
To: Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Leopold, Matt <Leopold.Matt@epa.gov>
Cc: Bolen, Brittany <bolen.brittany@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>; Feeley, Drew (Robert) <Feeley.Drew@epa.gov>; Woods, Clint <woods.clint@epa.gov>

Attorney Work Product / Ex. 5

From: Yamada, Richard (Yujiro)
Sent: Wednesday, March 7, 2018 5:49 PM
To: Schwab, Justin <Schwab.Justin@epa.gov>; Leopold, Matt <Leopold.Matt@epa.gov>
Cc: Bolen, Brittany <bolen.brittany@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>; Feeley, Drew (Robert) <Feeley.Drew@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Woods, Clint

Attorney Work Product / Ex. 5

Richard Yamada
Deputy Assistant Administrator
Office of Research and Development
U.S. Environmental Protection Agency

Personal Matters / Ex. 6

yamada.richard@epa.gov

Appointment

From: Bolen, Brittany [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31E872A691114372B5A6A88482A66E48-BOLEN, BRIT]
Sent: 2/9/2018 7:01:31 PM
To: Ringel, Aaron [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1654BDC951284A6D899A418A89FB0ABF-RINGEL, AAR]
Subject: Accepted: House Science Committee/HONEST Act Reforms
Location: 3442WJCN

Start: 2/13/2018 3:30:00 PM
End: 2/13/2018 4:00:00 PM

Recurrence: (none)

Message

From: Bolen, Brittany [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31E872A691114372B5A6A88482A66E48-BOLEN, BRIT]
Sent: 4/16/2018 7:11:14 PM
To: Clint Woods (woods.Clint@epa.gov) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]
Subject: FW: DRAFT Science Transparency op-ed
Attachments: DRAFT science transparency.docx

From: Beach, Christopher
Sent: Monday, April 16, 2018 2:43 PM
To: Bolen, Brittany <bolen.brittany@epa.gov>; Lovell, Will (William) <lovell.william@epa.gov>
Subject: DRAFT Science Transparency op-ed

Deliberative Process / Ex. 5

Thanks!
Chris

Appointment

From: Bolen, Brittany [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31E872A691114372B5A6A88482A66E48-BOLEN, BRIT]
Sent: 1/24/2018 7:48:17 PM
To: Gomez, Laura [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=575BA24FC19D429C8302A05102353238-LGOMEZ]
Subject: Tentative: CONFIRMED: EPA PRE-INTERNAL CALL : HONEST ACT IMPLEMENTATION
Location: DIAL IN: **Personal Matters / Ex. 6**
Start: 1/26/2018 7:00:00 PM
End: 1/26/2018 8:30:00 PM

Recurrence: (none)

From: Bolen, Brittany [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31E872A691114372B5A6A88482A66E48-BOLEN, BRIT]
Sent: 4/24/2018 7:17:44 PM
To: Palmieri, Rosario A. EOP/OMB [rpalmieri@omb.eop.gov]
Subject: FW: EPA Administrator Pruitt Proposes Rule To Strengthen Science Used In EPA Regulations

From: EPA Press Office [mailto:press=epa.gov@cmail19.com] **On Behalf Of** EPA Press Office
Sent: Tuesday, April 24, 2018 2:30 PM
To: Bolen, Brittany <bolen.brittany@epa.gov>
Subject: EPA Administrator Pruitt Proposes Rule To Strengthen Science Used In EPA Regulations



U.S. ENVIRONMENTAL PROTECTION AGENCY
NEWS RELEASE
WWW.EPA.GOV/NEWSROOM

EPA Administrator Pruitt Proposes Rule To Strengthen Science Used In EPA Regulations

WASHINGTON (April 24, 2018) - Today, U.S. Environmental Protection Agency (EPA) Administrator Scott Pruitt signed a proposed rule to strengthen the science used in regulations issued by EPA. The rule will ensure that the regulatory science underlying Agency actions is fully transparent, and that underlying scientific information is publicly available in a manner sufficient for independent validation.

“The era of secret science at EPA is coming to an end,” **said EPA Administrator Scott Pruitt.** “The ability to test, authenticate, and reproduce scientific findings is vital for the integrity of rulemaking process. Americans deserve to assess the legitimacy of the science underpinning EPA decisions that may impact their lives.”

This proposed rule is in line with the scientific community’s moves toward increased data sharing to address the “replication crisis”—a growing recognition that a significant proportion of published research may not be reproducible. The proposal is consistent with data access requirements for major scientific journals like *Science*, *Nature*, and *Proceedings of the National Academy of Sciences* as well as recommendations from the Bipartisan Policy Center’s *Science for Policy Project* and the Administrative Conference of the United States’ *Science in the Administrative Process Project*.

The proposed rule builds upon President Trump's executive orders on regulatory reform and energy independence:

- ✧ **Executive Order 13777**, issued in March 2017, provides that regulatory reform efforts shall attempt to identify “those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard of reproducibility.”
- ✧ **Executive Order 13783**, also issued in March 2017, provides that “It is the policy of the United States that necessary and appropriate environmental regulations comply with the law, are of greater benefit than cost, when permissible, achieve environmental improvements for the American people, and are developed through transparent processes that employ the best available peer-reviewed science and economics.”

Chairman Lamar Smith (R-TX): “Administrator Pruitt’s announcement ensures that data will be secret no more. For too long, the EPA has issued rules and regulations based on data that has been withheld from the American people. It’s likely that in the past, the data did not justify all regulations. Today, Administrator Pruitt rightfully is changing business as usual and putting a stop to hidden agendas.”

Senator Mike Rounds (R-SD): “Sound, reliable science is vital to helping us make important policy decisions that impact the health of American families and their livelihoods. Inserting new levels of transparency in the EPA rulemaking process will help make the agency more accountable to the American people and help everyone understand the impact of EPA’s decisions. Today’s directive is a significant step toward making sure these decisions are not made behind closed doors with information accessible only to those writing the regulations, but rather in the full view of those who will be affected.”

Dr. Edward J. Calabrese, Professor, Environmental Health Sciences, University of Massachusetts: “The proposal represents a major scientific step forward by recognizing the widespread occurrence of non-linear dose responses in toxicology and epidemiology for chemicals and radiation and the need to incorporate such data in the risk assessment process.”

Dr. Louis Anthony (Tony) Cox, President, Cox Associates; Member, National Academy of Engineering; and Editor-in-Chief of the Journal *Risk Analysis*: “I believe that transparency and independent reproducibility of analyses and conclusions are bedrock principles of sound science. Some commentators have expressed concerns that making the data behind policy conclusions and recommendations accessible and transparent might threaten the privacy of individuals. But this concern can be fully met by applying current privacy-protection techniques for data analysis. These techniques have been developed and used successfully for years at the Census Bureau and elsewhere. Thus, we can have the scientific benefits of accessible data while protecting individual privacy.”

Dr. Jason Scott Johnston, Director, Olin Law and Economics Program, University of Virginia School of Law: “EPA’s proposed rule, Strengthening Transparency in Regulatory Science, is badly needed “Best practice among peer-edited scientific journals is to require that data and statistical routines used in published papers be posted online and/or made publicly available. To apply the same standards to research that EPA says justify regulations affecting billions of dollars in economic activity and millions of human lives is essential for those regulations to truly be scientifically based.”

Bruno Pigott, Commissioner of the Indiana Department of Environmental Management (IDEM): “IDEM supports transparency in rulemaking. Good, sound science leads to better regulations.”

Dr. George Wolff, Principal Scientist, Air Improvement Resource, Inc., and former Chairman of EPA’s Clean Air Scientific Advisory Committee (1992 - 1996): “In the development of regulations based on environmental studies, numerous subjective assumptions and choices must be made regarding the selection of data and models that have a profound impact on the strength of any statistical associations and even whether the associations are positive or negative. The appropriateness of the assumptions and choices are not adequately evaluated in the standard peer review process. That is why it is essential that the data and models be placed in the public domain for a more rigorous evaluation by qualified experts. The proposed regulation, Strengthening Transparency in Regulatory Science, will provide an opportunity for such evaluations.”

###

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Washington, D.C. 20004



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Message

From: Bolen, Brittany [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31E872A691114372B5A6A88482A66E48-BOLEN, BRIT]
Sent: 1/23/2018 10:36:57 PM
To: Lovell, Will (William) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3b150bb6ade640f68d744fadcb83a73e-Lovell, Wil]
Subject: Fwd: Declined: EPA PRE-INTERNAL CALL : HONEST ACT IMPLEMENTATION

Sent from my iPhone

Begin forwarded message:

From: "Ringel, Aaron" <ringel.aaron@epa.gov>
Date: January 23, 2018 at 5:28:16 PM EST
To: "Schwab, Justin" <Schwab.Justin@epa.gov>
Cc: "Gomez, Laura" <Gomez.Laura@epa.gov>, "Yamada, Richard (Yujiro)" <yamada.richard@epa.gov>, "Bolen, Brittany" <bolen.brittany@epa.gov>
Subject: Re: Declined: EPA PRE-INTERNAL CALL : HONEST ACT IMPLEMENTATION

Can we move this to the afternoon?

Sent from my iPhone

On Jan 23, 2018, at 4:26 PM, Schwab, Justin <Schwab.Justin@epa.gov> wrote:

I'm booked for 2 air briefings with OAR during this time.

<meeting.ics>

Message

From: Bolen, Brittany [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31E872A691114372B5A6A88482A66E48-BOLEN, BRIT]
Sent: 4/30/2018 3:58:07 PM
To: Clint Woods (woods.Clint@epa.gov) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]
Subject: FW: Cooler Heads Coalition next meeting reminder and EPA's secret science reforms

From: Myron Ebell [mailto:Myron.Ebell@cei.org]
Sent: Monday, April 30, 2018 11:14 AM
To: Myron Ebell <Myron.Ebell@cei.org>
Subject: Cooler Heads Coalition next meeting reminder and EPA's secret science reforms

The Cooler Heads Coalition will hold its May strategy meeting on Monday, 14th May, beginning at 12 noon at CEI, 1310 L Street, N. W., Seventh Floor. Please e-mail or ring me at Personal Matters / Ex. 6 with questions or agenda items.

EPA's Scientific Transparency Reforms:

EPA Administrator Scott Pruitt on 24th April announced a proposed rule to end the use of secret science (and make other science reforms) in EPA's regulatory process. The press release is [here: https://www.epa.gov/newsreleases/epa-administrator-pruitt-proposes-rule-strengthen-science-used-epa-regulations](https://www.epa.gov/newsreleases/epa-administrator-pruitt-proposes-rule-strengthen-science-used-epa-regulations). The link to the proposed rule is at <https://www.epa.gov/newsroom/proposed-rule-strengthening-transparency-regulatory-science>.

One week before Pruitt's announcement, the National Association of Scholars published an important study by David Randall and Christopher Welser on ***The Irreproducibility Crisis of Modern Science***. Here is the link: https://www.nas.org/projects/irreproducibility_report.

Pruitt deserves lots of credit and so do many people who have worked for decades for scientific transparency. I'll mention only two here: Steve Milloy of JunkScience.com and Representative Lamar Smith, Chairman of the House Science, Space, and Technology Committee. Steve, a charter member of the Cooler Heads Coalition, has ongoing coverage of the controversy at JunkScience.com. Here is Chairman Smith's statement: <https://science.house.gov/news/press-releases/smith-remarks-administrator-pruitt-s-scientific-transparency-announcement>.

The blowback from environmental pressure groups and the junk science community has been amusing to watch. They are all for transparency and reproducibility, but not for requiring it when using junk science to justify costly new rules. Here are some examples: <http://thehill.com/opinion/energy-environment/384898-epa-proposal-will-hobble-good-science-and-harm-american-families>
<https://s3.amazonaws.com/ucs-documents/science-and-democracy/secret-science-letter-4-23-2018.pdf>;

<https://www.popsoci.com/epa-transparency-public-health-data>

Here are three news stories that toe the party line:

https://www.washingtonpost.com/news/energy-environment/wp/2018/04/24/pruitt-to-unveil-controversial-transparency-rule-limiting-what-research-epa-can-use/?noredirect=on&utm_term=.29e5569ee37d

https://www.huffingtonpost.com/entry/pruitt-epa-transparency-rule-science_us_5adf44a8e4b07560f395fb16

<http://www.latimes.com/politics/la-na-pol-epa-science-20180424-story.html>

Although it isn't easy to argue against scientific transparency, the campaign against EPA's reforms is going to be intense. We will need to gear up to counter the mis-information from the environmental pressure groups and spread by the mainstream media. Angela Logomasini, my CEI colleague, does a good job in this article published on the Hill blog:

<http://thehill.com/opinion/energy-environment/385411-pruitts-rule-ending-secret-science-is-pro-science-pro-consumer>

Myron Ebell
Director, Center for Energy and Environment
Competitive Enterprise Institute
1310 L Street, N. W., Seventh Floor
Washington, DC 20005, USA

Personal Matters / Ex. 6

Stop continental drift!

Message

From: Bolen, Brittany [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31E872A691114372B5A6A88482A66E48-BOLEN, BRIT]
Sent: 2/22/2018 11:04:17 PM
To: Lovell, Will (William) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3b150bb6ade640f68d744fadcb83a73e-Lovell, Wil]
Subject: Plz print 5 copies and bring to RJ office
Attachments: data_access_memo V6.docx; ATT00001.htm

Sent from my iPhone

Begin forwarded message:

From: "Feeley, Drew (Robert)" <Feeley.Drew@epa.gov>
Date: February 22, 2018 at 5:40:55 PM EST
To: "Yamada, Richard (Yujiro)" <yamada.richard@epa.gov>
Cc: "Bolen, Brittany" <bolen.brittany@epa.gov>
Subject: RE: here's latest draft

Thanks, Richard. See attached.

From: Yamada, Richard (Yujiro)
Sent: Thursday, February 22, 2018 5:09 PM
To: Feeley, Drew (Robert) <Feeley.Drew@epa.gov>
Subject: here's latest draft

Deliberative Process / Ex. 5

Could you give a look, and then we can send to Attorney Client / Ex. 5

Richard Yamada
Deputy Assistant Administrator
Office of Research and Development
U.S. Environmental Protection Agency

Personal Matters / Ex. 6

yamada.richard@epa.gov

Message

From: Bolen, Brittany [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31E872A691114372B5A6A88482A66E48-BOLEN, BRIT]
Sent: 4/24/2018 1:19:47 PM
To: Maguire, Kelly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8eee33b1dd63484488b0b3e7995646cd-KMaguire]
Subject: FW: Time sensitive action today
Attachments: Data Access Draft 4-23-18_ OIRA Conclusion Version Clean.docx; ATT00001.htm

Importance: High

Hi Kelly,
I understand Bill is not in the office yet. Can you please see that this work is getting done? I believe Caryn was assigned this.
Thanks,
Brittany

From: Bolen, Brittany
Sent: Tuesday, April 24, 2018 8:24 AM
To: Nickerson, William <Nickerson.William@epa.gov>
Subject: Time sensitive action today

Morning Bill,
Can your team please take those **Deliberative Process / Ex. 5**
Deliberative Process / Ex. 5 We want to get those
edits and upload into ROCIS before noon as we'll need the copy ready for signature by 1:45pm.
Let me know if you have any questions.
Thanks,
Brittany

Begin forwarded message:

From: "Laity, Jim A. EOP/OMB" <**Personal Matters / Ex. 6**>
Date: April 23, 2018 at 11:03:41 PM EDT
To: "Woods, Clint" <woods.clint@epa.gov>, "Bolen, Brittany" <bolen.brittany@epa.gov>, "Beck, Nancy" <Beck.Nancy@epa.gov>, "Yamada, Richard (Yujiro)" <yamada.richard@epa.gov>, "Leopold, Matt" <Leopold.Matt@epa.gov>, "Schwab, Justin" <Schwab.Justin@epa.gov>, "Nickerson, William" <Nickerson.William@epa.gov>
Cc: "Kim, Jim H. EOP/OMB" <**Personal Matters / Ex. 6**> "Palmieri, Rosario A. EOP/OMB" <**Personal Matters / Ex. 6**> "Schwab, Margo EOP/OMB" <**Personal Matters / Ex. 6**> "Key, Mike J. EOP/OMB" <**Personal Matters / Ex. 6**> "Ancini, Dominic J. EOP/OMB" <**Personal Matters / Ex. 6**>, "Rao, Neomi J. EOP/OMB" <**Personal Matters / Ex. 6**>

Subject: OIRA Concluding Review of EPA NPRM entitled Strengthening Transparency in Regulatory Science

Clint: OIRA is concluding review of the attached final draft of the NPRM entitled "Strengthening Transparency in Regulatory Science" with a finding of consistent with change. Thank you for working to address interagency comments on a tight schedule. This email constitutes the "official" conclusion of our review; please upload a clean formatted version into ROCIS at your convenience tomorrow so that

we can record the conclusion of review in our recordkeeping system; you do not need to wait for this step to be completed to sign and release to the public.

Please call if you have any questions.

Jim Laity
Chief, Natural Resources and Environment Branch
Office of Information and Regulatory Affairs
Office of Management and Budget

Personal Matters / Ex. 6

PS: **Deliberative Process / Ex. 5**
Deliberative Process / Ex. 5
Deliberative Process / Ex. 5 This version will be available to the public once the NPRM is published, pursuant to our disclosure procedures under EO 12866.

Appointment

From: Bolen, Brittany [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31E872A691114372B5A6A88482A66E48-BOLEN, BRIT]
Sent: 1/18/2018 4:30:13 PM
To: Gomez, Laura [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=575BA24FC19D429C8302A05102353238-LGOMEZ]
Subject: Tentative: PENDING: EPA PRE-PLANNING CALL: HONEST ACT -BRIEFING WITH HSST
Location: DIAL IN: **Personal Matters / Ex. 6**
Start: 1/19/2018 4:00:00 PM
End: 1/19/2018 5:00:00 PM

Recurrence: (none)

Appointment

From: Bolen, Brittany [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31E872A691114372B5A6A88482A66E48-BOLEN, BRIT]
Sent: 2/13/2018 3:05:59 PM
To: Ringel, Aaron [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1654BDC951284A6D899A418A89FB0ABF-RINGEL, AAR]
Subject: Accepted: House Science Committee/HONEST Act Reforms
Location: 3442WJCN
Start: 2/13/2018 5:00:00 PM
End: 2/13/2018 5:30:00 PM
Recurrence: (none)

Message

From: Bolen, Brittany [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31E872A691114372B5A6A88482A66E48-BOLEN, BRIT]
Sent: 4/23/2018 9:43:19 PM
To: Clint Woods (woods.Clint@epa.gov) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]
Subject: FW: Letter from 985 scientists to Administrator Pruitt
Attachments: Letter from 985 scientists to Administrator Scott Pruitt opposing policy to restrict science.pdf

From: Gretchen Goldman [mailto:GGoldman@ucsusa.org]
Sent: Monday, April 23, 2018 5:28 PM
To: Pruitt, Scott <Pruitt.Scott@epa.gov>; adm14pruitt@epa.gov
Cc: Leopold, Matt <Leopold.Matt@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Orme-Zavaleta, Jennifer <Orme-Zavaleta.Jennifer@epa.gov>; Neomi.Rao@omb.eop.gov <IMCEAINVALID-Neomi+2ERao+40omb+2Eeop+2Egov@namprd03.prod.outlook.com>; Yogin Kothari <YKothari@ucsusa.org>; Emily Berman <EBerman@ucsusa.org>
Subject: Letter from 985 scientists to Administrator Pruitt

Dear Administrator Pruitt,

Please find the attached letter from 985 scientists and technical experts urging you to stop any plans to restrict the use of best available science at the Environmental Protection Agency.

Best,

Gretchen T. Goldman, Ph.D.
Research Director, The Center for Science and Democracy
Office: 202-331-6942
Union of Concerned Scientists | 1825 K Street NW, Suite 800 | Washington, DC 20006
Subscribe to my [blog](#) | Follow me on [Twitter](#)

April 23, 2018

The Honorable E. Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Re: Don't Restrict EPA's Ability to Rely on Science

Dear Administrator Pruitt,

As scientists and technical experts, we urge you to cease any plans to restrict the types of science that the Environmental Protection Agency (EPA) can use in regulatory decisionmaking. EPA can only adequately protect our air and water and keep us safe from harmful chemicals if it takes full advantage of the wealth of scientific research that is available to the agency.

Recent news reports¹ suggest that you plan to adopt restrictions on research similar to those contained in two pieces of proposed legislation (the Secret Science Reform Act and the HONEST Act), which have both repeatedly failed to pass Congress for several years for good reason.² Multiple major scientific societies repeatedly came out strongly against the legislation at the time. "We urge caution in setting laws that submerge science beneath politics," they wrote.³

Proponents for these radical restrictions purport to raise two sets of concerns: reproducibility and transparency. In reality, these are phony issues that weaponize 'transparency' to facilitate political interference in science-based decisionmaking, rather than genuinely address either. The result will be policies and practices that will ignore significant risks to the health of every American.

First, many public health studies cannot be replicated, as doing so would require intentionally and unethically exposing people and the environment to harmful contaminants or recreating one-time events (such as the *Deepwater Horizon* oil spill). Second, there are multiple valid reasons why requiring the release of all data does not improve scientific integrity and could actually compromise research, including intellectual property, proprietary, and privacy concerns. Further, EPA has historically been transparent in demonstrating the scientific basis of its decisions, so the public can hold the agency accountable to establish evidence-based safeguards; any changes should be made with the full consultation with and support of the scientific community.

There are ways to improve transparency in the decisionmaking process, but restricting the use of science would improve neither transparency nor the quality of EPA decisionmaking. If fully implemented, this proposal would greatly weaken EPA's ability to comprehensively consider the scientific evidence across the full array of health effects studies. This would negatively impact EPA public protections that reduce levels of lead, harmful chemicals, and fine particle pollution, among others.

Again, we urge you to stop any plans to restrict the science that EPA can use in decision-making across the board or on any specific issue, and instead to protect the integrity of science at EPA. We stand by ready to help EPA fulfill its science-based mission to protect public health and the environment.

Sincerely,

The undersigned,
985 scientists

Cc:

Matthew Z. Leopold, General Counsel

William Wehrum, Assistant Administrator, Office of Air and Radiation

Dr. Jennifer Orme-Zavaleta, Principal Deputy Assistant Administrator for Science

Neomi Rao, Administrator, Office of Information and Regulatory Affairs

¹ <https://www.epa.gov/newsreleases/daily-caller-scott-pruitt-will-end-epas-use-secret-science-justify-regulations>

² <https://blog.ucsusa.org/gretchen-goldman/scott-pruitt-will-restrict-the-epas-use-of-legitimate-science>

³ <https://mcmprodaaas.s3.amazonaws.com/s3fs->

[public/HR%201430%20HONEST%20Act%20Multisociety%20Letter%20of%20Concern.pdf](https://mcmprodaaas.s3.amazonaws.com/s3fs-public/HR%201430%20HONEST%20Act%20Multisociety%20Letter%20of%20Concern.pdf)

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David Yelton, Ph.D.
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Ellin Stiteler, M.D.
Gillette, WY 82718

Message

From: Bolen, Brittany [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31E872A691114372B5A6A88482A66E48-BOLEN, BRIT]
Sent: 3/14/2018 9:59:28 PM
To: Palmieri, Rosario A. EOP/OMB [rpalmieri@omb.eop.gov]
Subject: Data Access Notice
Attachments: FR Notice on Data Access Guidelines_3.14.2018_CLEAN.docx

Hi Rosario –

As discussed, please see attached draft FR notice soliciting public comment on Proposed Guidelines for Strengthening Transparency and Reproducibility for Regulatory Science. Let me know if a call with the team would be helpful.

Thanks,

Brittany

Brittany Bolen

Deputy Associate Administrator, Office of Policy

U.S. Environmental Protection Agency

Personal Matters / Ex. 6

Bolen.Brittany@epa.gov

Message

From: Bolen, Brittany [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31E872A691114372B5A6A88482A66E48-BOLEN, BRIT]
Sent: 3/14/2018 11:29:53 AM
To: McGartland, Al [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5fe25fc1df634f9798675527e0070429-AMcGartl]
Subject: FRN for Data Access Guidelines
Attachments: FR Notice on Data Access Guidelines_3.13.2018_CLEAN.docx

Deliberative Process / Ex. 5

Thanks,
Brittany

Message

From: Bolen, Brittany [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31E872A691114372B5A6A88482A66E48-BOLEN, BRIT]
Sent: 3/13/2018 11:14:03 PM
To: 'Samantha Dravis (dravis.samantha@epa.gov)' [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ece53f0610054e669d9dffe0b3a842df-Dravis, Sam]
Subject: FW: LAST CALL: Clean Copy of Data Access FRN
Attachments: FR Notice on Data Access Guidelines_3.13.2018_CLEAN.docx

From: Bolen, Brittany
Sent: Tuesday, March 13, 2018 7:11 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Leopold, Matt <Leopold.Matt@epa.gov>; Beck, Nancy <beck.nancy@epa.gov>
Cc: Feeley, Drew (Robert) <Feeley.Drew@epa.gov>; Woods, Clint <woods.Clint@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>
Subject: LAST CALL: Clean Copy of Data Access FRN

Deliberative Process / Ex. 5

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From: Schwab, Justin
Sent: Tuesday, March 13, 2018 4:35 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Leopold, Matt <Leopold.Matt@epa.gov>
Cc: Beck, Nancy <Beck.Nancy@epa.gov>; Feeley, Drew (Robert) <Feeley.Drew@epa.gov>; Woods, Clint <woods.clint@epa.gov>
Subject: RE: ATTORNEY-CLIENT, ATTORNEY WORK PRODUCT

Attorney Client / Ex. 5

I will also forward to Matt for his awareness.

From: Jackson, Ryan
Sent: Tuesday, March 13, 2018 3:07 PM
To: Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Leopold, Matt <Leopold.Matt@epa.gov>
Cc: Beck, Nancy <Beck.Nancy@epa.gov>; Feeley, Drew (Robert) <Feeley.Drew@epa.gov>; Woods, Clint <woods.clint@epa.gov>
Subject: RE: ATTORNEY-CLIENT, ATTORNEY WORK PRODUCT

Attorney Client / Ex. 5

From: Yamada, Richard (Yujiro)
Sent: Tuesday, March 13, 2018 12:52 PM
To: Bolen, Brittany <bolen.brittany@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Leopold, Matt <Leopold.Matt@epa.gov>
Cc: Beck, Nancy <Beck.Nancy@epa.gov>; Feeley, Drew (Robert) <Feeley.Drew@epa.gov>; Woods, Clint <woods.clint@epa.gov>
Subject: RE: ATTORNEY-CLIENT, ATTORNEY WORK PRODUCT

Deliberative Process / Ex. 5

From: Bolen, Brittany
Sent: Tuesday, March 13, 2018 9:19 AM
To: Jackson, Ryan <jackson.ryan@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Leopold, Matt <Leopold.Matt@epa.gov>
Cc: Beck, Nancy <Beck.Nancy@epa.gov>; Feeley, Drew (Robert) <Feeley.Drew@epa.gov>; Woods, Clint <woods.clint@epa.gov>
Subject: RE: ATTORNEY-CLIENT, ATTORNEY WORK PRODUCT

All – following up on our OGC meeting Friday afternoon, I made further edits to reflect the nature of this document as Guidelines we are seeking public comment on. Please provide feedback on this version of the document by COB so we can start the interagency review process tomorrow.

Thanks,
Brittany

From: Bolen, Brittany
Sent: Friday, March 9, 2018 3:10 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Leopold, Matt <Leopold.Matt@epa.gov>
Cc: Beck, Nancy <beck.nancy@epa.gov>; Feeley, Drew (Robert) <Feeley.Drew@epa.gov>; Woods, Clint <woods.Clint@epa.gov>
Subject: RE: ATTORNEY-CLIENT, ATTORNEY WORK PRODUCT

Deliberative Process / Ex. 5

Brittany

From: Jackson, Ryan
Sent: Wednesday, March 7, 2018 6:30 PM
To: Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Leopold, Matt <Leopold.Matt@epa.gov>
Cc: Bolen, Brittany <bolen.brittany@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>; Feeley, Drew (Robert) <Feeley.Drew@epa.gov>; Woods, Clint <woods.clint@epa.gov>
Subject: RE: ATTORNEY-CLIENT, ATTORNEY WORK PRODUCT

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Yamada, Richard (Yujiro)

Sent: Wednesday, March 7, 2018 5:49 PM

To: Schwab, Justin <Schwab.Justin@epa.gov>; Leopold, Matt <Leopold.Matt@epa.gov>

Cc: Bolen, Brittany <bolen.brittany@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>; Feeley, Drew (Robert) <Feeley.Drew@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Woods, Clint <woods.clint@epa.gov>

Subject: ATTORNEY-CLIENT, ATTORNEY WORK PRODUCT

(This email contains deliberative and pre-decisional matters)

Hi Matt and Justin,

Deliberative Process / Ex. 5

Richard

Richard Yamada
Deputy Assistant Administrator
Office of Research and Development
U.S. Environmental Protection Agency

Phone: [Personal Matters / Ex. 6](#)
yamada.richard@epa.gov

Message

From: Bolen, Brittany [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31E872A691114372B5A6A88482A66E48-BOLEN, BRIT]
Sent: 3/20/2018 7:21:54 PM
To: Brown, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9242d85c7df343d287659f840d730e65-Brown, Byro]
Subject: latest version of data access notice
Attachments: FR Notice on Data Access Guidelines_3.19.2018docx.docx

From: Bolen, Brittany
Sent: Monday, March 19, 2018 3:03 PM
To: Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Beck, Nancy <beck.nancy@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>
Cc: Clint Woods (woods.Clint@epa.gov) <woods.Clint@epa.gov>; Feeley, Drew (Robert) <Feeley.Drew@epa.gov>
Subject: Initial Edits to Notice

Richard, Nancy, Justin, —

Deliberative Process / Ex. 5

Thanks,
Brittany

From: POLITICO Pro Energy [politicoemail@politicopro.com]
Sent: 8/17/2018 9:45:59 AM
To: Dravis, Samantha [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ece53f0610054e669d9dffe0b3a842df-Dravis, Sam]
Subject: Morning Energy: What's happening with WOTUS — Keystone fight far from over — Wheeler to Michigan

By Kelsey Tamborrino | 08/17/2018 05:44 AM EDT

With help from Annie Snider, Ben Lefebvre and Alex Guillén

A COUNTRY DIVIDED: Which streams and wetlands are protected under the Clean Water Act? As of Thursday, the answer depends on where you're standing. After a South Carolina District Court [ruling](#) overturning the Trump administration's attempted delay of the Obama administration's Waters of the U.S. rule for failing to offer the public a proper opportunity to comment, the 2015 rule is now officially on the books in 26 states — but not in the other 24 states where other district court injunctions are in place.

"**The agencies refused to engage** in a substantive reevaluation of the definition of the 'waters of the United States' even though the legal effect of the Suspension Rule is that the definition of 'waters of the United States' ceases to be the definition under the WOTUS rule and reverts to the definition under the 1980s regulation," Judge David Norton wrote in Thursday's ruling. "An illusory opportunity to comment is no opportunity at all."

Environmental groups hailed the decision, with Jon Devine of the Natural Resources Defense Council calling it a "sharp rebuke to the Trump administration." Meanwhile, Zippy Duvall, president of the American Farm Bureau Federation, one of the fiercest critics of the Obama-era rule, called on the Trump administration to "to take immediate steps to limit the impact of this dangerous court decision."

But will it hold? The Justice Department is reviewing the decision, a spokesman said, and players on both sides broadly expect an appeal. Separately, EPA said in a statement it and the Army Corps of Engineers "will review the order as the agencies work to determine next steps." But the fate of the delay rule could ultimately become moot if the federal district judge in Texas grants a nationwide injunction request.

And don't forget, this is just the warm-up fight. The battle royale will be over the Trump administration's rule to repeal the 2015 rule, which the agency has not finalized. Geoff Gisler, the Southern Environmental Law Center attorney who brought yesterday's case on behalf of local environmental groups, argued that Thursday's South Carolina court decision has implications for that fight and "should give the agencies pause" as they move forward. "The agencies just aren't telling the public what they're doing," he argued. "What this decision said was you can't just have a comment period, it has to be a meaningful comment period."

WE MADE IT TO FRIDAY! I'm your host, Kelsey Tamborrino. Simon and Company's Jen Covino named the eight senators who formerly served as mayors: [Dianne Feinstein](#), [Cory Booker](#), [Jim Inhofe](#), [Bob Corker](#), [Bernie Sanders](#), [Tim Kaine](#), [Mike Enzi](#) and [Bob Menendez](#). For today: Who are the three current House lawmakers who previously served as ambassadors? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseyam](#), [@Morning_Energy](#) and [@POLITICOPro](#).

FAR FROM OVER: A federal judge's order directing the State Department to conduct a supplemental environmental review for the Keystone XL pipeline's updated path through Nebraska is another setback in nearly a decade full of them for TransCanada. The order is sure to stall construction of the pipeline for months, Pro's Ben Lefebvre [reports](#). Plaintiffs in the case said the review would involve public hearings in Nebraska and consultations with Native American tribes whose land the pipeline would traverse.

Pipeline opponents are hoping to use the new review to push for a broader study of the project, Ben reports. Doug Hayes, a lawyer for the Sierra Club and one of the plaintiffs in the case, said the judge's ruling that the "entire pipeline remains interrelated and requires one [environmental review] to understand the functioning of the entire unit" could open the door for them to seek a new review for the pipeline's entire route. "If they are going back to do a supplemental environmental impact statement, our position is they would need to evaluate all the new impacts of the pipeline," Hayes said. "That would take definitely months."

WHERE'S WHEELER? Acting EPA Administrator Andrew Wheeler travels to Michigan today to discuss issues plaguing the Great Lakes and meet with GOP Rep. Tim Walberg, a member of the Energy and Commerce Committee, and officials from the Michigan Department of Natural Resources and Department of Environmental Quality.

WHEELER DELIVERS MESSAGE ON HARASSMENT: Wheeler reaffirmed EPA's policy against harassment in a memorandum sent to staff Thursday. Wheeler wrote that he expects "all individuals working at the EPA — employees, supervisors and non-employees — will not engage in or be subjected to unlawful and prohibited harassment."

MURKOWSKI: FERC NOMINEE SHOULD GO LITMUS TEST-FREE: Senate Energy Chairman Lisa Murkowski wouldn't comment on POLITICO's report that DOE's Bernard McNamee will be nominated to FERC. But the Alaska Republican said she believes that the next nominee shouldn't face a litmus test over their view of the Trump administration's efforts to prop up coal and nuclear power plants, Pro's Darius Dixon reports. "I worry that this is going to be viewed as, 'If you don't commit to voting against or voting for, then you're not going to have my support,'" Murkowski said. "That's not the way that we should be selecting commissioners for the FERC."

GET YOUR COMMENTS IN: American Petroleum Institute's Frank Macchiarola reiterated the need for Renewable Fuel Standard reform on a call with reporters Thursday outlining the group's comments for EPA's proposed biofuel blending requirements for the coming year under the RFS. "Very simply what we want is an end to this program by 2022," he said. Macchiarola said API is "willing to compromise" on certain policies like a waiver for summertime sales of E15, but only if the program will sunset by 2022. "The problem again is that the ethanol industry has been dug in to not doing anything," Macchiarola said. He added legislation is being drafted to reform the program in both chambers, but noted challenges and lengthy debate are likely ahead. Comments are due today on EPA's proposed volumes, with the final rule due to be released by Nov. 30.

— **API is also looking at the proposed plan** by EPA and the Department of Transportation to freeze fuel efficiency standards for cars and trucks. "It is a very complex proposal to a very complex program," Macchiarola said. "We will say that we appreciate the administration's relooking at CAFE in the light of changing energy market realities."

SECRET'S OUT: Thursday was the last day for comments on EPA's proposed "secret science" rule, which would ban the use of studies that don't publicly disclose all their data. Getting their thoughts in under the wire, Sens. Sheldon Whitehouse, Brian Schatz, Maggie Hassan, Jeff Merkley, Ed Markey, Tammy Duckworth, Kirsten Gillibrand, Tom Carper and Kamala Harris banded together to make their opposition known. "The proposed rule is illegal because it is arbitrary and capricious," they write, adding that "the proposed rule is illegal because it is the result of an effective delegation of rulemaking authority to private interests."

The American Chemistry Council, meanwhile, applauded the proposal in its comment Thursday. "EPA's proposal codifies an important good governance principle — that government agencies should be as transparent as possible, within the bounds of the law, about scientific information relied upon and the justifications for the significant regulatory decisions they make." Still, the trade association also highlighted that implementation of the plan would benefit from better historical context and applicability, and that greater clarity is required on key definitions and regulatory text, among other recommendations.

FIGHTING FIRE WITH A FEDERAL PLAN: The Agriculture Department released a new, aggressive approach to fighting wildfires Thursday, with proactive steps. During a bipartisan press conference, Secretary Sonny Perdue unveiled a plan that emphasizes increased collaboration with states, implementation of mapping and remote sensing tools, and management practices such as prescribed burns and timber sales, Pro's Liz Crampton reports. Though Perdue brushed aside specific questions on climate change's role, he said Interior Secretary Ryan Zinke is on board with the plan and noted further details and costs will be forthcoming from the U.S. Forest Service. "Really a lot of people ... when you talk about climate change, they want to talk about what the causes are," Perdue said. "[What] we're trying to talk about is the impact."

FERC RESTARTS PART OF PIPELINE: FERC modified a stop work order for the Mountain Valley Pipeline this week, allowing construction to restart for around 77 miles of the pipeline's West Virginia route with the exception of a 7-mile area surrounding the Weston and Gauley Bridge Turnpike Bridge Trail, MVP said Thursday. However, the company said about half of its construction workforce has been released due to continued delays. MVP said that it "remains committed to the earliest possible in-service date," though it noted that is now expected to arrive during the fourth quarter of 2019.

GREENS CALL FOR FERC REVIEW: The Southern Environmental Law Center and Appalachian Mountain Advocates petitioned the 4th U.S. Circuit Court of Appeals on Thursday to review FERC's approval of the Atlantic Coast Pipeline. The suit was filed on behalf of 13 other conservation groups. "FERC ordered the ACP construction stopped because the 4th Circuit determined that permits were issued without proper scrutiny," SELC attorney Greg Buppert said in a statement. "On the very same day, FERC rejected a rehearing request in which the conservation groups asserted that it also rushed through its decision to permit a pipeline that we don't need." The 4th Circuit last week vacated two permits issued for the project by the U.S. Fish and Wildlife Service and the National Park Service.

GREENS FILE FOIA SUIT: Environmental group Friends of the Earth filed a lawsuit Thursday against the Interior Department for lack of response to a Freedom of Information Act request. The lawsuit seeks to compel DOI to produce documents related to senior members of the department and the industries they regulate. The suit points to David Bernhardt's work as a lawyer and lobbyist for oil and gas companies and Vincent DeVito's time working as an energy industry representative. Friends of the Earth is being represented by the law firm Meyer Glitzenstein & Eubanks LLP.

AD-ING IT UP: Ahead of Wyoming's gubernatorial primaries Tuesday, a partnership between the Wyoming Wildlife Federation and Rocky Mountain Farmers Union, dubbed the Wyoming Conservation Legacy, will launch a five-figure ad campaign asking candidates to support conservation. The campaign will begin on Saturday and run through Aug. 21 with full-page print ads in the Casper Star Tribune and the Wyoming Tribune Eagle, separate radio buys on Wyoming Public Media programs, and digital ads across the state. See the ads here.

MAIL CALL! ON THE FARM: The National Biodiesel Board sent a letter to farm bill conference committee lawmakers reiterating its support for the inclusion of biodiesel programs in the five-year bill.

STAR-STUDDER SUMMIT: Attendees of the Global Climate Action Summit in San Francisco in September will hear from former White House officials, including former Vice President Al Gore and Secretary of State John Kerry. The summit announced Thursday night that new delegates will join the event, including Executive Secretary of the United Nations Framework Convention on Climate Change Patricia Espinosa and U.N. Special Envoy for Climate Action Michael Bloomberg. Actor Alec Baldwin and chimpanzee expert Jane Goodall will also attend.

GO NUCLEAR: The American Nuclear Society this week launched a nuclear science educational program for middle schoolers that covers topics like fission and fusion, and detecting radiation. The "Navigating Nuclear:"

Energizing Our World" program is aligned with the Next Generation Science Standards framework, which provides an evidence-based foundation for scientific research.

MOVER, SHAKERS: Jack Cramton, policy adviser for Sen. Bill Cassidy (R-La.), will start Monday as a legislative affairs adviser at the Department of Energy's Congressional and Intergovernmental Affairs Office.

QUICK HITS

- "U.S. energy chief applauds Mexico's plan to end fuel imports," Reuters.
- "Trump's CO2 rule is coming, and industries wonder who's next," E&E News.
- "California fire risk won't abate until November, U.S. warns," Bloomberg.
- "Zinke said he would never sell public land. But Interior is considering it," The Washington Post.
- "Elon Musk confronts a fateful tweet and an 'excruciating' year," The New York Times.

HAPPENING TODAY

crickets

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To view online:

<https://subscriber.politicopro.com/newsletters/morning-energy/2018/08/whats-happening-with-wotus-320196>

Stories from POLITICO Pro

Judge restores WOTUS rule in 26 states Back

By Alex Guillén | 08/16/2018 03:20 PM EDT

A federal judge today ruled that the Trump administration violated administrative legal requirements when it delayed the start of the Obama administration's Waters of the U.S. rule by two years — a move that means the rule will now go into effect for about half the country.

The judge said EPA and the Army Corps of Engineers had unlawfully declined to consider any comments addressing substantive issues related to WOTUS or an earlier 1982 version when it proposed delaying the rule to give the agencies more time to repeal and replace it.

That was a fatal flaw, ruled Judge David Norton of the U.S. District Court for South Carolina, a George H.W. Bush appointee. Delaying the WOTUS rule has the effect of reverting to the 1982 rule, he wrote.

Norton's injunction means the Obama-era rule will take effect in 26 states. The other 24 are covered by two different injunctions, one issued to 13 states in 2013 and one issued to another 11 states in June.

However, WOTUS may be blocked nationwide again if the rule's opponents get their way. In another WOTUS lawsuit in a federal court in Texas, three states in February asked for a nationwide injunction of WOTUS. That court has yet to decide on the matter.

WHAT'S NEXT: The Trump administration is working to finalize its repeal of the Obama WOTUS rule. And EPA and the Corps are expected to propose a replacement rule in the near future.

To view online [click here](#).

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Montana ruling could set back Keystone XL for months [Back](#)

By Ben Lefebvre | 08/16/2018 04:37 PM EDT

The fight over the Keystone XL pipeline isn't over yet.

District Court Judge Brian Morris' partial order that the State Department must conduct a supplemental environmental review to account for the pipeline's new path through Nebraska is another setback for developer TransCanada that's likely to delay construction of the nearly decade-old project by at least several months.

The order was a response to Nebraska regulators' approval in November 2017 of a route for the 830,000 barrel-a-day pipeline through the state that TransCanada had not proposed. The original environmental assessment the Trump administration used to approve Keystone XL earlier that year — a review conducted during the Obama administration — only considered a different route that TransCanada had planned for the pipeline.

The new route through Nebraska would cross through five counties that weren't included in the State Department's original environmental review, Morris noted in his order, meaning it would cross different waterways and require an additional pump station, .

Pipeline opponents say they hope to use Wednesday's ruling to push for a new broader study of the project.

Doug Hayes, a lawyer for the Sierra Club, one of the plaintiffs in the case, told POLITICO that Judge Morris' statement in his ruling that the "entire pipeline remains interrelated and requires one [environmental review] to understand the functioning of the entire unit" could open the door for them to seek a new review for the pipeline's entire route through the U.S.

"If they are going back to do a supplemental environmental impact statement, our position is they would need to evaluate all the new impacts of the pipeline," Hayes said. "That would take definitely months."

Jane Kleeb, who has long fought the pipeline and is now chairwoman of the Nebraska Democratic Party, said she thought process would drag out even longer.

"We think it buys us a year," she told POLITICO. "We just think there's a lot of significant hurdles in front of them."

Plaintiffs in the case said a new review would entail holding public hearings in Nebraska and consulting with Native American tribes whose land the pipeline would traverse.

Environmental groups have argued the pipeline posed a special risk because of the nature of the heavy oil it would transport, and that it would increase global carbon emissions. The Obama administration quashed the project in 2015, only to see their decision reversed when President Donald Trump took office a year and a half later.

A TransCanada spokesman declined to comment pending the company's review of the judge's decision.

Russ Girling, the company's chief executive officer, said during a call with investors earlier this month that the company hoped to make a final decision on whether to build the pipeline later this year or in early 2019. If approved, construction could start during the first quarter of 2019, Girling added.

A State Department official was not immediately available to comment.

Keystone XL also faces a test in Nebraska Supreme Court, where a lawsuit filed by environmental groups and state landowners challenges Nebraska regulators' approval of a route that TransCanada never formally requested. Hearings in that case are expected to start in October.

TransCanada is also waiting for several permits from federal agencies. Interior's Bureau of Land Management must issue right-of-way permits to cross federal land in Montana, and the Army Corp of Engineers must approve the pipeline's path over several waterways across the country.

To view online [click here](#).

[Back](#)

Sources: DOE's McNamee to get FERC nod [Back](#)

By Eric Wolff and Darius Dixon | 08/08/2018 04:07 PM EDT

The White House plans to nominate Energy Department official Bernard McNamee to fill the FERC leadership seat being vacated by departing Commissioner Rob Powelson, three sources familiar with discussions tell POLITICO.

McNamee helped roll out Energy Secretary Rick Perry's proposal last year to save struggling coal and nuclear power plants — an issue that sources have said served as a key litmus test for Trump administration officials evaluating a replacement for Powelson, who is [set to resign](#) Friday.

FERC in January unanimously voted down that plan, which sought to create special payments for power plants capable of holding 90 days of fuel on-site. But the administration has been considering additional options such as invoking rarely used emergency powers to force power plants to run, which would potentially give McNamee a chance to provide the pivotal vote on the subsequent rates and rules as a commissioner.

It is unclear when President Donald Trump would formally nominate McNamee, and the vetting process still seems to be underway. It would likely take the Senate several months to confirm him, a process that would start with hearings at the Energy and Natural Resources Committee.

Neither the White House nor DOE immediately responded to requests for comment Wednesday.

McNamee, who runs the DOE's Office of Policy, has been in and out of the agency under Trump. He was deputy general counsel for energy policy last year when he worked on Perry's ill-fated proposal to FERC. In February, he left DOE for a senior post with the Texas Public Policy Foundation, a conservative think tank [with ties to Perry](#), before returning to DOE in May.

Before joining the Trump administration, McNamee previously worked at McGuireWoods, as chief of staff to Texas Attorney General Ken Paxton and as an aide to Sen. [Ted Cruz](#) (R-Texas).

To view online [click here](#).

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Murkowski: Next FERC nominee should be free of litmus tests [Back](#)

By Darius Dixon | 08/16/2018 05:38 PM EDT

Alaska GOP Sen. [Lisa Murkowski](#) today declined to comment on POLITICO's [report](#) that DOE's Bernard McNamee would be nominated to FERC, but said she believes that the next nominee shouldn't face a litmus test over their view of the Trump administration's efforts to prop up coal and nuclear power plants.

"I worry that this is going to be viewed as 'If you don't commit to voting against or voting for, then you're not going to have my support,'" Murkowski, who chairs the Senate Energy and Natural Resources Committee, told POLITICO, referring to the administration's efforts to stave off coal retirements by potentially issuing emergency orders. "That's not the way that we should be selecting commissioners for the FERC."

Trump will want someone fairly aligned with the administration, she said, though she added that FERC came to the "right decision" in rejecting the Energy Department's controversial push to create special market payments for coal and nuclear plants last year. Still, she hoped that FERC's independence would be respected and that Democrats won't be reflexively opposed to the White House nominee in the way that they have been for Supreme Court nominee Brett Kavanaugh.

"A seat on the FERC is different than being a deputy secretary of Energy or Labor or whatever. Again, this is an independent regulatory agency that has a very different mission," she said. "The mission is not whatever the White House says it is. It is a very specific, statutory mission and so you want somebody who is going to be true to that. My hope is that the White House picks somebody who can demonstrate that they will be true to that."

To view online [click here](#).

[Back](#)

USDA unveils plan for fighting wildfires [Back](#)

By Liz Crampton | 08/16/2018 03:00 PM EDT

USDA said today it's embarking on a new, aggressive approach to combat wildfires by taking preventative steps like working more with states and upping use of forest management tools.

Department officials at a press conference unveiled a 22-page plan that emphasizes increased collaboration with states, implementation of mapping and remote sensing tools, and management practices such as prescribed burns and timber sales.

Further details and costs of the initiative will be forthcoming after the U.S. Forest Service and other agencies hold discussions with state partners, USDA Secretary Sonny Perdue said. He added that Interior Secretary Ryan Zinke is on board, although he was not in attendance.

The plan comes as the West is enduring yet another brutal wildfire season after 2017 ranked as the most expensive year for wildfires. Federal agencies last year spent \$2.9 billion to suppress wildfires across the country, according to USDA.

"Today to truly protect our forest and communities, we must increase the size of our projects and access larger landscapes across boundaries," Perdue said. "Frankly we cannot do it ourselves. It's got to be done in the shared stewardship of state and local communities."

Perdue was joined by interim Chief of the U.S. Forest Service Vicki Christiansen and Sens. [Maria Cantwell](#) (D-Wash.), [Lisa Murkowski](#) (R-Alaska), [Ron Wyden](#) (D-Ore.) and [Steve Daines](#) (D-Mont.).

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Subject: Morning Energy: Trump's not-so simple math — Judge orders update of Keystone XL study — States' rights get tricky over water

By Kelsey Tamborrino | 08/16/2018 05:43 AM EDT

With help from Ben Lefebvre and Annie Snider

A NUMBERS GAME: The White House's plan to rewrite the Obama administration's cornerstone climate rule for power plants may be based on some fuzzy math, setting up a potentially brutal court battle for the Justice Department. The legally risky strategy, POLITICO's Alex Guillén and Emily Holden report, calls for redoing the calculations of how much the rule would cost and who would benefit.

EPA's proposed replacement plan is expected to be unveiled any day now and will likely downplay a key feature of the Obama-era greenhouse rule: the money saved by using less electricity. Some expect EPA will also count only a fraction of the improvements in public health from reduced smog and soot pollution, Alex and Emily report, and it won't consider any benefits from slowing climate change outside the U.S.

In doing so, President Donald Trump's EPA will argue that the Obama-era rule had higher costs and fewer benefits than previously stated, a change to help improve the comparison when it unveils its own proposal. The Obama administration had estimated that the benefits from its rule would outstrip the costs by \$26 billion to \$45 billion by 2030, though supporters of that version say those net benefits could be even higher now.

In fact, math could become vital to the success or failure of several of Trump's rules. Critics say similarly fuzzy math underlies other Trump administration proposals to reverse or stymie action on climate change, such as a recent plan by EPA and the Department of Transportation to halt a planned tightening of fuel efficiency standards for cars and trucks. "They are cooking the books on technical analysis to try to justify preconceived conclusions that these regulations are bad," said David Doniger, senior strategic director of the Natural Resources Defense Council's climate program who was influential in the Obama EPA's crafting of the original rule. Read more.

GOOD THURSDAY MORNING! I'm your host, Kelsey Tamborrino. Many of you knew, but ClearView Energy Partners' Mitch Huber was the first to correctly answer that it's Loretta and Linda Sanchez who were the first and only sisters to serve simultaneously in Congress. For today: How many current senators are also former mayors? Bonus points if you can name them. Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](https://twitter.com/kelseytam), [@Morning_Energy](https://twitter.com/Morning_Energy) and [@POLITICOPro](https://twitter.com/POLITICOPro).

DO THAT AGAIN: The Trump administration was ordered Wednesday to update an environmental study of the Keystone XL pipeline despite its contention the alternative route picked last year by Nebraska regulators didn't require an updated environmental impact statement. Instead, Judge Brian Morris of the U.S. District Court for Montana ordered the State Department to go back to its 2014 EIS to take into account the new route, Alex reports for Pros. Morris said the State Department still has a "meaningful opportunity to evaluate" the alternative route that was picked in Nebraska. However, he declined environmentalists' request that Trump's permit be vacated.

STATES' RIGHTS GET TRICKY OVER WATER: The roiling debate over states' right to halt development projects over their water quality effects heads to the Senate Environment and Public Works Committee today. The panel will hold a legislative hearing on a bill from Chairman John Barrasso, S. 3303 (115), the Water Quality Certification Improvement Act of 2018. The measure would limit states' authority under Section 401 of the Clean Water Act, which requires states to certify that projects won't harm their water quality standards before the federal government issues a permit. In recent years a handful of Democratic-led states have used that authority to block natural gas pipelines. Republican Maryland Gov. Larry Hogan is also using the authority to try to force Exelon Corp. to clean up nutrient pollution flowing through one of its dams that harms the Chesapeake Bay.

GOP lawmakers have backed earlier efforts to limit or remove the authority, including in this year's House Appropriations bill, House and Senate energy legislation and standalone bills. But the Western Governors Association, which represents a number of Republican governors, has come out in opposition to reining in states' authority, and the Environmental Council of the States warned Wednesday that such moves could have unintended consequences. **If you go:** The hearing begins at 10 a.m. in 406 Dirksen.

NOMINATIONS ON TAP: Two nominees to the Energy Department will testify before the Senate Energy and Natural Resources Committee this morning: Bill Cooper to be general counsel and Lane Genatowski for director of the Advanced Research Projects Agency-Energy, which the Trump administration has sought to eliminate.

Who are they? Cooper serves as senior counsel and director of the McConnell Valdés law firm. Prior to that he was a subcommittee staff director for House Natural Resources, with a particular policy focus on the National Environmental Policy Act that the White House has sought to change up. Cooper also previously was president of the Center for Liquefied Natural Gas and counsel to the House Energy and Commerce Committee. His credentials have earned him the backing of industry groups, including the Air-Conditioning, Heating, and Refrigeration Institute, the Interstate Natural Gas Association of America, and the Electric Reliability Coordinating Council.

— **Genatowski hails from** a banking background. He's managing partner in investments at Dividend Advisors, a firm he founded in 2012. Genatowski before that was an energy investment banker at JPMorgan Chase and other Wall Street giants. His résumé lines up with others in Rick Perry's Energy Department, which has focused more on businessmen with energy-sector experience. **If you go:** The hearing kicks off at 10 a.m. in 366 Dirksen.

RESCISSIONS — TAKE TWO: The Trump administration is once again weighing a so-called rescissions package to force Congress to roll back federal spending, with just weeks to go until the next budget deadline, Pro's Sarah Ferris and John Bresnahan report. Senate Appropriations Chairman Richard Shelby said Wednesday he was told about the idea: "I heard they were thinking about one, but I haven't seen it." But a Senate leadership source said OMB chief Mick Mulvaney has already begun moving ahead on the effort.

FLORIDA DRILLING BITS: To drill or not to drill off the Florida coast is a question once again heating up the state's election campaigns. Gwen Graham, the current front-runner in the Democratic gubernatorial primary field, sent out a message titled "Drilling 75 Miles off Florida's Beaches is Insane" after a POLITICO report highlighted the idea as one that oil industry lobbyists are pushing to have included in the Interior Department's upcoming offshore drilling plan. Sunshine State Democratic Sen. Bill Nelson took the story to the Senate floor to try to whack current Gov. Rick Scott, who is running to replace him and earlier this year got help from Trump on the drilling issue.

REMEMBRANCE OF TARBALLS PAST: Former Florida Lt. Gov. Jeff Kottkamp is catching heat for his statement at a pro-drilling rally in Tallahassee that oil from the Deepwater Horizon spill "didn't even reach the shores of Florida." The remark, as first reported in the Florida Phoenix, may have surprised those who

remember former Gov. Charlie Crist squatting over oil-stained beaches in Pensacola. Kottkamp, who was speaking as co-chair of Explore Offshore Florida, went on to say "tarballs are naturally occurring." Earthjustice staff attorney Bradley Marshall called it "absurd to claim the Deepwater Horizon spill did not reach Florida" given the damage the state experienced. "That's why so many of Florida's leaders, regardless of what political party they belong to, have been so protective of our coasts all these years," he said in a statement.

WHAT'S THE RISK? EPA acting Administrator Andrew Wheeler delivered a video address at the National Environmental Justice Advisory Council's public meeting in Boston on Wednesday where he acknowledged the need for improvement in risk communication and noted the agency owes it to the American public to improve. "How well or how poorly we communicate risk disproportionately impacts those on the lower end of the socioeconomic ladder," he said. "We have fallen short in the past from our response to the Gold King Mine in Colorado, to the Kanawha River in West Virginia, to Flint, Mich." Watch it here.

CASE CLOSED: Interior's Office of Inspector General has closed its investigation into an allegation made against National Park Service officials. The claim centered around references to human-caused climate change in a report on sea-level rise and storm surge projections that officials allegedly sought to remove. The watchdog office said Wednesday that shortly after it opened the investigation, the NPS "published the report with all original references to human-caused climate change," thus prompting it to close its probe.

'SECRET' AGENTS: Comments are due today on EPA's proposed "scientific transparency" rule, which would ban the use of studies that don't publicly disclose all their data. Experts have said that plan could prohibit the use of vital studies on how pollutants affect human health because researchers typically promise to keep subjects' health information confidential. But conservatives have long accused the agency of relying on "secret science," prompting former Administrator Scott Pruitt to unveil the proposal in the name of transparency.

Under the wire: With the comment deadline approaching, nearly 80 groups, including the Union of Concerned Scientists, Sierra Club and Moms Clean Air Force, signed onto a letter Wednesday calling on Wheeler to withdraw the so-called secret science proposal. Separately, 66 health and medical organizations sent comments to Wheeler in opposition to the proposed rule. That's not to say there isn't support for the proposal; several comments posted Wednesday echoed the refrain that scientists should be required to "show your work."

AFTER THE STORM: The nonprofit Environmental Integrity Project released a new report today leading up to the one-year anniversary of Hurricane Harvey's widespread destruction in Texas. Using records from the Texas Commission on Environmental Quality, the report looks at air pollution during and after the storm as well as the government's and industries' response, and makes recommendations for the future. The "Preparing for the Next Storm" report found that all five of the largest industrial air pollution releases during Harvey were in the Houston area — with the Magellan Galena Park Terminal the biggest polluter, releasing 2,472,402 pounds of air pollution.

Harvey also triggered the release of at least 8.3 million pounds of unpermitted air pollution from petrochemical plants, according to the EIP report. And in the nine months after Harvey, "18 companies revised their air pollution reports to the state to erase 1.7 million pounds of unpermitted emissions during Hurricane Harvey," the report found.

LET'S MAKE A DEAL: Trump might soon strike a deal with Mexico on NAFTA, even as a trade war plays out with the rest of the world, POLITICO's Megan Cassella reports. The apparent turnaround after months of stalemate arrives as Mexican Secretary of Economy Ildefonso Guajardo visited Washington on Wednesday to hammer out some of the most contentious issues on NAFTA. "Both U.S. and Mexican officials now say they could be on the verge of announcing a preliminary agreement on everything from complicated automotive rules to environmental regulations by the end of August," Megan reports.

CATCHING FIRE: Agriculture Secretary Sonny Perdue will join Senate Energy ranking member [Maria Cantwell](#) and Sens. [Steve Daines](#) and [Ron Wyden](#) to unveil a new federal plan for addressing wildfires. Earlier this year, Perdue and Cantwell [worked together](#) on a commitment to use unmanned aircraft technology this fire season, and the Washington Democrat will likely highlight similar tools and technology today. Watch the livestream [here](#).

POLL: CLIMATE A FACTOR FOR MOST: Slightly more than half (53 percent) of U.S. voters believe climate change is a factor in making the ongoing California wildfires more extreme, while 39 percent say it's not, according to a new poll from Quinnipiac University [released](#) Wednesday. Sixty-four percent of voters said they think the country is not doing enough to address climate change, the national poll found. Eighteen percent of voters say the U.S. is doing enough to address the issue, while 10 percent say the U.S. is doing too much.

— **On a related note**, the Natural Resources Defense Council launched [a tracker](#) this week to see where every state's lawmakers stand on offshore drilling.

QUICK HITS

— "A coal company and Interior teamed up to save a power plant," [E&E News](#).

— "FirstEnergy Solutions takes next step toward closure of nuclear power plants," [Akron Business Journal](#).

— "A rising concern? After straws, balloons get more scrutiny," [The Associated Press](#).

— "Will Washington State Voters Make History on Climate Change?" [The Atlantic](#).

HAPPENING TODAY

10 a.m. — Senate Environment and Public Works Committee [hearing](#) on clean water, 406 Dirksen.

10 a.m. — Senate Energy and Natural Resources Committee [hearing](#) to consider DOE nominees, 366 Dirksen.

10 a.m. — American Petroleum Institute conference call briefing on efforts "to reform the broken Renewable Fuel Standard that threatens to reverse America's energy progress."

12:45 p.m. — Senate Energy and Natural Resources ranking member [Maria Cantwell](#) and Agriculture Secretary Sonny Perdue [unveil](#) a federal plan for addressing wildfire, Senate Room S-115.

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To view online:

<https://subscriber.politicopro.com/newsletters/morning-energy/2018/08/trumps-not-so-simple-math-319039>

Stories from POLITICO Pro

Exclusive: Draft details Trump's plan for reversing Obama climate rule [Back](#)

By Emily Holden | 08/14/2018 07:46 PM EDT

The Trump administration is preparing to unveil its plan for undoing Barack Obama's most ambitious climate regulation — offering a replacement that would do far less to reduce the greenhouse gas emissions that are warming the planet, according to POLITICO's review of a portion of the unpublished draft.

The new climate proposal for coal-burning power plants, expected to be released in the coming days, would give states wide latitude to write their own modest regulations for coal plants or even seek permission to opt out, according to the document and a source who has read other sections of the draft.

That's a sharp contrast from the aims of Obama's Clean Power Plan, a 2015 regulation that would have sped a shift away from coal use and toward less-polluting sources such as natural gas, wind and solar. That plan was the centerpiece of Obama's pledge for the U.S. to cut carbon dioxide emissions as part of the Paris climate agreement, which President Donald Trump has said he plans to exit.

The Environmental Protection Agency acknowledges that both carbon emissions and pollutants such as soot and smog would be higher under its new proposal than under the Clean Power Plan. And Trump's critics call it a recipe for abandoning the effort to take on one of the world's most urgent problems.

The proposal would be "another, more official, sign that the government of the United States is not committed to climate policy," said Janet McCabe, EPA's air chief under Obama.

McCabe said based on a description of the proposal, it would offer "a significant amount of discretion to states to decide that nothing at all needs to be done."

Many red states and several companies sued over the Clean Power Plan, and a federal appeals court was nearing a decision when Trump's EPA asked for time to rewrite the rule. McCabe said the proposal could be meant to eat up time and stall a future president from quickly regulating greenhouse gases.

EPA was widely expected to write a far less stringent replacement rule. Trump promised to nix the Clean Power Plan and exit the Paris deal during his campaign. But the draft offers the first look at the specifics since the agency released a broader notice that it would reconsider the rule in April.

The White House Office of Management and Budget has finished reviewing the draft and sent it back to EPA this week.

The rule would allow states to write rules to make coal plants more efficient, enabling them to burn less coal to produce the same amount of electricity. But that could be bad for the planet, people familiar with state air programs say, by making it cost-effective for power companies to run those plants more often.

EPA looked at the outcomes of various scenarios that could be possible from state-proposed plans in 2025, 2030 and 2035, implying that the plans could be in place before 2025.

Obama's plan was meant to see greenhouse gas emissions from the U.S. power sector fall to 32 percent below 2005 levels by 2030. The nation has already achieved much of that reduction because of trends such as the closures of dozens of older coal plants.

EPA intends to argue that the Obama administration rule illegally sought to regulate the broader power sector, beyond coal plants, and that the compliance costs would have been big and the climate benefits negligible, according to the draft POLITICO reviewed.

Environmental advocates and blue states plan to wage war on the proposal once it is final. But while the legal fights play out, the regulation will be a placeholder that could stall a future president from regulating power plants.

States will be able to present reasons for why they don't want to regulate coal plants, including considering how many more years they have left before they would probably shut down, according to a source who reviewed a different section of the document.

In another contentious portion of the proposal, EPA is looking at letting states decide whether they want to adopt changes to pollution reviews that kick in when a plant makes upgrades. Existing rules are meant to keep plants from making changes that cause more pollution.

Conservatives and industry groups have long argued that the review process, called New Source Review, makes it too expensive for operators to make improvements to plants.

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The key to Trump's climate reversal? New math [Back](#)

By Alex Guillén and Emily Holden | 08/16/2018 05:06 AM EDT

The Trump administration's attempt to reverse Barack Obama's most sweeping climate regulation rests on a legally risky strategy — redoing the calculations of how much the rule would cost and who would benefit.

The EPA's proposed replacement is expected to downplay the money that people and businesses would save from using less electricity, a key feature of the Obama-era greenhouse rule for power plants. People tracking the issue also expect that the agency will count only a fraction of the improvements in public health from reduced smog and soot pollution, and won't consider any benefits from slowing climate change outside the U.S.

The upshot: President Donald Trump's Environmental Protection Agency will argue that the Obama administration's rule had more costs and fewer benefits than previously stated, a change to help improve the comparison when it unveils its own, much less ambitious power plant proposal as soon as next week.

The Obama administration had estimated that the benefits from its 2015 rule would outstrip the costs by \$26 billion to \$45 billion by 2030.

Supporters of the Obama version say those net benefits could be even higher now, because states are on track to meet the climate goals and the costs of clean energy have continued to plummet. And they warn that repealing the regulation could keep older, more expensive coal-fired power plants in operation, adding to consumers' costs.

The math could be crucial to the success or failure of a number of Trump rules. That could make the rollbacks legally vulnerable when environmental advocates and states sue to overturn Trump's action, critics of the new proposals say.

"They are cooking the books on technical analysis to try to justify preconceived conclusions that these regulations are bad," said David Doniger, the senior strategic director of the Natural Resources Defense Council's climate program who was influential in the Obama EPA's crafting of the original rule.

EPA did not respond to a request for comment on Wednesday.

Trump administration lawyers reviewing the replacement are already struggling with how to defend a rule that could cost electricity users money but would not do much to address climate change or air pollution, according to a person aware of conversations between the White House and the Justice Department. DOJ would be charged with defending the rule in court.

POLITICO has examined a portion of the agency's unpublished draft of the new rule, which would allow states to write their own modest regulations for coal plants or even let plant operators seek to opt out entirely, according to a source with knowledge of the broader proposal.

The proposed rewrite of the power plant rule is part of a pattern: Critics say similarly fuzzy math underlies other Trump administration proposals to reverse or stymie action on climate change, such as a recent plan by EPA and the Department of Transportation to halt a planned tightening of fuel efficiency standards for cars and trucks.

Sean Donahue, an environmental lawyer who has represented groups like the Environmental Defense Fund, said he would expect a court to be "very skeptical" of any effort that looks as though EPA is trying to evade its obligation to regulate greenhouse gases. But he conceded that will depend on the details of EPA's power plant proposal.

"If it were one or two technical judgments where there's a difference between this administration and the last one, or this administration and prior consistent practice, that would be one thing," Donahue said. "But it's many, many things, all pointing the same way, all pointing toward rolling back greenhouse gas mitigation efforts."

Trump has repeatedly expressed doubts about man-made climate change, and much of his Cabinet shares a similar view. In contrast, the federal government's own scientific assessment finds that human-caused climate change will not only raise temperatures but also make extreme weather more dangerous and lift sea levels by 1 to 4 feet by the end of the century.

Kate Larsen, director of economic research firm Rhodium Group, said the Trump administration's justifications for unraveling climate change policies are symptomatic of its broader governing principles.

"A decision we make today is narrowly focused on the impacts to myself and my immediate neighbor in the next week, but you're not taking into account impacts next year and the following year to yourself, your neighbor, the entire community," she said.

Environmental experts are also scrutinizing the auto rule proposal, released earlier this month, which would freeze the Obama administration's aggressive fuel economy standards after 2020 and dial back EPA greenhouse gas rules to match.

EPA and DOT's National Highway Traffic Safety Administration argued that the freeze would save billions of dollars in costs. Critics say the administration overestimated compliance costs of the Obama-era auto targets by as much as fourfold, which could significantly tip the cost-benefit analysis in their favor. Another claim that the Trump rollback would save more than 1,000 lives per year — yielding benefits of \$77 billion — has also drawn skepticism.

On Tuesday, EPA released a June memo that showed agency staff criticizing a number of "unrealistic" aspects of NHTSA's modeling. They disagreed with the proposal's fatality figures, with EPA staff estimating deaths would increase slightly under the freeze. And they thought the rule overestimated compliance costs and the time needed to recoup those costs in fuel savings, all factors that boosted benefits and lowered costs for the proposed freeze. Both EPA and NHTSA dismissed the memo as only one part of a complex review process.

The administration and industry groups have blasted the Obama administration's use of "co-benefits" — the benefits in improved health or reduced pollution that arise even when they're not the primary aim of a regulation. (One example: Cutting coal plants' carbon dioxide pollution under the power plant regulation would't do much directly to improve people's health, but it would reduce smog.) But Donahue argued that Trump's regulators sometimes lean on co-benefits to help build the case for their rollbacks.

For example, NHTSA's modeling credits changes in consumer behavior as the overwhelming factor behind all the lives that the Trump administration contends its auto rollback would save. The agencies argue that under the previous Obama rule, drivers would be more likely to remain in older, more dangerous cars than purchase more expensive, safer ones.

That "would seem to be a co-benefits argument, since the EPA doesn't have, and NHTSA doesn't have, the authority to regulate used cars," said Donahue, who called the paradox "sort of entertaining."

Counting co-benefits is a long-standing practice for federal regulators, but energy industry groups and Republican state officials grew incensed by the Obama administration's use of it to justify major regulations.

"The co-benefits thing has ballooned into the biggest scandal in environmental regulation," said the conservative Competitive Enterprise Institute's Myron Ebell, who led Trump's post-election transition team at EPA. "You get very small direct benefits, but you make up, essentially, a lot of co-benefits."

Still, he contended that EPA's withdrawal of Obama's power plant rule would eliminate a huge amount of costs in the coming years, saying Obama's regulation represented "just the first emissions cuts."

"There were going to be more beyond that if the Obama administration had been succeeded by the Clinton administration," Ebell said. He added: "By cutting it off in the way that they're doing, we're avoiding immense future costs."

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Keystone XL pipeline wins green light in Nebraska — but may face new hurdles [Back](#)

By Ben Lefebvre | 11/20/2017 11:25 AM EDT

Nebraska regulators approved the Keystone XL pipeline Monday, but only if it is built along a new path that may force the project developer to jump through a new set of regulatory hoops.

The 3-2 vote by the Nebraska Public Service Commission gave the green light to a different route than the one preferred by Keystone developer TransCanada, moving it east to run partially alongside the original Keystone pipeline and through a portion of the state's ecologically sensitive Sandhills area as well across the Ogallala Aquifer.

The Trump administration is evaluating whether it would have to re-approve the controversial pipeline to account for the new route. But activists who have spent the better part of a decade fighting to block Keystone said the decision throws the whole project into jeopardy, while TransCanada, the company seeking to build the project, said only that it is evaluating its next steps.

"This decision today throws the entire project into a huge legal question mark," said Jane Kleeb, the activist who led the opposition to the pipeline and who is now Nebraska Democratic Party chair. "TransCanada will have to go back to the State Department because that route has never been reviewed by the feds."

The State Department said it is reviewing the PSC decision for just such a possibility.

"We won't know about any impacts until we learn precisely the extent of any changes, something we are currently engaged in," State Department spokesman Vincent Campos said.

TransCanada President and CEO Russ Girling said the company "will conduct a careful review of the Public Service Commission's ruling while assessing how the decision would impact the cost and schedule of the project."

Former President Barack Obama had blocked the permits for the pipeline in 2015, citing the oil sands' impact on climate change, but President Donald Trump quickly reversed that decision after taking office. Keystone XL is designed to transport up to 830,000 barrels per day of crude from Canada's oil sands and North Dakota's shale fields to oil refineries on the Gulf Coast.

The Nebraska PSC vote comes as TransCanada adds new crews to its cleanup operations in South Dakota, where the original Keystone Pipeline ruptured last week and released 210,000 gallons of oil. But Nebraska law bars the regulators from considering spills or pipeline safety in its decision-making process.

Environmentalists and landowners who opposed Keystone XL's construction have promised to try to overturn the commission's decision.

"We will appeal," Kleeb said. "We will challenge a foreign corporation being given eminent domain in the county courts, with every intent to bring it to the Supreme Court if needed."

Even with the approval, the project, whose costs to build the nearly 1,200 mile artery have ballooned to \$8 billion, is still not ready to be built since TransCanada is gauging the economics of the huge investment. Though prices for oil have rebounded moderately in recent months, and while TransCanada has said demand for space on the pipeline is strong, it's not yet clear that enough companies will commit to the 20-year contracts required to reserve space on it.

The opposition to Keystone XL had been a rallying cry for green activists who have long said mining Canada's oil sands would be a disaster for global climate change, releasing vast amounts of carbon dioxide into the atmosphere.

But supporters have said tapping the oil fields in Alberta is no worse than the oil production in Venezuela, where much of the heavy sour crude that is shipped to U.S. refineries comes from now.

Many in the oil industry, however, no longer see the Keystone XL pipeline as crucial to the U.S. refineries as they once did, especially since the railroad sector stepped in to offer a more flexible — though more expensive — way to ship the oil.

"There's not going to be a parade thrown, although everyone in the industry is going to be grateful," said Tyler Nelson, an energy lobbyist for Cornerstone Government Affairs. "It should have been done years ago. But now a lot of people want it to be over with and done and move on."

The pipeline may struggle to succeed in the oil business. Energy markets have made the Alberta oil sands less attractive, with ExxonMobil, ConocoPhillips and others pulling out of the region to concentrate on U.S. oil

shale development in Texas. Meanwhile, rival pipeline company Enbridge has expanded its pipeline system delivering Canadian crude to the U.S.

Critics have pointed to the recent shale oil boom as a reason that supply from the Canadian and North Dakota fields is in less demand, and they argue that much of the oil from Keystone XL could end up on tankers bound for export. U.S. oil production is on target to average more than 9 million barrels a day this year, nearly double what it was when TransCanada first proposed the massive pipeline.

If TransCanada gives its final approval to go ahead, construction would not start until 2019 at the earliest, Paul Miller, TransCanada's president of liquids pipelines, said during a conference call earlier this month.

The pipeline already is the focus of a court challenge stemming from Trump's State Department approving the project. A coalition of groups is arguing the State Department did not do due diligence before approving the cross-border pipeline in March. The case is still in the beginning stages, with a decision pending from the U.S. District Court of Montana on a Trump administration motion to dismiss.

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Judge orders Trump administration to update Keystone XL environmental study [Back](#)

By Alex Guillén | 08/15/2018 08:17 PM EDT

A federal judge today ordered the Trump administration to update its environmental study of the Keystone XL pipeline.

Nebraska regulators last year picked an alternative route through the state after the pipeline was approved by President Donald Trump. Now the State Department must update its previous 2014 environmental impact statement to take that route into account, ruled Judge Brian Morris of the U.S. District Court for Montana.

The Trump administration argued that it did not need to update the EIS, despite Nebraska regulators' decision to pick the alternate route.

But Morris concluded that the State Department still has a "meaningful opportunity to evaluate" the alternative route that was picked in Nebraska. "Federal Defendants cannot escape their responsibility under NEPA to evaluate the Mainline Alternative route," he ruled.

The approved route differs from the one studied in the 2014 EIS by crossing different counties and bodies of water and requiring an extra pump station and electric infrastructure, Morris noted.

However, Morris declined environmentalists' request that Trump's permit be vacated, at least for now.

TransCanada does not plan to start construction before the second quarter of 2019, he said, giving the Trump administration sufficient time "to supplement the EIS in a manner that allows appropriate review before TransCanada's planned construction activities." Morris said he would revisit the issue if "circumstances change" and he is unable to review the new supplemental EIS before TransCanada begins construction.

WHAT'S NEXT: Morris ordered the State Department to propose a schedule to supplement the EIS.

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Trump administration to make a second try on spending cutbacks [Back](#)

By Sarah Ferris and John Bresnahan | 08/15/2018 07:15 PM EDT

The Trump administration is eyeing a second attempt to force Congress to roll back federal spending, after its last attempt collapsed in the GOP-led Senate, according to the chairman of the Senate Appropriations Committee as well as a Senate leadership source.

The Office of Management and Budget is said to be considering a second package of so-called rescissions, with just weeks to go until Congress' next budget deadline.

OMB officials did not return a request for comment and it's not known yet what spending the White House might try to cut or eliminate this time around.

Senate Appropriations Chairman Richard Shelby said today he was told about the idea. "I heard they were thinking about one, but I haven't seen it," Shelby (R-Ala.) told POLITICO.

OMB chief Mick Mulvaney has already begun moving ahead, according to the Senate leadership source.

Budget hawks, led by Mulvaney, fought hard for the last package, H.R. 3 (115), which would have pulled back \$15 billion in already-approved federal dollars. That bill ultimately tanked in the Senate, coming up just one vote shy on a procedural vote.

If the White House moves quickly, its next rescissions package could arrive in the middle of a separate major funding fight on Capitol Hill. Lawmakers have until Sept. 30 to send roughly \$1.4 trillion in fiscal 2019 funding to President Donald Trump's desk or risk a funding lapse.

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Oil companies ask Florida lawmakers to unlock offshore drilling [Back](#)

By Ben Lefebvre | 08/15/2018 05:01 AM EDT

Oil and gas companies are aggressively lobbying Florida lawmakers to agree to allow offshore drilling in the eastern Gulf of Mexico — seeking to break decades of bipartisan opposition in a state that has long viewed oil spills as an existential threat to its tourist economy.

The effort, which would potentially bring oil rigs as close as 75 miles to Florida beaches, comes just seven months after Interior Secretary Ryan Zinke promised that the state was "off the table" for offshore drilling. And it could complicate Republican Gov. Rick Scott's campaign to unseat Democratic Sen. Bill Nelson, whose opposition to drilling off the coast has been a main theme of his decades in Congress.

But the expansion would aid President Donald Trump's effort to increase U.S. oil and gas production, in what he calls a bid for American "energy dominance."

Gaining access to the millions of barrels of oil and natural gas off Florida's west coast is a top priority for Exxon Mobil, Chevron, Shell and other companies.

Energy lobbyists and trade associations believe Zinke left some wiggle room in his comments, and they are trying to persuade Florida lawmakers to sign on to possible compromises, including allowing drill rigs to operate up to 75 miles off the state's Gulf coast, lawmakers and industry sources said. That would be down from more than 200 miles under an existing drilling moratorium.

Zinke's tweet exempting Florida — which critics charge was simply a political gift for Scott's Senate campaign — and his subsequent statement that he was "removing Florida from consideration for any new oil and gas platforms" shouldn't be read as official Interior policy, said Randall Luthi, president of the trade group National Offshore Industry Association, which is pressing for access to the waters.

"Secretarial tweets and statements to Congress are outside the administrative process, but certainly are indicators of where the Secretary and evidently the White House might end up," Luthi said in a statement to POLITICO. "The Eastern Gulf of Mexico is ripe for some kind of a reasonable compromise."

The Gulf of Mexico Energy Security Act of 2006 put a moratorium on oil and gas exploration in the eastern Gulf until June 2022. Department of Defense offshore training zones put another large part of those waters out of contention for drilling.

Interior's first draft plan included opening up every acre of federal water to oil and gas companies, however. Zinke has implied in later conversations with coastal state governors, senators and trade associations that the final plan wouldn't necessarily include drilling off the coasts of New Jersey, Delaware, Maine, but his plan to announce a final decision this fall could delay unpopular decisions — including possibly opening up the waters off southern California and the Mid-Atlantic region — until after the midterm elections, sources said.

The most aggressive plan industry lobbyists have brought to lawmakers calls for allowing drilling platforms within 75 miles of Florida's Gulf coast, an idea that Interior itself floated in its draft plan. Buffer zones going out as far as 125 miles have also been discussed, sources said. Either could technically adhere to Zinke's promise not to open Florida's waters, since the state's jurisdiction only extends nine nautical miles from the shoreline. Interior proposed the use of so-called exclusion zones for the eastern Gulf of Mexico and the Atlantic coast in its draft plan.

One lobbyist working the issue told POLITICO that Zinke and Scott were careful to "not say the entire Eastern Gulf," was off the table during their press conference at the Tallahassee airport in January.

"There are some Republicans who are prepared to make a deal. Seventy-five miles is the expected buffer, but folks might be willing to throw it a little further," said the lobbyist, speaking anonymously to frankly discuss ongoing negotiations.

That reduced buffer zone would please the oil industry because most of the oil and gas reserves in the eastern Gulf are believed to be in the waters south of Alabama and the Florida Panhandle, said a person at one oil and gas company who was not authorized to discuss the draft plan.

"I think we could live with 75 miles," the person said. "I think that wouldn't hurt anyone."

The idea so far has failed to gain much traction with at least two Florida Republicans who said they have been inundated with industry requests to open the area to drilling.

Florida Republican Rep. Matt Gaetz said he opposes the idea on national security grounds, given that the Defense Department uses a large part of the eastern Gulf for training exercises.

"It seems every week the oil and gas industry is working to obtain permission to crack the Destin Dome," Gaetz said in an interview with POLITICO, referring to one offshore site believed to hold large amounts of natural gas. "That would be devastating to our national security. I don't have a nuanced view on this. I am opposed."

Gaetz said he has raised his concerns on several occasions with Zinke, who he said has not pushed for a specific policy but has espoused an expansion of oil and gas drilling in general.

"I've had meetings with the secretary on this," Gaetz said. "I've had spirited conversations with him. I would not say he was wedded to any particular plan. He was trying to advance the cause of energy exploration."

An Interior spokeswoman did not answer questions about Zinke's meetings with Florida lawmakers or the possibility of establishing a 75-mile buffer zone.

"Secretary Zinke regularly meets with and communicates with many members on both sides of the aisle, coastal and non-coastal," the spokeswoman said in a written statement. "Members often discuss relevant issues pertaining to their districts and states as appropriate."

Republican Rep. Francis Rooney, who opposed drilling off the Florida coast during his 2016 campaign, said the industry has also been reaching out to him. Industry representatives have suggested several compromises, including a 100-mile buffer zone, he said, though he has rejected that plan, saying currents could carry any spilled oil from that part of the Gulf onto state beaches.

Instead, Rooney, who had served on the board of the oil and gas company Laredo Petroleum, offered to allow drilling 200 miles off the coast, west of the area where the military conducts training.

"The oil people have brought up several different things and I have been pretty much recalcitrant in negotiating with them," Rooney told POLITICO. "I think we need a clear delineation of where they will drill and not drill, and we don't need them drilling east of that military mission line."

Environmentalists also oppose any drilling, saying a buffer zone wouldn't protect Florida's beaches and tourism economy.

"The Deepwater Horizon disaster that spoiled Florida's coastline was 200 miles from its shore," said Diane Hoskins, director of environmental group Oceana, referring to the 2010 deepwater gusher that took months to plug. "A 75-mile buffer would be a cold comfort for Floridians."

Alexandra Glorioso contributed to this report.

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Trump delivers a Senate race sweetener to Scott [Back](#)

By Marc Caputo, Ben Lefebvre, Matt Dixon and Bruce Ritchie | 01/09/2018 11:24 PM EDT

Donald Trump delivered a big political contribution to Rick Scott on Tuesday as the Florida governor contemplates a bid for U.S. Senate: a pledge to spare Florida from administration plans to expand offshore oil drilling nationwide.

The surprise announcement from Secretary of Interior Ryan Zinke — who went to the trouble of flying to Tallahassee to stand beside Scott — outraged environmentalists and Democrats who insist the decision was a political ploy that unlawfully gave preferential treatment to Florida, a swing state that voted for Trump and that's home to his so-called "Winter White House" escape at Mar-a-Lago in Palm Beach.

Zinke made sure that the term-limited governor got all the credit. In response to a question about what was the final determining factor in his decision, Zinke said: "The governor."

"You have a tremendous governor that is straightforward, easy to work for, says exactly what he means. And I can tell you Florida is well-served," Zinke said.

Zinke's glowing endorsement of Scott has become de facto policy for Trump, who has tried for more than a year to woo Scott publicly and privately to run for U.S. Senate against Democratic incumbent Bill Nelson. The veteran senator is one of the most vocal opponents of offshore oil-drilling in Florida, an issue that typically enjoys broad bipartisan support in a state whose economy depends heavily on tourism and development along 1,300 miles of coastline.

Scott used to be an exception to the blanket opposition to offshore oil drilling. In 2010, the then-political newcomer voiced more support for oil exploration, but the position became a political liability in the state after the Deepwater Horizon oil spill coated some Florida beaches with tar balls and damaged tourism in parts of the Gulf.

A 2016 University of South Florida-Nelson poll found that 47 percent of state residents see offshore drilling as a move in the "wrong direction," a distinction that makes it one of the most unpopular policy proposals in the state.

So when Zinke announced last Thursday that the administration wanted to open vast new stretches of federal waters to oil and gas drilling, opposition was united in Florida — from liberal environmentalists to conservative lawmakers and even Scott, who issued a rare public denunciation of the policy.

At the time, Democrats and Nelson supporters highlighted the unpopular policy announcement by a president who's flagging in the polls. Nelson's campaign began fundraising off of the initial announcement to expand oil exploration.

One Republican insider, however, told POLITICO shortly after the initial announcement that the administration would scale the plan back somewhat to give Scott a political boost that would "be a big win, and it won't be Bill Nelson bringing it home."

As late as Tuesday, Nelson was still fundraising off the drilling announcement. "President Trump is about to hand a huge victory to the oil industry and put Florida's entire economy at risk," Nelson's campaign wrote. "He just announced plans to rollback offshore drilling regulations that were put in place after the 2010 Deepwater Horizon disaster, and open up nearly all federal waters to offshore oil drilling — including the eastern Gulf of Mexico."

But just before that email solicitation was sent out, Zinke was unexpectedly standing in Tallahassee's regional airport with Scott announcing the reversal to the Florida capital press corps.

Nelson said he was incredulous.

"I have spent my entire life fighting to keep oil rigs away from our coasts. But now, suddenly, Secretary Zinke announces plans to drill off Florida's coast and four days later agrees to 'take Florida off the table'? I don't believe it," Nelson said in a written statement. "This is a political stunt orchestrated by the Trump administration to help Rick Scott, who has wanted to drill off Florida's coast his entire career. We shouldn't be playing politics with the future of Florida."

Similarly, the Sierra Club of Florida said the decision was "a purely political move to aid the ambitions of Rick Scott." And the League of Conservation Voters called it a "publicity stunt."

Scott's spokesman, Jonathan Tupps, said oil-drilling opponents should not be upset.

"Senator Nelson and anyone else who opposes oil drilling off of Florida's coast should be happy that the governor was able to secure this commitment," he said. "This isn't about politics. This is good policy for Florida."

Tupps said that, contrary to claims by Scott's opponents, the governor and staff have frequently discussed Florida's opposition to more offshore oil drilling with the Interior Department. Scott personally raised the issue with Zinke in an October meeting in Washington, Tupps said.

Why Zinke suddenly reversed months of planning four days after announcing the new oil and gas exploration policy are unclear. Zinke also made his announcement via Twitter after a brief question-and-answer session with reporters in Tallahassee.

In reversing the policy for Florida, however, Zinke may have run afoul of the Administrative Procedure Act, critics said. That could give ammunition to California and Atlantic Coast states wanting to get on the same no-drill list -- the opposite of what President Donald Trump intended when he directed Zinke to expand oil companies' access to federal waters to boost U.S. energy production.

The American Petroleum Institute President Jack Gerard earlier in the day had applauded the Trump administration's plan to make all available federal waters available for drilling, saying "It represents a bold acknowledgement of the industry's advancements in technology to safely access U.S. energy resources."

Almost immediately after Zinke's announcement, lawmakers from other states took to Twitter to raise the specter of lawsuits, which could lead to courtroom entanglements for Interior's offshore drilling plan. The proposal was supposed to go into effect in 2019 and offer acres off the coast of Florida in late 2022 when a drilling moratorium officially ends.

"Under the Administrative Procedure Act, an agency can't act in an arbitrary and capricious manner. In this case, exempting Florida but not California (which has an even larger coastal economy) is arbitrary and capricious," Rep. Ted Lieu, a California Democrat and attorney, told POLITICO.

"So the agency would either have to not exempt Florida, or in the alternative, exempt Florida, California and any other state that can show the coasts are important to the state's tourism and economy."

California Attorney General Xavier Becerra also hammered that point on Twitter, echoing Scott's argument against drilling off the Florida coast to say "California is also 'unique' & our 'coasts are heavily reliant on tourism as an economic driver.' Our 'local and state voice' is firmly opposed to any and all offshore drilling. If that's your standard, we, too, should be removed from your list. Immediately."

In Virginia, U.S. Sen. Tim Kaine took a more low key approach. "Virginia's governor (and governor-elect) have made this same request [as Florida], but we have not received the same commitment. Wonder why..." he tweeted.

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Pruitt touts science policy as transparency as Democrats slam him for secrecy [Back](#)

By Emily Holden and Annie Snider | 04/26/2018 03:17 PM EDT

Embattled EPA Administrator Scott Pruitt sought to fend off criticisms he had clouded his activities within the agency in secrecy, pointing during Thursday's congressional hearing to the new science policy rolled out this week that he said is boosting transparency around new rules.

But that new policy, long a conservative priority, had Democrats howling that Pruitt had effectively given himself carte blanche to conceal studies that would not support his rollback of Obama EPA rules.

"The type of studies you want to exclude are the same kind of scientific studies that were used to prove that lead in pipes and paints harm children and that secondhand smoke is a dangerous carcinogen," said Rep. [Raul Ruiz](#) (D-Calif.). "You have demonstrated a disregard of true science [and] the scientific process," he said.

The discussion was one of the most substantive policy issues at [the hearing](#) of the Energy and Commerce subcommittee that focused largely on the scandals that have erupted around Pruitt in recent weeks.

The draft rule, which was announced at a closed event at agency headquarters on Tuesday, could have far-reaching effects that limit EPA's ability to rely on studies that don't have publicly available raw data when making decisions about air and water regulations. Scientists and public health advocates have argued the change could keep the agency from updating health protections based on new science since those studies typically redact subjects' personal information.

Pruitt's GOP supporters on the panel praised the move as a way to ensure that scientific data used to support new regulations was available for everyone to review.

"I've had a lot of constituents over the years who've been very concerned about decisions ... that get made by administrators or the bureaucracy and in some cases they can't get access to the underlying data that underpins the decisions," said Rep. [Greg Walden](#) (R-Ore.), chairman of the Energy and Commerce Committee.

Rep. [Paul Tonko](#) (D-N.Y.) called Pruitt "hypocritical" because the proposed rule gives broad authority Pruitt to grant exemptions from the new requirements, which he said Pruitt could use "without any transparency or accountability" for his decisions.

Tonko pointed to internal emails between top EPA officials initially released under the Freedom of Information Act that show the agency's top chemicals official, a former leading chemicals industry expert, expressing concerns about the impact the policy could have on companies' confidential business information.

"If EPA was assessing the safety of a chemical, you alone would have the power to selectively block public health studies that do not support your political priorities and allow ones that favor your friends in industry. Not only does this open the door to special treatment for industry over the public health, but you could also pick winners and losers among the industry types," Tonko said.

Pruitt argued the restrictions will apply equally to "all third party studies." He said both business and personal health information could be redacted, which experts have argued would be time-consuming and expensive.

Yogin Kothari, a Washington representative for the Union of Concerned Scientists, which has opposed the change, said Democrats were right to highlight the hypocrisy of the policy that he said was really about restricting science.

"What it highlights is a lack of transparency at the agency because he hasn't really talked about this or explained this or explained his thinking about this," Kothari said.

Frank Maisano, a spokesman for the lobbying firm Bracewell who attended the hearing, said Republicans on the committee appeared to be interested in hearing more about the policy.

"It's a topic that is different from what Democrats are talking about, it's a topic that's substantive," Maisano said. "It's a topic that many in the business community and many in the conservative community have been focused on for years."

EPA's proposal, based on long-sought legislation from House Science Chairman Lamar Smith (R-Texas), also drew support from Rep. Kevin Cramer (R-N.D.) who said it undercut Democrats who attacked Pruitt for secrecy while defending the agency previous use of "secret science."

"You've also been accused of hypocrisy, a lack of transparency, by people who are in the same breath defending secret science as a means of carrying out their political philosophy ... the irony is rich beyond rich with me," he said.

Quint Forgey contributed to this report.

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Mexico, U.S. may be heading toward NAFTA deal amid Trump's global trade war [Back](#)

By Megan Cassella | 08/15/2018 05:32 PM EDT

President Donald Trump could be poised to make a deal with Mexico on NAFTA even as he engages in a trade war with the rest of the world.

Mexican Economy Secretary Ildefonso Guajardo arrived in Washington on Wednesday — as he has every week for the past month — to hammer out some of the most contentious issues on NAFTA. U.S. and Mexican officials now say they could be on the verge of announcing a preliminary agreement on everything from complicated automotive rules to environmental regulations by the end of August.

The apparent turnaround after months of stalemate is a surprise outcome of discussions reaching their year anniversary on Thursday. And while the two sides have yet to bring Canada, the third partner in NAFTA, into the latest round, the negotiators' optimistic tone could signal that Trump may be ready to extinguish at least one trade conflagration before the midterms. That would placate Republicans who have been calling for a return to stability as the U.S. and China have been slapping tariffs on each other's exports, roiling international markets and burdening American farmers.

"We're settling in for the long haul with China, so we really need to release the pressure in our backyard," said Dan Ujcz, an international trade lawyer who specializes in Canada-U.S. matters. "I think that's a driving force for the U.S.' desire to get a deal right now."

To be sure, some major controversial issues remain unresolved, including the U.S. proposal to automatically terminate the pact after five years unless all three countries agree to renew it — an idea that Canada and Mexico have both rejected outright. And for the time being, at least, Canada still remains on the outside of the current talks.

But reaching even a bare-bones agreement on NAFTA before November's elections would hand a concrete victory to Trump, who would likely point to the revamped pact as a symbol that his strong-arm tactics have worked, industry sources and experts closely following the talks say. It would also allow U.S. trade officials to clear a major task off their agenda and dedicate more time to areas where U.S. Trade Representative Robert Lighthizer in particular has wanted to focus, primarily trade issues with China.

At the same time, Mexican negotiators are also under renewed pressure to get a deal after the country elected a new leader who takes office in December and who badly wants NAFTA to be signed and off his plate before then. Mexico has pointed to Aug. 25 as the date by which it must wrap up at least a preliminary agreement for outgoing President Enrique Peña Nieto to be able to sign the deal before he leaves office.

Those domestic politics have put Guajardo in a tough position, as he tries to appease the incoming Mexican administration and quickly wrap up a deal while still standing up firmly against some U.S. proposals that Mexico has repeatedly derided as unworkable.

"They're under a lot of pressure to just come up with anything, whatever it is," one source close to the talks said, requesting anonymity to speak freely about internal deliberations. "What I've been hearing from other Mexican parties is that Ildefonso was sort of distraught and frazzled by the fact that he's being asked to wrap it up, and that of course means making concessions that he wasn't ready to make. It lowers his negotiating potential."

Against that backdrop, sources close to the talks say Mexico appears to be poised to accept large swaths of a U.S. proposal involving the rules that govern North American-produced automobiles and dictate what percentage of each car must be sourced from within a NAFTA country to qualify for reduced duties under the agreement.

At the U.S.' urging, Mexico looks likely to agree to an increase in the overall amount of North American-sourced content that must be included in each automobile, and will accept a requirement that a certain percentage of each car must be produced by workers earning at least \$16 an hour, sources say. Mexico is also poised to accept mandates that a certain percentage of the steel, aluminum and plastic included in each vehicle is also sourced from a NAFTA country.

In exchange, the United States would be prepared to give up a controversial proposal that would have made it easier for American fruit and vegetable growers to make the case that Mexico is selling produce at unfairly low prices when crops are in season in a particular region, two sources with knowledge of the trade-off told POLITICO. The U.S. would also submit to Mexico's demand to leave a chapter largely untouched that contains rules on disputes between governments, one of the sources said.

"Essentially, there is a deal," one of the sources said.

At the same time, however, other major aspects of the renegotiation remain unfinished. Chief among them is the so-called sunset clause that the U.S. wants, which would end the pact after five years unless the parties opt to continue it. Several sources close to the talks say the sunset clause has hardly been discussed during the latest set of meetings between the U.S. and Mexico, and the two countries still remain on opposite sides.

And Canada will need to come to the table for a deal to be finalized. Officials from all three countries have sought to emphasize that the U.S.-Mexico engagement is not a sign of ill will toward Canada but is instead an attempt to work out bilateral issues before bringing Ottawa back into the fold.

But negotiators had expected that Washington and Mexico City would have made enough progress by now for Canadian Foreign Minister Chrystia Freeland to have joined the meetings in Washington. The more time that passes, the more likely it is that the strategy to put off a trilateral meeting could backfire, a source close to the talks said.

"Yes, there's U.S.-Mexico momentum — that's a positive message and great from Mexico's point of view," the source said. "But the longer it takes to bring in Canada, the less likely this is going to get done in the short term."

Still, any incremental progress, or even the fact that the U.S. and Mexico are continuing to engage in good-faith negotiations and regular meetings, has offered a signal of some hope to U.S. farmers, consumers and industry groups who have been worn out by months of uncertainty and pummeled by retaliatory tariffs imposed over the past few months.

Retailers and business groups are reluctant to throw their support at this point behind a deal that is still unfinished, particularly when a number of proposals that some have termed poison pills remain on the table.

But at the same time, "I think what all of our members want, what the business industry at large wants, is certainty," said Vanessa Sciarra, a former U.S. trade negotiator who now works as a vice president at the National Foreign Trade Council. "Anything that provides for greater clarity on trade relationships, particularly with Mexico and Canada ... would be helpful."

Adam Behsudi contributed to this report.

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EPA News Highlights 3.19.18

Finger Lakes Times: Dundee Getting EPA Funds For New Bus

The Dundee Central School District will be getting a new bus through the U.S. Environmental Protection Agency's Diesel Emissions Reduction Act funding. Nationwide, the EPA is awarding \$8.7 million to replace or retrofit 452 older diesel buses. In New York, \$460,000 is going to replace or retrofit 23 buses, including one in Dundee. Stephanie Cleveland, Dundee's transportation director, learned of the EPA program last year when district officials were looking at purchasing new buses. "We will replacing an older model diesel bus with an approved, newer model bus that meets the requirements of the program," Cleveland said. "The bus submitted for the rebate will be scrapped as part of the requirements of the rebate program. We are very pleased to have been selected for this rebate."

St. Louis Post-Dispatch: EPA Extends Rebates To Missouri Schools For Cleaner Bus Upgrades

The Environmental Protection Agency is offering rebates to 18 Missouri school districts — including some near St. Louis — to replace older, diesel school buses. The \$745,000 total extended to schools around the state will help cover the

replacement of 40 buses. The sum is part of a broader outlay of \$8.7 million nationally for bus replacements and retrofits, funded through the EPA's Diesel Emissions Reduction Act program. The rebates offered through the program will knock down the sticker price that eligible school districts pay by \$15,000 to \$20,000 apiece, depending on the size of the bus. St. Louis-area school districts to receive the funding include De Soto, Mehlville, Valley Park, New Haven and the Lincoln County R-III School District, in Troy, which is by far the state's largest recipient of the money, with \$150,000 to be put toward 10 new buses. No other district received more than \$60,000 to help with three bus upgrades.

Farm Futures: EPA's Pruitt Talks WOTUS, RFS With Farm Bureau Members

EPA Administrator Scott Pruitt talked about the agency's role in American agriculture during a March 14 appearance before more than 300 members of the Iowa, Missouri, Ohio and Alabama Farm Bureau. "I am committed to providing America's farmers with the transparency and regulatory certainty they deserve from Washington," Pruitt said. "EPA is working with our nation's first environmentalists as partners to preserve and steward our natural resources while supporting local economies."

E&E News: Science Reform Eyed As Path To Unravel Endangerment Finding

The plan now being developed at U.S. EPA to restrict the science the agency uses could affect the crafting of regulations for years and become one of the most enduring parts of Administrator Scott Pruitt's legacy. The plan under consideration is expected to limit the science used in EPA regulation to studies where the data could be published and reproduced. And while the agency is still considering the exact scope of its restrictions, both critics and supporters of the plan agree that it will fundamentally transform the way EPA uses research. Supporters say it will prevent opaque "secret science" from being used to form regulations that could affect billions of dollars in economic activity. Opponents say it will eliminate from consideration much of the groundbreaking research the agency has used to protect Americans against pollution.

National News Highlights 3.19.18

The Washington Post: Fourth Austin Explosion Possibly Detonated By Tripwire, Leaving 2 Injured, Police Say

Police in Austin said an explosion in a residential neighborhood Sunday night appeared to be related to the three bombs that detonated earlier this month, plunging the Texas capital further into a frightening mystery that forced residents to remain locked in their home as investigators scoured the area for answers. The blast Sunday, which injured two men who were riding bicycles through a residential area, was the latest in a string of explosions to rock Austin, which has been on edge since the previous bombings killed two people and seriously injured a third. Authorities have seemed at a loss to explain who could be setting off these devices or why, saying only that the bombs were sophisticated and could have been motivated by racial bias, although they acknowledged that this remains only a theory. This latest explosion injured two men in their 20s in the southwest portion of Austin. While the previous blasts all involved packages left at homes, this explosive was on the side of the road and possibly triggered by a tripwire, said Brian Manley, the interim Austin police chief.

The Wall Street Journal: Trump Steps Up Attacks On Mueller Investigation

President Donald Trump and his legal team over the weekend intensified attacks on the special counsel's probe into possible Russian election interference, departing from a previously more cooperative posture and prompting more urgent warnings from senators not to undermine the investigation. In his first Twitter post to target the special counsel, Robert Mueller, by name, Mr. Trump on Saturday said the probe "should never have been started in that there was no collusion and there was no crime." On Sunday, the president mentioned Mr. Mueller again, suggesting his team of prosecutors consisted of "hardened Democrats" intent on taking down the Republican president. Mr. Trump for months has criticized the Russia probe, but his weekend comments showed a more confrontational tone toward Mr. Mueller and prompted senators from both parties to caution the president against taking steps to end the special counsel's investigation. The warnings to Mr. Trump were also triggered by a statement Saturday by the president's personal lawyer, John Dowd, calling for the Justice Department to step in to stop the Mueller investigation.

TRUMP TWEETS

Finger Lakes Times

http://www.fltimes.com/news/dundee-getting-epa-funds-for-new-bus/article_41045558-ab17-548a-b386-fdb61e0d2d87.html

Dundee Getting EPA Funds For New Bus

By Mike Hibbard, 3/18/18

DUNDEE — The Dundee Central School District will be getting a new bus through the U.S. Environmental Protection Agency's Diesel Emissions Reduction Act funding.

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Federal officials said the new and retrofitted buses will reduce pollutants linked to health problems such as asthma and lung damage.

The EPA launched its "Clean School Bus USA" program 15 years ago.

St. Louis Post-Dispatch

http://www.stltoday.com/business/local/epa-extends-rebates-to-missouri-schools-for-cleaner-bus-upgrades/article_a1fedc95-ba8d-560c-a948-f65cae17cc5f.html

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By Bryce Gray, 3/18/18

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The EPA says the initiative aims to protect the health of children by decreasing emissions of pollutants like nitrogen oxides and particulate matter.

"There are links to health problems like asthma and lung damage, and with school buses carrying our most treasured possessions — our youth — we'd like (the funding) to energize some work in those areas by cities and states," said David Bryan, a public affairs specialist at the agency's regional headquarters near Kansas City.

Funding upgrades to cleaner school buses is gaining widespread traction at other levels of government, too. Though not part of a coordinated effort, the EPA's move is similar to investment under consideration by the Missouri Department of Natural Resources, which signaled that it is likely to pursue similar upgrades with at least some of its \$41 million from the Volkswagen emissions scandal settlement.

Deliberation on how to spend that money is still ongoing, but DNR officials suggested that the EPA's separate move could help "get the most bang for the buck" in terms of funding bus replacements.

"They're separate but certainly related," said Darcy Bybee, director of DNR's Air Pollution Control Program. "The timing is good."

Farm Futures

<http://www.farmfutures.com/epa/epas-pruitt-talks-wotus-rfs-farm-bureau-members>

EPA's Pruitt Talks WOTUS, RFS With Farm Bureau Members

By Farm Futures, 3/19/18

EPA Administrator Scott Pruitt talked about the agency's role in American agriculture during a March 14 appearance before more than 300 members of the Iowa, Missouri, Ohio and Alabama Farm Bureau.

"I am committed to providing America's farmers with the transparency and regulatory certainty they deserve from Washington," Pruitt said. "EPA is working with our nation's first environmentalists as partners to preserve and steward our natural resources while supporting local economies."

Topics covered include:

- Waters of the U.S. rules
- Continued efforts to engage in cooperative federalism on issues affecting farmers and ranchers.
- The Renewable Fuel Standard

Quotes from attending Farm Bureaus

"Administrator Pruitt is willing to work with the people on the front lines instead of against them," said Missouri Farm Bureau President Blake Hurst. "This is a welcome change, and we look forward to making progress on environmental policy with his team."

"I appreciate the new direction Administrator Pruitt is taking the EPA and the outreach that has been made to the farming community," said John DeLoach, a young farmer in town with the Alabama Farmers Federation. "It is encouraging to see the agency working with, rather than against, our nations' farmers in carrying out their mission."

"We appreciate Administrator Pruitt's support on critical issues such as rescinding the Waters of the U.S. (WOTUS) rule and recognizing farmers and ranchers as partners in conservation and environmental stewardship," said Iowa Farm Bureau President Craig Hill.

"Ohio farmers appreciate Administrator Pruitt's willingness to listen to our concerns," said Ohio Farm Bureau President Frank Burkett III. "He shares Farm Bureau's belief that protecting the environment and farming profitably are not exclusive of one another. We appreciate that he chose to spend valuable time with us."

E&E News

<https://www.eenews.net/climatewire/2018/03/19/stories/1060076695>

Science Reform Eyed As Path To Unravel Endangerment Finding

By Scott Waldman, 3/19/18

The plan now being developed at U.S. EPA to restrict the science the agency uses could affect the crafting of regulations for years and become one of the most enduring parts of Administrator Scott Pruitt's legacy.

The plan under consideration is expected to limit the science used in EPA regulation to studies where the data could be published and reproduced. And while the agency is still considering the exact scope of its restrictions, both critics and supporters of the plan agree that it will fundamentally transform the way EPA uses research.

Supporters say it will prevent opaque "secret science" from being used to form regulations that could affect billions of dollars in economic activity. Opponents say it will eliminate from consideration much of the groundbreaking research the agency has used to protect Americans against pollution.

EPA's expected reform efforts are inspired by legislative measures boosted by Republican Rep. Lamar Smith of Texas, chairman of the House Committee on Science, Space and Technology and one of Congress' chief antagonists toward mainstream climate scientists. Smith has pushed legislation in recent years that would require new EPA regulations to be based on science that is reproducible and whose data is public. The most recent iteration of Smith's legislation, which is called the "Honest and Open New EPA Science Treatment (HONEST) Act," passed out of the House a year ago but has failed to advance in the Senate.

But a group of influential conservative voices, including Trump EPA transition team members and researchers from conservative think tanks, want Pruitt to go further. They want Pruitt — who recently told a group of conservatives gathered at the Heritage Foundation that the agency was working on the issue — to impose the requirement on all science used at the agency. Some even see it as a way to potentially go after the endangerment finding for greenhouse gases, which is the legal underpinning of EPA's climate regulations.

Science transparency can be used to go after the supporting documents for the endangerment finding, to evaluate its quality, said Pat Michaels, director of the Center for the Study of Science at the libertarian Cato Institute, which had a representative at the Heritage Foundation meeting. Michaels has long criticized climate models used in future predictions, and he believes that making data around the models transparent would prove his theory and make it easier to pick apart the models.

"We're all for rigorous examination of the models that are being used, especially the models for the endangerment finding," he said. "It's pretty apparent they're not working well, and if, for some reason, it's left to me and my few friends to point this out, I think it would be a good idea [and] that the agency should do it."

Regardless of whether it becomes a club against the endangerment finding, the directive could have significant impacts for studies now in place, said Bernard Goldstein, dean emeritus of the University of Pittsburgh Graduate School of Public Health and the former EPA assistant administrator for research and development in the Reagan administration. For example, air pollution rules must be re-evaluated by the agency every five years under the Clean Air Act, and the science data directive could sharply limit "just about everything" in those reviews, he said. That includes research from around the world, and there is little chance that scientists in Britain, France or Australia would turn over raw data to the Trump administration, he said.

"You're basically throwing out the data you have, that you've built up over many, many years," he said.

In pushing back against the estimates by EPA's career staff that the "HONEST Act" would cost more than \$250 million annually, Pruitt's EPA staff suggested that it would not apply to many studies that it would rely upon, according to a Congressional Budget Office analysis. That may suggest that the agency is now looking at crafting the plan to fit future regulations, rather than a retroactive look at those in place. That would mean Pruitt could roll out the plan in a dramatic public presentation as he did with his reform of the science advisory boards, but it would have a far smaller impact.

EPA didn't respond to a request for comment about the expected announcement.

Bad for industry?

Critics of the proposal say it would have lasting damage and might even earn industry's ire because it could easily be reversed by the next administration.

The requirement would privilege industry data, because many key studies upon which regulations were built are historical and don't have raw data available, said David Michaels, a George Washington University epidemiologist and former assistant secretary at the Occupational Safety and Health Administration in the Obama administration. That means EPA's regulatory, or deregulatory, agenda wouldn't be based on the best available science but only that which has been produced by industry and has raw data. One example, he said, of studies that would be excluded by data restrictions is some of the key research on lead, which goes back years, and which Pruitt has said is a priority for the agency this year.

"Industry would provide the studies they've done that show the effects are minimal or less, and they would provide the raw data," he said. "But some of the historical studies which have found a higher risk associated with this exposure might not be available, and so this sort of process could support that rolling back of regulations even though good science would tell you not to do that."

Even if the science reforms are issued through a directive, and it is wiped out by the first post-Trump EPA administrator, it has the potential to create lasting damage for years, he said. That sort of back-and-forth creates an uncertainty that even industry will oppose, he said.

"If this is being used to alter regulation, then those take many years to change, and that's a concern," he said. "It's bad for public health; it's bad for industry, which needs some certainty."

Pruitt mentioned that a plan was forthcoming to a group of conservatives gathered at the Heritage Foundation last week. Some of those who were there, or whose group was in attendance, want Pruitt to go further than the "HONEST Act."

"I hope that it's tighter than that," said Steve Milloy, a former coal executive and member of Trump's EPA transition team who has pushed the agency to impose such restrictions for years. "I hope that EPA does not regulate at all unless the underlying scientific data can be made available, and I don't think there is any legislation yet that is that strong."

Milloy said the final plan would likely not go as far as he would like, because some industry groups, including the pharmaceutical industry, are lobbying against it. He said his goal is that EPA does not rely on any data that cannot be challenged.

"If they don't want to defend their data, I'm hoping that is the last we see of it," he said.

Critics of the plan say the greatest danger of the plan, and perhaps its most problematic legacy is its ability to quickly spread to other federal agencies. It's likely that if proponents see the plan put in place at EPA, they'll seek it in the Federal Drug Administration or Department of Agriculture, anywhere that government has imposed regulations, said Goldstein, the former EPA official in the Reagan administration. It would also interfere with ongoing regulatory efforts that have been underway for years, he said, wiping out the potential use of an unprecedented amount of essential research.

"This scares the hell out of me and has for quite some time," he said. "You can just about pick any agency that's using science on regulatory things and say, 'Hey, if we get away with it at EPA, we can do it for any of these.'"

The Washington Post

https://www.washingtonpost.com/news/morning-mix/wp/2018/03/18/two-injured-in-explosion-in-austin-police-say/?utm_term=.b679eef88fe8

Fourth Austin Explosion Possibly Detonated By Tripwire, Leaving 2 Injured, Police Say

By Eva Ruth Moravec, Meagan Flynn, Mark Berman, 3/19/18

AUSTIN — Police in Austin said an explosion in a residential neighborhood Sunday night appeared to be related to the three bombs that detonated earlier this month, plunging the Texas capital further into a frightening mystery that forced residents to remain locked in their home as investigators scoured the area for answers.

The blast Sunday, which injured two men who were riding bicycles through a residential area, was the latest in a string of explosions to rock Austin, which has been on edge since the previous bombings killed two people and seriously injured a third. Authorities have seemed at a loss to explain who could be setting off these devices or why, saying only that the bombs were sophisticated and could have been motivated by racial bias, although they acknowledged that this remains only a theory.

This latest explosion injured two men in their 20s in the southwest portion of Austin. While the previous blasts all involved packages left at homes, this explosive was on the side of the road and possibly triggered by a tripwire, said Brian Manley, the interim Austin police chief.

“We are working under the belief that this is related to the other bombing incidents that have occurred in our community over the last couple weeks,” Manley said at a news conference early Monday.

Yet this latest blast has only deepened the uncertainty surrounding what is happening in Austin at a time when the city has been inundated with visitors for the South by Southwest festival.

The first two bombs killed black people — a 39-year-old construction worker and a 17-year-old high school student — related to prominent members of Austin’s African American community who were also close personal friends. The third bomb seriously injured a 75-year-old Hispanic woman, but it was addressed to a different home and apparently exploded when she was carrying it, according to two people familiar with the case.

The first three explosions detonated in the eastern part of Austin, impacting areas where the city’s black and Hispanic residents live, which prompted some in the area to question whether the initial blast would have prompted more urgency had it gone off in the more affluent, predominantly white neighborhoods.

This fourth explosion went off in the southwestern part of the city, far from the first three, and police said Monday that the two men injured were both white. They were taken to the hospital with serious but not life-threatening injuries, officials said, and the hospital said they were in good condition.

Still, police said they were still considering whether at least some of the bombings could have been a hate crime.

“We’ve said from the beginning that we’re not willing to rule anything out, just because when you rule something out you limit your focus,” Manley said in an interview Monday with ABC’s “Good Morning America.” “This does change the concerns that we had initially, although we have still not yet ruled it out until we understand what the ideology or motive is behind the suspect or suspects.”

Manley said in the interview that police do not have any specific evidence leading them to a particular suspect, and he reiterated his plea to the public for tips and information.

Authorities have described the explosives as the sophisticated work of a person or people who know what they are doing, saying that the bombers have been able to assemble and deliver these packages without setting them off at any point. Manley said the explosion Sunday night suggested that the bomber is even more proficient than authorities feared.

“If this explosion last night was the result of a bomb that was utilizing tripwire technology, that is showing a different level of skill, above what we were already concerned that this suspect or suspects possess,” Manley said.

Austin Mayor Steve Adler said that while the initial concern after the first bombings focused on packages left on doorsteps, Sunday night’s explosion caused officials to cast a wider net.

"We understand the anxiousness that we all feel, but there is just an army of law enforcement personnel working on this at this point," he said Monday in a telephone interview with The Washington Post.

Adler said that "with each additional event, the horrible part is that people are getting hurt." But, he added, "it also means that law enforcement folks get additional forensic evidence."

The fourth explosion went off just hours after the Austin police made a public appeal in the case, increasing the reward for information to \$100,000 and addressing the bomber or bombers in particular.

"These events in Austin have garnered worldwide attention," Manley said during the earlier announcement. "And we assure you that we are listening. We want to understand what brought you to this point, and we want to listen to you."

After Sunday's explosion, Manley urged residents in the surrounding neighborhood to remain in their homes while investigators continue to probe the area. Because of the darkness, he said, police may not know until after sunrise whether other suspicious devices were left in the neighborhood. He said that people who needed to leave their homes should call 911 for an escort.

"Given the darkness, we have not really had the opportunity to really look at this blast site to determine what has happened," Manley said at a news conference late Sunday. "It's obvious there's been an explosion; it's obvious it caused significant injuries to two people, and it is important right now for anyone in the neighborhood behind us to remain inside and give us time to work through this."

Manley also said that officers were working to clear a backpack left in the area. The FBI and Bureau of Alcohol, Tobacco, Firearms and Explosives were also on the scene, and Manley said more than 500 officers have followed up on 435 leads and have conducted 236 interviews. None have resulted in a suspect so far.

Steve Brown, 53, had gone out to dinner Sunday and was returning home when he saw the police tape.

"It's kind of surreal," he told The Washington Post. "It had been on the other side of town — now it's on our street."

He said his 80-year-old mother-in-law was at home and told them she heard a "boom."

Early Monday, the Austin Independent School District announced on Facebook that it was keeping school buses out of the neighborhood and would be excusing any related tardiness or absences. Regents School of Austin, a private Christian school near the neighborhood where the explosive went off, said class would begin later Monday before ultimately canceling school.

After the first explosion on March 2 killed Anthony Stephan House, police said initially described it as an "isolated incident." However, when two more bombs exploded 10 days later, police reversed course and said they believed all three were related.

The first blast on March 12 killed Draylen Mason, a high school senior well known for his love of music, playing everything from funk to mariachi to classical music. The second bomb that day critically wounded Esperanza Herrera, who was visiting her mother's house where the package was delivered.

At least two of the victims of the bombings have had an connection, though its significance was not immediately clear. House's stepfather, Freddie Dixon, told The Post last week that he is close to Mason's grandfather, Norman Mason. They were fraternity brothers, and Norman Mason also attended the church where Dixon was once a pastor, Dixon said.

Dixon said he did not think the connection was a coincidence.

"Somebody's done their homework on both of us, and they knew what they were doing," he said, adding that he believed the explosions were possibly a hate crime or the result of a vendetta.

Authorities have said they do not think the bombings were connected to the South by Southwest festival, though fears from these explosions crept into the event, with a bomb threat forcing the Roots to cancel a concert they were going to hold Saturday night. Police said they arrested a 26-year-old Trevor Weldon Ingram in connection with that threat.

The Wall Street Journal

<https://www.wsj.com/articles/trump-says-he-never-saw-mccabe-take-notes-1521385809>

Trump Steps Up Attacks On Mueller Investigation

By Louise Radnofsky, Rebecca Ballhaus and Aruna Viswanatha, 3/19/18

WASHINGTON—President Donald Trump and his legal team over the weekend intensified attacks on the special counsel's probe into possible Russian election interference, departing from a previously more cooperative posture and prompting more urgent warnings from senators not to undermine the investigation.

In his first Twitter post to target the special counsel, Robert Mueller, by name, Mr. Trump on Saturday said the probe "should never have been started in that there was no collusion and there was no crime." On Sunday, the president mentioned Mr. Mueller again, suggesting his team of prosecutors consisted of "hardened Democrats" intent on taking down the Republican president.

Mr. Trump for months has criticized the Russia probe, but his weekend comments showed a more confrontational tone toward Mr. Mueller and prompted senators from both parties to caution the president against taking steps to end the special counsel's investigation. The warnings to Mr. Trump were also triggered by a statement Saturday by the president's personal lawyer, John Dowd, calling for the Justice Department to step in to stop the Mueller investigation.

Such a step "would be the beginning of the end of his presidency, because we are a rule-of-law nation," Sen. Lindsey Graham (R., S.C.) said on CNN.

Rep. Trey Gowdy (R., S.C.) said on Fox that Mr. Dowd's remarks were "a disservice," adding, "If you have an innocent client, Mr. Dowd, act like it." Mr. Gowdy, who has said he isn't seeking re-election, is a member of the House Intelligence Committee and a former federal prosecutor.

The latest flare-up over the Russia probe came days after news that the special counsel had subpoenaed Mr. Trump's company, the Trump Organization, for documents related to his investigation. It also came after the Justice Department fired a former top Federal Bureau of Investigation official whom Mr. Trump has repeatedly criticized publicly and who is a potential witness to the events surrounding Mr. Trump's dismissal last year of James Comey as FBI director.

Mr. Mueller is investigating the firing for evidence of obstruction of justice, as part of his probe of any ties between the Trump 2016 campaign and Moscow. That investigation has led to five public guilty pleas, including by two top Trump campaign aides, while Mr. Mueller last month returned indictments of three Russian companies and 13 Russian citizens on charges of engaging in a widespread effort to interfere in the election.

Mr. Trump has said his presidential campaign didn't collude with Russia, and he has denied attempting to block the probe. At times, he has also indicated that he doubts U.S. intelligence assessments that Russia attempted to tip the election to Mr. Trump. Russia has denied those assessments as well.

Mr. Trump's legal team has sought to provide Mr. Mueller the documents he has requested and has discussed offering a sit-down interview with Mr. Trump if it would more quickly end the investigation. Mr. Trump's attorneys have also urged him to show restraint in his tweets and not antagonize the special counsel.

Mr. Trump in another tweet approved of the late-Friday firing of Andrew McCabe, a former FBI deputy director, and leveled a new attack on Mr. Comey and what he called the "lies and corruption going on at the highest levels" of the FBI.

The firing of Mr. McCabe by Attorney General Jeff Sessions, who himself has come under fire from Mr. Trump, came after the Justice Department's inspector general found a "lack of candor" in Mr. McCabe's disclosures about contact with the news media, in relation to an October 2016 Wall Street Journal report.

The FBI's Office of Professional Responsibility recommends dismissal if "lack of candor" is found, but allies of Mr. McCabe say the finding was rushed and lacks a substantive basis.

The McCabe firing, which came hours before he was set to retire, depriving him of at least part of pension, sparked debate over whether it was merited or was an attempt to undermine the Mueller probe. Mr. Trump's attacks also follow the news that Mr. McCabe wrote memos describing his conversations with Mr. Trump and turned them over Mr. Mueller.

A person familiar with the memos said they outlined three or four meetings or calls between Messrs. McCabe and Trump. While it wasn't the main point of the memos, the documents say that in each interaction, Mr. Trump commented on Mr. McCabe's wife, who ran for the state Senate in Virginia in 2015 as a Democrat and received campaign funding from the political organization of then- Gov. Terry McAuliffe, a longtime friend of Bill and Hillary Clinton. Mr. Trump tried to cast doubt on the report of the memos, writing on Twitter Sunday that he "spent very little time with Andrew McCabe, but he never took notes when he was with me."

In remarks after the McCabe firing, John Brennan, director of the Central Intelligence Agency under President Barack Obama and an official in the George W. Bush administration, said on Twitter that Mr. Trump would be seen as a "disgraced demagogue," adding, "You may scapegoat Andy McCabe, but you will not destroy America."

The White House circulated a statement Sunday night from Ty Cobb, the White House lawyer handling the Russia probe. "In response to media speculation and related questions being posed to the Administration, the White House yet again confirms that the President is not considering or discussing the firing of the Special Counsel, Robert Mueller," Mr. Cobb said.

Rep. Mark Meadows (R., N.C.) said he was comfortable with the termination of Mr. McCabe and didn't see it as unfair, from what he knew.

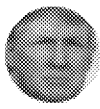

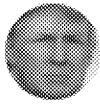

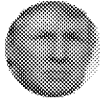

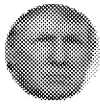

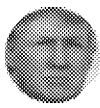

"Based on the information that I have...I would think that the termination of Andrew McCabe by the Department of Justice and FBI was certainly appropriate," he said.

Mr. Trump's tweet suggesting an anti-GOP bent to the Mueller team came even though Mr. Mueller is a registered Republican and was appointed and is overseen by another Republican, Deputy Attorney General Rod Rosenstein. Mr. Trump and his supporters have pointed to indications that some members of the Mueller team, including deputy Andrew Weissman, are Democrats and therefore can't be impartial. Mr. Weissman attended Mrs. Clinton's election-night party in New York, according to people familiar with his attendance.

Other lawyers on the team have made donations to Democratic candidates in the past, which under federal law can't be a barrier when they are being assessed for career positions in the agency.

The White House on Sunday said cooperation with Mr. Mueller hadn't ended. "I don't think that the president or anybody right now in our White House is suggesting not cooperating in any way with the Mueller investigation," said Marc Short, the president's director of legislative affairs, on CBS.

TRUMP TWEETS

	Donald J. Trump  @realDonaldTrump · 10m	▼
A total WITCH HUNT with massive conflicts of interest!		
💬 6.1K ↻ 2.4K ❤️ 8.5K ✉️		
	Donald J. Trump  @realDonaldTrump · 1h	▼
.@seanhannity on @foxandfriends now! Great! 8:18 A.M.		
💬 8.2K ↻ 2.7K ❤️ 13K ✉️		
	Donald J. Trump  @realDonaldTrump · Mar 18	▼
Why does the Mueller team have 13 hardened Democrats, some big Crooked Hillary supporters, and Zero Republicans? Another Dem recently added...does anyone think this is fair? And yet, there is NO COLLUSION!		
💬 78K ↻ 28K ❤️ 103K ✉️		
	Donald J. Trump  @realDonaldTrump · Mar 18	▼
Spent very little time with Andrew McCabe, but he never took notes when he was with me. I don't believe he made memos except to help his own agenda, probably at a later date. Same with lying James Comey. Can we call them Fake Memos?		
💬 51K ↻ 28K ❤️ 110K ✉️		
	Donald J. Trump  @realDonaldTrump · Mar 18	▼
Wow, watch Comey lie under oath to Senator G when asked "have you ever been an anonymous source...or known someone else to be an anonymous source...?" He said strongly "never, no." He lied as shown clearly on @foxandfriends.		
💬 27K ↻ 24K ❤️ 86K ✉️		

Michael Abboud

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EPA News Highlights 3.19.18

Finger Lakes Times: Dundee Getting EPA Funds For New Bus

The Dundee Central School District will be getting a new bus through the U.S. Environmental Protection Agency's Diesel Emissions Reduction Act funding. Nationwide, the EPA is awarding \$8.7 million to replace or retrofit 452 older diesel buses. In New York, \$460,000 is going to replace or retrofit 23 buses, including one in Dundee. Stephanie Cleveland, Dundee's transportation director, learned of the EPA program last year when district officials were looking at purchasing new buses. "We will replacing an older model diesel bus with an approved, newer model bus that meets the requirements of the program," Cleveland said. "The bus submitted for the rebate will be scrapped as part of the requirements of the rebate program. We are very pleased to have been selected for this rebate."

St. Louis Post-Dispatch: EPA Extends Rebates To Missouri Schools For Cleaner Bus Upgrades

The Environmental Protection Agency is offering rebates to 18 Missouri school districts — including some near St. Louis — to replace older, diesel school buses. The \$745,000 total extended to schools around the state will help cover the replacement of 40 buses. The sum is part of a broader outlay of \$8.7 million nationally for bus replacements and retrofits, funded through the EPA's Diesel Emissions Reduction Act program. The rebates offered through the program will knock down the sticker price that eligible school districts pay by \$15,000 to \$20,000 apiece, depending on the size of the bus. St. Louis-area school districts to receive the funding include De Soto, Mehlville, Valley Park, New Haven and the Lincoln County R-III School District, in Troy, which is by far the state's largest recipient of the money, with \$150,000 to be put toward 10 new buses. No other district received more than \$60,000 to help with three bus upgrades.

Farm Futures: EPA's Pruitt Talks WOTUS, RFS With Farm Bureau Members

EPA Administrator Scott Pruitt talked about the agency's role in American agriculture during a March 14 appearance before more than 300 members of the Iowa, Missouri, Ohio and Alabama Farm Bureau. "I am committed to providing America's farmers with the transparency and regulatory certainty they deserve from Washington," Pruitt said. "EPA is working with our nation's first environmentalists as partners to preserve and steward our natural resources while supporting local economies."

E&E News: Science Reform Eyed As Path To Unravel Endangerment Finding

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National News Highlights 3.19.18

The Washington Post: Fourth Austin Explosion Possibly Detonated By Tripwire, Leaving 2 Injured, Police Say

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TRUMP TWEETS

Finger Lakes Times

http://www.fltimes.com/news/dundee-getting-epa-funds-for-new-bus/article_41045558-ab17-548a-b386-fdb61e0d2d87.html

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By Mike Hibbard, 3/18/18

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Federal officials said the new and retrofitted buses will reduce pollutants linked to health problems such as asthma and lung damage.

The EPA launched its "Clean School Bus USA" program 15 years ago.

St. Louis Post-Dispatch

http://www.stltoday.com/business/local/epa-extends-rebates-to-missouri-schools-for-cleaner-bus-upgrades/article_a1fedc95-ba8d-560c-a948-f65cae17cc5f.html

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By Bryce Gray, 3/18/18

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The rebates offered through the program will knock down the sticker price that eligible school districts pay by \$15,000 to \$20,000 apiece, depending on the size of the bus.

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The EPA says the initiative aims to protect the health of children by decreasing emissions of pollutants like nitrogen oxides and particulate matter.

"There are links to health problems like asthma and lung damage, and with school buses carrying our most treasured possessions — our youth — we'd like (the funding) to energize some work in those areas by cities and states," said David Bryan, a public affairs specialist at the agency's regional headquarters near Kansas City.

Funding upgrades to cleaner school buses is gaining widespread traction at other levels of government, too. Though not part of a coordinated effort, the EPA's move is similar to investment under consideration by the Missouri Department of Natural Resources, which signaled that it is likely to pursue similar upgrades with at least some of its \$41 million from the Volkswagen emissions scandal settlement.

Deliberation on how to spend that money is still ongoing, but DNR officials suggested that the EPA's separate move could help "get the most bang for the buck" in terms of funding bus replacements.

"They're separate but certainly related," said Darcy Bybee, director of DNR's Air Pollution Control Program. "The timing is good."

Farm Futures

<http://www.farmfutures.com/epa/epas-pruitt-talks-wotus-rfs-farm-bureau-members>

EPA's Pruitt Talks WOTUS, RFS With Farm Bureau Members

By Farm Futures, 3/19/18

EPA Administrator Scott Pruitt talked about the agency's role in American agriculture during a March 14 appearance before more than 300 members of the Iowa, Missouri, Ohio and Alabama Farm Bureau.

"I am committed to providing America's farmers with the transparency and regulatory certainty they deserve from Washington," Pruitt said. "EPA is working with our nation's first environmentalists as partners to preserve and steward our natural resources while supporting local economies."

Topics covered include:

- Waters of the U.S. rules
- Continued efforts to engage in cooperative federalism on issues affecting farmers and ranchers.
- The Renewable Fuel Standard

Quotes from attending Farm Bureaus

“Administrator Pruitt is willing to work with the people on the front lines instead of against them,” said Missouri Farm Bureau President Blake Hurst. “This is a welcome change, and we look forward to making progress on environmental policy with his team.”

“I appreciate the new direction Administrator Pruitt is taking the EPA and the outreach that has been made to the farming community,” said John DeLoach, a young farmer in town with the Alabama Farmers Federation. “It is encouraging to see the agency working with, rather than against, our nations’ farmers in carrying out their mission.”

“We appreciate Administrator Pruitt’s support on critical issues such as rescinding the Waters of the U.S. (WOTUS) rule and recognizing farmers and ranchers as partners in conservation and environmental stewardship,” said Iowa Farm Bureau President Craig Hill.

“Ohio farmers appreciate Administrator Pruitt’s willingness to listen to our concerns,” said Ohio Farm Bureau President Frank Burkett III. “He shares Farm Bureau’s belief that protecting the environment and farming profitably are not exclusive of one another. We appreciate that he chose to spend valuable time with us.”

E&E News

<https://www.eenews.net/climatewire/2018/03/19/stories/1060076695>

Science Reform Eyed As Path To Unravel Endangerment Finding

By Scott Waldman, 3/19/18

The plan now being developed at U.S. EPA to restrict the science the agency uses could affect the crafting of regulations for years and become one of the most enduring parts of Administrator Scott Pruitt's legacy.

The plan under consideration is expected to limit the science used in EPA regulation to studies where the data could be published and reproduced. And while the agency is still considering the exact scope of its restrictions, both critics and supporters of the plan agree that it will fundamentally transform the way EPA uses research.

Supporters say it will prevent opaque "secret science" from being used to form regulations that could affect billions of dollars in economic activity. Opponents say it will eliminate from consideration much of the groundbreaking research the agency has used to protect Americans against pollution.

EPA's expected reform efforts are inspired by legislative measures boosted by Republican Rep. Lamar Smith of Texas, chairman of the House Committee on Science, Space and Technology and one of Congress' chief antagonists toward mainstream climate scientists. Smith has pushed legislation in recent years that would require new EPA regulations to be based on science that is reproducible and whose data is public. The most recent iteration of Smith's legislation, which is called the "Honest and Open New EPA Science Treatment (HONEST) Act," passed out of the House a year ago but has failed to advance in the Senate.

But a group of influential conservative voices, including Trump EPA transition team members and researchers from conservative think tanks, want Pruitt to go further. They want Pruitt — who recently told a group of conservatives gathered at the Heritage Foundation that the agency was working on the issue — to impose the requirement on all science used at the agency. Some even see it as a way to potentially go after the endangerment finding for greenhouse gases, which is the legal underpinning of EPA's climate regulations.

Science transparency can be used to go after the supporting documents for the endangerment finding, to evaluate its quality, said Pat Michaels, director of the Center for the Study of Science at the libertarian Cato Institute, which had a representative at the Heritage Foundation meeting. Michaels has long criticized climate models used in future predictions, and he believes that making data around the models transparent would prove his theory and make it easier to pick apart the models.

"We're all for rigorous examination of the models that are being used, especially the models for the endangerment finding," he said. "It's pretty apparent they're not working well, and if, for some reason, it's left to me and my few friends to point this out, I think it would be a good idea [and] that the agency should do it."

Regardless of whether it becomes a club against the endangerment finding, the directive could have significant impacts for studies now in place, said Bernard Goldstein, dean emeritus of the University of Pittsburgh Graduate School of Public Health and the former EPA assistant administrator for research and development in the Reagan administration. For example, air pollution rules must be re-evaluated by the agency every five years under the Clean Air Act, and the science data directive could sharply limit "just about everything" in those reviews, he said. That includes research from around the world, and there is little chance that scientists in Britain, France or Australia would turn over raw data to the Trump administration, he said.

"You're basically throwing out the data you have, that you've built up over many, many years," he said.

In pushing back against the estimates by EPA's career staff that the "HONEST Act" would cost more than \$250 million annually, Pruitt's EPA staff suggested that it would not apply to many studies that it would rely upon, according to a Congressional Budget Office analysis. That may suggest that the agency is now looking at crafting the plan to fit future regulations, rather than a retroactive look at those in place. That would mean Pruitt could roll out the plan in a dramatic public presentation as he did with his reform of the science advisory boards, but it would have a far smaller impact.

EPA didn't respond to a request for comment about the expected announcement.

Bad for industry?

Critics of the proposal say it would have lasting damage and might even earn industry's ire because it could easily be reversed by the next administration.

The requirement would privilege industry data, because many key studies upon which regulations were built are historical and don't have raw data available, said David Michaels, a George Washington University epidemiologist and former assistant secretary at the Occupational Safety and Health Administration in the Obama administration. That means EPA's regulatory, or deregulatory, agenda wouldn't be based on the best available science but only that which has been produced by industry and has raw data. One example, he said, of studies that would be excluded by data restrictions is some of the key research on lead, which goes back years, and which Pruitt has said is a priority for the agency this year.

"Industry would provide the studies they've done that show the effects are minimal or less, and they would provide the raw data," he said. "But some of the historical studies which have found a higher risk associated with this exposure might not be available, and so this sort of process could support that rolling back of regulations even though good science would tell you not to do that."

Even if the science reforms are issued through a directive, and it is wiped out by the first post-Trump EPA administrator, it has the potential to create lasting damage for years, he said. That sort of back-and-forth creates an uncertainty that even industry will oppose, he said.

"If this is being used to alter regulation, then those take many years to change, and that's a concern," he said. "It's bad for public health; it's bad for industry, which needs some certainty."

Pruitt mentioned that a plan was forthcoming to a group of conservatives gathered at the Heritage Foundation last week. Some of those who were there, or whose group was in attendance, want Pruitt to go further than the "HONEST Act."

"I hope that it's tighter than that," said Steve Milloy, a former coal executive and member of Trump's EPA transition team who has pushed the agency to impose such restrictions for years. "I hope that EPA does not regulate at all unless the underlying scientific data can be made available, and I don't think there is any legislation yet that is that strong."

Milloy said the final plan would likely not go as far as he would like, because some industry groups, including the pharmaceutical industry, are lobbying against it. He said his goal is that EPA does not rely on any data that cannot be challenged.

"If they don't want to defend their data, I'm hoping that is the last we see of it," he said.

Critics of the plan say the greatest danger of the plan, and perhaps its most problematic legacy is its ability to quickly spread to other federal agencies. It's likely that if proponents see the plan put in place at EPA, they'll seek it in the Federal Drug Administration or Department of Agriculture, anywhere that government has imposed regulations, said Goldstein, the former EPA official in the Reagan administration. It would also interfere with ongoing regulatory efforts that have been underway for years, he said, wiping out the potential use of an unprecedented amount of essential research.

"This scares the hell out of me and has for quite some time," he said. "You can just about pick any agency that's using science on regulatory things and say, 'Hey, if we get away with it at EPA, we can do it for any of these.'"

The Washington Post

https://www.washingtonpost.com/news/morning-mix/wp/2018/03/18/two-injured-in-explosion-in-austin-police-say/?utm_term=.b679eef88fe8

Fourth Austin Explosion Possibly Detonated By Tripwire, Leaving 2 Injured, Police Say

By Eva Ruth Moravec, Meagan Flynn, Mark Berman, 3/19/18

AUSTIN — Police in Austin said an explosion in a residential neighborhood Sunday night appeared to be related to the three bombs that detonated earlier this month, plunging the Texas capital further into a frightening mystery that forced residents to remain locked in their home as investigators scoured the area for answers.

The blast Sunday, which injured two men who were riding bicycles through a residential area, was the latest in a string of explosions to rock Austin, which has been on edge since the previous bombings killed two people and seriously injured a third. Authorities have seemed at a loss to explain who could be setting off these devices or why, saying only that the bombs were sophisticated and could have been motivated by racial bias, although they acknowledged that this remains only a theory.

This latest explosion injured two men in their 20s in the southwest portion of Austin. While the previous blasts all involved packages left at homes, this explosive was on the side of the road and possibly triggered by a tripwire, said Brian Manley, the interim Austin police chief.

"We are working under the belief that this is related to the other bombing incidents that have occurred in our community over the last couple weeks," Manley said at a news conference early Monday.

Yet this latest blast has only deepened the uncertainty surrounding what is happening in Austin at a time when the city has been inundated with visitors for the South by Southwest festival.

The first two bombs killed black people — a 39-year-old construction worker and a 17-year-old high school student — related to prominent members of Austin's African American community who were also close personal friends. The third bomb seriously injured a 75-year-old Hispanic woman, but it was addressed to a different home and apparently exploded when she was carrying it, according to two people familiar with the case.

The first three explosions detonated in the eastern part of Austin, impacting areas where the city's black and Hispanic residents live, which prompted some in the area to question whether the initial blast would have prompted more urgency had it gone off in the more affluent, predominantly white neighborhoods.

This fourth explosion went off in the southwestern part of the city, far from the first three, and police said Monday that the two men injured were both white. They were taken to the hospital with serious but not life-threatening injuries, officials said, and the hospital said they were in good condition.

Still, police said they were still considering whether at least some of the bombings could have been a hate crime.

"We've said from the beginning that we're not willing to rule anything out, just because when you rule something out you limit your focus," Manley said in an interview Monday with ABC's "Good Morning America." "This does change the concerns that we had initially, although we have still not yet ruled it out until we understand what the ideology or motive is behind the suspect or suspects."

Manley said in the interview that police do not have any specific evidence leading them to a particular suspect, and he reiterated his plea to the public for tips and information.

Authorities have described the explosives as the sophisticated work of a person or people who know what they are doing, saying that the bombers have been able to assemble and deliver these packages without setting them off at any point. Manley said the explosion Sunday night suggested that the bomber is even more proficient than authorities feared.

"If this explosion last night was the result of a bomb that was utilizing tripwire technology, that is showing a different level of skill, above what we were already concerned that this suspect or suspects possess," Manley said.

Austin Mayor Steve Adler said that while the initial concern after the first bombings focused on packages left on doorsteps, Sunday night's explosion caused officials to cast a wider net.

"We understand the anxiousness that we all feel, but there is just an army of law enforcement personnel working on this at this point," he said Monday in a telephone interview with The Washington Post.

Adler said that "with each additional event, the horrible part is that people are getting hurt." But, he added, "it also means that law enforcement folks get additional forensic evidence."

The fourth explosion went off just hours after the Austin police made a public appeal in the case, increasing the reward for information to \$100,000 and addressing the bomber or bombers in particular.

"These events in Austin have garnered worldwide attention," Manley said during the earlier announcement. "And we assure you that we are listening. We want to understand what brought you to this point, and we want to listen to you."

After Sunday's explosion, Manley urged residents in the surrounding neighborhood to remain in their homes while investigators continue to probe the area. Because of the darkness, he said, police may not know until after sunrise whether other suspicious devices were left in the neighborhood. He said that people who needed to leave their homes should call 911 for an escort.

"Given the darkness, we have not really had the opportunity to really look at this blast site to determine what has happened," Manley said at a news conference late Sunday. "It's obvious there's been an explosion; it's obvious it caused significant injuries to two people, and it is important right now for anyone in the neighborhood behind us to remain inside and give us time to work through this."

Manley also said that officers were working to clear a backpack left in the area. The FBI and Bureau of Alcohol, Tobacco, Firearms and Explosives were also on the scene, and Manley said more than 500 officers have followed up on 435 leads and have conducted 236 interviews. None have resulted in a suspect so far.

Steve Brown, 53, had gone out to dinner Sunday and was returning home when he saw the police tape.

“It’s kind of surreal,” he told The Washington Post. “It had been on the other side of town — now it’s on our street.”

He said his 80-year-old mother-in-law was at home and told them she heard a “boom.”

Early Monday, the Austin Independent School District announced on Facebook that it was keeping school buses out of the neighborhood and would be excusing any related tardiness or absences. Regents School of Austin, a private Christian school near the neighborhood where the explosive went off, said class would begin later Monday before ultimately canceling school.

After the first explosion on March 2 killed Anthony Stephan House, police said initially described it as an “isolated incident.” However, when two more bombs exploded 10 days later, police reversed course and said they believed all three were related.

The first blast on March 12 killed Draylen Mason, a high school senior well known for his love of music, playing everything from funk to mariachi to classical music. The second bomb that day critically wounded Esperanza Herrera, who was visiting her mother’s house where the package was delivered.

At least two of the victims of the bombings have had an connection, though its significance was not immediately clear. House’s stepfather, Freddie Dixon, told The Post last week that he is close to Mason’s grandfather, Norman Mason. They were fraternity brothers, and Norman Mason also attended the church where Dixon was once a pastor, Dixon said.

Dixon said he did not think the connection was a coincidence.

“Somebody’s done their homework on both of us, and they knew what they were doing,” he said, adding that he believed the explosions were possibly a hate crime or the result of a vendetta.

Authorities have said they do not think the bombings were connected to the South by Southwest festival, though fears from these explosions crept into the event, with a bomb threat forcing the Roots to cancel a concert they were going to hold Saturday night. Police said they arrested a 26-year-old Trevor Weldon Ingram in connection with that threat.

The Wall Street Journal

<https://www.wsj.com/articles/trump-says-he-never-saw-mccabe-take-notes-1521385809>

Trump Steps Up Attacks On Mueller Investigation

By Louise Radnofsky, Rebecca Ballhaus and Aruna Viswanatha, 3/19/18

WASHINGTON—President Donald Trump and his legal team over the weekend intensified attacks on the special counsel’s probe into possible Russian election interference, departing from a previously more cooperative posture and prompting more urgent warnings from senators not to undermine the investigation.

In his first Twitter post to target the special counsel, Robert Mueller, by name, Mr. Trump on Saturday said the probe “should never have been started in that there was no collusion and there was no crime.” On Sunday, the president mentioned Mr. Mueller again, suggesting his team of prosecutors consisted of “hardened Democrats” intent on taking down the Republican president.

Mr. Trump for months has criticized the Russia probe, but his weekend comments showed a more confrontational tone toward Mr. Mueller and prompted senators from both parties to caution the president against taking steps to end the special counsel's investigation. The warnings to Mr. Trump were also triggered by a statement Saturday by the president's personal lawyer, John Dowd, calling for the Justice Department to step in to stop the Mueller investigation.

Such a step "would be the beginning of the end of his presidency, because we are a rule-of-law nation," Sen. Lindsey Graham (R., S.C.) said on CNN.

Rep. Trey Gowdy (R., S.C.) said on Fox that Mr. Dowd's remarks were "a disservice," adding, "If you have an innocent client, Mr. Dowd, act like it." Mr. Gowdy, who has said he isn't seeking re-election, is a member of the House Intelligence Committee and a former federal prosecutor.

The latest flare-up over the Russia probe came days after news that the special counsel had subpoenaed Mr. Trump's company, the Trump Organization, for documents related to his investigation. It also came after the Justice Department fired a former top Federal Bureau of Investigation official whom Mr. Trump has repeatedly criticized publicly and who is a potential witness to the events surrounding Mr. Trump's dismissal last year of James Comey as FBI director.

Mr. Mueller is investigating the firing for evidence of obstruction of justice, as part of his probe of any ties between the Trump 2016 campaign and Moscow. That investigation has led to five public guilty pleas, including by two top Trump campaign aides, while Mr. Mueller last month returned indictments of three Russian companies and 13 Russian citizens on charges of engaging in a widespread effort to interfere in the election.

Mr. Trump has said his presidential campaign didn't collude with Russia, and he has denied attempting to block the probe. At times, he has also indicated that he doubts U.S. intelligence assessments that Russia attempted to tip the election to Mr. Trump. Russia has denied those assessments as well.

Mr. Trump's legal team has sought to provide Mr. Mueller the documents he has requested and has discussed offering a sit-down interview with Mr. Trump if it would more quickly end the investigation. Mr. Trump's attorneys have also urged him to show restraint in his tweets and not antagonize the special counsel.

Mr. Trump in another tweet approved of the late-Friday firing of Andrew McCabe, a former FBI deputy director, and leveled a new attack on Mr. Comey and what he called the "lies and corruption going on at the highest levels" of the FBI.

The firing of Mr. McCabe by Attorney General Jeff Sessions, who himself has come under fire from Mr. Trump, came after the Justice Department's inspector general found a "lack of candor" in Mr. McCabe's disclosures about contact with the news media, in relation to an October 2016 Wall Street Journal report.

The FBI's Office of Professional Responsibility recommends dismissal if "lack of candor" is found, but allies of Mr. McCabe say the finding was rushed and lacks a substantive basis.

The McCabe firing, which came hours before he was set to retire, depriving him of at least part of pension, sparked debate over whether it was merited or was an attempt to undermine the Mueller probe. Mr. Trump's attacks also follow the news that Mr. McCabe wrote memos describing his conversations with Mr. Trump and turned them over Mr. Mueller.

A person familiar with the memos said they outlined three or four meetings or calls between Messrs. McCabe and Trump. While it wasn't the main point of the memos, the documents say that in each interaction, Mr. Trump commented on Mr. McCabe's wife, who ran for the state Senate in Virginia in 2015 as a Democrat and received campaign funding from the political organization of then- Gov. Terry McAuliffe, a longtime friend of Bill and Hillary Clinton. Mr. Trump tried to cast doubt on the report of the memos, writing on Twitter Sunday that he "spent very little time with Andrew McCabe, but he never took notes when he was with me."

In remarks after the McCabe firing, John Brennan, director of the Central Intelligence Agency under President Barack Obama and an official in the George W. Bush administration, said on Twitter that Mr. Trump would be seen as a “disgraced demagogue,” adding, “You may scapegoat Andy McCabe, but you will not destroy America.”

The White House circulated a statement Sunday night from Ty Cobb, the White House lawyer handling the Russia probe. “In response to media speculation and related questions being posed to the Administration, the White House yet again confirms that the President is not considering or discussing the firing of the Special Counsel, Robert Mueller,” Mr. Cobb said.

Rep. Mark Meadows (R., N.C.) said he was comfortable with the termination of Mr. McCabe and didn’t see it as unfair, from what he knew.

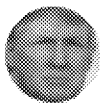

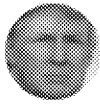

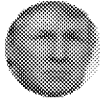

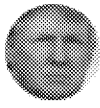

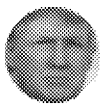

“Based on the information that I have...I would think that the termination of Andrew McCabe by the Department of Justice and FBI was certainly appropriate,” he said.

Mr. Trump’s tweet suggesting an anti-GOP bent to the Mueller team came even though Mr. Mueller is a registered Republican and was appointed and is overseen by another Republican, Deputy Attorney General Rod Rosenstein. Mr. Trump and his supporters have pointed to indications that some members of the Mueller team, including deputy Andrew Weissman, are Democrats and therefore can’t be impartial. Mr. Weissman attended Mrs. Clinton’s election-night party in New York, according to people familiar with his attendance.

Other lawyers on the team have made donations to Democratic candidates in the past, which under federal law can’t be a barrier when they are being assessed for career positions in the agency.

The White House on Sunday said cooperation with Mr. Mueller hadn’t ended. “I don’t think that the president or anybody right now in our White House is suggesting not cooperating in any way with the Mueller investigation,” said Marc Short, the president’s director of legislative affairs, on CBS.

TRUMP TWEETS

	Donald J. Trump  @realDonaldTrump · 10m	▼
A total WITCH HUNT with massive conflicts of interest!		
💬 6.1K ↻ 2.4K ❤️ 8.5K ✉		
	Donald J. Trump  @realDonaldTrump · 1h	▼
.@seanhannity on @foxandfriends now! Great! 8:18 A.M.		
💬 8.2K ↻ 2.7K ❤️ 13K ✉		
	Donald J. Trump  @realDonaldTrump · Mar 18	▼
Why does the Mueller team have 13 hardened Democrats, some big Crooked Hillary supporters, and Zero Republicans? Another Dem recently added...does anyone think this is fair? And yet, there is NO COLLUSION!		
💬 78K ↻ 28K ❤️ 103K ✉		
	Donald J. Trump  @realDonaldTrump · Mar 18	▼
Spent very little time with Andrew McCabe, but he never took notes when he was with me. I don't believe he made memos except to help his own agenda, probably at a later date. Same with lying James Comey. Can we call them Fake Memos?		
💬 51K ↻ 28K ❤️ 110K ✉		
	Donald J. Trump  @realDonaldTrump · Mar 18	▼
Wow, watch Comey lie under oath to Senator G when asked "have you ever been an anonymous source...or known someone else to be an anonymous source...?" He said strongly "never, no." He lied as shown clearly on @foxandfriends.		
💬 27K ↻ 24K ❤️ 86K ✉		

Message

From: Jim Tozzi [btozzi1@cox.net]
Sent: 7/27/2018 11:37:40 AM
To: mbradfordd@aaas.org
Subject: [SPAM-Sender] Former OMB Official on EPA Transparency in Science Rule

Ms. Bradford:

EPA's well intended--but poorly designed--- rule for transparency in science will not provide the relief so claimed and will thwart real reform because it fails to capitalize on existing statutes which address an identical problem.

I am with the Center for Regulatory Effectiveness and I am addressing an issue seldom addressed in the comments submitted to EPA as of this date notwithstanding EPA highlighting its concern, namely:

"EPA solicits comment on this proposal and how it can best be promulgated and implemented in light of existing law and prior Federal policies that already require increasing public access to data and influential scientific information used to inform federal regulation.

To verify the authenticity of the Center for Regulatory Effectiveness and my association thereto here is a link to articles I have written which have been published on the Yale Law – American Bar Association Website: <http://yalejreg.com/nc/?s=tozzi>. Open any article on the aforementioned website and you will see at the end of each article a link to both the Center for Regulatory Effectiveness and one which describes my affiliation with it.

You may then read my views on this subject by visiting the website of the Center for Regulatory Effectiveness at <http://www.thecre.com/forum8/?p=2276>

We would appreciate receiving any relevant materials you have on this subject for our use in upcoming discussions with Administration officials.

Respectfully,

jim

Jim Tozzi
Center for Regulatory Effectiveness

I may also be reached at tozzi@thecre.com

Jim Tozzi

Center for Regulatory Effectiveness

From: POLITICO Pro Energy [politicoemail@politicopro.com]
Sent: 7/17/2018 9:43:58 AM
To: Dravis, Samantha [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ece53f0610054e669d9dffe0b3a842df-Dravis, Sam]
Subject: Morning Energy: Spotlight on FERC at Pro summit — Hitching a ride on the 'minibus' — 'Secret science' out in the open

By Kelsey Tamborrino | 07/17/2018 05:43 AM EDT

With help from Emily Holden, Anthony Adragna, Colin Wilhelm and Darius Dixon

SEE YOU THERE: Today's the day — POLITICO Pro is hosting its second annual Pro summit, featuring one-on-one conversations with newsmakers across the policy landscape, including two sessions on energy.

FERC Commissioner Cheryl LaFleur will sit down this afternoon with our own Darius Dixon, before the regulatory body is deadlocked next month following the exit of GOP Commissioner Rob Powelson. LaFleur, a Democrat, has served under presidents from both parties and experienced the agency in almost every configuration — whether it has all five commissioners in place, or just one. There's no shortage of topics to chew over: the potential impact of an Energy Department coal and nuclear rescue plan, the heated rhetoric against states that stand in the way of pipelines, and whether FERC is "on the wrong side of history" when it comes to climate change. Darius' interview with LaFleur starts around 2 p.m.

Also on tap: California Air Resources Board Chairwoman Mary Nichols, Murray Energy CEO Bob Murray and the Council on Foreign Relations' Amy Myers Jaffe will participate in a panel this morning on America's "energy future." Nichols, for one, has been heavily involved in discussions with the Trump administration over car rules that the White House is considering rolling back. Expect questions related to the administration's efforts to pare back regulations and increase oil, gas and coal production — and an in-depth conversation on what that means for free market forces and renewables.

See the full agenda [here](#) and watch the livestream [here](#).

WELCOME TO TUESDAY! I'm your host, Kelsey Tamborrino. Citizens' Climate Lobby's Brett Cease was first to correctly identify the two presidents who threw out the first pitch at an All-Star game in D.C.: Franklin D. Roosevelt in 1937 and John F. Kennedy in 1962. For today: Which state or states have just one consonant in its spelling? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](#), [@Morning_Energy](#) and [@POLITICOPro](#).

JUST RELEASED: [View the latest POLITICO/AARP poll](#) to better understand Arizona voters over 50, a voting bloc poised to shape the midterm election outcome. Get up to speed on priority issues for Hispanic voters age 50+, who will help determine whether Arizona turns blue or stays red.

HITCHING A RIDE ON THE 'MINIBUS': The House Rules Committee late Monday made 70 amendments to the EPA and Interior title of the spending minibuss, [H.R. 6147 \(115\)](#). The amendments focus on blocking a host of Obama-era environmental regulations even as the Trump administration is in the process of rolling back many of those. Some of the amendments that caught ME's eye:

— **Diesel emissions grants:** Rep. [Gary Palmer's amendment](#) would eliminate the popular bipartisan Diesel Emissions Reduction Grant program used to retrofit diesel engines like those in school buses,

— **WOTUS:** Rep. Don Beyer's amendment would remove language blocking the Obama administration's Waters of the U.S. regulation,

— **Obama-era methane rule:** Rep. Markwayne Mullin's amendment would block enforcement of the Obama-era regulation aimed at curbing methane emissions from new oil and gas sources, which the Trump administration is already reconsidering,

— **Social cost of carbon:** Another amendment from conservatives would bar the use of the social cost of carbon in rulemakings,

— **Trailer efficiency:** Reps. Barry Loudermilk and Morgan Griffith's amendment would bar EPA from applying stricter fuel efficiency and greenhouse gas emissions standards to certain truck trailers,

— **Chesapeake Bay:** Rep. Bob Goodlatte's effort would limit EPA's ability to go after states that miss Chesapeake Bay cleanup milestones,

— **Ozone:** Rep. Glenn Grothman's amendment would block implementation of EPA's 2015 tightened ozone standard,

— **Coal ash:** A Democratic amendment would block the Trump EPA from revisiting an Obama-era coal ash regulation,

— **Endangered Species Act riders:** Several measures would bar the administration from issuing or enforcing Endangered Species Act rules relating to species like the lesser prairie chicken and Preble's meadow jumping mouse,

— **Attorney fees:** An amendment from Reps. Jason Smith and Greg Gianforte would block attorney fees from being awarded in any Clean Air Act, Clean Water Act or Endangered Species Act settlement, and,

— **Inspectors general:** Nothing related to former Administrator Scott Pruitt was made in order, but the House will consider an amendment from Rep. Raúl Grijalva that would increase the budget of the Interior Department's inspector general by \$2.5 million.

Read the full list of amendments made in order to the measure here.

'SECRET SCIENCE' OUT IN THE OPEN: EPA's controversial proposal to consider only research with publicly available data gets a public hearing at agency headquarters today starting at 8 a.m. Nearly 70 health, medical, academic and science groups — including the American Lung Association, American Heart Association, American Medical Association and American Academy of Pediatrics — oppose the plan, which they say could hamstring public health and environment protections.

EPA's Science Advisory Board voted unanimously to review the proposal, which Pruitt said was meant to bolster transparency. Paul Billings, national senior vice president of advocacy at the American Lung Association, called the rule a "coordinated effort to ignore the science that is inconvenient to the EPA's agenda," and compared it to lobbying efforts by the tobacco industry in the 1990s to exclude studies that showed secondhand smoke could kill.

What's at stake? The proposal could move forward quickly enough to allow EPA to roll back certain air quality standards currently under review. According to the Natural Resources Defense Council, the plan could undercut computer models meant to test chemicals under the new Toxic Substances Control Act and could toss

out landmark studies that relied on personal health records following extraordinary events, including when Hiroshima and Nagasaki victims were tested over time to find out the effects of radiation on humans.

The meeting will run until 8 p.m. or an hour after the last of more than 100 registered speakers has commented. Speakers, aside from many environment and public health groups, include the American Petroleum Institute, the U.S. Chamber of Commerce, the American Chemistry Council, FreedomWorks Foundation and climate science critic Steve Milloy. Dan Byers of the Chamber of Commerce's Global Energy Institute is expected to applaud the agency's efforts and commend EPA for going through the formal public comment and rulemaking process. "It is one thing to be cavalier about transparency principles when their application has little or no import to public policy, but federal rules that impact millions of people and billions of dollars should be held to a higher standard," he is expected to say. Also registered are Reps. Paul Tonko, Suzanne Bonamici and Dan Lipinski. Comments can be submitted until Aug. 16.

Related reading: Competitive Enterprise Institute senior fellow Angela Logomasini looks at the science transparency rule in analysis published today. "The rule is actually far more modest and flexible than depicted by its critics, and its goals are in fact achievable," Logomasini writes. Read it here.

FOR THE RECORD: The House Rules Committee meets at 3 p.m. this afternoon to formulate a rule on an anti-carbon tax resolution, H. Con. Res. 119 (115), that calls a tax on carbon released from fossil fuels "detrimental to the United States economy." The Rules panel will tee up a vote later this week on the resolution, which is led by Majority Whip Steve Scalise and would put a range of lawmakers — most notably the Climate Solutions Caucus — on the record on the issue.

WHERE'S ZINKE? Interior Secretary Ryan Zinke will deliver remarks this morning at the first meeting of the "Made in America" Outdoor Recreation Advisory Committee. The committee is tasked with advising the secretary on "public-private partnerships across all public lands, with the goal of expanding access to and improving infrastructure on public lands and waterways." See the meeting agenda.

AMERICA'S PLEDGE STILL WORKING ON PLEDGES: Michael Bloomberg and California Gov. Jerry Brown, the co-chairs of climate organization "America's Pledge," have unveiled a preview of the report they will release at the Global Climate Action Summit in San Francisco in September, detailing "bottom-up" opportunities for climate action sans federal leadership. The list is familiar: boosting renewables, accelerating coal retirements, retrofitting buildings for energy efficiency, electrifying building energy use, accelerating electric vehicle adoption, phasing out HFCs, preventing methane leaks at the wellhead, reducing methane leaks in cities, reducing emissions from land and starting carbon markets.

Vice Chairman Carl Pope said the group still plans to debut a quantitative analysis outlining what state and local governments are already doing, what they have committed to and what they are keying up. "We have every reason to believe the rest of the world is watching this very closely," Pope said, noting that the U.N.'s top climate official, Patricia Espinosa, mentioned the group and summit by name at the Vatican earlier this month. Read it here.

ESA GETS ITS DAY: Proposed tweaks to the Endangered Species Act will be front and center at a Senate Environment and Public Works hearing this morning. The hearing will feature testimony from Wyoming Gov. Matt Mead, Colorado Parks and Wildlife's Bob Broscheid and Virginia's Secretary of Natural Resources Matthew J. Strickler, and will focus on a discussion draft released by Chairman John Barrasso earlier this month aimed at changing the statute. **If you go:** The hearing kicks off at 9:45 a.m. in 406 Dirksen. Livestream here.

TAKEN BY STORMWATER: The House on Monday passed by voice vote H.R. 3906 (115), the Innovative Stormwater Infrastructure Act of 2017, which would "establish centers of excellence" for stormwater control infrastructure. The legislation, introduced last year by Democratic Rep. Denny Heck, directs EPA to create a

stormwater infrastructure funding task force to make recommendations on the availability of public and private funding for stormwater infrastructure.

DOE ISSUES FIRST TRIBAL LOAN GUARANTEE: The Energy Department will issue its first solicitation for the Tribal Energy Loan Guarantee Program today. The program provides up to \$2 billion in partial loan guarantees to support energy development in Native American and Alaska Native communities. According to DOE, today's solicitation marks more than \$40 billion in energy infrastructure loans and loan guarantees from DOE's Loan Programs Office in five areas.

HOUSE PANEL TO HOLD GRID HEARING: House Natural Resources will hold a hearing on July 25 on Puerto Rico's electric grid recovery and possible improvements to make it more efficient and resilient to future hurricanes. On top of the devastation caused by Hurricane Maria last year, Puerto Rico's electric utility owes bondholders \$9 billion, and most of its leadership departed last week after clashes with Gov. Ricardo Rosselló over executive compensation and political control of the utility, which is quasi-governmental.

MAKING THE GRADE: The Environment America Research & Policy Center is out today with its state-by-state report card, "Renewables on the Rise," which details increases in solar, wind, energy efficiency, electric vehicles and battery storage. The report says the U.S. now produces almost six times as much renewable electricity from wind and solar than it did in 2008. It also found that in March of last year, wind and solar produced 10 percent of the United States' electricity — marking a first. On the state level, the report said California, Arizona, North Carolina, Nevada and Texas saw the greatest total increases from 2008 until 2017 in solar energy generation. See the report [here](#) and a state-by-state interactive map [here](#).

YOU DOWN WITH TIP? A bipartisan group of four senators wrote to Energy Secretary Rick Perry on Monday in support of the Western Area Power Administration's Transmission Infrastructure Program, which was axed under the Trump administration's fiscal 2019 budget proposal. "TIP is one of the few federal programs that directly supports new and upgraded electric transmission," according to the letter, signed by Sens. Catherine Cortez Masto, Martin Heinrich, Dean Heller and Cory Gardner.

HOUSE PLANS FLOOD INSURANCE VOTE: The House is planning to vote next week to extend the National Flood Insurance Program, ahead of its July 31 expiration, sources familiar with the matter tell Pro Financial Services' Zachary Warmbrodt. There are already a few options on the table for the program: one from Financial Services Chairman Jeb Hensarling, who has been trying to put together an extension bill that includes reforms, and a new bill introduced by Scalise and Rep. Tom MacArthur that would reauthorize the program through Nov. 30. Read [more](#).

FOR YOUR RADAR: Republican Sen. Chuck Grassley introduced bipartisan legislation on Monday targeting price fixing by OPEC. The bill would amend the Sherman Act to make oil-producing and exporting cartels illegal, and was co-sponsored by Sens. Amy Klobuchar, Mike Lee and Patrick Leahy. "It's long past time to put an end to illegal price fixing by OPEC," Grassley said in a statement. Read the legislation [here](#).

MAIL CALL! National Rural Electric Cooperative Association CEO Jim Matheson sent a letter to the leadership of the Energy and Commerce Environment Subcommittee on Monday in support of legislation to reform the New Source Review permitting program.

— **More than 100 Democrats** signed onto a letter to members of both House and Senate Armed Services committees today to urge them to oppose any provisions to the National Defense Authorization Act that would "have widespread, negative consequences for the conservation of our imperiled wildlife and public lands." Read the letter [here](#).

— **Iowa's congressional delegation** invited acting EPA Administrator Andrew Wheeler to their state to discuss the Renewable Fuel Standard. Read it [here](#).

What role will Hispanic voters over 50 play in Arizona this Fall? Read POLITICO Magazine's new series "The Deciders" which focuses on this powerful voting bloc that could be the determining factor in turning Arizona blue.

QUICK HITS

- "Puerto Ricans return to power grid, but fear for long term," The Associated Press.
- "Oil boom in Southern New Mexico ignites groundwater feud with Texas," Water Deeply.
- "In N.Y., farmers think about what might have been," E&E News.
- "Same agenda, different style, acting EPA head pledges," Bloomberg Environment.

HAPPENING TODAY

8:30 a.m. — POLITICO's Pro Summit, 999 Ninth St. NW.

8:45 a.m. — The United States Institute of Peace discussion on "Wildlife Poaching and Trafficking: Combating a Vital Source of Terrorism," 2301 Constitution Avenue NW.

9 a.m. — The Resilient Puerto Rico Advisory Commission discussion with the authors of the newly released "ReImagina Puerto Rico" report, 14th and F St. NW.

9 a.m. — The National Academy of Sciences' Board on Atmospheric Sciences and Climate meeting to discuss a research agenda for adaptation science, 2101 Constitution Ave. NW.

9:45 a.m. — Senate Environment and Public Works Committee hearing on "The Endangered Species Act Amendments of 2018," 406 Dirksen.

10 a.m. — House Natural Resources Federal Lands Subcommittee hearing on federal land bills, 1324 Longworth.

10 a.m. — The Atlantic Council discussion on "Ready and Resilient," focusing on disaster preparedness, 1030 15th St. NW.

10 a.m. — House Oversight Interior, Energy and Environment Subcommittee hearing on "Tribal Energy Resources: Reducing Barriers to Opportunity," 2247 Rayburn.

10 a.m. — House Science Energy and Environment Subcommittees joint hearing on "The Future of Fossil: Energy Technologies Leading the Way," 2318 Rayburn.

10 a.m. — Senate Energy and Natural Resources Committee hearing on the Interior Department's final list of critical minerals, 366 Dirksen.

12:30 p.m. — The Washington Institute for Near East Policy discussion on "Reimplementing Iran Sanctions: Where, How and How Much?" 1111 19th St. NW.

12:30 p.m. — Sens. Ed Markey and Tom Carper press conference on Supreme Court nominee Brett Kavanaugh, S-115.

1 p.m. — EPA meeting on pesticide health and safety, Rosslyn, Va.

1 p.m. — House Energy and Commerce Environment Subcommittee markup of H.R. 3128 (115), 2322 Rayburn.

3 p.m. — House Rules Committee meets to formulate a rule on H. Con. Res. 119 (115), H-313.

THAT'S ALL FOR ME!

To view online:

<https://subscriber.politicopro.com/newsletters/morning-energy/2018/07/spotlight-on-ferc-280874>

Stories from POLITICO Pro

House plans vote to keep flood insurance program going Back

By Zachary Warmbrodt | 07/16/2018 06:49 PM EDT

The House is planning to vote next week to extend the National Flood Insurance Program before leaving town ahead of the program's July 31 expiration, sources familiar with the matter said.

House Financial Services Chairman Jeb Hensarling (R-Texas) has been trying to put together an extension bill that includes reforms, sources said. Another option is a new bill introduced by House Majority Whip Steve Scalise (R-La.) and Rep. Tom MacArthur (R-N.J.) that would reauthorize the program through Nov. 30.

In a statement, Scalise said it was important to keep working on a long-term flood insurance reauthorization but that his bill would take concerns about a lapse off the table for the remainder of hurricane season.

While the House has passed a five-year reauthorization and overhaul, the Senate hasn't reached agreement on its own bill amid disputes over how to retool the program. It's unclear if the Senate would be able to pass anything other than a clean, short-term reauthorization at this stage. Sources said Sen. John Kennedy (R-La.) was planning to try to hotline an extension through January.

To view online click here.

[Back](#)

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Subject: Morning Energy: Another mess for Pruitt — Virgin Islands party boss: Zinke ties improved hurricane response — Coal magnate delivered draft orders to Trump

By Kelsey Tamborrino | 06/07/2018 05:41 AM EDT

With help from Darius Dixon, Anthony Adragna and Annie Snider

ANOTHER MESS FOR PRUITT: Scott Pruitt has an appetite for food from the White House mess — a U.S. Navy-run restaurant for use only by White House officials, Cabinet members and other dignitaries. In fact, he loves eating there so much, the White House asked him to stop coming by so often, POLITICO's Emily Holden, Andrew Restuccia and Anthony Adragna report.

The message was clear, according to one person close to Pruitt: "We love having Mr. Pruitt, but it's not meant for everyday use." A member of the White House's Cabinet affairs team told agency chiefs of staff last year that their bosses shouldn't treat the mess like their personal dining hall — a comment that came in response to Pruitt's recurring use of the restaurant, sources said.

Pruitt's allies privately disputed that the warning about overuse of the mess was aimed squarely at him, but nobody contests that he's a frequent presence at the establishment in the basement of the West Wing. The White House did not respond when asked about his lunch habits, and EPA declined to comment.

A billing statement from July 2017 offered a glimpse into Pruitt's trips to the mess, racking up a bill of \$400 over nine trips that month — a relative bargain in downtown Washington considering the menu. A cheeseburger at the White House runs just \$6.35, according to Pruitt's bill. Compare that to the \$17 you'd pay for a burger from another favorite Pruitt spot, French bistro Le Diplomate. Read [more](#).

Support for Pruitt is also falling on Capitol Hill, Anthony and Emily report, in the wake of this week's news that Pruitt sought to buy a used mattress from the Trump Hotel and inquired about securing a Chick-fil-A franchise for his wife. Two more top aides to Pruitt — scheduler Millan Hupp and counsel Sarah Greenwalt — also are leaving the agency. "I'm not going to come down here, just because he happens to be a nominee of a president I support or a nominee from my party, and try to defend the indefensible," Sen. [John Neely Kennedy](#) said. More [here](#).

On the other hand, [Cory Gardner](#), who heads the Senate GOP campaign arm, told reporters he doesn't think Pruitt's ongoing ethics woes will harm his party in the midterms. "The states like Missouri, Indiana, North Dakota have benefited from a regulatory approach this administration has taken," Gardner said.

Environmentalists' "Boot Pruitt" campaign will gather a "group of cows" outside the Capitol South Metro station today from 8 a.m. to 9:15 a.m. to hand out fake Chick-fil-A coupons for a free chicken sandwich with a donation to Pruitt's legal defense fund. They'll hold signs reading: "Breeth Mor Carhun" and "What the Cluck, Pruitt?"

VIRGIN ISLANDS BOSS PLAYS UP ZINKE RELATIONSHIP: The head of the Virgin Islands Republican Party suggested his fundraising group's longstanding relationship with Interior Secretary Ryan Zinke helped improve the department's response to last year's hurricanes that struck the island territory, Pro's

Ben Lefebvre reports. John Canegata said he had direct access to Interior officials after the storm thanks to money his group raised for Zinke when he was a member of Congress.

Calling Zinke a "close friend," Canegata boasted of his connections in a televised appearance that aired in the Virgin Islands last month but has not received widespread attention outside of the territory. While numerous officials played a role in helping the islands recover from hurricanes Maria and Irma, "behind the scenes, trust me, a lot of telephone calls, a lot of maneuvering was going on because, I think, some of the relationships we built," Canegata said of Zinke.

Interior acknowledged that officials contacted Canegata after the hurricanes but said they did so as part of a wider effort to contact business leaders based in the territory and Zinke did not call him personally. Canegata works for Cruzan Rum, but a company representative told Ben he was not involved in coordinating its relief efforts. Interior expedited the reimbursement of taxes on Virgin Islands rum following the storms, but it was unclear whether Canegata influenced that decision; he did not respond to a request for comment.

For his part, Zinke has known Canegata since at least 2015, Ben reports. The secretary previously came under fire for a fundraiser for the VIGOP, as the group is known, during an official trip to the islands in his first month in President Donald Trump's Cabinet. Read more.

IT'S THURSDAY! I'm your host Kelsey Tamborrino. NRECA's Dan Riedinger correctly identified John Tyler as the only president to have not been a resident of the U.S. when he died. Tyler resided in Virginia at the time, which was part of the Confederate States of America. Today's question: Which Congress had the largest number of veterans in office? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](https://twitter.com/kelseytam), [@Morning_Energy](https://twitter.com/Morning_Energy) and [@POLITICOPro](https://twitter.com/POLITICOPro).

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MURRAY DELIVERED EXECUTIVE ORDERS TO TRUMP: Coal magnate Bob Murray handed off drafts of six executive orders that would roll back Obama-era environmental regulations to Trump during the beginning of his administration, according to documents from DOE released under FOIA. The documents include a letter to Energy Secretary Rick Perry from Murray praising Trump's March 2017 energy independence executive order, and included a note where Murray wrote, "we have developed the enclosed materials for your review and consideration, consisting of: six (6) Executive Orders further rescinding anti-coal regulations of the Obama administration; and one (1) memorandum outlining the legal rationale for each of these action, and others."

While Trump did not sign those exact orders, the administration has moved to enact similar policies, Pro's Darius Dixon reports. The documents, which were sent to DOE the day Trump signed his energy independence order and one day before Murray met with Perry and DOE chief of staff Brian McCormack, also included concepts about grid security and "resiliency" that Perry later touted as part of his push to stop coal power plants from closing. Read more.

BAILOUT ON HIS MIND: In private remarks given during his visit to FEMA headquarters Wednesday, Trump mentioned a slew of topics that had nothing to do with hurricanes, The Washington Post reports, while only briefly mentioning Puerto Rico. Trump instead encouraged Perry to make an announcement about rescuing economically struggling coal and nuclear power plants, the Post reports. "I'd love to put it out — 'clean coal, nuclear,' it's a very important message," he said, telling Perry he needed to hold a news conference.

WRDA MOVES AHEAD: The House passed the Water Resources Development Act of 2018 (H.R. 8 (115)) last night, marking the first major piece of infrastructure legislation to move under the Trump administration, Pro's Annie Snider reports. Lawmakers signed off on the measure on a broadly bipartisan vote of 408-2. The bill — markedly narrower than the Senate's measure — would authorize six new Army Corps of Engineers projects and enact a suite of policy reforms at the red tape-laden agency.

What about the Senate? For those wondering, EPW Chairman John Barrasso told ME he'd not yet locked down a time for the Senate to consider its broader version of the water resources infrastructure legislation. Separately, Sen. Tammy Baldwin sent this letter to Trump, calling on him to urge Congress to include a permanent Buy America provision in the legislation.

MUM'S THE WORD: Barrasso, whose state produces a lot of coal and uranium, told ME he isn't ready to back Trump's proposed bailout for coal and nuclear power plants. "I've read the article but I want to actually see what the proposal is," he said. DOE is still formulating the details of how it would intervene to save the struggling plants.

RESCISSIONS VOTE TODAY: The House is set to vote today on Trump's \$15 billion rescissions bill, Pro's Sarah Ferris reports. The House Rules Committee teed up the bill, H.R. 3 (115), on Wednesday, a quick turnaround that surprised even some GOP lawmakers.

ALL ABOARD: After the rescissions package, the House is ready to start debate on its "minibus" appropriations package, which includes energy and water, legislative branch and military construction-VA spending bills, Pro's Kaitlyn Burton reports. The Rules Committee has set up floor votes on 50 amendments to the energy and water title. A final vote on the overall bill is expected Friday.

SHIMKUS SPEAKS: Rep. John Shimkus, one of the most ardent Yucca Mountain champions in Congress, said his loud floor dispute with Paul Ryan on Tuesday was simply a dispute over "strategy going forward." Other members suggested it had to do with the timing of the Energy-Water bill, since Shimkus thinks delaying until after the midterms might allow Yucca language to make it into the title. The Senate has avoided tackling Yucca due to Sen. Dean Heller's close reelection contest.

POWER OF THE PEN: The House Appropriations Committee agreed to bar EPA from spending more than \$50 on a fountain pen. The amendment — an apparent reference to the \$1,560 Pruitt spent on a dozen fancy writing implements — passed on a voice vote at Wednesday's markup. The panel cleared its version of the fiscal 2019 EPA-Interior bill, on a vote of 25-20. Committee Republicans blocked an effort from Democrats to boost EPA's Office of Inspector General by \$12 million, but approved an amendment that would change revenue sharing for drilling in the Arctic National Wildlife Refuge. And while the pen amendment passed, the committee shot down another amendment from Democratic Rep. Mike Quigley related to Pruitt's travel.

MEETING WITH A FULL DECK: The last time the leadership of FERC and the Nuclear Regulatory Commission got together, there were just enough commissioners between the two agencies to fill one five-member board. Fast-forward to today, and it's a full house for the first time in years thanks to confirmation of two new NRC leaders last month. The get-together is slated to run for just over two hours. An agenda hasn't been released but the meetings usually involve staff presentations on grid reliability — and how it might be impacted by the retirement of nuclear plants — and cybersecurity regulations. Finding the areas where an

economic regulator overlaps with a safety watchdog isn't always obvious. The meeting is slated to run from 9 a.m. to 11:15 a.m. at FERC headquarters, and will be [webcast](#).

ROYALTY RUMPUS: Interior's Royalty Policy Committee approved recommendations Wednesday aimed at expanding energy lease sales and lowering royalty rates, Ben recaps. But during the advisory committee's meeting, two members questioned whether it had the power to suggest changes to federal environmental review. "NEPA is not referred to in the [committee] charter," Rod Eggert, a professor at the Colorado School of Mines, said during the meeting. "The text in the charter refers to royalties and collections of royalties." Read more [here](#).

Later Wednesday, BLM sent out a [memo](#) instructing field offices to look for ways to speed up permit processing, including by using categorical exclusions, Ben [reports](#).

— **Meanwhile, the Central Arizona Project will meet today** on proposals for sourcing cheaper power to run the Navajo Generating Station. The Bureau of Land Reclamation last week sought to delay the coal-fired power plant's closure, arguing that a 1968 law gives Zinke the authority to require the Arizona water project buy energy from the power plant. Reuters has the rundown [here](#).

GROUPS WARY OF INTERIOR DRAFT BILL: A coalition of sportsmen's groups is concerned about draft legislation that appeared before the House Natural Resources Energy Subcommittee on Wednesday. According to the [draft bill](#), it would enable Interior to recover the costs of administrative protests to oil and gas lease sales, drilling permits and other applications. The bill, [they say](#), would make it more difficult for sportsmen and women to comment on oil and gas lease sales on public land.

BLANKENSHIP IS BACK: Former coal baron Don Blankenship hasn't given up hope to take on the establishment and earn himself a spot in the Senate. After losing a primary bid to West Virginia Attorney General Patrick Morrisey, Blankenship's campaign [announced](#) Wednesday it is petitioning to gain ballot access for the general election as the nominee for the Constitution Party.

BIPARTISAN LETTER ASKS PRUITT TO DROP 'SECRET SCIENCE': More than 100 lawmakers — including Republican Reps. [Brian Fitzpatrick](#), [Carlos Curbelo](#), [Ryan Costello](#) and [Ileana Ros-Lehtinen](#) — signed onto a letter to Pruitt today, asking him to withdraw EPA's so-called secret science proposal to bar EPA from using studies that don't make public all their data. Read the letter [here](#).

DEMS WARN AGAINST E15: Democratic Sens. [Tom Udall](#) and [Peter Welch](#) are calling on EPA to abide "by all legal and regulatory requirements" as the Trump administration weighs the year-round sale of 15 percent ethanol blends of gasoline. "We are very concerned that career EPA officials may be being directed to reverse over 25 years of the agency's position to manufacture legal and scientific justifications for a politically-directed decision on E15," they write. Read the [letter](#).

MAIL CALL! RELEASE THE STUDY: A coalition of environmental groups will send [this letter](#) today to HHS Secretary Alex Azar, calling on him to release the controversial federal chemical pollution study [blocked](#) by EPA officials.

— **Nineteen environmental groups filed a letter** to the House in opposition of [H.R. 5895 \(115\)](#), the so-called minibus, which they say sets up an improper use of water and natural resources, and undermines safe nuclear waste disposal. Read it [here](#).

FOR YOUR RADAR: The International Wildlife Conservation Council, which came [under fire](#) for the big-game trophy hunters added to its ranks, will hold its next meeting June 19 in Atlanta, according to the [Federal Register](#).

ON THE WEB: The Center for American Progress is launching a new website today that is dedicated to tracking legal challenges to the Trump administration's conservation agenda. See it [here](#).

QUICK HITS

- The heat is back on high: May smashes U.S. temperature records, [Associated Press](#).
- Man dies at Randolph County mine, [Charleston Gazette-Mail](#).
- Hurricanes are traveling more slowly — which makes them even more dangerous, [The Washington Post](#).
- Trump falsely claims "We're now exporting energy for the first time," [The New York Times](#).
- Trump's move to please farmers on biofuels reform draws refinery union ire, [Reuters](#).

HAPPENING TODAY

8:00 a.m. — Exchange Monitor holds [Decommissioning Strategy Forum](#), Nashville

8:30 a.m. — New Energy Update holds [U.S. Offshore Wind conference](#), Boston

9:00 a.m. — The Atlantic Council and the American Council on Renewable Energy [discussion](#) on "The State of America's Energy Transition: Renewable Energy Policy Network for the 21st Century Renewable Global Status Report," 1030 15th Street NW

9:00 a.m. — Industry Exchange holds [Mexico Gas Summit](#), San Antonio, Texas

9:00 a.m. — The Federal Energy Regulatory Commission and the Nuclear Regulatory Commission [joint meeting](#), 888 First Street NE

11:00 a.m. — House Energy and Commerce Committee [hearing](#) on "Improving the Hydropower Licensing Process," 2123 Rayburn

11:00 a.m. — House Transportation Coast Guard and Maritime Transportation Subcommittee [hearing](#) on "Maritime Transportation in the Arctic: The U.S. Role," 2167 Rayburn

12:00 p.m. — Hill briefing on "The Export Subsidy RIN: A Valueless Dead End," 608 Dirksen

12:30 p.m. — Women of Renewable Industries and Sustainable Energy [lunch and learn](#), 1501 M St NW

1:00 p.m. — House Science Energy Subcommittee [hearing](#) on the electric grid, 2318 Rayburn

2:00 p.m. — House Natural Resources Oversight Subcommittee [hearing](#) on "Wildfire Risk, Forest Health, and Associated Management Priorities of the U.S. Forest Service," 1324 Longworth

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To view online:

<https://subscriber.politicopro.com/newsletters/morning-energy/2018/06/another-mess-for-pruitt-244517>

Stories from POLITICO Pro

Another mess for Pruitt: Overstaying his White House welcome at lunch [Back](#)

By Emily Holden, Andrew Restuccia and Anthony Adragna | 06/06/2018 10:17 PM EDT

EPA Administrator Scott Pruitt loves eating at the White House mess, an exclusive U.S. Navy-run restaurant open only to White House officials, Cabinet members and other dignitaries.

But apparently he liked it too much, and the White House asked him to please eat elsewhere sometimes.

In response to Pruitt's recurring use of the restaurant next to the Situation Room in the basement of the West Wing, a member of the White House's Cabinet affairs team told agency chiefs of staff in a meeting last year that Cabinet members shouldn't treat the mess as their personal dining hall, according to three people with knowledge of the issue.

The message was clear, according to one person close to Pruitt: "We love having Mr. Pruitt, but it's not meant for everyday use." Another person added that the White House asked Cabinet members to visit the mess only occasionally because there are [few tables available](#).

A renovation to update the West Wing HVAC last August included the mess kitchen and may have limited space, one person said. The renovation came shortly after the president tapped John Kelly as chief of staff, and he implemented several day-to-day changes to bring order to the White House.

The White House did not respond to a request for comment and EPA declined to comment. Pruitt's allies privately disputed that the warning about overuse of the mess was aimed squarely at him, but nobody contests that he's a frequent presence at the White House for lunch.

Pruitt has been known to complain that EPA headquarters has no cafeteria of its own and no private dining quarters, according to multiple sources, who said Pruitt still often heads to the White House for lunch. One source said EPA officials called the White House to explain that Pruitt didn't have a place to eat at EPA and would like to continue to visit. Pruitt's EPA office is only a few blocks up Pennsylvania Avenue from the White House.

A [billing statement](#) from July 2017 offered a glimpse into Pruitt's use of the mess, showing the EPA chief or people linked to him dined at the mess at least nine times that month, racking up a bill of \$400, a relative bargain in downtown Washington. Pruitt and his guests dined on dishes like "cowboy" skirt steak, popcorn chicken and waffles, spinach strawberry salad and beer-braised brisket tacos.

While the food is considered to be top-notch, the prices are a real bargain. Skirt steak runs just \$10.25, while coriander beef kabobs were just \$11.95 each. And a cheeseburger runs just \$6.35, according to his bill. The burger at another of Pruitt's haunts, French bistro Le Diplomate, runs \$17.

Records obtained through a Sierra Club Freedom of Information Act request [also show](#) Pruitt often sought to bring friends from Oklahoma to the White House mess.

Five friends from Tulsa — Charlie Polston, Carlyn Mattox, David Mattox, Bob Wagoner and Jerry Dillon — were invited for a September lunch there with him, though it didn't appear in Pruitt's detailed calendar obtained through FOIA.

That lunch came just two weeks after Pruitt made a lunch date there with Bob Funk, a wealthy Oklahoma Republican with whom he bought a major stake in the minor league Oklahoma City RedHawks baseball team back in 2003.

"Please have Mr. Funk arrive at EPA building at 11:40am to ride with Administrator Pruitt to the WH," Lincoln Ferguson, a senior adviser for public affairs, wrote in [an email](#). There was no entry in Pruitt's calendar for the time when the lunch was to have taken place.

Calendars from Pruitt's senior aides show he made frequent use of the space in the month following his February 2017 Senate confirmation. He dined there on Feb. 27, March 2 and met with Ivanka Trump, the president's daughter and West Wing adviser, on March 13. Chief of staff Ryan Jackson's calendar also lists a lunch in the "Mess" on March 16.

Pruitt also hosted representatives from the Oklahoma Farm Bureau on March 29, according to Jackson's calendar. And he returned for lunch with Mike Catanzaro, a senior White House energy aide, and several senior aides on April 7.

Pruitt and his guests also seemed to have a sweet tooth, partaking of a dessert called "Chocolate Freedom" on multiple occasions. As [POLITICO reported](#) in January 2017, the dish — a molten cake made with imported French chocolate that must be ordered at the beginning of lunch because of the baking time — was also popular among Obama administration staffers on their way out the door.

Chocolate Freedom has garnered [rave reviews online](#), and once prompted comedian Zach Galifianakis to [ask](#) whether it was also the staff's nickname for former President Barack Obama.

Also available to diners: boxes of red, white and blue M&Ms featuring the presidential seal.

Alex Guillén contributed to this report.

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Pruitt wanted to buy 'old mattress' from Trump International Hotel [Back](#)

By Anthony Adragna | 06/04/2018 10:43 AM EDT

Two senior House Oversight Democrats are demanding Chairman Trey Gowdy (R-S.C.) subpoena Scott Pruitt for documents after one of his closest aides told congressional investigators the EPA administrator had her book a personal flight to the Rose Bowl, search for housing for him and try to buy him an "old mattress" from the Trump International Hotel.

Ranking member Elijah Cummings (D-Md.) and Gerry Connolly (D-Va.) demanded that Gowdy compel Pruitt to turn over all documents related to the potential mattress purchase, efforts to secure personal flights, and work that agency employees performed on non-EPA tasks for Pruitt that have been withheld from an earlier April Democratic request. That followed a May 18 transcribed interview with Millan Hupp, Pruitt's scheduler.

"If Ms. Hupp's statements to the Committee are accurate, Administrator Pruitt crossed a very clear line and must be held accountable," they wrote. "Federal ethics laws prohibit Administrator Pruitt from using his official position for personal gain and from requesting and accepting services from a subordinate employee that are not part of that employee's official duties."

As part of its investigation into Pruitt, the Oversight Committee said it has conducted several transcribed interviews and obtained 2,350 pages of documents, and a spokeswoman criticized the release of Hupp's testimony.

"Selectively releasing portions of witness interview transcripts damages the credibility of our investigation and discourages future witnesses from coming forward. The Committee will continue conducting a serious, fact-driven investigation, and therefore will wait until the conclusion of our investigation to release our findings," committee spokeswoman Amanda Gonzalez said in a statement.

White House Press Secretary Sarah Huckabee Sanders said Monday the administration is "looking into" the issues in the Democrats' letter, but didn't outline any more specific steps.

"I couldn't comment on the specifics of the furniture use in his apartment and certainly would not attempt to," she said, referring to Pruitt's interest in the mattress.

According to the Democrats' letter, Hupp told Oversight staff she worked with the managing director of the Trump International Hotel in hopes of securing an old mattress. She said Pruitt had told her someone at the hotel indicated he could purchase the mattress, though she did not know why he wished to do so and did not know if he ultimately bought it.

In addition, Hupp said she sent several emails to real estate agents over a period of several months last summer during work hours to help Pruitt find housing after he verbally asked for her help. She said she visited a "probably more than 10" properties during her lunch hour over the course of several months. Hupp said she didn't use work email for the searches and was not paid for her efforts.

Pruitt and his wife ultimately settled on an apartment on 13th and U streets, but left it shortly afterwards because "they were not comfortable in the area," according to Hupp.

Democratic lawmakers have honed in on Pruitt's admission during a May 16 Senate subcommittee hearing that Hupp had searched for housing for him without pay on her own personal time.

"It doesn't cut it that they're a friend or that kind of thing," Sen. Tom Udall (D-N.M.) told Pruitt at the hearing, because having a subordinate staff member voluntarily conduct tasks on personal time would constitute a gift.

"That's in violation of federal law," Udall told Pruitt.

An EPA spokesman said the agency continued to give the information it was seeking.

"We are working diligently with Chairman Gowdy and are in full cooperation in providing the Committee with the necessary documents, travel vouchers, receipts and witnesses to his inquiries." EPA spokesman Jahan Wilcox said in a statement.

According to the Democrats' letter, Hupp said around Christmas she used a personal credit card from Pruitt in her possession to arrange his personal trip to the Rose Bowl in California to watch the Oklahoma Sooners football team play. She did not know why Pruitt, who sent her the details for the trip, and couldn't book the flight on his own.

"He just sent me the flights details and asked me to book for him," Hupp said.

Hupp indicated she considered Pruitt a personal friend, which was why she did these tasks for him. She said the two had met for dinners that were attended by just the two of them.

"We worked very closely together and spent a lot of time together," she said. "I traveled with him, so naturally a friendship developed."

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Republicans losing patience with scandal-scarred Pruitt [Back](#)

By Anthony Adragna and Emily Holden | 06/06/2018 05:37 PM EDT

Republicans on Capitol Hill are growing frustrated with EPA Administrator Scott Pruitt — and many are now publicly questioning whether he can hang on to his job amid the unending stream of scandals.

Several GOP lawmakers said their patience was running thin after this week's news that Pruitt sought to buy to buy a used mattress from the Trump Hotel and inquired about securing a Chick-fil-A franchise for his wife. And Pruitt's circle of confidantes inside the agency appeared to be shrinking as well, with two of his closest aides set to depart in the coming days.

"The constant drip needs to stop so the agency can get its footing and focus back," House Energy and Commerce Chairman Greg Walden (R-Ore.) told reporters. "They're doing some really good work in the environmental front, but this needs to stop."

"Sometimes people get tripped up on other things besides the core mission, and I think that's what you're seeing," Sen. Shelley Moore Capito (R-W.Va.) told reporters.

Pruitt's scheduler, Millan Hupp, is resigning following her interview by the House Oversight Committee during which she disclosed that she helped her boss find housing and inquired about purchasing a used mattress for him from the Trump International Hotel.

And his top legal counsel, Sarah Greenwalt, will also depart, according to sources. Both women had worked for Pruitt in the Oklahoma attorney general's office and both were among the staff that received raises that had been rejected by the White House.

"I think it's extremely fair to say her and Millan both are tired of the daily grind here," one EPA official said. "Everybody is painfully aware of that."

While acknowledging that President Donald Trump would ultimately make any decision about Pruitt's job, several Republicans indicated Pruitt's support was waning in their conference.

"I'm not going to come down here, just because he happens to be a nominee of a president I support or a nominee from my party, and try to defend the indefensible," Sen. John Kennedy (R-La.) said. "I thought that Mr. Pruitt would have learned his lesson."

Kennedy added: "I said the same thing about Tom Price," referring to Trump's former HHS secretary who resigned after spending lavishly on military and private jets.

Trump reaffirmed his support for Pruitt on Wednesday when they participated in a briefing on the 2018 hurricane season with several Cabinet officials.

"EPA is doing really, really well," Trump said. "You know, somebody has to say that about you a little bit. You know that, Scott."

But even staunch Pruitt allies like Sen. Jim Inhofe (R-Okla.) said the mounting scandals had them rethinking their support.

"Some are true, some are not true. Whether he can weather the storm, I'm not sure," Inhofe said. "The accusations are all troubling. They are."

A few Republicans stood by Pruitt, arguing he's been targeted by an environmental community and press corps eager to take him down.

"I like him," Sen. Roger Wicker (R-Miss.) said. "He is a target because he's keeping the president's campaign promises."

But a more common view among GOP lawmakers was the collective stream of scandals were taking their toll and making Pruitt's position untenable.

"Take a thousand cuts and [there's] not much energy left," Senate Appropriations Chairman Richard Shelby (R-Ala.) told reporters.

Rep. John Shimkus (R-Ill.), who leads the Energy and Commerce subcommittee overseeing EPA, joked he "can't keep up" with the flood of allegations and said he's concerned they haven't stopped.

"These unforced errors are unforced errors," he said. "I don't like being asked all the time about this."

But he raised a possible reason why Republicans weren't abandoning Pruitt: getting a replacement confirmed by the Senate would be nearly impossible.

"Are you going to promise me we could even get an administrator?" he said. "I think that's another concern."

In a video posted by a Nexstar Wednesday, Pruitt defended his attempts to set his wife up with a Chick-fil-A franchise Wednesday, while the president reaffirmed his support in the administrator.

Pruitt said that his wife is "an entrepreneur herself" and that the pair loved the fast-food franchise. As he has in the past, Pruitt dismissed criticism of his behavior as being driven by opposition to the Trump administration's deregulatory policies.

"With great change comes, I think, opposition," he said in a clip the reporter posted to Twitter.

Pruitt did not directly address whether he had asked an EPA aide to reach out to Chick-fil-A President Dan Cathy to inquire about his wife opening up her own restaurant, as the Washington Post first reported Tuesday.

"Chick-fil-A is a franchise of faith and it's one of the best in the country, so that was something we were very excited about," he told the Nextstar reporter Wednesday. "We need more of them in Tulsa, [Okla.]. We need more of them across the country."

Kelsey Tamborrino contributed to this report.

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Trump's Interior chief 'hopping around from campaign event to campaign event' [Back](#)

By Ben Lefebvre and Esther Whieldon | 10/05/2017 05:01 AM EDT

Republican donors paid up to \$5,000 per couple for a photo with Interior Secretary Ryan Zinke at a fundraiser held during a taxpayer-funded trip to the U.S. Virgin Islands, according to documents reviewed by POLITICO — raising questions about his habit of mixing official government business with political activism.

The new details about Zinke's March trip to the Caribbean, including the previously undisclosed invitation to the Virgin Islands Republican Party fundraiser, emerged after weeks of scrutiny of the former Montana GOP congressman's travels. The nearly two-hour event was one of more than a half-dozen times Zinke has met with big donors or political groups while on department-paid trips, Interior travel records and other documents show.

Ethics watchdogs say Zinke is combining politics with his Interior duties so frequently that he risks tripping over the prohibitions against using government resources for partisan activity, even though his appearance at the Virgin Islands event seems to have been legal. Democrats have also seized on the issue, including 26 House members who wrote in a letter Tuesday that Zinke's travels "give the appearance that you are mixing political gatherings and personal destinations with official business."

Zinke has said all his actions have obeyed the law, dismissing concerns about his travel as "a little BS."

But some ethics advocates say Zinke's attendance at a fundraiser during his first month as secretary is not in line with past administrations' conduct, even if he crossed no legal red lines.

"It happens on occasion with other Cabinet secretaries, perhaps even a little more often as you get near the election, but it is not a very common practice for Cabinet members to be hopping around from campaign event to campaign event like we're seeing with Zinke," said Craig Holman, government affairs specialist for government watchdog Public Citizen.

The secretary is already under investigation by his department's inspector general over his use of taxpayer-funded private planes for some of the trips, and the Office of Special Counsel is looking into an activist group's allegations that he violated the Hatch Act, the law limiting political activism by federal employees. The White House has cracked down on Cabinet members' travel habits following former HHS Secretary Tom Price's resignation on Friday, which occurred after POLITICO reported on his own expensive flights.

Zinke visited the Virgin Islands from March 30 to April 1 on an official trip related to the Interior Department's role overseeing the U.S. territory. On his first day, following a "veterans meet and greet" and a reception with Gov. Kenneth Mapp, he appeared in his personal capacity at a March fundraiser for the local Republican Party at the patio bar of the Club Comanche Hotel St. Croix, department records show.

Tickets for the fundraiser ranged from \$75 per person to as much as \$5,000 per couple to be an event "Patron," according to Zinke's official calendar and a copy of the invitation. Patrons and members of the host committee, who paid \$1,500 per couple, could get a photo with Zinke at the start of the event, which was attended by local party members and elected officials.

The following day, Zinke took a \$3,150 flight on a private plane, paid for by the department, from St. Croix to official functions on St. Thomas and returned later that evening. Interior Department officials said there was no

other way to accommodate his schedule, which included official events on both islands commemorating the 100th anniversary of the Dutch government transferring control of the islands to the United States.

Zinke is allowed to engage in partisan political activity in a "purely personal (not official) capacity," so long as he does not use government resources, according to Interior Department guidelines on the Hatch Act and other federal laws. The invitation to the GOP fundraiser did not identify Zinke by his official title and included a disclaimer that the money is being solicited by the local party and "not by any federal official."

All told, Zinke has spent around \$20,000 for three charter flights as secretary, nowhere near the \$1 million tab Price racked up on non-commercial trips. But he has on numerous occasions attended political receptions, spoken to influential conservative groups or appeared alongside past campaign donors during trips has taken outside of Washington, D.C., for official department business.

In one instance, Zinke gave a motivational speech for a professional hockey team owned by a major campaign contributor that he said was official business — and which required him to charter a \$12,000 flight to Montana for an appearance at the Western Governors Association the next day.

In another case, during a speech to the Western Conservative Summit in Denver, he was introduced via a recorded voice as the Interior secretary and Zinke proceeded to talk about the agency's priorities. The summit was organized by the Centennial Institute, which bills itself as Colorado Christian University's think tank and is a part of the State Policy Network of organizations that collectively push for conservative state-level legislation.

An Interior spokeswoman said Zinke always follows the law but declined to answer specific questions about his appearance at the Virgin Islands fundraiser, nor say whether he would keep raising political money. The agency also has yet to post Zinke's trip expenses involving any of the political events.

"The Interior Department under the Trump Administration has always and will always work to ensure all officials follow appropriate rules and regulations when traveling, including seeking commercial options at all times appropriate and feasible, to ensure the efficient use of government resources," spokeswoman Heather Swift said in a statement.

Swift did not respond to questions about whether the department had gotten reimbursement for the political portion of Zinke's three-day Virgin Islands trip, as the head of one watchdog group says it should have.

"Some of this travel is clearly political and that part of the travel should have been paid for by the RNC, NRCC, state political parties, a campaign committee or Zinke personally," said Daniel Stevens, executive director of the Campaign for Accountability.

No payments to the department are listed in the Virgin Islands Republican Party's FEC records.

Zinke is not the first Interior secretary, or Cabinet member, to have his activities questioned.

In 2012, a watchdog group called Cause of Action urged the Office of Special Counsel to investigate whether President Barack Obama's then- Interior Secretary Ken Salazar had violated the Hatch Act while taking an Obama reelection campaign RV tour of Colorado with a couple of lawmakers and the state lieutenant governor. Local organizers of one stop on that tour had billed Salazar on its online events calendar as attending the political rally in his official role. OSC would not say whether its investigation uncovered any problems, but travel records Interior has posted show that one of Salazar's aides had told the tour's coordinator the schedule "should not refer to (Salazar as) 'secretary.'" Salazar did not respond to a request for comment.

A former Salazar aide, who was not authorized to speak on the record, said the Obama administration generally tried to avoid scheduling political events that coincided with official travel because it was difficult to divvy up what expenses should be reimbursed by a campaign.

The special counsel's office found Obama HHS Secretary Kathleen Sebelius in violation of the Hatch Act in 2012, saying she had made "extemporaneous partisan remarks" by endorsing a candidate for North Carolina governor during a speech she made in her official capacity. Sebelius tried to scrub the violation by reclassifying the appearance as political and reimbursing the Treasury Department for costs associated with the trip.

Sally Jewell, who was Interior secretary during Obama's second term, said Zinke was within his rights to appear at the fundraiser in the Virgin Islands. Jewell said she once appeared at a fundraiser for Democratic Sen. Maria Cantwell while in Obama's Cabinet, though she paid her own way to Washington state and was not identified by her official title.

"If he had legitimate business while he's on the island, to do a political thing on the side, I don't think that is that unusual," Jewell said in an interview.

EPA Administrator Scott Pruitt canceled his scheduled appearance at a fundraiser for the Oklahoma Republican Party in April because an invitation had identified him by his official title and said he would discuss his work at the agency. EPA ethics officials said he would have been cleared to attend the event if not for that language on the invitation.

Watchdog groups say Zinke's behavior fits a pattern for Trump's Cabinet.

"These government resources have been abused by this administration," said Virginia Canter, an executive branch ethics counsel for Citizens for Responsibility and Ethics in Washington who previously worked as an ethics official for Presidents George H.W. Bush, George W. Bush and Obama. "To the extent that some of that supports their political ambitions is inconsistent with the intent of this authority."

The Campaign for Accountability called on Interior's inspector general and the Office of Special Counsel to investigate whether Zinke violated the Hatch Act or department ethics rules with his speech to the hockey team, which the group said appeared to be a favor for a donor. Interior's IG office announced its investigation earlier this week, and OSC told the Campaign for Accountability that it was looking into the group's complaint, according to an email shared with POLITICO. The OSC declined to comment.

Reps. Raúl Grijalva (D-Ariz.) and Donald McEachin (D-Va.) have asked Interior's IG to also look into any trips on which the secretary was accompanied by his wife, Lola Zinke, who is chairing the campaign of Montana Republican Troy Downing, a candidate to unseat Democratic Sen. Jon Tester next year. Swift said Lola Zinke was not in the Virgin Islands and has paid her own way whenever she has traveled with her husband on official trips.

Many who know him see Zinke's travels as an attempt to keep in touch with political contacts as he contemplates what he will do after leaving the Trump administration. Back home, the 55-year-old former Montana congressman is seen as an attractive candidate for the open-seat governor's race in 2020, when Democratic Gov. Steve Bullock will have to step down because of term limits.

"I think he's definitely got political aspirations; that's one of the reasons why he is where he is at right now," said Land Tawney, executive director of Backcountry Hunters and Anglers, a Montana-based sportsman group that supported Zinke's bid for Interior secretary. "You don't go from being a Montana legislator to a first-term congressman to [Interior] secretary without having ambition."

The Virgin Islands trip was Zinke's first interaction with big donors or influential conservative groups during his travel as Interior secretary.

A weeklong trip in May that took Zinke through Montana, Utah and California also offered a chance to squeeze in some political events.

Zinke delivered the keynote speech at the RNC spring meeting on May 11 in Coronado, Calif. Zinke had flown to California the previous night, after several days touring monuments in Utah, and the RNC speech was his only event in the state aside from a meeting earlier that afternoon with Rep. Amata Radewagen, the Republican delegate from American Samoa, and members of the American Tunaboat Association.

The next day, Zinke flew back to Montana, where he joined Sen. Steve Daines (R-Mont.) and Vice President Mike Pence to tour a coal mine on the Crow Indian reservation operated by the Westmoreland Coal Co.

The trip offered Zinke and Pence an opportunity to tout the Trump administration's work to promote new coal mining on federal lands — and it allowed them to make a brief detour to promote Zinke's congressional replacement. That Friday night, Zinke, Pence and Daines attended a political rally for GOP candidate Greg Gianforte, and Zinke attended a get-out-the vote event for the Montana GOP the next day.

Zinke apparently paid for his return trip to Washington out of his own pocket — it was marked "personal travel" on his calendar, a designation not applied to the other flights on that trip.

Gianforte, whose wife is a major political donor in Montana, won the May 25 special election to take over Zinke's House seat.

Greg and Susan Gianforte donated more than \$10,000 to Zinke's 2016 congressional campaign and another \$10,000 to a joint Zinke-Daines PAC, according to federal records. The couple donated \$5,000 for his earlier run for Congress.

Zinke met with big influencers and donors in June as well.

On June 25, he flew from D.C. to Reno, Nev., where his only scheduled event was a meeting of the Rule of Law Defense Fund, a group of Republican attorneys general that has been linked to the Koch brothers, where he spoke and took questions for about 30 minutes, according to his schedule.

After his remarks, he sat at a dinner table with Montana's attorney general, the government relations specialist for the Venetian Resort Hotel Casino and Las Vegas Sands, and Koch Industries lobbyist Allen Richardson, Interior documents show.

The next day, Zinke flew to Las Vegas for an event on public lands in nearby Pahrump, Nev., and a speech that night to the National Hockey League's Vegas Golden Knights. Bill Foley, the team owner and chairman of Fidelity, introduced Zinke. Foley donated \$7,800 to Zinke's 2014 campaign, while employees and PACs associated with Fidelity and related companies gave another \$180,000. Interior officials said the speech to the NHL team was part of Zinke's official duties, and they pointed to scheduling conflicts it created to justify his use of a \$12,000 private plane to get to a Western Governors Association meeting in Montana the next day.

In July, Zinke spoke to several conservative groups in Colorado during a three-day trip that also included tours of Interior Department facilities in the state. He flew into Denver on July 20 so he could appear that evening at a closed-door reception for the American Legislative Exchange Council, a group of conservative state legislators, lobbyists and industry groups that has pushed for more state control over federal lands.

And over the next two days, he was a featured speaker at a Republican committee roundtable and attended the Western Conservative Summit in Denver.

Eric Wolff contributed to this report.

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Zinke's political ties to Virgin Islands improved Interior's hurricane response, party boss says [Back](#)

By Ben Lefebvre | 06/07/2018 05:11 AM EDT

The top GOP official in the U.S. Virgin Islands suggested his fundraising group's "behind the scenes" relationship with Interior Secretary Ryan Zinke helped influence the department's response to last year's hurricanes in the island territory.

John Canegata, the head of the Virgin Islands Republican Party, said he had direct access to Interior officials after the storm thanks to money his group raised for Zinke, whom he described as a "close friend." Zinke, a former congressman, has known Canegata since at least 2015, and the secretary was at a [fundraiser](#) for the VIGOP, as the group is known, during an official trip to the islands in his first month in President Donald Trump's Cabinet.

Interior officials acknowledged reaching out to Canegata, who also works for a major rum distiller in the territory, although they said it was part of a wider effort to contact business leaders based in the territory and Zinke did not call him personally. However, a representative of the distiller said Canegata was not involved in their relief efforts, and a spokesman for the Virgin Islands' House delegate disputed Canegata's involvement in the hurricane response.

The department expedited reimbursements of rum taxes as part of its response to the hurricanes, although it's unclear whether Canegata's connection influenced that decision. Interior has jurisdiction over U.S. territories including the Virgin Islands but not Puerto Rico, which suffered more extensive devastation.

Disaster response experts say it would be inappropriate for Canegata's political connections to influence Interior's efforts in the Virgin Islands.

"These are processes that are supposed to be transparent and supposed to be above the board," said Eric LeCompte, executive director of Jubilee USA, an anti-poverty group that has been involved in hurricane disaster relief efforts. "So, it would not be something a political party would be part of."

VIGOP is not a typical political party and faces frequent inquiries from the FEC to better explain its fundraising practices and expenses. Some critics, including past Republican clients, say the group bilks conservative donors with promises to fight Democrats while spending the bulk of its money on overhead instead of political advocacy. The group spends the [vast majority of its money](#) on a small group of Washington-area political consultants who have also done work for Zinke's campaign and leadership PACs.

Zinke was introduced to the VIGOP in 2015 by a Washington fundraising consultant who also did work for his campaigns, and as a member of Congress he has traveled to at least two political conferences in the Virgin

Islands sponsored by the group, POLITICO reported last year. Zinke and Canegata are seen together during a prior trip in a photo posted to Facebook.

Canegata boasted about his Zinke ties in a televised appearance on WTJX Virgin Islands Public Broadcasting that aired last month but has not received widespread attention outside of the territory.

"We were in direct connection with the Department of Interior," Canegata said in the broadcast.

"Secretary Zinke, happens to be, I wouldn't say a personal friend, but a close friend," Canegata continued.

"Prior to him being the secretary of Interior, we spent some time in Washington, we spent some time here in the Virgin Islands. We supported him when he was a congressman and, behold, he becomes the secretary of Interior."

While Canegata credited other officials with their part in aiding the island's response, he said the pre-existing connection to Zinke was key.

"Obviously, we have our congresswoman, our governor doing their job," Canegata continued. "But behind the scenes, trust me, a lot of telephone calls, a lot of maneuvering was going on because, I think, some of the relationships we built."

The Office of Special Counsel on Tuesday closed its investigation into Zinke's appearance at the Virgin Islands fundraiser in March 2017, finding that he had not violated the Hatch Act because he was there in his official capacity and VIGOP reimbursed Interior for its expenses. Interior's inspector general also recently said the appearance at the fundraiser was not inappropriate. It is unclear whether either of those investigations addressed any link between VIGOP and Interior's hurricane response; both offices declined to comment.

Interior's Office of Insular Affairs, which oversees the Virgin Islands, "reached out to dozens of local government employees as well as major private sector employers in the USVI to check their power status and to see how the office could help," Interior spokeswoman Heather Swift said in an email. Canegata "was contacted by those Insular Affairs officials because he works for one of those major private employers, Cruzan Rum."

Canegata, a supply chain specialist at the rum distillery, had no role in the company's disaster relief efforts, according to Cruzan Rum human resources manager Ayanda Daniels.

"He wasn't part of the coordination," Daniels told POLITICO. "Maybe he had a conversation with someone in order to do something, but we had another team for company response."

James Norton, a former Department of Homeland Security Deputy official during the George W. Bush administration, said it is important for disaster response efforts to be handled through the appropriate channels.

"As a matter of proper procedure, it would only be appropriate for all federal actions to be dealt with solely with official authorities at the Department of Defense, Interior, Homeland Security, FEMA, etc., and those local officials on the ground," said Norton, who is now head of the consulting agency Play-Action Strategies.

"Anything other than raising awareness and reaching out to get an update on what's happening would be inappropriate, as a political party or other organization doesn't have command and control authority, nor would they be the designated principal federal official on the ground directing rescue operations."

A spokesman for Stacey Plaskett, the Democratic House delegate from the Virgin Islands, disputed Canegata's version of events.

"I cannot honestly remember hearing them or seeing them do anything to that effect," Plaskett's spokesman Mike McQuerry said. "The congresswoman was the person here in D.C. that worked extremely hard during that time to get those funds to the Virgin Islands."

Canegata did not respond to a request for comment this week.

Interior expedited reimbursement of \$223 million in taxes on Virgin Islands rum imported into the mainland and provided a \$567,500 grant to help with a post-hurricane finance audit. Other hurricane relief funds would have come from FEMA, an Insular Affairs spokesperson said.

Otherwise, Zinke and Insular Affairs head Doug Domenech met with Virgin Islands Gov. Kenneth Mapp to discuss recovery efforts, the Insular Affairs spokesperson said. In November, Domenech also met representatives of Cruzan Rum's parent company, Beam Suntory, to discuss the rum tax reimbursements Interior makes to the territory. Beam Suntory donated \$1.5 million to hurricane relief efforts the previous month.

Swift said Zinke did not personally reach out to Canegata. "The only official in the USVI the Secretary called was Governor Mapp," she said.

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Murray had early access to Perry to share coal plan [Back](#)

By Eric Wolff | 12/07/2017 04:22 PM EDT

Coal magnate Bob Murray pitched Energy Secretary Rick Perry on his plan to throw an economic lifeline to coal companies less than a month before Perry set in motion plans to aid the industry, according to newly disclosed photographs that show the two meeting.

The liberal magazine In These Times obtained pictures of Murray and Perry from a March 29 meeting at Energy Department headquarters, less than a month after Perry was sworn in. Several other officials were in attendance, including Andrew Wheeler, who at the time was a lobbyist for Murray and has since been nominated as EPA's No. 2 official.

The meeting puts Murray and Perry together at a crucial moment in the timeline of the Trump administration's push to save the struggling coal industry, an effort that would benefit Murray Energy in particular while hiking electricity prices for potentially millions of people. A month before the meeting, one of Murray's biggest customers, FirstEnergy Corp., had told investors it was seriously considering sending its merchant division, FirstEnergy Solutions, into bankruptcy, a move which would likely void its supply contracts with Murray's coal mines.

Three weeks after Murray's visit, Perry would order a grid study that later became part of the justification for a proposed rule to reward coal and nuclear power plants for providing "grid resiliency." FERC, which has jurisdiction over the proposal, must make a decision on it by Monday.

At the time of the meeting, Wheeler was already the leading candidate to become the deputy administrator for EPA. Wheeler, who represented Murray as a lobbyist for Faegre Baker Daniels, would not be officially

nominated for months. Wheeler, who has acknowledged participating in meetings on Murray's coal plan at DOE and on Capitol Hill, cleared committee last week and is awaiting Senate confirmation.

Murray is an outspoken supporter of President Donald Trump and held a fundraiser for him during the 2016 campaign.

DOE did not dispute the validity of the photos.

"Industry stakeholders visit the Department of Energy on a daily basis," DOE spokeswoman Shaylyn Hynes said, when asked about the meeting. "The DOE proposal to FERC was about the future and resiliency of the nation's power supply, an issue much bigger than one industry or company."

The photographs show Perry sitting at the head of a table in the Department of Energy, with Bob Murray, CEO of Murray Energy, to his left, and Wheeler down the table from Murray.

"Enclosed is an Action Plan for achieving reliable and low cost electricity ... and to assist in the survival of our Country's coal industry, which ... power grid reliability and low cost electricity," Murray writes in a cover letter to Perry, parts of which are visible in one photo from the meeting.

Though the document has never been publicly released, DOE critics say Murray's plan appears to have inspired DOE's grid study and the proposed rule Perry sent FERC in September. Copies are visible at the seats of most of the participants, including Perry and Murray. Wheeler, who told members of the Senate Environment Committee he had only seen the memo briefly, is not holding a copy in the photos obtained by In These Times. Murray told Greenwire in November he "didn't have any involvement" in writing the rule.

Murray has acknowledged sharing the plan with Trump.

"I gave Mr. Trump what I called an action plan very early," Murray said in a recent PBS Frontline documentary on EPA. "It's about three-and-a-half pages and — of what he needed to do in his administration. He's wiped out page one."

The meeting appears to have been successful for all. One of the photos shows Perry and Murray in a big bear hug.

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Murray delivered executive orders on coal rules to Trump administration [Back](#)

By Darius Dixon | 06/06/2018 07:05 PM EDT

Coal magnate Bob Murray delivered six draft executive orders ready for President Donald Trump to sign to roll back Obama-era environmental regulations in the early weeks of the administration, according to newly released Energy Department documents.

The documents released Wednesday after a Freedom of Information Act request include a letter to Energy Secretary Rick Perry from Murray praising Trump's March 2017 energy independence executive order, which largely aimed to help the coal industry. And to bolster that effort, Murray wrote, "we have developed the

enclosed materials for your review and consideration, consisting of: six (6) Executive Orders further rescinding anti-coal regulations of the Obama administration; and one (1) memorandum outlining the legal rationale for each of these action, and others."

Those executive orders were also sent to EPA Administrator Scott Pruitt, whose agency had jurisdiction over most of the issues they involved, such as ozone rules and regulations on coal ash.

Trump has not signed executive orders resembling Murray's, but the administration has moved to enact the policies, such as pulling U.S. out of the Paris climate agreement. The documents, which were sent to DOE the day Trump signed his energy independence order and one day before Murray met with Perry and DOE chief of staff Brian McCormack, also included concepts about grid security and "resiliency" that Perry later touted as part of his push to stop coal power plants from closing.

"The Department of Energy ("DOE") must issue an emergency directive to have an immediate study done of the security and resiliency of our electric power grids," the document states. "DOE will direct that no power plants having an available fuel supply of at least forty-five (45) days be closed during the study period, or a minimum of two (2) years."

Perry later ordered his staff to write a study about the electric grid that was eventually tied to a regulatory proposal that FERC create financial rewards for power plants with a 90-day supply of fuel on-site. That condition would have overwhelmingly benefited coal and nuclear generators, but it was shot down by FERC in January.

Critics have said Murray would be the biggest beneficiary of Trump's efforts, since his company supplies coal to many of the power plants at risk of closing because of stiff competition from cheap natural gas and renewable power as well as lagging electricity demand from consumers.

Murray spokesman Gary Broadbent confirmed the company had submitted the documents to Perry "to assist in the reversal of the illegal, job-killing, anti-coal regulations of the Obama Administration."

"Mr. Murray has always sought to secure reliable, low-cost electricity for all Americans, as well as to preserve and protect the jobs and family livelihoods of thousands of coal mining families," he said in a statement. "We applaud the actions taken by President Trump's Administration, to date, to protect these jobs and to advance the energy security of the United States."

Murray has repeatedly called on DOE to issue must-run orders for FirstEnergy power plants that consume his coal, and he blasted the FERC commissioners who opposed the on-site fuel proposal.

On Tuesday, a top DOE official said the agency is still formulating a plan to keep struggling coal and nuclear power plants from closing, and it had no deadline to meet Trump's demand to rescue them.

"We are evaluating options," Energy Undersecretary Mark Menezes told reporters. Last week, Trump called on DOE to take "immediate steps" to stop a wave of coal and nuclear power plant retirements, and like Perry, he cast the shutdowns as a threat to national security.

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House passes WRDA bill [Back](#)

By Annie Snider | 06/06/2018 09:42 PM EDT

The House has overwhelmingly approved the Water Resources Development Act of 2018, [H.R. 8 \(115\)](#), the first major infrastructure legislation to move under the Trump administration.

Lawmakers signed off on the measure on a broadly bipartisan vote of 408-2. The bill would authorize six new Army Corps of Engineers projects and enact a suite of policy reforms at the red tape-laden agency. It is significantly narrower than the Senate's measure, which would also make changes to EPA drinking water and wastewater programs.

And it includes a provision that could stir some controversy with the Senate, ordering a study of whether the Army Corps' civilian work should remain within the Department of Defense.

But House leaders dodged provisions that could have derailed the bill by blocking controversial amendments from floor consideration. Those included efforts to repeal the Obama administration's Waters of the U.S. rule, allow firearms at Army Corps recreational sites and exempt pesticide spraying from Clean Water Act permitting requirements.

WHAT'S NEXT: The Senate is expected to consider its version of the WRDA bill, America's Water Infrastructure Act of 2018, [S. 2800 \(115\)](#), this summer.

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Trump calls for coal, nuclear power plant bailout [Back](#)

By Eric Wolff | 06/01/2018 02:29 PM EDT

President Donald Trump pressed for a quick regulatory bailout for struggling coal power plants on Friday — a move that would buoy a mining industry that offered him crucial support in 2016, but is riling other energy companies and even some free-market conservatives.

The White House called on Energy Secretary Rick Perry to take immediate steps to keep both coal and nuclear power plants running, backing Perry's claim that plant closures threaten national security. An administration strategy to do that laid out in a memo to the National Security Council circulated widely among industry groups on Friday, but it was not clear that intervention could survive the inevitable political and legal challenges.

It was the latest step in more than a year of efforts by the administration to compel power companies to keep operating the money-losing plants that are suffering from the rise of competing energy sources like natural gas. Those proposals have drawn opposition from most utilities, along with environmentalists, gas producers, power grid operators and conservatives who say it would be an unwarranted intrusion to the energy markets.

The White House statement calling for action came after days of Trump making similarly aggressive moves on international trade, slapping tariffs on the European Union, Canada and Mexico to protect U.S. industries like aluminum and steel. In this case, the president is acting on behalf of what he likes to call "beautiful, clean coal," a once-dominant fuel that still plays a major role in his stump speeches.

Trump "has directed Secretary of Energy Rick Perry to prepare immediate steps to stop the loss of these resources," White House press secretary Sarah Huckabee Sanders said in a statement Friday, referring to coal and nuclear plants.

She added that Trump believes "keeping America's energy grid and infrastructure strong and secure protects our national security... Unfortunately, impending retirements of fuel-secure power facilities are leading to a rapid depletion of a critical part of our nation's energy mix, and impacting the resilience of our power grid."

The statement came five months after federal energy regulators rejected Perry's call that they adopt his proposal to keep the struggling coal and nuclear power plants operating. That proposal would have overwhelmingly benefited mining magnate Bob Murray, an outspoken Trump supporter whose operations supply coal to several endangered plants in the Midwest and Northeast, according to a POLITICO analysis.

Trump's National Security Council gathered Friday to discuss the draft memo that lays out arguments why the administration should use federal authority to keep the money-losing power plants open — despite the assurances from some of the nation's grid operators that no such emergency exists.

"Any federal intervention in the market to order customers to buy electricity from specific power plants would be damaging to the markets and therefore costly to consumers," said the PJM Interconnection, which operates the nation's largest power grid and stretches from the Midwest the Atlantic Coast, in a statement. "There is no need for any such drastic action."

A broad swath of trade associations representing oil and gas, wind and solar power, consumer groups and advanced energy technologies slammed the plan, and they were joined by some congressional Democrats.

"This would be an egregious abuse of power," Sen. Ron Wyden (D-Ore.) said in a statement. "I fought this proposal before, and I will continue to fight this corrupt scheme to prop up the coal industry at the expense of American consumers."

That new 41-page memo, first revealed by Bloomberg News on Thursday evening, says that under the 2015 highway and transit bill known as the FAST Act, DOE must identify critical energy infrastructure, a process the agency is undertaking now with the help of its national labs. But because that is likely to take two years, DOE in the meantime should use the 1950 Defense Production Act and the Federal Power Act to require the plants to keep operating, the memo says.

Power sector experts have said using the two laws to keep specific plants operating would stretch both those measures, and would certainly trigger a major legal fight. Critics of the administration's strategy said the memo appears to signal that the White House is preparing for a fight.

"One way to view the release of this draft is that it is a trial balloon to see how fierce and fast the opposition will be," said Dena Wiggins, CEO of the industry lobby group Natural Gas Supply Association, which opposes the DOE plan. "We've known for some time that all of these federal authorities ... were in play, so the fact that we've now seen it in writing doesn't really change anything. It does, however, underscore how hard it is to cobble together a sound legal rationale to bail out otherwise uneconomic coal and nuclear plants."

And critics say the push to bail out the plants is simply Trump's effort to reward backers like Murray, the coal baron, and live up to his campaign promise to revive coal country. Perry first began work on the power plant issue in March 2017, when he met with Murray at DOE, and Trump himself personally directed Perry to take action on the issue since last summer.

Murray's coal mines have been a major supplier for power plants owned by FirstEnergy Solutions, a unit of Ohio-based utility giant FirstEnergy that sank into bankruptcy this spring. FirstEnergy Solutions has said it plans to close or sell five of its money-losing coal and nuclear power plants.

But the Federal Energy Regulatory Commission and the grid operator have said that even with the planned closures, the region has ample power to supply the market's needs. Stagnant power consumption growth, coupled with the rise of natural gas and renewable power sources like wind, has displaced many of the older coal and nuclear facilities in the markets.

The memo also calls for establishing a new requirement for the electric grid based on "resilience," a term Perry injected into the regulatory conversation last fall with a proposed rule that would have rewarded plants that could keep 90 days of fuel on site. FERC rejected that rule, but it also created a new proceeding to try to define "resilience," which some in the industry say pertains to the grid's ability to withstand and recover from a physical or cyberattack.

The memo largely focuses on the issue of resilience, which it says would suffer if coal and nuclear power plants retire. It specifically targets natural gas as a weakness, because the plants that burn the fuel rely on pipelines that could be disrupted, while coal and nuclear power plants can keep months' worth of fuel on site.

"Natural gas pipelines are increasingly vulnerable to cyber and physical attacks," the memo says. "The incapacitation of certain pipelines through the United States would have severe effects on electric generation necessary to supply critical infrastructure facilities."

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House to vote Thursday on Trump's spending cuts plan [Back](#)

By Sarah Ferris | 06/06/2018 05:32 PM EDT

President Donald Trump's prized deficit-reduction package is rolling toward the House floor this week, though its prospects in the Senate remain in doubt — with little time to spare.

House leaders have set a vote Thursday on the Trump administration's roughly \$15 billion rescissions bill, according to a GOP aide, nearly a full month after the proposal was first delivered to Capitol Hill.

The House Rules Committee will tee up the bill, [H.R. 3 \(115\)](#), on Wednesday evening, a lightning turnaround that surprised even some GOP lawmakers.

The last-minute scheduling change comes after the White House [agreed this week](#) not to slash hundreds of millions of dollars from politically sensitive programs, like Hurricane Sandy aid, which helped [secure votes](#) from numerous GOP holdouts.

Even with some of those unpopular cuts reversed, several House Republicans remain anxious about the plan's optics — specifically, cuts to the ultra-popular Children's Health Insurance Program.

At a closed-door meeting of House Republicans Wednesday, several GOP lawmakers stood up to complain that the kids' health cuts could hit hard on the campaign trail, despite assurance from neutral budget experts that the cuts wouldn't harm the program.

In fact, the vast majority of the White House's proposed spending cuts would exist only on paper. The bill would save only \$1 billion over a decade, according to the CBO, which is far less than 1 percent of the size of Congress' last spending bill, H.R. 1625 (115).

Next, the White House will have to sell the bill to the Senate, where a single Republican "no" vote could sink the package.

Budget chief Mick Mulvaney has already met with Sen. Lisa Murkowski, an Alaska Republican who has raised issues with the cuts to CHIP. Sen. Susan Collins of Maine, another GOP moderate, has not yet said whether she supports the bill.

If the House clears the bill Thursday, the Senate will have roughly two weeks to send the measure to Trump's desk before its filibuster-proof powers expire June 22.

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Minibus spending package ready for House floor action [Back](#)

By Kaitlyn Burton | 06/06/2018 07:46 PM EDT

The House Rules Committee today teed up a three-bill spending bundle for floor consideration as soon as Thursday.

All in all, the panel approved 50 Energy-Water amendments, 22 Military Construction-VA amendments and seven Legislative Branch amendments, setting them up for floor votes.

While the minibuss, H.R. 5895 (115), will likely pass, House Democratic leaders threw a wrench in things when they urged lawmakers to oppose the bill, POLITICO reported Tuesday evening.

Votes on the package are expected to come after a separate Thursday vote on the White House's rescissions measure, H.R. 3 (115). Conservatives, including the Republican Study Committee, asked for the spending cuts to be taken up first, according to a House GOP aide. The Rules Committee teed up the rescissions proposal in a 9-3 vote tonight, allowing no amendment votes.

The minibuss would be the first House-passed fiscal 2019 funding measure.

Sarah Ferris contributed to this alert.

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House appropriators advance \$35B Interior-EPA spending package [Back](#)

By Alex Guillén | 06/06/2018 05:04 PM EDT

The House Appropriations Committee today approved its \$35 billion Interior-EPA spending bill by a party-line vote of 25-20.

Committee Republicans blocked an effort from Democrats to boost EPA's Office of Inspector General by \$12 million, saying the watchdog already has "robust" appropriations. The bill funds the OIG at \$12 million less than his request, but higher than the amount requested by the White House.

The committee voted down an amendment that would have required EPA's administrator and deputy administrator to report public details of travel costs within 10 days of a trip, along with various amendments targeting a repeal of the Waters of the U.S. rule and other policy riders, along with EPA's proposed science transparency policy, offshore drilling and other standard policy disputes.

Lawmakers approved an amendment that would change revenue sharing for drilling in the Arctic National Wildlife Refuge. The approved amendment would send 50 percent of revenue to the federal government, 47 percent to the state and 3 percent to the Alaskan Native claims settlement fund.

They also backed a tongue-in-cheek amendment from Rep. [Marcy Kaptur](#) (D-Mich.) that would limit EPA from spending more than \$50 on any one fountain pen, a response to a recent Washington Post report that Pruitt spent \$1,560 for a dozen personalized fountain pens. The amendment passed with no "nay" votes.

WHAT'S NEXT: Lawmakers hope to have the bill before the full House sometime this summer, but it is unclear whether the Senate will act on a similar timeframe. Like most other appropriations bills in recent years, Congress has passed an omnibus rather than conferencing directly.

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GOP blocks funding increase for EPA watchdog probing Pruitt activities [Back](#)

By Alex Guillén | 06/06/2018 03:06 PM EDT

House Republicans today blocked a Democratic effort to increase funding for EPA's Office of Inspector General to help the watchdog deal with the increased workload stemming from Administrator Scott Pruitt's spending and ethics scandals.

Rep. [Mark Pocan](#) (D-Wis.) and a bloc of Democrats on the House Appropriations Committee pushed an amendment that would have boosted OIG funding for fiscal 2019. It ultimately was voted down on a party-line vote of 21-26.

"It's hard to imagine that there is a more overworked inspector general than at the EPA these days," Pocan said. "This is not a Democrat/Republican thing, this should be a good government thing."

Interior-EPA Appropriations Chairman [Ken Calvert](#) (R-Calif.) said the bill "already includes robust support for EPA's inspector general."

The House Interior-EPA spending package would provide the OIG funding of just over \$50 million, about flat with 2018's level. Most of that is appropriated directly, though some of it is pulled from the Superfund program for OIG's work on Superfund-specific issues. Pocan's amendment would have drawn the extra \$12 million from EPA's "workforce reshaping" account inside the \$2.5 billion environmental programs.

In a February [letter](#), EPA Inspector General Arthur Elkins said the president's proposed OIG budget of \$46 million would "substantially inhibit the OIG from performing the duties of the office." He asked instead for a budget of \$62 million. That request came before an avalanche of congressional requests to review various Pruitt-related issues on spending and ethics.

WHAT'S NEXT: The committee will vote later today on the full spending bill.

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Interior advisory committee recommends streamlining environmental reviews for drilling [Back](#)

By Ben Lefebvre | 06/06/2018 06:31 PM EDT

An Interior Department advisory board on Wednesday approved a slew of recommendations aimed at expanding energy lease sales and lowering royalty rates, even as some members questioned whether it had the power to suggest changes to federal environmental reviews.

The Royalty Policy Committee wrapped up its latest meeting in New Mexico after approving nine [recommendations](#) for Secretary Ryan Zinke to change how the department collects payments from energy production on federal land. Most of the suggestions would benefit oil and gas companies operating on federal acres, while two recommendations were aimed at boosting renewable energy production.

Two committee members disagreed with a recommendation for the Bureau of Land Management to issue "categorical exclusions" for certain oil and gas projects, allowing those projects to forgo full environmental reviews under the National Environmental Protection Act.

"NEPA is not referred to in the [committee] charter," Rod Eggert, a professor at the Colorado School of Mines, said during the meeting. "The text in the charter refers to royalties and collections of royalties."

Committee member Monte Mills of the University of Montana agreed that recommending categorical exclusions fell outside of the committee's scope.

Western Energy Alliance President Kathleen Sgamma, another member of the committee, defended the recommendation, saying it would increase royalty payments to Interior by making it easier for companies to drill on public land.

"We're trying to increase competitiveness of federal lands," Sgamma said during the meeting. "NEPA is often the aspect of the federal process that takes the longest and decreases the competitiveness of public lands the most."

Ultimately, the committee approved the recommendation and deferred further discussion about the scope of its charter until its next meeting, yet to be scheduled.

The committee also suggested Interior make it easier for companies to pay lower royalty rates for mature oil and gas wells and those "difficult" to operate. And it recommended Zinke ask Congress to amend the Outer Continental Shelf Lands Act with language allowing Interior to hold offshore energy project lease sales in Guam and other U.S. territories.

The committee's two renewable power suggestions were that Interior offer annual lease sales for 2 gigawatts of offshore wind power every year for a decade starting in 2024; and to instruct BLM to reduce fees and streamline permit requirements for solar projects.

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BLM tells field office to expedite drilling permit reviews [Back](#)

By Ben Lefebvre | 06/06/2018 08:20 PM EDT

The Bureau of Land Management instructed field offices to prioritize the use of old environmental reviews or categorical exclusions to expedite drilling permit applications for sites where work is already underway, according to a memo released today.

The bulletin posted on the BLM website said those methods will allow officials to process the applications "in the most expeditious and appropriate manner" under the National Environmental Policy Act.

The BLM bulletin directed its field offices that existing environmental analysis for new projects proposed for old sites "should be used to the greatest extent possible" instead of starting a new environmental review process.

If the old analysis isn't sufficient, field offices should determine whether the application falls under an existing categorical exclusion, meaning a new NEPA review would not be required. Criteria to determine whether an exclusion would be available include whether a similar project has already occurred on the same site within the previous five years.

BLM posted its memo soon after Interior's Royalty Policy Committee recommended earlier today that the agency increase its use of categorical exclusions.

WHAT'S NEXT: The environmental review priority list goes into effect immediately.

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White House, EPA headed off chemical pollution study [Back](#)

By Annie Snider | 05/14/2018 12:43 PM EDT

Scott Pruitt's EPA and the White House sought to block publication of a federal health study on a nationwide water-contamination crisis, after one Trump administration aide warned it would cause a "public relations nightmare," newly disclosed emails reveal.

The intervention early this year — not previously disclosed — came as HHS' Agency for Toxic Substances and Disease Registry was preparing to publish its assessment of a class of toxic chemicals that has contaminated water supplies near military bases, chemical plants and other sites from New York to Michigan to West Virginia.

The study would show that the chemicals endanger human health at a far lower level than EPA has previously called safe, according to the emails.

"The public, media, and Congressional reaction to these numbers is going to be huge," one unidentified White House aide said in an email forwarded on Jan. 30 by James Herz, a political appointee who oversees environmental issues at the OMB. The email added: "The impact to EPA and [the Defense Department] is going to be extremely painful. We (DoD and EPA) cannot seem to get ATSDR to realize the potential public relations nightmare this is going to be."

More than three months later, the draft study remains unpublished, and the HHS unit says it has no scheduled date to release it for public comment. Critics say the delay shows the Trump administration is placing politics ahead of an urgent public health concern — something they had feared would happen after agency leaders like Pruitt started placing industry advocates in charge of issues like chemical safety.

Sen. Maggie Hassan (D-N.H.) called the delay "deeply troubling" on Monday, urging Pruitt and President Donald Trump "to immediately release this important study."

"Families who have been exposed to emerging contaminants in their drinking water have a right to know about any health impacts, and keeping such information from the public threatens the safety, health, and vitality of communities across our country," Hassan said, citing POLITICO's reporting of the issue. Details of the internal discussions emerged from EPA emails released to the Union of Concerned Scientists under the Freedom of Information Act.

Sen. Jeanne Shaheen, a fellow New Hampshire Democrat, called the delay "an egregious example of politics interfering with the public's right to know. ... [I]t's unconscionable that even the existence of this study has been withheld until now."

The emails portray a "brazenly political" response to the contamination crisis, said Judith Enck, a former EPA official who dealt with the same pollutants during the Obama administration — saying it goes far beyond a normal debate among scientists.

"Scientists always debate each other, but under the law, ATSDR is the agency that's supposed to make health recommendations," she said.

The White House referred questions about the issue to HHS, which confirmed that the study has no scheduled release date.

Pruitt's chief of staff, Ryan Jackson, defended EPA's actions, telling POLITICO the agency was helping "ensure that the federal government is responding in a uniform way to our local, state, and Congressional constituents and partners."

Still, Pruitt has faced steady criticism for his handling of science at the agency, even before the recent spate of ethics investigations into his upscale travels and dealings with lobbyists. In his year leading EPA, he has overhauled several scientific advisory panels to include more industry representatives and recently ordered limits on the kinds of scientific studies the agency will consider on the health effects of pollution.

On the other hand, Pruitt has also called water pollution one of his signature priorities.

The chemicals at issue in the HHS study have long been used in products like Teflon and firefighting foam, and are contaminating water systems around the country. Known as PFOA and PFOS, they have been linked with thyroid defects, problems in pregnancy and certain cancers, even at low levels of exposure.

The problem has already proven to be enormously costly for chemicals manufacturers. The 3M Co., which used them to make Scotchguard, paid more than \$1.5 billion to settle lawsuits related to water contamination and personal injury claims.

But some of the biggest liabilities reside with the Defense Department, which used foam containing the chemicals in exercises at bases across the country. In a March report to Congress, the Defense Department listed 126 facilities where tests of nearby water supplies showed the substances exceeded the current safety guidelines.

A government study concluding that the chemicals are more dangerous than previously thought could dramatically increase the cost of cleanups at sites like military bases and chemical manufacturing plants, and force neighboring communities to pour money into treating their drinking water supplies.

The discussions about how to address the HHS study involved Pruitt's chief of staff and other top aides, including a chemical industry official who now oversees EPA's chemical safety office.

Herz, the OMB staffer, forwarded the email warning about the study's "extremely painful" consequences to EPA's top financial officer on Jan. 30. Later that day, Nancy Beck, deputy assistant administrator for EPA's Office of Chemical Safety and Pollution Prevention, suggested elevating the study to OMB's Office of Information and Regulatory Affairs to coordinate an interagency review. Beck, who worked as a toxicologist in that office for 10 years, suggested it would be a "good neutral arbiter" of the dispute.

"OMB/OIRA played this role quite a bit under the Bush Administration, but under Obama they just let each agency do their own thing..." Beck wrote in one email that was released to UCS.

Beck, who started at OMB in 2002, worked on a similar issue involving perchlorate, an ingredient in rocket fuel — linked with thyroid problems and other ailments — that has leached from defense facilities and manufacturing sites into the drinking water of at least 20 million Americans. Beck stayed on at OMB into the Obama administration, leaving the office in January 2012 and going to work for the American Chemistry Council, where she was senior director for regulatory science policy until joining EPA last year.

Yogin Kothari, a lobbyist with the Union of Concerned Scientists, called Beck's January email "extremely troubling because it appears as though the White House is trying to interfere in a science-based risk assessment."

Environmentalists say such interference was routine during the Bush administration.

"It's why the Obama administration issued a call for scientific integrity policies across the federal government," Kothari said in an email to POLITICO. "Dr. Beck should know firsthand that the Bush administration sidelined science at every turn, given that she spent time at OMB during that time."

Soon after the Trump White House raised concerns about the impending study, EPA chief of staff Ryan Jackson reached out to his HHS counterpart, as well as senior officials in charge of the agency overseeing the assessment to discuss coordinating work among HHS, EPA and the Pentagon. Jackson confirmed the outreach last week, saying it is important for the government to speak with a single voice on such a serious issue.

"EPA is eager to participate in and, contribute to a coordinated approach so each federal stakeholder is fully informed on what the other stakeholders' concerns, roles, and expertise can contribute and to ensure that the federal government is responding in a uniform way to our local, state, and Congressional constituents and partners," Jackson told POLITICO via email.

Pruitt has made addressing per- and polyfluoroalkyl substances, or PFAS, a priority for EPA. The unpublished HHS study focused on two specific chemicals from this class, PFOA and PFOS.

States have been pleading with EPA for help, and experts say that contamination is so widespread, the chemicals are found in nearly every water supply that gets tested.

In December, the Trump administration's nominee to head the agency's chemical safety office, industry consultant Michael Dourson, withdrew his nomination after North Carolina's Republican senators said they would not support him, in large part because of their state's struggles with PFAS contamination. Dourson's previous research on the subject has been criticized as too favorable to the chemical industry.

Shortly after Dourson's nomination was dropped, Pruitt announced a "leadership summit" with states to discuss the issue scheduled for next week.

In 2016, the agency published a voluntary health advisory for PFOA and PFOS, warning that exposure to the chemicals at levels above 70 parts per trillion, total, could be dangerous. One part per trillion is roughly the equivalent of a single grain of sand in an Olympic-sized swimming pool.

The updated HHS assessment was poised to find that exposure to the chemicals at less than one-sixth of that level could be dangerous for sensitive populations like infants and breastfeeding mothers, according to the emails.

Dave Andrews, a senior scientist with the Environmental Working Group, said those conclusions line up with recent studies on the health effects of PFAS.

"They are looking at very subtle effects like increased risk of obesity for children exposed in womb, lowered immune response, and childhood vaccines becoming not as effective," Andrews said.

The HHS document at issue is called a toxicological profile, which describes the dangers of a chemical based on a review of previous scientific studies. It would carry no regulatory weight itself, but could factor into cleanup requirements at Superfund sites.





EPA scientists, including career staffers, were already talking with the HHS researchers about the differences in their two approaches to evaluating the chemicals when officials at the White House raised alarm in late January, the emails show. Those differences, according to the correspondence, stemmed from the agencies' use of different scientific studies as a basis, and from taking different approaches to accounting for the harm that the chemicals can do to the immune system — an area of research that has burgeoned in the two years since EPA issued its health advisory.

Enck, the former EPA official, said she sees one troubling gap in the emails: They make "no mention of the people who are exposed to PFOA or PFOS, there's no health concern expressed here."

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By Kelsey Tamborrino | 05/31/2018 05:43 AM EDT

With help from Eric Wolff

PRUITT'S SAB STORY: EPA's independent Science Advisory Board will meet today and Friday for the first time since Administrator Scott Pruitt barred scientists on the committee from receiving EPA grants and boosted its ranks with industry representatives — and the group's agenda is packed. The SAB will look at Pruitt's "secret science" proposal to bar EPA from using studies that don't make public all their data, as well as the Clean Power Plan repeal, Pruitt's decision to relax 2022-25 auto emissions standards, changes to the 2016 methane rule for new oil and gas wells and effort to repeal a rule regulating emissions from "glider" trucks — and that's not all.

A lot to dive into: The heavy slate of issues is unusual for the advisory board, Pro's Alex Guillén reports. Several current and former SAB members say it's unprecedented for the board to consider reviewing so many regulatory actions. But like green groups and critics of Pruitt, the SAB scientists say EPA has declined to share information about its regulatory rollbacks. "The agency has not been forthcoming about how they're developing the relevant science work products," said Chris Frey, a professor of environmental engineering at North Carolina State University and a SAB member since 2012.

EPA keeps quiet: SAB has been conducting twice-yearly reviews of EPA's planned regulatory actions since 2012, members said. It's an effort designed to enable the advisory board to help guide EPA before its rules are finalized. But this time around, the SAB's working groups say EPA wasn't being forthcoming with information. "Basically they just didn't provide us with any answers," said Frey. "That kind of put us in a position where all we can really do is say EPA has not identified the science or any plan to review it, and clearly there are science issues that are in the proposed rule."

What to expect: It's not immediately clear whether the full SAB will vote today to advance the reviews. But Frey noted that some of the members appointed by Pruitt had been on the working groups, giving him hope that the full board will back the recommendations to look deeper into the regulatory rollbacks. Should SAB adopt them, Alex reports, it likely would mean setting up special subcommittees that include current members plus outside experts to question EPA further. Read more [here](#).

IT'S THURSDAY! I'm your host Kelsey Tamborrino, and Entergy's Rob Hall correctly identified former President William Howard Taft as the first to see a Major League Baseball game in his hometown of Cincinnati. For today: Name all the presidents who were married while in office. Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseyam](#), [@Morning_Energy](#) and [@POLITICOPro](#).

Register for the Pro Summit: Join Pro subscribers, expert reporters and key decision-makers from the executive branch, federal agencies and Congress for a full day of incisive policy conversations on July 17. [Learn more](#).

THE LONG AND SHORT OF IT: In an unusual attack on the White House's legislative affairs director, North Dakota Rep. Kevin Cramer blamed Marc Short explicitly for the party's legislative failures in the Senate, including ending the Obama rule on flaring and venting from oil and gas wells. After POLITICO published a story outlining the awkward dynamic between Heidi Heitkamp, Cramer and the White House, Cramer told North Dakota radio host Rob Port that he had done some digging and believes that there "are some people in the White House that think, you know, the president's too friendly too her," Burgess Everett recaps.

Moreover, Cramer laid specific blame at Short's feet for failed GOP efforts in the Senate to roll back an Obama-era regulation limiting flaring and venting, as well as repealing Obamacare. Heitkamp voted against gutting that flaring rule, something Cramer has criticized her for, in particular. "If Marc Short was very good at his job, you know, we'd have a repeal and replacement of Obamacare, we'd have a replacement of the venting and flaring rule," Cramer said. Read that story here.

PRUITT'S MEDIA BLITZ: The EPA administrator visited Rosslyn, Va., on Wednesday to sit for interviews with two conservative media outlets. One was conducted by Boris Epshteyn for his Sinclair Broadcasting segment, "Bottom Line with Boris." (Watch that here.) The other was with the Washington Free Beacon, where Pruitt repeated familiar talking points in defense of the ongoing scandals and investigations that have surrounded him over the past few months. Pruitt said he still has President Donald Trump's backing, noting that Trump has "spoken very strongly and consistently" about their working relationship. "It's been intense the last couple of months, but he's been very encouraging, very empathetic and very supportive rather consistently," Pruitt said. The administrator also discusses the Paris climate agreement, "The Bachelorette" and, of course, baseball in the 13-minute segment, which you can listen to here.

GRID AND BEAR IT: In response to an executive order signed last year, the Energy Department released a new report Wednesday that said senior government officials and electric sector executives don't know enough about how energy companies could recover from a disruptive cyberattack, and those companies aren't thinking about cyber threats enough when building out their supply chains. While the report mainly hammered home some long-known problems with the grid, DOE highlighted how grid resilience efforts suffer because of "gaps in incorporating cybersecurity concerns, including planning for long-term disruption events, into state emergency response and energy assurance planning." Generally, however, the report said the U.S. is "well prepared to manage most electricity disruptions." Read more from Pro's Eric Geller here.

WHERE'S PERRY? Energy Secretary Rick Perry delivers remarks this morning on critical infrastructure at DOE's Texas-Israel Cyber Security Conference in Dallas. The department also announced that Perry would address the DOE's annual Cyber Conference in Austin on Monday. During both events Perry is expected to discuss DOE's new Cybersecurity, Energy Security and Emergency Response office, as well as efforts at DOE to address cyber vulnerabilities in the energy sector.

ABOUT THAT GLIDER RULE: The New York Times' Eric Lipton tweeted out new documents late Wednesday that give new details into the controversial Tennessee Technological University study on truck emissions that Pruitt used to consider rewriting part of the Phase 2 truck rules. "The letters obtained via open records request show that the principal investigator at Tenn Tech who conducted study funded by Fitzgerald, the company that makes the so-called glider trucks, disavowed the work, saying that it had been distorted in a fraudulent way," Lipton tweeted.

BY THE NUMBERS: The federal government spent \$13.2 billion across 19 agencies during fiscal 2017 on programs related to climate change, a report from the Government Accountability Office says. That's an overall \$1.5 billion increase across the federal government over fiscal 2016, Pro's Anthony Adragna reports. And it's an increase of \$4.4 billion since fiscal 2010, according to the report, which was request by House Science Chairman Lamar Smith. Read more.

CALIFORNIA GETS CHARGED UP FOR EVs: The California Public Utilities Commission is expected to approve a \$589 million program for its four investor-owned utilities to build out their electric vehicle charging infrastructure. The plan is part of the implementation of California's aggressive greenhouse gas law passed in 2015. Most of the money — which will ultimately come from ratepayers — will go toward setting up electric vehicle charging stations and related infrastructure. California leads the nation by far in electric vehicle sales and adoption.

NO MAJOR FLAWS IN FERC PROCESS: Auditors in the DOE inspector general's office said they found no major flaws in FERC's process for reviewing interstate natural gas pipelines, according to a new report. But they also flagged concerns about FERC's transparency and how it handles public comments. The auditors said that "nothing came to our attention to indicate that FERC had not performed its due diligence" in how it balanced public benefits of a proposed project with its adverse impacts. But the report also said regulators' "had not fully ensured" that the certification process was transparent to those who want to participate, and it hit the agency's eLibrary documentation system as difficult to use, Pro's Darius Dixon reports.

**** A message from America's Pledge:** America's Pledge is flipping the script on climate action. One year after the federal government announced it would pull out of the Paris Agreement, 2,700+ U.S. cities, states, and businesses are saying, "We Are Still In." See how far we've come: <https://politi.co/2koAHZb> **

FERC DENIES PENNEAST REHEARING: FERC on Wednesday denied a rehearing sought by the Delaware Riverkeeper Network and Sourland Conservancy on the controversial PennEast pipeline. Commissioner Richard Glick issued a separate statement on the agency's use of tolling orders. "This proceeding, in particular, illustrates the need for prompt action on rehearing requests," Glick wrote. " ... I also have serious concerns regarding the Commission's practice of issuing conditional certificates — which, notwithstanding their name, vest the pipeline developer with full eminent domain authority — in cases where the record does not contain adequate evidence to conclude definitively that the pipeline is in the public interest."

GREENS ENDORSE DE LEON OVER FEINSTEIN: 350.org co-founder Bill McKibben and 350 Action said Wednesday it is backing Kevin de León in his bid to challenge California Sen. Dianne Feinstein. McKibben said de León, a current California state senator, "has been a strong champion of clean energy — and an effective one, using his power in Sacramento to make change happen against the strong opposition of the fossil fuel industry." Read De León's candidate questionnaire answers here.

SELC SUES OMB OVER REORG: The Southern Environmental Law Center sued the Office of Management and Budget Wednesday for its failure to release information under FOIA on the reorganization at federal agencies that manage public lands. SELC says OMB has not provided requested information under a November 2017 FOIA request, nor has it made a determination or otherwise responded to the request, and has subsequently stopped communicating with SELC. The center is seeking "all records in the custody or control of OMB submitted in connection with Executive Order 13781 by any agency responsible for the management of federal public lands," including the Forest Service, National Park Service, BLM and the Fish and Wildlife Service. The EO in question directed each agency head to submit a report to OMB outlining proposed changes to their agency. Read the lawsuit.

CRES BACKS McMASTER IN SOUTH CAROLINA: Citizens for Responsible Energy Solutions will announce a \$175,000 television and digital ad buy today highlighting South Carolina Gov. Henry McMaster's record on clean energy. "First as lieutenant governor and now as governor, his commitment to the development of advanced energy technologies like natural gas and solar power is helping the state's economy and job market thrive," CRES Chairman and Executive Director James Dozier said.

McCARTHY NAMED DIRECTOR OF HARVARD CENTER: Harvard T.H. Chan School of Public Health announced former EPA Administrator Gina McCarthy will lead its newly launched Center for Climate, Health,

and the Global Environment. Under McCarthy, C-CHANGE announced a collaboration between Harvard University and Google to reduce the use of harmful chemicals in construction and renovation projects. "C-CHANGE will ensure that cutting-edge science produced by Harvard Chan School is actionable — that the public understands it, and that it gets into the hands of decision-makers so that science drives decisions," McCarthy said in a statement.

MOVER, SHAKER: Mitch Schwartz started this week as communications director for Jason Crow's campaign in Colorado's 6th Congressional District. Schwartz previously worked for SKDKnickerbocker.

— **PUSH Buffalo, a sustainable housing group**, announced Rahwa Ghirmatzion as its new executive director as of August 2018. Ghirmatzion has served as the organization's deputy director since 2017.

QUICK HITS

- Exxon aims to boost production even with any climate rules, [Associated Press](#).
- Buffett utility to be first in U.S. to reach 100 percent renewables, [Reuters](#).
- Chevron shareholders reject climate change resolutions, [Washington Examiner](#).
- It's not every day you see a tropical depression over Indiana — but here it is, [The Washington Post](#).
- U.S. solar manufacturing poised to boom in wake of Trump tariffs, [Bloomberg](#).
- Oil prices steady after big drop on OPEC talks, [The Wall Street Journal](#).

HAPPENING TODAY

10:00 a.m. — The U.S. Energy Association [forum](#) on coal mine drainage as a domestic source of rare earth elements, 1300 Pennsylvania Ave NW

10:00 a.m. — The World Resources Institute [webinar](#) on "Guidance for Apparel and Footwear Sector Companies to Set Science-Based Targets," focusing on greenhouse gas emissions

12:00 p.m. — Women's Council on Energy and the Environment [event](#) on "Solar Jobs and Community Impact," 1350 I Street NW

12:00 p.m. — The Property Casualty Insurers Association of America briefing on "Hurricane Season: Preparedness, Response, and Recovery," 2044 Rayburn

5:00 p.m. — House Science Committee [field hearing](#) on "Earthquake Mitigation: Reauthorizing the National Earthquake Hazards Reduction Program," Huntington Beach, Calif.

THAT'S ALL FOR ME!

**** A message from America's Pledge:** One year after President Trump announced plans to withdraw from the Paris Agreement, America's Pledge is showing the world that U.S. cities, states, and businesses can lead us towards our goals - with or without Washington. <https://politi.co/2koAHZb> **

To view online:

<https://subscriber.politicopro.com/newsletters/morning-energy/2018/05/first-sab-meeting-set-to-begin-237617>

EPA boosts industry membership on key advisory boards [Back](#)

By Alex Guillén | 11/03/2017 01:41 PM EDT

EPA officially announced the new line ups for several key advisory boards today, bolstering their membership with employees of energy companies and state agencies just days after Administrator Scott Pruitt ordered scientists who have received agency grant money to give up their EPA funding or their seat.

As POLITICO [reported](#) on Tuesday, the [Science Advisory Board](#)'s new additions include representatives from Phillips 66, Total, Southern Co., the American Chemistry Council and NERA Economic Consulting, a firm frequently hired by industry interests. Their additions boost the industry membership of SAB, although the panel had previously included members from Dow Chemical and other industries or companies.

The [Clean Air Scientific Advisory Committee](#), which provides health advice for air quality standards, also has three new members. Aside from new Chairman Tony Cox, an independent consultant, the new members are Larry Wolk of the Colorado Department of Public Health and Environment and James Boylan of the Georgia Department of Natural Resources.

EPA also announced a slate of new additions to the [Board of Scientific Counselors](#), which advises on research issues. The former chairwoman, Deborah Swackhamer of the University of Minnesota, is now listed as member, while Paul Gilman of waste-to-energy company Covanta has taken over as chair.

Other new BOSC members include representatives from the North Dakota Petroleum Council, Eli Lilly and Co., the Defense Threat Reduction Agency, the Arkansas Department of Environmental Quality, the California Energy Commission and the consulting firm Ramboll Environ.

To view online [click here](#).

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EPA's science advisers turn eyes on Pruitt's rollbacks [Back](#)

By Alex Guillén | 05/31/2018 05:00 AM EDT

EPA's influential Science Advisory Board will meet on Thursday for its first time since Administrator Scott Pruitt filled it with a slate of industry representatives — and it's got a long list of controversial rule rollbacks to review.

The SAB plans to pore over the science EPA is using to justify rollbacks on emissions regulators for cars, trucks, power plants and oil and gas wells — as well as Pruitt's proposed "transparency" rule for scientific studies.

Several current and former SAB members told POLITICO that it was unprecedented for the board to consider diving into so many regulatory actions, but the heightened scrutiny from the outside experts came about because the agency stonewalled the scientists' questions about Pruitt's deregulatory decisions. That echoes the complaints from environmentalists and public advocacy groups who say EPA has declined to share information about how it was justifying easing the regulations put in place during the Obama administration.

"The agency has not been forthcoming about how they're developing the relevant science work products," said Chris Frey, a professor of environmental engineering at North Carolina State University and a SAB member since 2012.

In a move critics derided as an attempt to stack the 44-member board with industry-friendly voices, Pruitt last year broke with the tradition of reappointing first-term SAB members for second three-year stints by removing several advisers who received grants from the agency. In their places, he installed scientists from the fossil fuel and chemicals sectors and several Republican environmental officials. Among the new members are representatives from Phillips 66, Total, Southern Co., the American Chemistry Council and NERA Economic Consulting.

In addition to studying Pruitt's proposal to bar EPA from using studies that don't make public all their data, the SAB's working groups suggested the full group take a closer look at the repeal of the Clean Power Plan and EPA's reconsideration of its related rule limiting carbon emissions from future power plants. Also up for review are Pruitt's decision to relax 2022-2025 auto emissions standards, changes to the 2016 methane rule for new oil and gas wells, and EPA's effort to repeal a rule regulating emissions from "glider" trucks.

The working groups also deferred decisions on two other rulemakings: the Waters of the U.S. rewrite and rules on a special class of "persistent, bioaccumulative and toxic chemicals" under the Toxic Substances Control Act. SAB can decide whether to conduct a deeper review into those once EPA has reviewable regulatory language available, the groups said.

Frey, who has been a SAB member for six years, said having multiple rules up for review was very unusual for the board.

"It's very rare that we've recommended to the full Science Advisory Board that there should be an SAB action," he said.

SAB has been conducting twice-yearly reviews of EPA's planned regulatory actions since 2012, members said, an effort designed to enable the advisory board to help guide EPA before its rules are finalized.

In the early days, getting information from EPA was "like pulling teeth," said Kimberly Jones, a SAB member from 2011 through 2017 and the chair of environmental engineering at Howard University. But that quickly improved once EPA knew the scope of SAB inquiries, she added.

The SAB's working groups review how EPA uses scientific studies in its rulemakings, including whether and how a study was peer-reviewed and if EPA has properly accounted for uncertainties in the scientific findings. The groups typically find that further reviews aren't needed.

But this time around, the working groups said EPA didn't respond to their questions about many of Pruitt's highest-profile rollbacks.

"Basically, they just didn't provide us with any answers," Frey said. "That kind of put us in a position where all we can really do is say EPA has not identified the science or any plan to review it, and clearly there are science issues that are in the proposed rule."

Frey pointed to lengthy memos from the working groups that included multiple pages of questions that had been posed to EPA for each rulemaking. EPA responded with short statements promising to keep the issues in mind as it develops the final rules.

"The response from the agency was basically a non-response," Frey said.

An agency spokesman said in a statement that SAB "plays an important role" advising EPA.

"We value the Board's expertise, and we welcome feedback from the chartered panel on areas in which they are interested in getting additional scientific information that is relevant to the rulemaking process," the spokesman said.

It was not clear whether the full SAB will vote on Thursday to advance the reviews.

Frey noted that some of the members appointed by Pruitt had been on the working groups, giving him hope that the full board will back the recommendations to look deeper into the regulatory rollbacks.

Should SAB adopt them, it likely would mean setting up special subcommittees that include current members plus outside experts to question EPA further.

The board can advise EPA only on scientific matters, not policy or legal issues. In several cases, like with the repeals of the Clean Power Plan and the glider rule, EPA says it has a legal argument about statutory authority that does not rely on scientific issues.

But even then, Frey said, EPA must keep the science in mind.

"It's in the best interest of the agency to make sure that it's using appropriately developed and reviewed science in its rules," Frey said. "And the flip side of that is if the agency's not doing that, it could open itself up to legal challenges for not following appropriate procedures to develop the science."

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GOP sweats Trump's Heitkamp flirtation [Back](#)

By Alex Isenstadt and Burgess Everett | 05/30/2018 05:08 AM EDT

When a small group of alarmed White House aides caught wind that Sen. Heidi Heitkamp — one of the most endangered Democrats up for reelection in 2018 — would be attending President Donald Trump's bill signing last week, they raced to stop it.

Word eventually reached Senate Majority Leader Mitch McConnell, who has made unseating Heitkamp a top priority. He opted not to intervene, and the invitation stood: As the president signed a banking deregulation bill into law before a national audience, Heitkamp was right next to him, the only Democrat in the room.

As the election year kicks into high gear, Republicans have grown increasingly frustrated with Trump's ongoing flirtation with the freshman senator. At a time when many in the GOP fear that the president's unpredictable style will undercut their best-laid midterm plans, the relationship has given Heitkamp — who is seeking reelection in a state where Trump won nearly two-thirds of the vote — fodder to portray herself as a presidential ally.

Her office keeps a running list of the dozen-plus meetings Heitkamp has had with Trump and his top advisers since the 2016 election. And the senator is fond of noting that she forged close ties with Trump's former top economist, Gary Cohn. The president met with Heitkamp in Trump Tower after the 2016 election to discuss a

possible Cabinet position, asked her to join him on Air Force One, and invited her onstage to join him and her Republican opponent, Rep. Kevin Cramer, during an appearance in North Dakota.

"Everyone is saying, 'What's she doing up here?'" the president said at the September event to sell his tax reform plan, which Heitkamp eventually opposed. "But I'll tell you what. Good woman, and I think we'll have your support, I hope we'll have your support. And thank you very much, senator, thank you for coming up."

After last week's bill signing, Heitkamp's allies raced to capitalize. The North Dakota Democratic Party sent out a tweet with an image of Cramer looking on uncomfortably as the president stood next to Heitkamp.

"At a bill signing today, @HeidiHeitkamp got a shout out and all @kevincramer got was a photo op next to a chair," the state party boasted.

"We will see footage of this on every platform," said Doug Heye, a former top Republican National Committee official. "It's a huge gift for her campaign."

Trump aggressively recruited Cramer to give up his House seat to take on Heitkamp, and his actions since have left some of Cramer's closest allies feeling snubbed. They note that while Trump has savaged Democratic incumbents Joe Donnelly of Indiana and Jon Tester of Montana and visited a growing list of states to pump up Republican Senate hopefuls — most recently Tennessee, where he appeared Tuesday on behalf of Rep. Marsha Blackburn — he has yet to make a campaign appearance with Cramer. Nor has the attack dog-in-chief attacked Heitkamp.

After Cramer learned last year that Heitkamp would be accompanying the president on Air Force One to North Dakota, he complained bitterly to the White House, according to two people with direct knowledge of the discussions. Heitkamp, Cramer predicted at the time, would try to use it to her political advantage. (A Cramer adviser, Pat Finken, denied that the congressman had complained about the senator riding on Air Force One.)

The administration has taken steps to assure Cramer that he has the president's full support. The congressman has been regularly in touch with White House political director Bill Stepien, and the two met earlier this month. Trump has agreed to hold a rally for Cramer later this year.

In an interview, Cramer shrugged off Heitkamp's attendance at the bill signing and said there would soon be "clarity" on who Trump supports in the race.

Yet the congressman declined to predict whether the president would go after Heitkamp aggressively, as Trump has done with other Democratic incumbents. Cramer seemed aware of the warmth between the president and the senator. Trump has asked Cramer whether he likes Heitkamp, and when the congressman responds yes, the president seems to be "relieved," Cramer said.

"Politically, North Dakota's a pretty nice state. So I don't know that turning it on her is necessarily politically helpful to me," Cramer said. "They may just be concerned that she's a woman and maybe that has an impact. I just don't know."

Heitkamp said she's proud of her ability to work with the president.

"I have a friendly relationship. I have a very important working relationship," she said in an interview, "not just with him but other members of the administration."

Trump's reluctance to go after Heitkamp stems in part from the simple fact that he needs her vote. With Republicans clinging to a narrow Senate majority, the White House has pushed for her support on several

contentious votes, including the recent confirmations of CIA Director Gina Haspel and Secretary of State Mike Pompeo. She also backed Trump's nominations of Supreme Court Justice Neil Gorsuch and Environmental Protection Agency Administrator Scott Pruitt.

Last week's signing ceremony was organized by White House Office of Legislative Affairs Director Marc Short. He said he extended an invitation to Heitkamp because she played a central role in passing the banking deregulation law.

"She was an original cosponsor of the bill," Short said. "But she's also someone who opposed tax relief, who opposed repeal of Obamacare, and someone who will always support Chuck Schumer. So you can be sure the president will be actively campaigning in North Dakota this cycle."

Cramer's February entry into the race followed an intense pursuit from Trump and top White House officials. After Cramer initially said in January that he wouldn't run for Senate, he received overtures from Trump, White House counselor Kellyanne Conway, and energy executive and Trump donor Harold Hamm within a three-day period. Trump also met with Cramer's wife, Kris.

Cramer said Trump told him at the time that he'll "be out there campaigning more than you are." Trump's entreaties, Republicans contend, helped to push Cramer into the contest. Cramer won his statewide, at-large House seat in 2012, the same year Heitkamp entered the Senate.

"The president leaned on him very hard. The president wanted the best candidate, and everyone in the state thought Kevin was the best candidate to beat Heidi," said Gary Emineth, a former North Dakota GOP chairman who is close with the congressman. "You know how the president is. He just doesn't quit."

Heitkamp predicted that Trump would attack her eventually. While she has maintained a positive working relationship with the president, she said it pales in comparison to Cramer's staunch loyalty.

"I don't think anyone can match his Trump credentials," Heitkamp said. "He is somebody who will always do what the president asks him to do, regardless of whether it's good for North Dakota."

As of late, the senator has been airing commercials that highlight her balancing act. "When I agree with the president I vote with him — and that's over half my votes," she says in a spot that began airing this month. "And if his policies hurt North Dakota, he knows I'll speak up."

Cramer accused Heitkamp of acting like a "Republican wannabe" with her occasional support for key Trump nominees.

"Her trying to cozy up to Donald Trump has resulted in good votes," Cramer said. "But every time she tries to become more like me, it's more flattering to me than it is to her."

Democrats, however, couldn't be happier to portray Cramer as a jilted lover.

Last week, the North Dakota Democratic Party released a video featuring a montage of clips of the president praising Heitkamp and shaking her hand as Cramer looks on — set to the sad sounds of R.E.M.'s "Everybody Hurts."

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GOP Senate candidate lashes out at Trump's legislative director [Back](#)

By Burgess Everett | 05/30/2018 06:27 PM EDT

Rep. Kevin Cramer, one of the GOP's top Senate recruits, launched an unusual attack on the White House's legislative director Wednesday, blaming him explicitly for the party's legislative failures in the Senate.

The comments from Cramer (R-N.D.) come amid rising GOP angst over President Donald Trump's close relationship with his opponent in the North Dakota Senate race, Democratic Sen. Heidi Heitkamp.

Heitkamp was the only Democrat invited to the White House last week for a bank deregulation bill signing, alarming some White House aides and Republicans. After POLITICO published a [story](#) on Wednesday outlining the awkward dynamic between Heitkamp, Cramer and the White House, Cramer [told](#) North Dakota radio host Rob Port that he had done some digging and believes that there "are some people in the White House that think, you know, the president's too friendly too her."

Then Cramer laid into White House legislative affairs director Marc Short for two prominent failed GOP efforts in the Senate: Repeal of Obamacare and the rollback of an Obama-era regulation that would limit flaring and venting from oil and gas wells. Heitkamp voted against both and Cramer has criticized her in particular over the flaring vote.

"If Marc Short was very good at his job, you know, we'd have a repeal and replacement of Obamacare, we'd have a replacement of the venting and flaring rule," Cramer said.

In an interview last week with POLITICO, Cramer insisted he is not angry over Trump's political flirtations with Heitkamp: "Not the case at all. I've been fine with it. I just don't think it hurts me." And on Wednesday on Port's show, Cramer said the spat over Heitkamp's attendance at the banking bill signing "just seems to be an argument between Marc Short and other people in the White House."

Short extended an invitation to Heitkamp to the bill signing, but also has knocked Heitkamp for opposing the GOP's tax law. He did not respond to a request for comment for this story.

Heitkamp has tried to stay out of the back and forth, though she is playing up her collaborations with a president that won her state in 2016 by more than 35 points.

"The president has got bigger fish to fry and bigger problems to solve than whether Kevin likes him more than I do," Heitkamp said.

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DOE report: U.S. generally 'well prepared' for grid hacking, but gaps remain [Back](#)

By Eric Geller | 05/30/2018 06:05 PM EDT

Senior government officials and electric sector executives don't know enough about how energy companies could recover from a disruptive cyberattack, and those companies don't consider cyber threats enough when building out their supply chains, according to a new Energy Department [report](#).

Grid resilience efforts also suffer because of "gaps in incorporating cybersecurity concerns, including planning for long-term disruption events, into state emergency response and energy assurance planning," said the report.

"The United States is, in general, well prepared to manage most electricity disruptions," the Energy Department said in its report. But gaps still exist in areas like situational awareness, workforce development, separation of roles and responsibilities and the coordinated use of resources like digital defense tools.

DOE completed the report last August as part of President Donald Trump's May 2017 cyber executive order but did not publish it until today.

The report mostly hammered home long-understood problems with protecting the power grid from hackers, including the challenges of sharing cyber threat data between partners

"The variation in infrastructure ownership and operation and the jurisdictional overlap add complexity to sharing actionable information in a timely manner," the report said. "These complexities are compounded when information is classified or sensitive due to the limited options and access to facilitate sharing."

It also warned of compounding problems in the event of a major power outage. For example, "as cyber incidents may impact disparate systems across the country, the impacted owner-operators may not be familiar with each other's systems and procedures."

To view online [click here](#).

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DOE working to stand up new cyber unit in fiscal 2018 [Back](#)

By Darius Dixon | 03/01/2018 01:11 PM EDT

The Energy Department is aiming to have its new cybersecurity office fired up before the end of the fiscal year, Bruce Walker, the agency's top electricity official, said today.

"We're working with Congress because we put it into the FY 2019 budget proposal ... and we're looking to stand it up earlier because of the importance and our sector-specific agency authority [for cyber incidents]," he told reporters after testifying before the Senate Energy and Natural Resources Committee.

Walker has previously noted that DOE wouldn't need additional congressional authority to create the office or a new assistant secretary job to lead it. Today, he also said that the design change is meant to elevate cyber issues as well as to divide up the agency's infrastructure work into short-term and long-term operations.

Creating the Office of Cybersecurity, Energy Security and Emergency Response is a reaction to a range of issues, including Congress giving DOE more emergency authorities in the 2015 FAST Act ([H.R. 22 \(114\)](#)), the relentless need to improve cyber defenses, and the deepening marriage between the natural gas and electric sectors.

Walker would still lead the electricity office, which would focus on long-term infrastructure plans and set research-and-development goals, including for cybersecurity. Meanwhile, the new CESER office would be "actionable, near-term and highly responsive" recovery work like the devastation in Puerto Rico or the immediate response to a cyberattack, he said.

"One basically feeds the other," Walker said. "[CESER] responds to the incidents, OE will design them out of the system on a going-forward basis."

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GAO: Government spent \$13.2B on climate change last year [Back](#)

By Anthony Adragna | 05/30/2018 04:34 PM EDT

The federal government spent \$13.2 billion across 19 agencies during fiscal 2017 for various programs related to climate change, according to [a report](#) from the Government Accountability Office released today.

Overall, climate change-related spending across the federal government rose \$1.5 billion between fiscal 2016 and 2017 and grew \$4.4 billion since fiscal 2010, according to the report.

GAO examined the budget justifications for six agencies accounting for 89 percent of all climate change spending and found just 18 of 533 programs within those agencies whose primary purpose is to address climate change. It further concluded that those programs primarily dedicated to addressing the problem "serve different purposes, target different audiences, or operate at different time periods and scales, which minimizes potential overlap or duplication." The other programs had multiple purposes beyond addressing climate change.

The White House Office of Management and Budget reports the government has spent over \$154 billion since 1993 to understand and address climate change.

House Science Chairman [Lamar Smith](#) (R-Texas) requested the report.

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DOE IG: No big flaws in FERC pipeline review process, but transparency should improve [Back](#)

By Darius Dixon | 05/30/2018 03:21 PM EDT

Federal watchdogs said they found no major flaws in FERC's process for reviewing interstate natural gas pipelines, but they flagged concerns about its transparency and how it handles public comments, according to [new report](#).

Auditors in the Energy Department inspector general's office who reviewed FERC's pipeline certification process said that "nothing came to our attention to indicate that FERC had not performed its due diligence" in how it balanced public benefits of a proposed project with its adverse impacts.

But the report said regulators' "had not fully ensured" that the certification process was transparent to those who want to participate and that its eLibrary documentation system was difficult to use. And it said FERC lacked a consistent method for tracking and addressing comments submitted on a proposed project.

"FERC had not specifically designed its public-facing systems for use by the general public," the IG report said, noting that "although available to the general public, eLibrary had been designed for use by practitioners, the legal community, and other stakeholders."

The report also said parts of the eLibrary website "did not contain a sufficient explanation of the entire process" and that a document for landowners who could be affected by a project was not clear about key aspects of the certification process.

"While nothing came to our attention to indicate that natural gas certification applications had been inappropriately approved or disapproved," watchdogs wrote, "FERC can take steps to improve aspects of the natural gas certification process."

WHAT'S NEXT: FERC is in the process of a broad review of its natural gas pipeline certification process but there's no established deadline.

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Not at all

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Subject: Morning Energy, presented by America's Pledge: Battle in the Bakken state? — Groups sue over EPA waiver exemptions — Deja vu on formaldehyde

By Kelsey Tamborrino | 05/30/2018 05:41 AM EDT

With help from Annie Snider and Ben Lefebvre

BATTLE IN THE BAKKEN STATE? As the election year kicks into high gear, President Donald Trump's friendly relationship with Democratic Sen. Heidi Heitkamp is worrying some within the Republican party, POLITICO's Alex Isenstadt and Burgess Everett report. Republicans have grown increasingly frustrated with Trump's ongoing flirtation with the freshman senator from the No. 2 oil-producing state, especially at a time when many in the GOP fear that the president's unpredictable style will undercut their midterm plans. Heitkamp, who is seeking reelection in a state where Trump won nearly two-thirds of the vote, has a friendly relationship with the president, even after Trump aggressively recruited Rep. Kevin Cramer — who advised his campaign on energy issues — to give up his House seat and enter that race, leaving some of Cramer's closest allies feeling snubbed.

In an interview, Cramer said there would soon be "clarity" on who Trump supports in the race. But the congressman declined to predict whether the president would go after Heitkamp aggressively, as Trump has done with other Democratic incumbents. Cramer seemed aware of the warmth between the president and the senator, Alex and Burgess report. Trump has asked Cramer if he likes Heitkamp, and when the congressman responds yes, the president seems to be "relieved," Cramer said. "Politically, North Dakota's a pretty nice state. So I don't know that turning it on her is necessarily politically helpful to me," Cramer said. "They may just be concerned that she's a woman and maybe that has an impact. I just don't know."

For her part, Heitkamp said she's proud of her ability to work with the president. "I have a friendly relationship, I have a very important working relationship," she said in an interview, "not just with him but other members of the administration." Read the story [here](#).

WELCOME TO WEDNESDAY! I'm your host Kelsey Tamborrino, and Peter Robertson of the Pebble Partnership was the first to correctly identify California and Ohio as the two states that don't have an avenue named after them in D.C. Instead, there's a California Street and Ohio Drive. For today: Which president was the first to see a major league baseball game in his hometown, and which town was it? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](#), [@Morning_Energy](#) and [@POLITICOPro](#).

Register for the Pro Summit: Join Pro subscribers, expert reporters and key decision-makers from the executive branch, federal agencies and Congress for a full day of incisive policy conversations on July 17. [Learn more.](#)

GROUPS SUE ON WAIVER EXEMPTIONS: Ethanol and farm groups say they've filed a lawsuit against EPA over some of the waivers granted to small refineries allowing them to shed their Renewable Fuel Standard requirements on blending biofuels, Pro's Eric Wolff reports. The Renewable Fuels Association, National Corn Growers Association, American Coalition for Ethanol and National Farmers Union are challenging the waivers granted to CVR Refining's Wynnewood, Okla., refinery and the HollyFrontier refineries at Cheyenne, Wyo. and

Woods Cross, Utah. Those refineries have collectively saved \$170 million in compliance costs, the coalition said.

Those waivers, which ethanol backers say violate the volume mandates under the RFS, are also the subject of some horse-trading in the discussions between EPA Administrator Scott Pruitt and USDA Secretary Sonny Perdue. The two are trying to put the final touches on a compromise deal over EPA's rules for biofuels. Read [more](#).

CHEVRON SHAREHOLDERS VOTE: Shareholders at Chevron's annual meeting today will vote on a pair of climate change-related provisions. First up is a proposal that the oil giant report to investors how it will change its business model to account for any decreased demand for oil and gas resulting from greater development of renewable energy sources. Another proposal is that Chevron start providing reports on steps it is taking to minimize methane emissions from its fracking operations. Chevron's board of directors have advised against both proposals, saying the company is already making sufficient efforts on both matters.

Exxon, which also holds its annual meeting today, is getting a break this year from the sort of environmental proposals its shareholders considered in 2017.

**** A message from America's Pledge:** America's Pledge is flipping the script on climate action. One year after the federal government announced it would pull out of the Paris Agreement, 2,700+ U.S. cities, states, and businesses are saying, "We Are Still In." See how far we've come: <https://politi.co/2koAHZb> **

DEJA VU? Already under fire for their handling of a controversial assessment of nonstick chemicals in drinking water, a newly uncovered EPA email suggests that public relations strategy was also front-of-mind for EPA staffers as the agency contemplated reevaluating the risks of formaldehyde. Reuters reported last week that EPA delayed release of a new assessment of the chemical that is expected to for the first time link formaldehyde with leukemia after meeting with the American Chemistry Council in January.

"They reiterated the concern you have raised about information leaking before it's been vetted and asked that the Agency have appropriate communication materials ready to use if needed," Jennifer Orme-Zavaleta, who heads EPA's Office of Research and Development, wrote in a Jan. 24 email to EPA chief of staff Ryan Jackson and Richard Yamada, deputy assistant administrator for research and development. The email was released to the Union of Concerned Scientists under the Freedom of Information Act.

Yogin Kothari, a lobbyist of UCS, said the email "sounds eerily similar" to concerns that EPA and White House officials expressed about a HHS assessment of the chemicals PFOA and PFOS. "It's not surprising that the ACC is attempting to wield its influence over EPA when its former staff are basically running the place," Kothari said by email.

WE'RE CLOSED: The Environmental Council of the States' upcoming fall meeting will close to the public certain sessions attended by EPA officials, according to the group's draft agenda for the August meeting. The draft shows ECOS will hold closed sessions on several issues, including a state-EPA roundtable on "cooperative federalism" and joint PFAS activities. (h/t E&E News' Sean Reilly)

NAFTA TALKS STILL STALLED: Recent NAFTA talks between the U.S., Mexico and Canada have not resulted in progress on the thorniest issues because the U.S. remains unwilling to offer important concessions, two sources close to the talks told Pro's Sabrina Rodriguez. Negotiators from the Office of the U.S. Trade Representative continue to demand that "they want everything, and there's no possible way they'll get everything they want," one of the sources said. "Conversations have stalled entirely." Read [more](#).

WE'LL ALWAYS HAVE PARIS: This week marks the one-year anniversary of Trump's decision to pull the U.S. out of the Paris climate agreement. The United States still technically remains in the 2015 pact for the next

two-and-a-half years, but the action to implement it is playing out in the rest of the world. To mark the occasion, the World Resources Institute will host a [discussion](#) today on whether other nations have moved on since Trump's decision to exit the agreement. Among those participating is Todd Stern, the former State Department special envoy for climate change who helped seal the deal. In the lead-up to the event, WRI's Eliza Northrop laid out the seven signs of progress since Trump's announcement [here](#), including a timeline of events over the last year. If you go: The discussion kicks off at 2:30 p.m at 10 G Street NW. Watch the livestream [here](#).

— **And the National League of Cities**, as well as mayors from across the country, will release today their latest "State of the Cities" report that will look into the trend of cities taking on clean energy goals, despite the federal government.

OFFSHORE DRILLER FINED \$4M: Oil and gas company Energy Resource Technology was fined \$4 million Tuesday by the U.S. Attorney's Office for the Eastern District of Louisiana for fabricating data about the readiness of a key piece equipment used to prevent oil spills, Interior said. The fine comes as a result of an [investigation](#) by Interior's Office of Inspector General that found that ERT management directed an employee on its rig in the Gulf of Mexico to create a fake blowout preventer pressure test chart to conceal a failed test result, Pro's Ben Lefebvre reports. Read [more](#).

EPA, KILDEE SPAR OVER SUMMIT: EPA defended its move to only allow federal agency and state representatives on the second day of last week's summit on toxic chemicals in drinking water, dismissing Democratic Rep. [Dan Kildee](#)'s complaint that members of his staff had been barred from attending as a mischaracterization. EPA Associate Administrator Troy Lyons wrote in a letter Tuesday to Kildee and obtained by POLITICO that the agency worked with Kildee's office ahead of time to allow a staffer to attend the first day of the summit.

"**I trust you understand our disappointment** when we discovered that no one from your office attended the summit on May 22, particularly in light of the subsequent events on May 23," Lyons wrote. In a statement, Mitchell Rivard, Kildee's chief of staff, said that "it is hard to mischaracterize the EPA's actions — it had been widely reported that the EPA blocked both journalists and a congressional office from the taxpayer-funded PFAS summit." Read the letter [here](#).

MAIL CALL! 45Q AND YOU: Rep. Cramer shared [a letter](#) Tuesday from the Treasury Department in response to [his request](#) for direction on the expanded 45Q tax credit for capturing and storing carbon dioxide. In the letter, Assistant Secretary for Legislative Affairs Drew Maloney said Treasury is developing published guidance to provide clarity to taxpayers for the purpose of using the credit.

— **A coalition of 12 state and city attorneys general** and attorneys sent a letter to National Academy of Sciences President Marcia McNutt saying EPA's so-called secret science proposal to ban the use of studies that don't publicly disclose all data is "too vague and rushed to allow for meaningful public review." And they pressed for the group to weigh in, saying "the National Academy's input on this extremely consequential proposal." Read it [here](#).

API WRITES TO TRUMP ON SECTION 232: The American Petroleum Institute [sent a letter](#) to Trump last week requesting that the list of countries currently exempt from Section 232 tariffs on steel and aluminum be expanded "without imposing alternative measures such as quotas," and that the president remove any associated import quotas that have already been imposed. In his letter, API President and CEO Jack Gerard writes that additional import restrictions "will have a negative effect on our industry just as we have achieved the highest level of domestic hydrocarbon (oil and natural gas and natural gas liquids, or NGLs) production since 1949," according to EIA.

TRUDEAU COMMENTS ON PIPELINE: Canadian Prime Minister Justin Trudeau defended the Canadian government's plan to buy and complete the expansion of Kinder Morgan's Trans Mountain pipeline. "The

project became too risky for a commercial entity to go forward with it; that's what Kinder Morgan told us," Trudeau said during a Bloomberg Businessweek event. "We are going to ensure that it gets built so that we can get our resources to new markets." More [here](#).

WHITE HOUSE TALKS PUERTO RICO: Aboard an Air Force One flight, press secretary Sarah Huckabee Sanders was asked whether the president — despite his [previous comments](#) — now thinks Puerto Rico constitutes a "real catastrophe" following the release of a Harvard University study that found at least 4,645 people died from the September 2017 storm rather than the 64 deaths federal authorities counted. The White House continues to be supportive of the governor of Puerto Rico, Sanders said according to pool reports, and of "transparency and accountability." The people of Puerto Rico "deserve nothing less than that, and were going to continue to be focused on helping in every way we can," she said. "FEMA has already done the largest response ever in history to any natural disaster. They're in Puerto Rico, and we're going to continue to give as much assistance as possible."

RBS COMMITS TO NEW ENERGY FINANCING: Ahead of its shareholder meeting today, the Royal Bank of Scotland [announced](#) Tuesday new energy financing policies to support a transition to low carbon. The bank said it would no longer provide "project-specific finance" to new coal-fired power plants, thermal coal mines or oil sands projects, among other projects. Additionally, RBS said it is tightening restrictions on general lending to mining and power companies generating more than 40 percent of their revenues from thermal coal and of electricity from coal, respectively. In response, Rainforest Action Network Executive Director Lindsey Allen said the announcement "comes as a result of groups like us pressuring banks to defund fossil fuels and deforestation," but said the "policy is only half a step forward because it leaves loopholes in place."

REPORT: COOK TAPPED FOR SUPERFUND JOB: EPA has named Steven Cook — a former senior counsel at chemical giant LyondellBasell — to the agency's Superfund Task Force in the position left vacant by Albert "Kell" Kelly, Bloomberg BNA [reported](#). Cook has been serving as deputy assistant administrator for the agency's land and waste office, prior to his move to the Superfund spot.

ZINKE DEFENDS 'KONICHIWA' GREETING: In a wide-ranging radio interview with Breitbart Radio, Interior Secretary Ryan Zinke defended his use of the greeting "konichiwa" in response to a question from Rep. Colleen Hanabusa on preserving internment sites during a March Natural Resources hearing. "I grew up in a little logging, timber town, railroad town in Montana and a lot of my family lived through the years of the internment camps. I've long since had friends that were Japanese families that went through that," Zinke said, calling it an "appropriate salute." Listen to the full interview [here](#).

AD WARS: Club for Growth Action said Tuesday that it would spend \$250,000 on new ads attacking Russ Fagg, a former judge and Republican candidate for Senate in Montana. Campaign Pro's James Arkin [reports](#) the new ad campaign attacks Fagg over his record during his two decades as a district judge, including the time he called a judge who "undercut" Trump's rollback of environmental rules a "thoughtful moderate." Watch the TV ad [here](#).

MOVER, SHAKER: Stuart Siffring joined the Western Energy Alliance as a regulatory analyst, the trade group announced Tuesday. Siffring previously worked as a permit engineer at EPA and the Colorado Department of Public Health and Environment.

QUICK HITS

- EPA used disavowed research to justify putting dirtier trucks on the road, [Los Angeles Times](#).
- Antarctica has enormous mountain ranges and valleys deep beneath its ice, [The Washington Post](#).
- Former Perry adviser is FirstEnergy's secret weapon in U.S. bailout, [Bloomberg](#).

- McConnell's plan for a packed summer Senate agenda, [CQ Roll Call](#).
- Lowe's drops paint strippers blamed in dozens of deaths, [The New York Times](#).
- No offsets, no problem as Army Corps OKs wetland projects, [E&E News](#).

HAPPENING TODAY

9:30 a.m. — The Woodrow Wilson Center's Environmental Change and Security Program [discussion](#) on "Sustainable Water, Resilient Communities: The Challenge of Erratic Water," 1300 Pennsylvania Ave NW

1:00 p.m. — The National Academy of Sciences' Government-University-Industry Research Roundtable [webinar](#) on "Connecting Research to Policy: The Broadband Research Initiative at Pew Charitable Trusts."

1:00 p.m. — The Center for Climate, Health, and the Global Environment at the Harvard T.H. Chan School of Public Health [launches new center](#), Boston.

2:00 p.m. — The Woodrow Wilson Center [discussion](#) on "Where Does the Transatlantic Relationship Go from Here," 1300 Pennsylvania Avenue NW

2:30 p.m. — The World Resources Institute [forum](#) on "One Year Later: Has the World Moved On Since President Trump's Announcement on the Paris Agreement?" 10 G Street NE

4:00 p.m. — Atlantic Council's Cyber Statecraft Initiative and Global Energy Center [discussion](#) on "Supply Chain Vulnerabilities in the Software Era," 1030 15th Street Northwest

THAT'S ALL FOR ME!

**** A message from America's Pledge:** One year after President Trump announced plans to withdraw from the Paris Agreement, America's Pledge is showing the world that U.S. cities, states, and businesses can lead us towards our goals - with or without Washington. <https://politi.co/2koAHZb> **

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<https://subscriber.politicopro.com/newsletters/morning-energy/2018/05/battle-in-the-bakken-state-236539>

Stories from POLITICO Pro

The one Democrat Trump can't help but like [Back](#)

By Alex Isenstadt and Burgess Everett | 05/30/2018 05:08 AM EDT

When a small group of alarmed White House aides caught wind that Sen. Heidi Heitkamp — one of the most endangered Democrats up for reelection in 2018 — would be attending President Donald Trump's bill signing last week, they raced to stop it.

Word eventually reached Senate Majority Leader Mitch McConnell, who has made unseating Heitkamp a top priority. He opted not to intervene, and the invitation stood: As the president signed a banking deregulation bill into law before a national audience, Heitkamp was right next to him, the only Democrat in the room.

As the election year kicks into high gear, Republicans have grown increasingly frustrated with Trump's ongoing flirtation with the freshman senator. At a time when many in the GOP fear that the president's unpredictable

style will undercut their best-laid midterm plans, the relationship has given Heitkamp — who is seeking reelection in a state where Trump won nearly two-thirds of the vote — fodder to portray herself as a presidential ally.

Her office keeps a running list of the dozen-plus meetings Heitkamp has had with Trump and his top advisers since the 2016 election. And the senator is fond of noting that she forged close ties with Trump's former top economist, Gary Cohn. The president met with Heitkamp in Trump Tower after the 2016 election to discuss a possible Cabinet position, asked her to join him on Air Force One, and invited her onstage to join him and her Republican opponent, Rep. Kevin Cramer, during an appearance in North Dakota.

"Everyone is saying, 'What's she doing up here?'" the president said at the September event to sell his tax reform plan, which Heitkamp eventually opposed. "But I'll tell you what. Good woman, and I think we'll have your support, I hope we'll have your support. And thank you very much, senator, thank you for coming up."

After last week's bill signing, Heitkamp's allies raced to capitalize. The North Dakota Democratic Party sent out a tweet with an image of Cramer looking on uncomfortably as the president stood next to Heitkamp.

"At a bill signing today, @HeidiHeitkamp got a shout out and all @kevincramer got was a photo op next to a chair," the state party boasted.

"We will see footage of this on every platform," said Doug Heye, a former top Republican National Committee official. "It's a huge gift for her campaign."

Trump aggressively recruited Cramer to give up his House seat to take on Heitkamp, and his actions since have left some of Cramer's closest allies feeling snubbed. They note that while Trump has savaged Democratic incumbents Joe Donnelly of Indiana and Jon Tester of Montana and visited a growing list of states to pump up Republican Senate hopefuls — most recently Tennessee, where he appeared Tuesday on behalf of Rep. Marsha Blackburn — he has yet to make a campaign appearance with Cramer. Nor has the attack dog-in-chief attacked Heitkamp.

After Cramer learned last year that Heitkamp would be accompanying the president on Air Force One to North Dakota, he complained bitterly to the White House, according to two people with direct knowledge of the discussions. Heitkamp, Cramer predicted at the time, would try to use it to her political advantage. (A Cramer adviser, Pat Finken, denied that the congressman had complained about the senator riding on Air Force One.)

The administration has taken steps to assure Cramer that he has the president's full support. The congressman has been regularly in touch with White House political director Bill Stepien, and the two met earlier this month. Trump has agreed to hold a rally for Cramer later this year.

In an interview, Cramer shrugged off Heitkamp's attendance at the bill signing and said there would soon be "clarity" on who Trump supports in the race.

Yet the congressman declined to predict whether the president would go after Heitkamp aggressively, as Trump has done with other Democratic incumbents. Cramer seemed aware of the warmth between the president and the senator. Trump has asked Cramer whether he likes Heitkamp, and when the congressman responds yes, the president seems to be "relieved," Cramer said.

"Politically, North Dakota's a pretty nice state. So I don't know that turning it on her is necessarily politically helpful to me," Cramer said. "They may just be concerned that she's a woman and maybe that has an impact. I just don't know."

Heitkamp said she's proud of her ability to work with the president.

"I have a friendly relationship. I have a very important working relationship," she said in an interview, "not just with him but other members of the administration."

Trump's reluctance to go after Heitkamp stems in part from the simple fact that he needs her vote. With Republicans clinging to a narrow Senate majority, the White House has pushed for her support on several contentious votes, including the recent confirmations of CIA Director Gina Haspel and Secretary of State Mike Pompeo. She also backed Trump's nominations of Supreme Court Justice Neil Gorsuch and Environmental Protection Agency Administrator Scott Pruitt.

Last week's signing ceremony was organized by White House Office of Legislative Affairs Director Marc Short. He said he extended an invitation to Heitkamp because she played a central role in passing the banking deregulation law.

"She was an original cosponsor of the bill," Short said. "But she's also someone who opposed tax relief, who opposed repeal of Obamacare, and someone who will always support Chuck Schumer. So you can be sure the president will be actively campaigning in North Dakota this cycle."

Cramer's February entry into the race followed an intense pursuit from Trump and top White House officials. After Cramer initially said in January that he wouldn't run for Senate, he received overtures from Trump, White House counselor Kellyanne Conway, and energy executive and Trump donor Harold Hamm within a three-day period. Trump also met with Cramer's wife, Kris.

Cramer said Trump told him at the time that he'll "be out there campaigning more than you are." Trump's entreaties, Republicans contend, helped to push Cramer into the contest. Cramer won his statewide, at-large House seat in 2012, the same year Heitkamp entered the Senate.

"The president leaned on him very hard. The president wanted the best candidate, and everyone in the state thought Kevin was the best candidate to beat Heidi," said Gary Emineth, a former North Dakota GOP chairman who is close with the congressman. "You know how the president is. He just doesn't quit."

Heitkamp predicted that Trump would attack her eventually. While she has maintained a positive working relationship with the president, she said it pales in comparison to Cramer's staunch loyalty.

"I don't think anyone can match his Trump credentials," Heitkamp said. "He is somebody who will always do what the president asks him to do, regardless of whether it's good for North Dakota."

As of late, the senator has been airing commercials that highlight her balancing act. "When I agree with the president I vote with him — and that's over half my votes," she says in a spot that began airing this month. "And if his policies hurt North Dakota, he knows I'll speak up."

Cramer accused Heitkamp of acting like a "Republican wannabe" with her occasional support for key Trump nominees.

"Her trying to cozy up to Donald Trump has resulted in good votes," Cramer said. "But every time she tries to become more like me, it's more flattering to me than it is to her."

Democrats, however, couldn't be happier to portray Cramer as a jilted lover.

Last week, the North Dakota Democratic Party released a video featuring a montage of clips of the president praising Heitkamp and shaking her hand as Cramer looks on — set to the sad sounds of R.E.M.'s "Everybody Hurts."

To view online [click here.](#)

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Ethanol, farm groups sue EPA over exemptions [Back](#)

By Eric Wolff | 05/29/2018 07:13 PM EDT

A coalition of ethanol and farmers groups said they filed a lawsuit in federal court today against EPA seeking to overturn some of the waivers the agency has granted to small refineries allowing them to shed their Renewable Fuel Standard requirements on blending biofuels.

The Renewable Fuels Association, National Corn Growers Association, American Coalition for Ethanol and National Farmers Union are challenging the waivers granted to CVR Refining's Wynnewood, Okla., refinery and the HollyFrontier refineries at Cheyenne, Wyo. and Woods Cross, Utah. Those refineries have collectively saved \$170 million in compliance costs, the coalition said.

The groups, along with their allies in Congress, have criticized EPA's frequent use of the waivers, which they say undermines the RFS mandates on the amount of biofuel that must be sold into the U.S. fuel market.

"EPA is trying to undermine the RFS program under the cover of night," RFA CEO Bob Dinneen said in a statement. "And there's a reason it has been done in secret — it's because EPA is acting in contravention of the statute and its own regulations, methodically destroying the demand for renewable fuels."

The Advanced Biofuels Association challenged the waivers May 1.

WHAT'S NEXT: The complaint will be heard in the U.S. Court of Appeals for the 10th Circuit.

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Exxon shareholders win vote to build Paris climate pact into plans [Back](#)

By Ben Lefebvre | 05/31/2017 02:37 PM EDT

The Trump administration may be preparing to [withdraw the U.S.](#) from the Paris climate change accords, but shareholders at Exxon Mobil and at least one other U.S. oil company are demanding the companies incorporate the international deal in their business models.

Nearly two-thirds of Exxon's shareholders backed a proposal on Wednesday calling for the company to assess how climate change and global efforts to limit temperature increases will affect its business. The vote is non-binding, but the results show that the once-fringe idea of linking climate change to big oil's operations has gained momentum.

The vote at the Exxon annual shareholder meeting in Dallas came after investors in its smaller rival Occidental Petroleum earlier this month cast more than two-thirds of their votes for a measure calling for the company to

assess how its business would be affected by the Paris climate change accord's target of holding global warming to 2-degrees. Company credit rating agency Moody's said last year it would start to use the Paris pledge to assess financial risk for corporations.

"Shareholders have spoken clearly on climate," said Danielle Fugere, president and chief counsel for As You Sow, a group that helps shareholders introduce environmental proposals. "If there's less demand for oil and the world is awash in oil, there's going to be more competition among these companies. Shareholders are trying to figure out who is the best bet."

Not all of these climate-related investor proposals succeeded, however. Chevron shareholders Wednesday morning rejected a motion that the company issue a report on how limiting global temperature increase to 2 degrees Celsius (3.6 degrees Fahrenheit) would affect its business. Only 27 percent of voting shareholders approved the proposal, down from more than 40 percent who voted for a similar proposal last year.

Exxon, Chevron and other energy companies facing such proposals argue that they are already taking the Paris agreement seriously and incorporating it into their business plans. Exxon in particular pointed out that it was developing technology that would capture the carbon emitted at natural gas power plants and then either store it or use it to produce more electricity.

"We believe the goal of carbon policy is to reduce emissions at the lowest cost to society," Exxon Chief Executive Darren Woods said at the shareholder meeting. "These goals led us to support the Paris Agreement." Woods sent President Donald Trump a letter earlier this month urging the U.S. to stay in the Paris deal.

For Exxon, the votes also illustrate how entangled the company has become in New York state climate change politics. The climate change proposal shareholders approved was partly sponsored by the New York State Common Retirement Fund, which is run by the State's comptroller. Meanwhile, the company is embroiled in a lawsuit with the New York and Massachusetts attorneys general over whether it withheld its own research on climate change from shareholders.

"The burden is now on Exxon Mobil to respond swiftly and demonstrate that it takes shareholder concerns about climate risk seriously," New York State Comptroller Thomas P. DiNapoli said in a prepared statement after the vote.

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NAFTA talks stall amid apparent refusal of U.S. to make concessions [Back](#)

By Sabrina Rodriguez | 05/29/2018 07:41 PM EDT

Recent high-level NAFTA talks between the U.S., Mexico and Canada have not resulted in progress on the thorniest issues because the U.S. remains unwilling to offer important concessions, two sources close to the talks said on Tuesday.

Negotiators from the Office of the U.S. Trade Representative continue to demand that "they want everything, and there's no possible way they'll get everything they want," one of the sources told POLITICO. "Conversations have stalled entirely."

As the U.S. and Canada resumed talks in Washington on Tuesday, the sources confirmed that Mexican Trade Undersecretary Juan Carlos Baker met with officials from USTR last week to present a counterproposal that would see Mexico make concessions on wages in the automotive sector in return for U.S. concessions on other flashpoint issues.

Under the offer, Mexico reportedly would accept language on automotive rules of origin that would require that 20 percent of cars produced within North America be made by workers earning at least \$16 an hour.

In exchange, Mexico reportedly asked that the U.S. back off some of its thorniest proposals, like placing limits on government procurement as well as a so-called sunset clause, which would allow for the deal to be terminated if all three countries don't agree to renew it after five years. News of the counterproposal was first reported by Bloomberg.

Mexico's counterproposal was not well received by USTR, the sources said.

"USTR did not take a close look at their proposal before rejecting it," one of the sources said. "As soon as it included [the U.S.] giving in on something, it was a 'no' from USTR."

That leaves it up to U.S. Trade Representative Robert Lighthizer to decide if the U.S. will offer any concessions to Mexico and Canada, the sources added.

USTR did not immediately respond to a request for comment on Tuesday evening.

The latest deadlock comes as Mexico and Canada face a looming deadline in their effort to secure a permanent exemption from the U.S. steel and aluminum tariffs. Mexico and Canada were temporarily exempted from the duties, but to win a permanent reprieve each country must reach a separate agreement to satisfy U.S. national security concerns by June 1.

Mexican President Enrique Peña Nieto and Canadian Prime Minister Justin Trudeau have both emphasized in recent days that they will not be pressured into accepting a NAFTA deal that is bad for their respective countries.

"No NAFTA is better than a bad deal, and we've made that very clear to [President Donald Trump]," Trudeau said Tuesday in an interview with Bloomberg. "We are not going to move ahead just for the sake of moving ahead."

Trudeau discussed the NAFTA talks during a call with Vice President Mike Pence on Tuesday, the White House said in a readout that provided no details of the conversation.

Negotiators have made some gains, despite the continued difficulties over the hot-button topics. Canadian Foreign Minister Chrystia Freeland, Canada's top NAFTA official, said she had a "very substantive" conversation with her U.S. counterpart in Washington on Tuesday.

The NAFTA nations' top trade officials have been in consistent contact over the phone since they last met in Washington two weeks ago.

Lighthizer had acknowledged at that point that the three countries still faced "gaping differences" on a number of issues, such as market access for agricultural products and automotive rules of origin. "The NAFTA countries are nowhere near close to a deal," Lighthizer said then.

Talks have continued to move forward on the NAFTA modernization chapters, like e-commerce, "but as long as USTR keeps the thorny issues on the table, there won't be movement," one of the sources said.

Negotiators have so far closed nine chapters and six sectoral annexes, Mexico's chief negotiator, Kenneth Smith Ramos, said last week. Those chapters include: telecommunications, small- and medium-sized enterprises, competition, and technical barriers to trade.

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Gulf of Mexico rig operator fined \$4M after Interior Department investigation [Back](#)

By Ben Lefebvre | 05/29/2018 04:36 PM EDT

The U.S. Attorney's Office for the Eastern District of Louisiana fined offshore oil and gas company Energy Resource Technology \$4 million for fabricating data about readiness of a key piece equipment used to prevent oil spills, the Interior Department said today.

The fine was a result of an [investigation](#) by Interior's Office of Inspector General that found that ERT management directed an employee on its rig in the Gulf of Mexico to create a fake blowout preventer pressure test chart to conceal a failed test result. The failure by a blowout preventer was one of the main causes of Deepwater Horizon rig accident that killed 11 people in 2010.

An ERT supervisor on the same rig had employees perform welding near an active well in violation of Interior safety regulations.

Interior had fined ERT \$4 million in 2012 for earlier violations on its rigs, and an accident [killed](#) a contract worker on an ERT rig in February.

ERT is a subsidiary of Houston-based Talos Energy.

WHAT'S NEXT: In addition to the fine, ERT was sentenced to 36 months' probation and ordered to pay \$200,000 in restitution.

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Study: 4,645 people died after Hurricane Maria, far more than official estimate [Back](#)

By Mel Leonor | 05/29/2018 11:40 AM EDT

At least 4,645 people died amid the devastation wrought by Hurricane Maria in Puerto Rico — more than 70 times the official government death toll of 64, according to a new study from Harvard University.

Locals, journalists and public health experts have for months questioned the government estimate of deaths from the storm, which caused more than \$90 billion in damage.

President Donald Trump, however, said in October that Puerto Rico officials should be "very proud" of the low death toll.

The study, published Tuesday in the New England Journal of Medicine, is based on household surveys of more than 3,000 homes in the territory, where researchers found a boom in the mortality rate between late September and late December 2017.

The authors of the study, which was largely funded by the Harvard T.H. Chan School of Public Health, described the official death count as a "substantial underestimate" and called it evidence of the "inattention of the U.S. government to the frail infrastructure of Puerto Rico."

"The timely estimation of the death toll after a natural disaster is critical to defining the scale and severity of the crisis and to targeting interventions for recovery," they wrote.

Researchers found that "interruption of medical care was the primary cause" of the high mortality rate that came after the storm made landfall.

With the 2018 hurricane season in swing, the authors also urged chronically ill patients, communities and health care providers to develop contingency plans for future disasters.

Carlos R. Mercader, executive director of the Puerto Rico Federal Affairs Administration, said in a statement that officials would analyze the report, adding, "We have always expected the number to be higher than what was previously reported."

He said the Puerto Rico government has commissioned a report from George Washington University, which he said would be released "soon."

Trump said in October that the storm had been less devastating than Hurricane Katrina in 2005, but the new study indicates that may not be true. Hurricane Katrina resulted in the deaths of 1,833 people, according to FEMA.

"Every death is a horror," Trump said at the time, "but if you look at a real catastrophe like Katrina and you look at the tremendous — hundreds and hundreds of people that died — and you look at what happened here with, really, a storm that was just totally overpowering ... no one has ever seen anything like this."

Rep. Nydia Velázquez (D-N.Y.) said after the report was released Tuesday that the apparent undercounting of deaths "concealed" the impact of Hurricane Maria on the territory.

"By obscuring this, many were left to believe the Trump Administration's mythology that Puerto Rico was not hit hard by Maria," Velázquez said in a statement. "We must get to the bottom of this discrepancy."

The White House did not respond to a request for comment.

Last year, Velázquez and Rep. Bennie Thompson (D-Miss.) asked a government watchdog to investigate how Puerto Rican officials "originally arrived at such a low number."

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New Club for Growth ads attack Fagg in Montana [Back](#)

By James Arkin | 05/29/2018 03:48 PM EDT

Club for Growth Action, the super PAC arm of the Club for Growth, announced today that it would spend \$250,000 on new ads attacking Russ Fagg, a former judge and Republican candidate for Senate in Montana.

The Club is backing state auditor Matt Rosendale in the race in the race to face Democratic Sen. Jon Tester, and its PACs have spent more than \$1 million on ads backing Rosendale and attacking Fagg, one of his top challengers in the June 5 primary.

The new ad campaign attacks Fagg over his record during his two decades as a district judge. The TV ad makes three claims against Fagg: that he defended another judge who suggested a rape victim was to blame for her own attack; that he called a judge who "undercut" President Donald Trump's rollback of environmental rules a "thoughtful moderate"; and that he "praised a liberal federal judge who ruled against speeding up deportations."

"Russ Fagg's values are not Montana values," the narrator says.

The radio version of the ad features a woman and a man having a conversation about Fagg's record and pointing listeners to a website, factsformontana.com, funded by Club for Growth Action.

You can watch the TV ad [here](#) and listen to the radio ad [here](#).

To view online [click here](#).

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Subject: EPA Announces Extended Comment Period and Public Hearing on Proposed Rule to Strengthen Science Transparency in EPA Regulations

EPA Announces Extended Comment Period and Public Hearing on Proposed Rule to Strengthen Science Transparency in EPA Regulations

WASHINGTON (May 24, 2018) - Today, the U.S. Environmental Protection Agency (EPA) announced an extension of the comment period on the proposed rule, "Strengthening Transparency in Regulatory Science." EPA is also announcing a public hearing for the proposed rule, which will be held on July 17, 2018, in Washington, D.C.

"EPA is committed to public participation and transparency in the rulemaking process," said EPA Administrator Scott Pruitt. **"By extending the comment period for this rule and holding a public hearing, we are giving stakeholders the opportunity to provide valuable input about how EPA can improve the science underlying its rules."**

On April 30, 2018, EPA announced the proposed rule with a 30-day comment period that was scheduled to close on May 30. With today's extension, the comment period will now close on August 17. EPA is soliciting comments on all aspects of the proposal and specifically on the issues identified in Section III. The public hearing will provide a forum for interested parties to present data, views, and arguments regarding EPA's proposed rule.

The proposed rule will strengthen the science used in regulations issued by EPA. It will require that underlying scientific information be publicly available. Also, this rule is consistent with data access requirements for major scientific journals and builds upon Executive Orders 13777 and 13783.

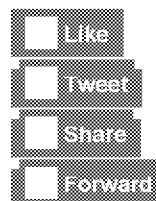
Comments should be identified by Docket ID No. is EPA-HQ-OA-2018-0259 and submitted through the Federal eRulemaking Portal: <http://www.regulations.gov>.

The public hearing will be held at the U.S. Environmental Protection Agency Headquarters, William Jefferson Clinton East Building, Main Floor Room 1153, 1201 Constitution Avenue NW, in Washington, D.C. 20460. The public hearing will convene at 8:00 a.m. EST and continue until 8:00 p.m. EST. Parties interested in presenting oral testimony at the public hearing should register online by July 15, 2018, at <https://www.epa.gov/osa/strengthening-transparency-regulatory-science>.

While we have taken steps to ensure the accuracy of this [Internet version of the rule](#), it is not the official version of the rule for purposes of public comment. Please refer to the official version in a forthcoming *Federal Register* publication.

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Subject: Morning Energy, presented by ExxonMobil: Democrats try to make GOP pay at the pump — Nukes out at PJM even as capacity prices double — Senate Appropriations marks up Energy-Water

By Kelsey Tamborrino | 05/24/2018 05:42 AM EDT

With help from Anthony Adragna and Eric Wolff

PUMP UP THE VOLUME: Days away from the Memorial Day weekend, gas prices are on the rise — and Democrats didn't have to look far for someone to blame. During a press conference in front of a notably pricey Exxon gas station, Democratic leaders blamed President Donald Trump's foreign policy decisions — including his move to reimpose sanctions on Iran — for the 50-cent-per-gallon surge in prices since he took office. "There's a straight line between Trump's policies and the price of gasoline," Sen. [Brian Schatz](#) told Pro's Ben Lefebvre and Anthony Adragna.

A page out of the Trump playbook: In pushing the blame onto Republicans, Democrats aren't breaking new ground. Trump himself called for former President Barack Obama's firing when in October 2012 gas prices hit "crazy levels." Republicans weren't surprised by the Democratic talking point, either. "Everyone's going to look for whatever political leverage they have going into an election," Sen. [Lisa Murkowski](#) said. "[But do] you think that Republicans created the high prices? No."

Roadblocks ahead: The Democratic message faces a big obstacle: Short of an energy crisis like the one President Jimmy Carter faced in his 1980 reelection campaign, it's tough to convince voters the president is to blame for expensive gas. Especially because the White House has little control over gas prices, which largely track the movement in global crude oil market prices. Energy market watchers say the price rally is largely due to moves by OPEC and Russia, in addition to the collapse of Venezuela's oil industry. [Read more.](#)

RELATED DOC: Trump has staffed his administration with oil and auto industry insiders, according to a new report from ethics watchdog group Public Citizen. The report breaks down industry influence by the numbers and finds 52 administration staff members have oil and gas ties, 15 with auto industry ties and 10 who have ties to both. Those industry ties are most concentrated at EPA, Interior and the White House. [Read the report.](#)

GOOD THURSDAY MORNING! I'm your host Kelsey Tamborrino. Congrats to the American Petroleum Institute's Khary Cauthen, who was the first to identify Franklin D. Roosevelt as the first president to have a state car custom built to Secret Service standards. For today: In what year did someone first attempt to jump the White House fence? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](#), [@Morning_Energy](#) and [@POLITICOPro](#).

POLITICO and the South China Morning Post are partnering to expand coverage of U.S.-China relations. Read our note from POLITICO Editor-in-Chief John Harris and Editor Carrie Budoff Brown to [learn more](#). If you want all China-related content that appears through this partnership sent directly to your inbox, go to your [account settings](#) to sign up for the South China Morning Post tag or reach out to your [account manager](#) for assistance.

COMMENT PERIOD EXTENDED: EPA [extended](#) the comment period for its controversial "secret science" proposal that was set to end on May 30. The public will now have until Aug 16 to make their voices heard on

the proposal to ban the use of studies that don't publicly disclose all data. EPA also said it would hold a public hearing July 17 in Washington on the proposal rule, heeding public requests to do so.

NUKES OUT OF PJM EVEN AS CAPACITY PRICES DOUBLE: PJM Interconnection, which manages the nation's largest power market, shed almost a third of its nuclear capacity in capacity auction results released yesterday for the 2021-22 delivery year. The auction, which provides extra payments to generators in return for staying available to run at any time, saw prices nearly double to \$140 per megawatt-day, and it will generate \$9.3 billion in revenue for companies with plants that cleared. Stu Bressler, PJM's senior vice president for Operations and Markets said prices rose because companies were trying to make up revenue lost to lower energy prices. "The offers from supply resources into the capacity auction take into account the actual as well as the anticipated energy revenues when they construct those offers in order to meet their required revenues," he told reporters Wednesday.

More megawatts cleared the auction for every other fuel type. Solar capacity quadrupled and wind added 529 MW, making up for ground lost in last year's auction. Coal added 500 MW compared to the previous auction, something that may catch the attention of the Department of Energy, which is trying to save coal plants. "The results of this auction should reassure everyone that the electricity markets are working and maintaining a reliable system," said Susan Buehler, a spokeswoman for the grid operator. "PJM has always said we don't believe there is any need for intervention."

Plenty of power: PJM continues to have far more power than it needs to meet reserve requirements. In 2021-22, it will have a 21.5 percent reserve, well above the 15.8 percent target. That reserve is actually down 2 points from the auction to supply power for 2020-21.

EVERY BILL GETS ITS DAY: The Senate Appropriations Committee will mark up its fiscal 2019 Energy-Water appropriation bill, which puts discretionary funding at \$43.8 billion — \$566 million more than this year's appropriation and \$7.2 billion more than the administration requested. The bill provides \$6.65 billion for the Office of Science — a \$390 million boost — and would increase funds for ARPA-E, which the White House has sought to eliminate. The committee will also consider so-called 302(b) allocations.

How it'll play out: Lamar Alexander is already eyeing how the Senate might move on the title in the coming weeks. "My guess would be two or three bills would come over from the House, Sen. [Mitch] McConnell could put those bills together, put them on the floor at once and allow amendments to them all," Alexander, who chairs the Energy and Water Subcommittee, told reporters. He added that 83 senators had provided input into his bill and that his subcommittee was able to address those suggestions "to some degree in almost every case."

If you go: The markup kicks off at 10:30 a.m. in 106 Dirksen.

BRIDENSTINE'S CLIMATE EVOLUTION COMPLETE: NASA Administrator Jim Bridenstine endorsed a major federal report that echoed the scientific consensus that human activity is the primary driver of climate change. Under questioning Wednesday from Sen. Brian Schatz, the former Oklahoma lawmaker said the National Climate Assessment "has clearly stated that it is extremely likely ... that human activity is the dominate cause of global warming and I have no reason to doubt the science that comes from that." Bridenstine agreed that his new position on the science constituted an evolution of his views and vowed to protect climate science work at the space agency. Keep in mind: The climate report in question is the same assessment Administrator Scott Pruitt sought to rebuff in his proposed "red team-blue team" debate. Watch the Bridenstine clip here.

WHEN WE LAST LEFT OUR HEROES: Top deputies across the Trump administration — including EPA Deputy Administrator Andrew Wheeler, Deputy Energy Secretary Dan Brouillette and USDA Deputy Secretary Stephen Censky — will meet today to try to resolve long-standing tensions over the Renewable Fuel Standard. The group will pick up where the president left off during his meeting on the topic last month, including the unfinished business of whether to allow biofuel exports to receive Renewable Identification Numbers, and whether to reallocate the gallons small refiners were exempted from blending under economic hardship waivers

from EPA. A refining source previously told Pro's Eric Wolff the USDA is trying to capitalize on the controversies surrounding EPA and has been pressing the agency to move quickly on allowing year-round sales of 15 percent ethanol fuel.

And with small refinery exemptions on the table, ME will be looking to see how Wednesday's news that Marathon Petroleum asked EPA for an exemption plays out. Ahead of today's meeting, the ethanol and biofuel trade association Growth Energy released a statement that called out the "flood of illegitimate waivers" and their resulting "'demand destruction' for U.S. farmers at a time when rural communities can least afford it."

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BIODIESEL WANTS MORE: Biodiesel producers think EPA should crank up the biodiesel requirement, not leave it flat, as POLITICO reported yesterday. "These rumored numbers are disappointing," Kurt Kovarik, VO for federal affairs for the National Biodiesel Board said in a statement. "Holding biomass based diesel flat is a missed opportunity to signal growth, which is what the RFS is intended to do. ... The easiest way to fix this and turn around growing dissatisfaction among rural voters is to provide growth to the biodiesel industry and increase this number."

STILL WORKING: John Cornyn, the Senate's No. 2 Republican, said he continues to have discussions on his legislation to overhaul the Renewable Fuel Standard "almost daily, certainly at the staff level," but wasn't sure the talks would bear fruit this year. "We keep making progress but the goal line still seems some ways away," he told reporters. "I'd love to solve the problem this year, but I just don't know."

CARB AND EPA HAVE A MEET: EPA and the California Air Resources Board met Wednesday to open negotiations on a single unified standard for fuel economy, following a White House meeting with automakers earlier in the month. EPA and the National Highway Traffic Safety Administration are threatening to try and revoke California's waiver, risking a lengthy court battle that could balkanize the auto market. "Today's conversations between Administration Officials and the California Air Resources Board were productive," EPA and the Department of Transportation said in a joint statement following the meeting. "We are fully supportive of an open dialogue that proceeds in an expedited manner. EPA and USDOT look forward to moving ahead on a joint proposed rule and receiving practical and productive feedback from all stakeholders."

MOVING QUICKLY: Senate EPW Chairman John Barrasso said Wednesday he's working to reach a time agreement with Democrats to speed floor consideration of a broad water infrastructure package S. 2800 (115) that cleared his panel unanimously earlier this week. Barrasso said it would "be great" to get the bill passed before the Fourth of July recess. His Democratic counterpart on the panel, Sen. Tom Carper, agreed it wouldn't take long for the Senate to complete its work on the bill: "I don't think we're going to need a week. We might need a day," he said.

N.J. GOV DEFENDS EXXON SETTLEMENT USE: New Jersey Gov. Phil Murphy defended using money from a \$225 million settlement with Exxon Mobil to help balance his state's budget. The Democratic governor told reporters he wasn't happy about the decision, but said the state had "been dealt a lousy hand." Environmental groups are appealing the settlement in the hopes of negotiating a new deal, Pro New Jersey's Danielle Muoio reports.

MAIL CALL! FINISH UP, FERC: A new letter from 16 Democratic senators calls on FERC to finish up its rule to allow distributed energy resources to connect to the grid. The letter, led by Sheldon Whitehouse and Ed Markey, concerns the integration of DERs and renewable aggregators into capacity and energy markets. "This

will enable consumers to play a central role in strengthening reliability and avoiding unnecessary costs by supplying localized energy services," the senators write. Read the [letter](#).

REPORT: TRIBAL COMMUNITIES AT RISK: The Clean Air Task Force published a new [brief](#) Wednesday on the adverse health effects from oil and gas pollution on tribal lands. The report, which looked at lands in New Mexico, North Dakota and Utah, found that Native Americans face disproportionate health risks from living near sources of pollutants, such as VOCs, NOx and resultant smog.

WHAT'S HAPPENING IN COLORADO? The Colorado Association of Commerce and Industry and the National Association of Manufacturers will host [an event](#) today with former Interior Secretary and Colorado Attorney General Gale Norton, focusing on the Boulder, Colo., [climate lawsuit](#) against energy manufacturers over their role in contributing to climate change. Ahead of the event, Independent Petroleum Association of America's Energy in Depth is launching a digital ad buy in the state on the opposition against the lawsuit. Watch [the video](#).

THANKS, CHARLIE: The Citizens for Responsible Energy Solutions will announce a \$185,000 [television and digital ad](#) buy today, thanking Massachusetts Gov. Charlie Baker for his actions addressing climate change and on clean energy solutions. The ads will run across the state and encourage residents to thank Baker for his leadership.

MOVER, SHAKER: Van Ness Feldman announced Wednesday that Jason Larrabee, former Interior principal deputy assistant secretary for fish and wildlife and parks, has joined the firm as a senior policy adviser.

QUICK HITS

- Critics: EPA can't keep prior fuel economy data in its blind spot, [Bloomberg BNA](#).
- Coal company claims bank did not allow it to make loan payments, [S&P Global](#).
- Zinke, Burgum tout innovation over regulation at oil conference, [Bismarck Tribune](#).
- How more carbon dioxide can make food less nutritious, [The New York Times](#).
- New documents show why Pruitt wanted a "campaign-style" media operation, [Mother Jones](#).

HAPPENING TODAY

10:30 a.m. — Senate Appropriations Committee [markup](#) of FY 2019 Energy-Water bill and consideration of 302(b) allocations, 106 Dirksen

11:00 a.m. — The National Oceanographic and Atmospheric Administration conference call briefing on the 2018 Atlantic hurricane season outlook, Lakeland, Fla.

12:45 p.m. — The Center for Strategic and International Studies [conference](#) on "Can Nuclear Compete?" 1616 Rhode Island Avenue

1:00 p.m. — The National Academy of Sciences' Polar Research Board [webinar](#) on "Shaping Scientific Committee on Antarctic Research's New Scientific Research Programs"

5:30 p.m. — U.S. Green Building Council holds [2018 Building Tech Forum](#), Boston

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<https://subscriber.politicopro.com/newsletters/morning-energy/2018/05/democrats-try-to-make-gop-pay-at-the-pump-227726>

Stories from POLITICO Pro

Democrats turn to GOP playbook in pinning gas prices on Trump [Back](#)

By Ben Lefebvre and Anthony Adragna | 05/24/2018 05:02 AM EDT

A spike in gasoline prices is giving Democrats a rare chance to borrow an old Republican tactic: pounding the occupant of the White House for motorists' pain at the pump.

They're unleashing the message with gusto against President Donald Trump, arguing that his foreign policy moves — including his push to reimpose sanctions on Iran — are to blame for a 50-cent-per-gallon surge in prices since he took office. Democrats also note that gas prices are the highest they've been in nearly four years despite the multibillion-dollar windfall that oil companies are set to receive from the GOP-backed tax bill.

"There's a straight line between Trump's policies and the price of gasoline," Rep. [Brian Schatz](#) (D-Hawaii) said in a brief interview, echoing a growing chorus of Democrats.

Voters are already feeling spooked: Forty-two percent of Americans won't take a road trip for summer vacation this year, a much lower number of people than last year, and many of them cited higher gas prices as the reason, according to a [survey](#) by gas station data company GasBuddy.

But the Democratic message faces a big obstacle, even as the party is riding a wave of optimism to the November midterms: Short of an energy crisis like the one former President Jimmy Carter faced in his 1980 reelection campaign, it's tough to convince voters the president is to blame for expensive gas, as GOP candidate Mitt Romney found out when he [tried to use it](#) against former President Barack Obama 2012.

Trump himself frequently criticized Obama for rising gas prices in the run-up to his reelection, [tweeting](#) weeks before the November 2012 vote, "Gas prices are at crazy levels--fire Obama!"

GOP lawmakers say they aren't surprised by the Democrats' efforts and they doubt voters will buy the attacks.

"Everyone's going to look for whatever political leverage they have going into an election," Sen. [Lisa Murkowski](#) (R-Alaska), chairwoman of the Energy and Natural Resources Committee, told POLITICO. "[But do] you think that Republicans created the high prices? No."

Still, Democrats believe that the jump in prices at the pump to [nearly \\$3 a gallon](#) will be a core pocketbook issue for voters on the Memorial Day weekend, which signals the beginning of the high-demand summer driving season.

"I'm going to be having town meetings at home over the course of the week. They'll be in rural areas. People drive a long way and they're not going to see this as an abstract issue," Sen. Ron Wyden (D-Ore.), the top Democrat on the Senate Finance Committee, told POLITICO.

Wyden's panel on Tuesday released a report highlighting the fact that the nation's four largest oil companies are poised to reap some \$15 billion in tax benefits over the next decade from the GOP's tax law, while gas prices reach their highest levels in years. Sen. Ed Markey (D-Mass.) released his own staff report this week using the same tactic, blaming higher prices on "President Trump's incoherent foreign policy."

To be sure, the White House has little control over gas prices, which largely track the movement in global crude oil market prices. Those prices have jumped more than 60 percent since last June, even as U.S. oil production climbs to record levels. Energy market watchers say the price rally is largely because OPEC and Russia have cooperated to sop up extra supplies in the international markets as demand continues to climb.

In addition, the collapse of Venezuela's oil industry, one of the biggest foreign suppliers to the U.S., has pushed prices up. Its oil exports have fallen by a third from January 2016 amid the country's political meltdown, and the Trump administration looks poised to place sanctions on the country's remaining exports.

"Even OPEC could not have hoped for this kind of result," said Kevin Book, analyst at energy consulting firm ClearView Energy.

But analysts are also saying that the White House may indeed be contributing to the rise in prices. Trump's appointment of John Bolton as his national security adviser has spooked oil traders who worry about tensions in the Middle East, said Citigroup energy analyst Eric Lee. Meanwhile, Trump's threat to place heavy sanctions on Iran could remove oil from the global markets, and his moving the U.S. embassy in Israel to Jerusalem may irritate Saudi Arabia enough that the kingdom won't increase its own oil flows to lessen the hurt on U.S. drivers.

"It's a combination of things, but what really took prices to the current level is U.S. policy or at least uncertainty," Lee said in an interview.

On Wednesday, a gaggle of Democratic senators including Markey, Minority Leader Chuck Schumer, Maria Cantwell (Wash.) and Bob Menendez (N.J.) held a news conference at an Exxon filling station near the Capitol to blame the price increase on Trump.

"It's well known that geopolitical instability drives oil prices, and gas prices, around the world higher and higher," said Menendez, ranking member of the Senate Foreign Relations Committee. "The Trump administration's chaotic approach to foreign policy not only served instability around the world, it certainly serves to drive up oil prices higher and higher."

When asked how any president could impact pump prices, Schumer told reporters that Trump should pressure OPEC member states and U.S. oil companies to lower their prices.

"He's very, very tight with the crown prince," Schumer said of Trump's relationship with the head of Saudi Arabia. "He's very, very tight with the head of the UAE, very, very tight, supposedly, with Putin. Why doesn't he use that? Oil companies just got a big tax break. Jawbone them."

Trump and Republicans still have one card to play, analysts said: releasing oil into the market from the Strategic Petroleum Reserve, which could tap down prices. That's precisely what some Democrats asked Obama to do in early 2012 when they faced rising retail prices.

"I wouldn't be surprised if the president were to consider the use of the SPR to dampen prices to play to his base for the midterm elections," said Gary Ross, head of global oil analytics at S&P Global Platts. "He might see

such as a signal that he cares, and one that might deflect some criticism for higher gasoline prices due to Iranian sanctions."

White House and Energy Department spokespeople declined to answer questions about whether the administration would consider an SPR release if prices continue to climb.

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Editor's note: A POLITICO partnership in China [Back](#)

By John F. Harris and Carrie Budoff Brown | 05/22/2018 05:04 AM EDT

POLITICO readers will see on our pages today something new and important: the first stories reflecting the publication's commitment to illuminating the U.S. relationship with China.

POLITICO, which began in 2007 as preeminently a Washington publication, in recent years has had a global focus. In Europe, we have the largest news operation covering the increasingly complex and consequential workings of the European Union. Including our growing coverage in the U.S., POLITICO's 250 reporters and editors are now in 15 cities spanning nine time zones. Increasingly, we have heard from our most engaged readers that the place to expand our focus is toward the Pacific, as the U.S. relationship with China — intensely competitive in some spheres, intertwined and mutually dependent in others — will hover over the political and policy debates of the next generation.

One part of our expanding coverage involves a content partnership we are unveiling today with the South China Morning Post. SCMP, based in Hong Kong, is the oldest newspaper in Asia and is the only independent English-language publication in the region. SCMP has an editorial staff of 300 in Asia, with about 40 reporters stationed in mainland China. Like POLITICO, the publication has global ambitions. Under the partnership, SCMP editors will have access to POLITICO stories to share with their readers, and POLITICO editors can draw on the SCMP stories we believe our readers will find most relevant. Over time, editors in both newsrooms will look for opportunities to combine resources on original stories produced in combination with POLITICO and SCMP journalists.

Our experience shows often that the most important stories are best illuminated by being reported simultaneously from multiple perspectives. That's what we do every day in the United States and in Europe. In combination with SCMP, we will now be able to do the same on important subjects — trade, finance, technology and national security among them — at the heart of U.S. interests in China.

And you can expect POLITICO's growth to continue. As our readers' interests reflect a global perspective, so will our publication's journalistic focus and resources.

John F. Harris
Editor in chief

Carrie Budoff Brown
Editor

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Senate subcommittee advances energy and water spending bill [Back](#)

By Eric Wolff | 05/22/2018 03:44 PM EDT

A Senate subcommittee today advanced the Energy-Water appropriations bill to the full committee.

The bill appropriates \$43.8 billion in discretionary funding, \$566 million more than last year's appropriation and \$7.2 billion more than the administration requested. Non-defense activities rose \$474 million, while defense activities were increased \$92 million.

The bill provides \$6.65 billion for the Office of Science, \$390 million more than the last appropriation. And it funds an increase for ARPA-E. It also maintains funding for a weatherization assistance program and includes an extra \$196 million for drought resilience, among other measures.

Chairman [Lamar Alexander](#) lamented that writing the bill was made more difficult because the committee "started with an unrealistic budget proposal from the administration."

Appropriators funded DOE's Office of Energy Efficiency and Renewable Energy at \$2.3 billion, the same level as the current appropriation, but \$1.6 billion than President Donald Trump's budget.

The bill also provides \$6.9 billion for the Army Corps of Engineers, the largest appropriation for the corps, according to Alexander. It makes full use of the Inland Waterways Trust Fund, specifically the top four priority projects.

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Emails show Pruitt pushing 'red team-blue team' climate debate [Back](#)

By Alex Guillén and Anthony Adragna | 05/15/2018 06:39 PM EDT

EPA Administrator Scott Pruitt had hoped at least twice last year to announce his plans for a controversial red team-blue team debate that would take aim at a federal assessment supporting climate change science, according to newly released emails.

Pruitt's contentious review was abandoned because of the White House's objections, but the [communications](#) reveal new details about how the process would have worked and who was influencing Pruitt.

Many scientists have complained that a red team-blue team style debate was a poor way to examine the scientific evidence that overwhelmingly supports the findings that humans are the primary driver behind climate change. But for Pruitt, who had once suggested the event might be televised, [the debate](#) appeared to be directed at rebuffing the Fourth National Climate Assessment.

That government-wide report issued on Nov. 3 contradicted many Trump administration political appointees who have questioned the connection between greenhouse gas pollution and global warming.

A draft press release that circulated on Nov. 4 among top EPA officials, and which was shared with Pruitt on Nov. 5, laid out the line of attack, according to the documents made public on Tuesday by EPA following a records request from the Natural Resources Defense Council.

"EPA is standing up a Red Team peer review of the report," they wrote, while the "blue team" would essentially be the federal assessment and its authors.

"A robust, transparent public peer review evaluation of climate change is something everyone should support," Pruitt said in the unreleased November statement. "Now is a perfect opportunity for the formation of a 'Red Team' exercise."

The draft release also included space for quotes from two prominent climate science critics: Steve Koonin, an Obama-era Energy Department official, and William Happer, a Princeton physicist who argues that increased carbon dioxide would benefit the planet.

The duo appear to have been tapped to help guide the red-team review together.

"Your contributions even in a small way to the validity of the red team blue team approach would be appreciated," Ryan Jackson, Pruitt's chief of staff, wrote to Koonin and Happer on Nov. 4.

In an email to POLITICO, Happer said the exercise was "badly needed," while Koonin, now the director of the Center for Urban Science and Progress at New York University, told POLITICO the National Climate Assessment was "demonstrably deficient on a number of points."

EPA did not return a request for comment.

Pruitt has previously said a Wall Street Journal piece written by Koonin in April 2017 calling for a similar EPA review of climate science was his inspiration for instigating the "red team" review.

The emails, however, show that Koonin and his allies began wooing Pruitt even before that. In an email more than a week before Koonin's WSJ piece ran, Dan Yergin, the Pulitzer-winning oil historian and vice chairman of IHS Markit who joined a board advising President Donald Trump, introduced Koonin by email to Jackson.

Pruitt and Koonin met April 28, and the emails show Koonin was closely involved in the process afterward.

Koonin sent EPA a "prospectus" outlining the exercise, and though much of it was redacted by EPA before its release, Koonin suggested timing the red team review to the National Climate Assessment, which was due out six months later. Doing so would "ensure that certainties and uncertainties in projections of future climates are accurately presented to the public and decision makers," he wrote.

A revised version of the prospectus was circulated by EPA to White House officials in July after news of Pruitt's plans had leaked.

"There are a lot of press reports about EPA's planning on this. None of it is being run by us. This seems to be getting out of control," wrote Michael Catanzaro, a top energy adviser to Trump who has since left the administration, a few days after receiving Koonin's proposal.

In late June, Liz Bowman, then a top EPA spokeswoman, questioned whether the exercise could be announced as early as July 5 or 6. But it wasn't until November that top Pruitt staffers begin circulating a draft press release on the announcement.

A draft of the announcement on Nov. 5 inspired a [lengthy email chain](#), which EPA redacted, that involved direct messages from Trump chief of staff John Kelly, strategic communications director Mercedes Schlapp, and former White House staff secretary Rob Porter.

Pruitt was [touting](#) his plans to launch the red team review as late as December. Emails early in that month [indicate](#) the agency's air chief, Bill Wehrum, would make the announcement on Dec. 12 while Pruitt traveled in Morocco. One message that included Jackson had the subject line of "Red Team/Blue Team Announcement Planned for Tuesday, Dec. 12."

The [New York Times](#) reported in March that Kelly and other top officials stopped the announcement in the fall, and Kelly's deputy Rick Dearborn met with Pruitt in mid-December to declare the plan dead.

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Sources: EPA, DOE, USDA to talk biofuels Thursday [Back](#)

By Eric Wolff | 05/22/2018 05:09 PM EDT

Top deputies for EPA and the departments of Energy and Agriculture will meet on Thursday to hash out changes to the Renewable Fuel Standard, sources in the ethanol industry and the Senate told POLITICO today.

EPA Deputy Administrator Andrew Wheeler, DOE Deputy Secretary Dan Brouillette and USDA Deputy Secretary Stephen Censky will try to resolve long-standing tensions over the program. None of the agencies responded to requests for comment.

The group will pick up the items left unfinished from the meeting with President Donald Trump last month, including whether to allow biofuel exports to receive Renewable Identification Numbers, and whether to reallocate the gallons small refiners were exempted from blending under the economic hardship waivers granted by EPA.

A refining industry source says that USDA has been pressing EPA to move quickly on allowing year-round sales of 15 percent ethanol fuel, and that USDA "is looking to jam EPA" on reallocating the gallons in the 2019 blending mandate.

"They are probably trying to take advantage of what they imagine to be Pruitt's weakened status these days," the source said. "Not sure it will work."

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EPA News Highlights 3.27.18

The Wall Street Journal: The EPA Cleans Up Its Science

The Environmental Protection Agency will no longer rely on “secret” scientific data to justify regulations, Administrator Scott Pruitt announced last week. EPA regulators and agency-funded researchers have become accustomed to producing unaccountable, dodgy science to advance a political agenda. The saga began in the early 1990s, when the EPA sought to regulate fine particulate matter known as PM2.5—dust and soot smaller than 2.5 microns in diameter. PM2.5 was not known to cause death, but by 1994 EPA-supported scientists had developed two lines of research purporting to show that it did. When the studies were run past the EPA’s Clean Air Science Advisory Committee, it balked. It believed the studies relied on dubious statistical analysis and asked for the underlying data. The EPA ignored the request. As the EPA prepared to issue its proposal for PM2.5 regulation in 1996, Congress stepped in. Rep. Thomas Bliley, chairman of the House Commerce Committee, sent a sharply written letter to Administrator Carol Browner asking for the data underlying studies. Ms. Browner delegated the response to a subordinate, who told Mr. Bliley the EPA saw “no useful purpose” in obtaining the data. Congress responded by inserting a provision in a 1998 bill requiring that data used to

support federal regulation must be made available to the public via the Freedom of Information Act. But it was hastily written, and a federal appellate court held the law unenforceable in 2003.

The Philadelphia Inquirer: EPA Settlement At Upper Merion Superfund Site Could Make Way For New Apartments

The U.S. Environmental Protection Agency said Monday that it had reached a \$1.8 million settlement with owners of a Superfund site in Upper Merion to clean up a portion of the area and pave the way for high-density housing... The EPA has been pushing to get Superfund site settlements completed to make way for development. EPA Administrator Scott Pruitt said in a recent interview with the Inquirer that some sites have been on the National Priorities List for decades. "The Superfund area, just to speak to it generally, seemed to be languishing as we arrived," said Pruitt, who took office in March 2017. "There didn't seem to be sufficient focus on providing leadership."

Casper Star Tribune: Washington To Hear From Coal Country In Clean Power Plan Meeting Tuesday In Wyoming

The federal agency responsible for the emissions-cutting Clean Power Plan will hold a public meeting today in Gillette, one of only three across the country this season as the agency plans to dissolve the Obama-era rule. The Clean Power Plan would have dealt a painful blow to one of Wyoming's key industries, and both its supporters and opponents are lining up to speak at the event in coal country. Many of the arguments will be familiar to those who have followed the development, and more recent devolution, of the Clean Power Plan. Supporters say regulations to cut carbon dioxide emissions are a necessary step towards combating climate change. Others will criticize the Environmental Protection Agency's regulation as an unwieldy and ineffective tool that targeted the coal industry.

The New York Times: Scott Pruitt's Attack on Science Would Paralyze the E.P.A.

Scott Pruitt, the administrator of the Environmental Protection Agency, has announced that he alone will decide what is and isn't acceptable science for the agency to use when developing policies that affect your health and the environment. It is his latest effort to cripple the agency. Mr. Pruitt, who as Oklahoma's attorney general described himself as "a leading advocate against the E.P.A.'s activist agenda," said in an interview published in The Daily Caller last week that he would no longer allow the agency to use studies that include nonpublic scientific data to develop rules to safeguard public health and prevent pollution. Opponents of the agency and of mainstream climate science call these studies "secret science." But that's simply not true. Peer review ensures that the analytic methodologies underlying studies funded by the agency are sound.

National News Highlights 3.27.18

The Wall Street Journal: U.S. Stocks Extend Gains As Trade Fears Ease

U.S. stocks edged higher, extending sharp gains from the previous session, as fears of a trade war between the U.S. and China continued to fade. The Dow Jones Industrial Average rose 23 points, or 0.1%, to 24226 shortly after the opening bell, while the S&P 500 climbed 0.1% and the tech-focused Nasdaq Composite added 0.2%. U.S. technology and financial stocks in the S&P 500 rose, with software firm Red Hat—after an upbeat earnings call—climbing 6.7% and BB&T rising 1.7%. Meanwhile, real estate stocks declined 0.6% and shares of health-care firms fell 0.2%. European stocks rebounded, with the Stoxx Europe 600 climbing 1.4%, more than recouping its Monday decline, which came amid rising tensions between multiple EU nations and Russia.

The New York Times: Despite Concerns, Census Will Ask Respondents If They Are U.S. Citizens

The 2020 census will ask respondents whether they are United States citizens, the Commerce Department announced Monday night, agreeing to a Trump administration request with highly charged political and social implications that many officials feared would result in a substantial undercount. In a statement released Monday, the Commerce Department, which oversees the Census Bureau, said Commerce Secretary Wilbur Ross had "determined that reinstatement of a citizenship question on the 2020 decennial census questionnaire is necessary to provide complete and accurate census block level data," allowing the department to accurately measure the portion of the population eligible to vote. But his decision immediately invited a legal challenge: Xavier Becerra, California's attorney general, plans to sue the Trump administration over the decision, a spokeswoman for Mr. Becerra said late Monday.

TRUMP TWEETS

The Wall Street Journal

<https://www.wsj.com/articles/the-epa-cleans-up-its-science-1522105331>

The EPA Cleans Up Its Science

By Steve Milloy, 3/26/18

The Environmental Protection Agency will no longer rely on “secret” scientific data to justify regulations, Administrator Scott Pruitt announced last week. EPA regulators and agency-funded researchers have become accustomed to producing unaccountable, dodgy science to advance a political agenda.

The saga began in the early 1990s, when the EPA sought to regulate fine particulate matter known as PM2.5—dust and soot smaller than 2.5 microns in diameter. PM2.5 was not known to cause death, but by 1994 EPA-supported scientists had developed two lines of research purporting to show that it did. When the studies were run past the EPA’s Clean Air Science Advisory Committee, it balked. It believed the studies relied on dubious statistical analysis and asked for the underlying data. The EPA ignored the request.

As the EPA prepared to issue its proposal for PM2.5 regulation in 1996, Congress stepped in. Rep. Thomas Bliley, chairman of the House Commerce Committee, sent a sharply written letter to Administrator Carol Browner asking for the data underlying studies. Ms. Browner delegated the response to a subordinate, who told Mr. Bliley the EPA saw “no useful purpose” in obtaining the data. Congress responded by inserting a provision in a 1998 bill requiring that data used to support federal regulation must be made available to the public via the Freedom of Information Act. But it was hastily written, and a federal appellate court held the law unenforceable in 2003.

The controversy went dormant until 2011, when a newly Republican Congress took exception to the Obama EPA’s antioal rules, which relied on the same PM2.5 studies. Again the EPA was defiant. Administrator Gina McCarthy refused requests for the data sets and defied a congressional subpoena.

Bills to resolve the problem died in the Senate. Democrats argued that requiring data for study replication is a threat to intellectual property and an invasion of medical privacy. In fact, the legislation would protect property by requiring a confidentiality agreement, and no personal medical data or information would have been released.

This sort of data is already routinely made public for research use. In 2012 I was desperate for a way around the Obama EPA’s secrecy on the PM2.5 issue, I found out in 2012 that I could get California death-certificate data in electronic form. The state’s Health Department calls this sort of data “Death Public Use Files.” They are scrubbed of all personal identifying and private medical information. Some of my colleagues used this data to prepare a 2017 study, which found PM2.5 was not associated with death.

The best part is that if you don’t believe the result, you can get the same data for yourself from California and run your own analysis. Then we’ll compare, contrast and debate. That’s how science is supposed to work.

It would be better if Congress would pass a law requiring data transparency. A future administrator may backslide on the steps Mr. Pruitt is taking. In the meantime, we have science in the sunshine.

The Philadelphia Inquirer

<http://www.philly.com/philly/health/epa-settlement-at-upper-merion-superfund-site-could-make-way-for-new-apartments-20180326.html>

EPA Settlement At Upper Merion Superfund Site Could Make Way For New Apartments

By Frank Kummer, 3/26/18

The U.S. Environmental Protection Agency said Monday that it had reached a \$1.8 million settlement with owners of a Superfund site in Upper Merion to clean up a portion of the area and pave the way for high-density housing.

The 50-acre site, known as Crater Resources, was contaminated by coking and steel operations that sent hazardous chemicals into soil and groundwater. The site contains four quarries spanning about 14 acres.

As part of the settlement, two of the quarries will be cleaned by their owner, Renaissance Land Associates, with the goal of development, according to the civil suit filing. Renaissance Land Associates II and III completed purchase of those quarries in 2001. The two limited liability companies are under the control of O'Neill Properties.

The site, near the Gulph Mills Golf Club, has a long history of contamination stretching to 1919, when the Alan Wood Steel Co. disposed of coking wastes in the quarries. The Keystone Coke Co. purchased that firm in 1977 and continued until 1980 dumping "waste ammonia liquor" at the site — a by-product of a steel plant in Conshohocken.

Tests showed the soil and quarries were contaminated with hazards including cyanide, arsenic, mercury, fluorene, ammonia, phenol and other volatile organic compounds. The EPA placed the site on the National Priorities List of Superfund Sites in 1992.

Cleanup began in 2009, including removal of contaminated soil and building of caps designed to prevent contaminants from leaching into groundwater and to reduce the threat to public health. Groundwater contamination is also being addressed.

Much of the site is already redeveloped, with projects including the Renaissance Park office park. A small part of the Gulph Mills Golf Club is on the southern part of the site.

More commercial and residential projects are proposed for the 5.15 acres that contain the two quarries. EPA spokesman Roy Seneca said both will be capped before anything is built.

Upper Merion Township planner Rob Loeper said representatives of Renaissance Land Associates presented a plan in 2016 to build up to 300 multi-family units at one end of the property, provided issues were resolved with the EPA. Loeper said the units would likely be apartments.

Last year, the EPA said the company could build residential units provided the protective caps were built. The company agreed to take the extra measures as part of the agreement reached Monday.

The EPA has been pushing to get Superfund site settlements completed to make way for development.

EPA Administrator Scott Pruitt said in a recent interview with the Inquirer that some sites have been on the National Priorities List for decades.

"The Superfund area, just to speak to it generally, seemed to be languishing as we arrived," said Pruitt, who took office in March 2017. "There didn't seem to be sufficient focus on providing leadership."

Casper Star Tribune

http://trib.com/business/energy/washington-to-hear-from-coal-country-in-clean-power-plan/article_c2e50386-0da1-5637-b03e-6b118af603b9.html

Washington To Hear From Coal Country In Clean Power Plan Meeting Tuesday In Wyoming

By Heather Richards, 3/26/18

The federal agency responsible for the emissions-cutting Clean Power Plan will hold a public meeting today in Gillette, one of only three across the country this season as the agency plans to dissolve the Obama-era rule.

The Clean Power Plan would have dealt a painful blow to one of Wyoming's key industries, and both its supporters and opponents are lining up to speak at the event in coal country.

Many of the arguments will be familiar to those who have followed the development, and more recent devolution, of the Clean Power Plan. Supporters say regulations to cut carbon dioxide emissions are a necessary step towards combating climate change. Others will criticize the Environmental Protection Agency's regulation as an unwieldy and ineffective tool that targeted the coal industry.

Some may criticize climate science, which identifies the burning of fossil fuels as the catalyst for human-caused climate change. EPA Administrator Scott Pruitt, along with others in the Trump administration, has expressed doubts about that conclusion, despite a widespread consensus of scientists from NASA to the University of Wyoming.

Finalized in 2015, the plan aimed to cut carbon dioxide emissions from the power sector by about 30 percent compared to 2005 levels. It would start taking effect in 2022 and ramp up to full implementation by 2030. But the plan was immediately tied up in court when states like Wyoming objected. Wyoming economists noted a potential 25 to 50 percent reduction in the state's coal production if the plan was implemented.

President Donald Trump's campaign promised to repeal the rule. The pledge sent a hopeful jolt through Wyoming's coal industry, which at the time suffered from contractions in coal demand, bankruptcies and layoffs.

Gillian Malone, a supporter of carbon dioxide emissions regulations and a member of the Powder River Basin Resource Council said in a statement Monday that the coal industry will continue to face market pressures with or without the Clean Power Plan, noting the closure of coal plants across the country in favor of natural gas and renewables.

"The Trump Administration's efforts to champion coal haven't been successful in bringing coal back, and cutting the Clean Power Plan won't save coal jobs and communities," Malone said.

Travis Deti, executive director of the Wyoming Mining Association noted that coal is juggling a number of challenges; however, the Clean Power Plan is a different beast.

"There is no doubt that we face headwinds," Deti said. "We face competition from natural gas and low gas prices. But they are separate issues. This is dealing with the regulatory burden on the industry."

The Clean Power Plan was designed to push coal out of the electricity mix, he said. A less-punitive approach that utilizes carbon capture technology would be preferable from industry's perspective, he said, noting Wyoming's work in capturing carbon dioxide and studying its alternative uses.

"You address the carbon dioxide. You solve it with technology, and you keep coal as a viable industry," he said.

Repealing the Clean Power Plan is not a simple step. The Environmental Protection Agency is required to go through a similar process in undoing or rewriting the Clean Power Plan as it did when crafting it.

Tuesday's meeting to discuss unraveling the plan is part of that public process.

Despite the contention over the Clean Power Plan, the Environmental Protection Agency is also hamstrung by an endangerment finding from 2009. It determined that carbon dioxide was a harmful emission that the agency had to regulate under the Clean Air Act. Under the finding, the agency will have to attempt to curb carbon dioxide emissions, of which coal-burning power plants are a key contributor.

The EPA originally only scheduled a single meeting in West Virginia coal country. It was heavily attended by both sides, and the department later scheduled three additional listening sessions in San Francisco, Kansas City, Missouri and Gillette.

Pruitt, the EPA administrator, will be visiting coal country later in the week to see Wyoming's industry first hand. The state's delegates to Washington applauded the visit.

"In our community, it doesn't take long to understand how the coal industry is a source of reliable and affordable energy, a provider of high paying jobs and an amazing steward of the land," said Sen. Mike Enzi, former mayor of Gillette. "If a picture is worth a thousand words, being on the ground is worth more than a thousand pictures."

The New York Times

<https://www.nytimes.com/2018/03/26/opinion/pruitt-attack-science-epa.html?rref=collection%2Ftimestopic%2FEnvironmental%20Protection%20Agency>

Scott Pruitt's Attack on Science Would Paralyze the E.P.A.

By Gina McCarthy and Janet G. McCabe, 3/26/18

Scott Pruitt, the administrator of the Environmental Protection Agency, has announced that he alone will decide what is and isn't acceptable science for the agency to use when developing policies that affect your health and the environment.

It is his latest effort to cripple the agency. Mr. Pruitt, who as Oklahoma's attorney general described himself as "a leading advocate against the E.P.A.'s activist agenda," said in an interview published in The Daily Caller last week that he would no longer allow the agency to use studies that include nonpublic scientific data to develop rules to safeguard public health and prevent pollution.

Opponents of the agency and of mainstream climate science call these studies "secret science." But that's simply not true. Peer review ensures that the analytic methodologies underlying studies funded by the agency are sound.

Some of those studies, particularly those that determine the effects of exposure to chemicals and pollution on health, rely on medical records that by law are confidential because of patient privacy policies. These studies summarize the analysis of raw data and draw conclusions based on that analysis. Other government agencies also use studies like these to develop policy and regulations, and to buttress and defend rules against legal challenges. They are, in fact, essential to making sound public policy.

The agency also relies on industry data to develop rules on chemical safety that is often kept confidential for business reasons.

For instance, foundational epidemiological research into the effects of air pollution on health by scientists at Harvard and the American Cancer Society established a clear connection between exposure to fine particles and increased mortality. This research led to further studies that supported the development of air quality standards and rules requiring industry to reduce pollution, improving health and reducing costs for millions of Americans.

Yet, because the personal health data associated with individuals participating in the studies were obtained with guarantees of confidentiality, Mr. Pruitt apparently would have argued for those studies to be tossed out had he been at the helm then.

The E.P.A. administrator simply can't make determinations on what science is appropriate in rule-making without calling into question decisions by other federal agencies based on similar kinds of studies, including on the safety and efficacy of pharmaceuticals, and research into cancer and other diseases. All rely to some extent on data from individual health records. If one agency rejects studies based on that sort of data, it could open up policies by other agencies based on similar studies to challenge.

Mr. Pruitt — who is a lawyer, not a scientist — told The Daily Caller: "We need to make sure their data and methodology are published as part of the record. Otherwise, it's not transparent. It's not objectively measured, and that's important."

We don't have the details of the new policy. But don't be fooled by this talk of transparency. He and some conservative members of Congress are setting up a nonexistent problem in order to prevent the E.P.A. from using the best available science. These studies adhere to all professional standards and meet every expectation of the scientific community in terms of peer review and scientific integrity. In the case of the air pollution studies, a rigorous follow-up examination was done by the Health Effects Institute, a nonprofit research group that studies air pollution. The institute corroborated the findings.

In taking this action, Mr. Pruitt appears to be adopting the policies of the Honest and Open New E.P.A. Science Treatment Act, a bill aimed at the agency. Conservative lawmakers have tried to pass versions of this bill before to shackle the agency's rule making. That law would prohibit the E.P.A. from taking any action "unless all scientific and technical information relied on to support" it is "specifically identified, and publicly available in a manner sufficient for independent analysis and substantial reproduction of research results."

An analysis of a similar bill introduced in 2015 by the Congressional Budget Office estimated it would cost \$250 million a year over the first few years to carry out because it would require new "data collection, correspondence and coordination with study authors, construction of a database to house necessary information, and public dissemination" of the information.

The analysis, which did not appear to take into account the cost of redacting details like trade secrets or personally identifiable medical information, also predicted the agency would reduce by half the number of studies it relies on in developing policies and regulations because of the cost of complying with the law.

"The quality of the agency's work would be compromised if that work relies on a significantly smaller collection of scientific studies," the analysis found.

This approach would undermine the nation's scientific credibility. And should Mr. Pruitt reconsider regulations now in place, this new policy could be a catalyst for the unraveling of existing public health protections if the studies used to justify them could no longer be used by E.P.A.

So why would he want to prohibit his own agency from using these studies? It's not a mystery. Time and again the Trump administration has put the profits of regulated industries over the health of the American people. Fundamental research on the effects of air pollution on public health has long been a target of those who oppose the E.P.A.'s air quality regulations, like the rule that requires power plants to reduce their mercury emissions.

Mr. Pruitt's goal is simple: No studies, no data, no rules. No climate science, for instance, means no climate policy.

If a tree falls in the forest, we know it makes a sound, even if people aren't there to hear it. When people are exposed to mercury, lead or other air- and waterborne pollutants, we know their health is affected, whether or not E.P.A. is allowed to use the scientific studies that confirm those health impacts.

This policy no doubt will become a matter of litigation. It will be interesting to hear the agency defend Mr. Pruitt's view that peer-reviewed studies that meet every standard for proper scientific method and integrity should not be considered in drafting policies and regulations that regulate threats to the environment.

Representative Bill Foster, a physicist and Democrat from Illinois, has argued that "scientists should set the standards for research, not politicians."

We couldn't agree more. Scientific research provides factual support for policies that reduce exposure to pollution and protect the American people from costly and dangerous illnesses and premature deaths. Under Mr. Pruitt's approach to science, the E.P.A. would be turning its back on its mandate to "protect human health and the environment."

The Wall Street Journal

<https://www.wsj.com/articles/asia-pacific-stocks-rise-on-lower-anxiety-about-global-trade-1522114769>

U.S. Stocks Extend Gains As Trade Fears Ease

By David Hodari, 3/27/18

U.S. stocks edged higher, extending sharp gains from the previous session, as fears of a trade war between the U.S. and China continued to fade.

The Dow Jones Industrial Average rose 23 points, or 0.1%, to 24226 shortly after the opening bell, while the S&P 500 climbed 0.1% and the tech-focused Nasdaq Composite added 0.2%.

U.S. technology and financial stocks in the S&P 500 rose, with software firm Red Hat—after an upbeat earnings call—climbing 6.7% and BB&T rising 1.7%.

Meanwhile, real estate stocks declined 0.6% and shares of health-care firms fell 0.2%.

European stocks rebounded, with the Stoxx Europe 600 climbing 1.4%, more than recouping its Monday decline, which came amid rising tensions between multiple EU nations and Russia.

Pharmaceuticals company GlaxoSmithKline climbed 5.7% higher after buying Novartis's 36.5% stake in its health-care joint venture for \$13 billion. Novartis shares rose 2.3%.

Shares in Dutch paint maker Akzo Nobel rose 2.9% after the company confirmed the \$12.6 billion sale of its specialty chemicals arm to a Carlyle Group-led consortium.

The upbeat trading in Europe echoed the sharp resurgence in equities markets in Asia-Pacific. That recovery began on Monday as the U.S. and China appeared to soften their stances over trade, after tensions between the two superpowers ratcheted up last week.

The two countries traded barbs after the Trump administration threatened \$60 billion of levies in addition to import tariffs on aluminum and steel. China responded with its own measures and the promise of immediate retaliation to further tariffs.

The friction was soothed Monday by the news that the two countries were in talks to improve U.S. access to Chinese markets.

That said, rules requiring foreign companies to form joint ventures with domestic partners in China were likely to be a sticking point, given that U.S. firms would be required to divulge trade secrets.

"Talk of these tariffs started off with the EU coming back strongly, saying they'd look at countermeasures, so the U.S. added in that caveat about allies and friends being exempted. [That exemption] has been extended to more and more countries and if its also extended to China it will look like it was a bit of saber-rattling to bring China to the table and that seems to have succeeded," Edward Park, a director at asset manager Brooks Macdonald, said.

Some analysts see stock swings as a consequence of investor pessimism and broadly healthy equity-market performance.

"The market seemed to be assuming the worst-case scenario. That they responded this way may reflect overall positioning because we've had quite a good run and that correction was a bit stronger than expected," said Geoffrey Yu, head of the U.K. investment office at UBS Wealth Management. "That volatility is going to continue due to [central bank] renormalization."

Rising inflation has prompted growing speculation about the Federal Reserve's interest-rate policy, with some analysts suggesting the central bank will increase rates four times in 2018 instead of the three times it has penciled in.

"If the Fed does change to four hikes this year, it's not that much of a concern unless it's in reaction to much higher inflation. A rapid rate hike cycle would concern investors," Brooks Macdonald's Mr. Park said.

Higher stock valuations may continue to drive volatility, according to Shane Oliver, head of investment strategy and chief economist at AMP Capital in Sydney. "You don't have a valuation buffer as you had in the past," he said.

In Asia, the Shanghai Composite Index closed 1.1% higher and the tech-heavy Shenzhen composite index rose 2.2%. Taiwan's Taixex climbed 1.4% and Hong Kong's Hang Seng increased by 0.8%.

Japan's Nikkei closed 2.7% higher, clawing back some more of Friday's 4.5% amid easing domestic political concerns. Former finance ministry official Nobuhisa Sagawa told parliament that Prime Minister Shinzo Abe didn't order officials to alter documents in a disputed sale of government land.

The New York Times

<https://www.nytimes.com/2018/03/26/us/politics/census-citizenship-question-trump.html>

Despite Concerns, Census Will Ask Respondents If They Are U.S. Citizens

By Emily Baumgaertner, 3/26/18

WASHINGTON — The 2020 census will ask respondents whether they are United States citizens, the Commerce Department announced Monday night, agreeing to a Trump administration request with highly charged political and social implications that many officials feared would result in a substantial undercount.

In a statement released Monday, the Commerce Department, which oversees the Census Bureau, said Commerce Secretary Wilbur Ross had "determined that reinstatement of a citizenship question on the 2020 decennial census questionnaire is necessary to provide complete and accurate census block level data," allowing the department to accurately measure the portion of the population eligible to vote.

But his decision immediately invited a legal challenge: Xavier Becerra, California's attorney general, plans to sue the Trump administration over the decision, a spokeswoman for Mr. Becerra said late Monday.

Critics of the change and experts in the Census Bureau itself have said that, amid a fiery immigration debate, the inclusion of a citizenship question could prompt immigrants who are in the country illegally not to respond. That would result in a severe undercount of the population — and, in turn, faulty data for government agencies and outside groups that rely on the census. The effects would also bleed into the redistricting of the House and state legislatures in the next decade.

The Justice Department had requested the change in December, arguing that asking participants about their citizenship status in the decennial census would help enforce Section 2 of the Voting Rights Act, which aims to prevent voting rights violations.

"The Justice Department is committed to free and fair elections for all Americans, and has sought reinstatement of the citizenship question on the census to fulfill that commitment," a Justice Department spokesman, Devin M. O'Malley, told The New York Times in February.

In a memorandum explaining his decision, Mr. Ross wrote that he had considered opponents' arguments about the potential to discourage responses.

"I find that the need for accurate citizenship data and the limited burden that the reinstatement of the citizenship question would impose outweigh fears about a potentially lower response rate," he wrote.

The decennial census generally included a citizenship inquiry for more than 100 years through 1950, according to the Commerce Department. And other, smaller population surveys, such as the Current Population Survey and the American Community Survey, continue to ask respondents about it.

But critics dismissed administration officials' reassurances.

"The census numbers provide the backbone for planning how our communities can grow and thrive in the coming decade," said Mr. Becerra. "What the Trump administration is requesting is not just alarming, it is an unconstitutional attempt to discourage an accurate census count."

Others argued that an undercount in regions with high immigrant populations would lead not only to unreliable data but also to unfair redistricting, to the benefit of Republicans.

"Adding this question will result in a bad census — deeply flawed population data that will skew public and private sector decisions to ensure equal representation, allocate government resources and anticipate economic growth opportunities — for the next 10 years," Vanita Gupta, the chief executive of the Leadership Conference on Civil and Human Rights and a deputy attorney general in the Obama administration, said in a statement Monday night. "The stakes are too high to allow this. We urge Congress to overturn this error in judgment."

The announcement of the citizenship question comes at a troublesome time for the Census Bureau: Its top two positions have interim occupants, and it has been forced to skip two of its three trial runs for the 2020 census because of funding shortfalls. If response rates for the census are low, critics worry that the bureau may be unable to adjust the data or deploy enough census takers to low-response communities.

The bureau is required to submit a final list of the 2020 census questions to Congress by the end of March.

TRUMP TWEETS

 Donald J. Trump Retweeted

**Donald J. Trump**  @realDonaldTrump · Mar 25

Because of the \$700 & \$716 Billion Dollars gotten to rebuild our Military, many jobs are created and our Military is again rich. Building a great Border Wall, with drugs (poison) and enemy combatants pouring into our Country, is all about National Defense. Build WALL through MI

 28K  27K  98K 

**Donald J. Trump**  @realDonaldTrump · 14h

Trade talks going on with numerous countries that, for many years, have not treated the United States fairly. In the end, all will be happy!

 14K  16K  73K 

**Donald J. Trump**  @realDonaldTrump · 18h

Great news! #MAGA

**CNBC Now**  @CNBCnow
BREAKING: Dow posts third best one-day point gain ever
cnb.cx/2G6ga8Y

 15K  13K  54K 

EPA News Highlights 3.27.18

The Wall Street Journal: The EPA Cleans Up Its Science

The Environmental Protection Agency will no longer rely on “secret” scientific data to justify regulations, Administrator Scott Pruitt announced last week. EPA regulators and agency-funded researchers have become accustomed to producing unaccountable, dodgy science to advance a political agenda. The saga began in the early 1990s, when the EPA sought to regulate fine particulate matter known as PM2.5—dust and soot smaller than 2.5 microns in diameter. PM2.5 was not known to cause death, but by 1994 EPA-supported scientists had developed two lines of research purporting to show that it did. When the studies were run past the EPA’s Clean Air Science Advisory Committee, it balked. It believed the studies relied on dubious statistical analysis and asked for the underlying data. The EPA ignored the request. As the EPA prepared to issue its proposal for PM2.5 regulation in 1996, Congress stepped in. Rep. Thomas Bliley, chairman of the House Commerce Committee, sent a sharply written letter to Administrator Carol Browner asking for the data underlying studies. Ms. Browner delegated the response to a subordinate, who told Mr. Bliley the EPA saw “no useful purpose” in obtaining the data. Congress responded by inserting a provision in a 1998 bill requiring that data used to support federal regulation must be made available to the public via the Freedom of Information Act. But it was hastily written, and a federal appellate court held the law unenforceable in 2003.

The Philadelphia Inquirer: EPA Settlement At Upper Merion Superfund Site Could Make Way For New Apartments

The U.S. Environmental Protection Agency said Monday that it had reached a \$1.8 million settlement with owners of a Superfund site in Upper Merion to clean up a portion of the area and pave the way for high-density housing... The EPA has been pushing to get Superfund site settlements completed to make way for development. EPA Administrator Scott Pruitt said in a recent interview with the Inquirer that some sites have been on the National Priorities List for decades. “The Superfund area, just to speak to it generally, seemed to be languishing as we arrived,” said Pruitt, who took office in March 2017. “There didn’t seem to be sufficient focus on providing leadership.”

Casper Star Tribune: Washington To Hear From Coal Country In Clean Power Plan Meeting Tuesday In Wyoming

The federal agency responsible for the emissions-cutting Clean Power Plan will hold a public meeting today in Gillette, one of only three across the country this season as the agency plans to dissolve the Obama-era rule. The Clean Power Plan would have dealt a painful blow to one of Wyoming’s key industries, and both its supporters and opponents are lining up to speak at the event in coal country. Many of the arguments will be familiar to those who have followed the development, and more recent devolution, of the Clean Power Plan. Supporters say regulations to cut carbon dioxide emissions are a necessary step towards combating climate change. Others will criticize the Environmental Protection Agency’s regulation as an unwieldy and ineffective tool that targeted the coal industry.

The New York Times: Scott Pruitt’s Attack on Science Would Paralyze the E.P.A.

Scott Pruitt, the administrator of the Environmental Protection Agency, has announced that he alone will decide what is and isn’t acceptable science for the agency to use when developing policies that affect your health and the environment. It is his latest effort to cripple the agency. Mr. Pruitt, who as Oklahoma’s attorney general described himself as “a leading advocate against the E.P.A.’s activist agenda,” said in an interview published in The Daily Caller last week that he would no longer allow the agency to use studies that include nonpublic scientific data to develop rules to safeguard public health and prevent pollution. Opponents of the agency and of mainstream climate science call these studies “secret science.” But that’s simply not true. Peer review ensures that the analytic methodologies underlying studies funded by the agency are sound.

National News Highlights 3.27.18

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1.7%. Meanwhile, real estate stocks declined 0.6% and shares of health-care firms fell 0.2%. European stocks rebounded, with the Stoxx Europe 600 climbing 1.4%, more than recouping its Monday decline, which came amid rising tensions between multiple EU nations and Russia.

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TRUMP TWEETS

The Wall Street Journal

<https://www.wsj.com/articles/the-epa-cleans-up-its-science-1522105331>

The EPA Cleans Up Its Science

By Steve Milloy, 3/26/18

The Environmental Protection Agency will no longer rely on “secret” scientific data to justify regulations, Administrator Scott Pruitt announced last week. EPA regulators and agency-funded researchers have become accustomed to producing unaccountable, dodgy science to advance a political agenda.

The saga began in the early 1990s, when the EPA sought to regulate fine particulate matter known as PM2.5—dust and soot smaller than 2.5 microns in diameter. PM2.5 was not known to cause death, but by 1994 EPA-supported scientists had developed two lines of research purporting to show that it did. When the studies were run past the EPA’s Clean Air Science Advisory Committee, it balked. It believed the studies relied on dubious statistical analysis and asked for the underlying data. The EPA ignored the request.

As the EPA prepared to issue its proposal for PM2.5 regulation in 1996, Congress stepped in. Rep. Thomas Bliley, chairman of the House Commerce Committee, sent a sharply written letter to Administrator Carol Browner asking for the data underlying studies. Ms. Browner delegated the response to a subordinate, who told Mr. Bliley the EPA saw “no useful purpose” in obtaining the data. Congress responded by inserting a provision in a 1998 bill requiring that data used to support federal regulation must be made available to the public via the Freedom of Information Act. But it was hastily written, and a federal appellate court held the law unenforceable in 2003.

The controversy went dormant until 2011, when a newly Republican Congress took exception to the Obama EPA’s antioal rules, which relied on the same PM2.5 studies. Again the EPA was defiant. Administrator Gina McCarthy refused requests for the data sets and defied a congressional subpoena.

Bills to resolve the problem died in the Senate. Democrats argued that requiring data for study replication is a threat to intellectual property and an invasion of medical privacy. In fact, the legislation would protect property by requiring a confidentiality agreement, and no personal medical data or information would have been released.

This sort of data is already routinely made public for research use. In 2012 I was desperate for a way around the Obama EPA’s secrecy on the PM2.5 issue, I found out in 2012 that I could get California death-certificate data in electronic form. The state’s Health Department calls this sort of data “Death Public Use Files.” They are scrubbed of all personal identifying and private medical information. Some of my colleagues used this data to prepare a 2017 study, which found PM2.5 was not associated with death.

The best part is that if you don't believe the result, you can get the same data for yourself from California and run your own analysis. Then we'll compare, contrast and debate. That's how science is supposed to work.

It would be better if Congress would pass a law requiring data transparency. A future administrator may backslide on the steps Mr. Pruitt is taking. In the meantime, we have science in the sunshine.

The Philadelphia Inquirer

<http://www.philly.com/philly/health/epa-settlement-at-upper-merion-superfund-site-could-make-way-for-new-apartments-20180326.html>

EPA Settlement At Upper Merion Superfund Site Could Make Way For New Apartments

By Frank Kummer, 3/26/18

The U.S. Environmental Protection Agency said Monday that it had reached a \$1.8 million settlement with owners of a Superfund site in Upper Merion to clean up a portion of the area and pave the way for high-density housing.

The 50-acre site, known as Crater Resources, was contaminated by coking and steel operations that sent hazardous chemicals into soil and groundwater. The site contains four quarries spanning about 14 acres.

As part of the settlement, two of the quarries will be cleaned by their owner, Renaissance Land Associates, with the goal of development, according to the civil suit filing. Renaissance Land Associates II and III completed purchase of those quarries in 2001. The two limited liability companies are under the control of O'Neill Properties.

The site, near the Gulph Mills Golf Club, has a long history of contamination stretching to 1919, when the Alan Wood Steel Co. disposed of coking wastes in the quarries. The Keystone Coke Co. purchased that firm in 1977 and continued until 1980 dumping "waste ammonia liquor" at the site — a by-product of a steel plant in Conshohocken.

Tests showed the soil and quarries were contaminated with hazards including cyanide, arsenic, mercury, fluorene, ammonia, phenol and other volatile organic compounds. The EPA placed the site on the National Priorities List of Superfund Sites in 1992.

Cleanup began in 2009, including removal of contaminated soil and building of caps designed to prevent contaminants from leaching into groundwater and to reduce the threat to public health. Groundwater contamination is also being addressed.

Much of the site is already redeveloped, with projects including the Renaissance Park office park. A small part of the Gulph Mills Golf Club is on the southern part of the site.

More commercial and residential projects are proposed for the 5.15 acres that contain the two quarries. EPA spokesman Roy Seneca said both will be capped before anything is built.

Upper Merion Township planner Rob Loeper said representatives of Renaissance Land Associates presented a plan in 2016 to build up to 300 multi-family units at one end of the property, provided issues were resolved with the EPA. Loeper said the units would likely be apartments.

Last year, the EPA said the company could build residential units provided the protective caps were built. The company agreed to take the extra measures as part of the agreement reached Monday.

The EPA has been pushing to get Superfund site settlements completed to make way for development.

EPA Administrator Scott Pruitt said in a recent interview with the Inquirer that some sites have been on the National Priorities List for decades.

“The Superfund area, just to speak to it generally, seemed to be languishing as we arrived,” said Pruitt, who took office in March 2017. “There didn’t seem to be sufficient focus on providing leadership.”

Casper Star Tribune

http://trib.com/business/energy/washington-to-hear-from-coal-country-in-clean-power-plan/article_c2e50386-0da1-5637-b03e-6b118af603b9.html

Washington To Hear From Coal Country In Clean Power Plan Meeting Tuesday In Wyoming

By Heather Richards, 3/26/18

The federal agency responsible for the emissions-cutting Clean Power Plan will hold a public meeting today in Gillette, one of only three across the country this season as the agency plans to dissolve the Obama-era rule.

The Clean Power Plan would have dealt a painful blow to one of Wyoming’s key industries, and both its supporters and opponents are lining up to speak at the event in coal country.

Many of the arguments will be familiar to those who have followed the development, and more recent devolution, of the Clean Power Plan. Supporters say regulations to cut carbon dioxide emissions are a necessary step towards combating climate change. Others will criticize the Environmental Protection Agency’s regulation as an unwieldy and ineffective tool that targeted the coal industry.

Some may criticize climate science, which identifies the burning of fossil fuels as the catalyst for human-caused climate change. EPA Administrator Scott Pruitt, along with others in the Trump administration, has expressed doubts about that conclusion, despite a widespread consensus of scientists from NASA to the University of Wyoming.

Finalized in 2015, the plan aimed to cut carbon dioxide emissions from the power sector by about 30 percent compared to 2005 levels. It would start taking effect in 2022 and ramp up to full implementation by 2030. But the plan was immediately tied up in court when states like Wyoming objected. Wyoming economists noted a potential 25 to 50 percent reduction in the state’s coal production if the plan was implemented.

President Donald Trump’s campaign promised to repeal the rule. The pledge sent a hopeful jolt through Wyoming’s coal industry, which at the time suffered from contractions in coal demand, bankruptcies and layoffs.

Gillian Malone, a supporter of carbon dioxide emissions regulations and a member of the Powder River Basin Resource Council said in a statement Monday that the coal industry will continue to face market pressures with or without the Clean Power Plan, noting the closure of coal plants across the country in favor of natural gas and renewables.

“The Trump Administration’s efforts to champion coal haven’t been successful in bringing coal back, and cutting the Clean Power Plan won’t save coal jobs and communities,” Malone said.

Travis Deti, executive director of the Wyoming Mining Association noted that coal is juggling a number of challenges; however, the Clean Power Plan is a different beast.

“There is no doubt that we face headwinds,” Deti said. “We face competition from natural gas and low gas prices. But they are separate issues. This is dealing with the regulatory burden on the industry.”

The Clean Power Plan was designed to push coal out of the electricity mix, he said. A less-punitive approach that utilizes carbon capture technology would be preferable from industry's perspective, he said, noting Wyoming's work in capturing carbon dioxide and studying its alternative uses.

"You address the carbon dioxide. You solve it with technology, and you keep coal as a viable industry," he said.

Repealing the Clean Power Plan is not a simple step. The Environmental Protection Agency is required to go through a similar process in undoing or rewriting the Clean Power Plan as it did when crafting it.

Tuesday's meeting to discuss unraveling the plan is part of that public process.

Despite the contention over the Clean Power Plan, the Environmental Protection Agency is also hamstrung by an endangerment finding from 2009. It determined that carbon dioxide was a harmful emission that the agency had to regulate under the Clean Air Act. Under the finding, the agency will have to attempt to curb carbon dioxide emissions, of which coal-burning power plants are a key contributor.

The EPA originally only scheduled a single meeting in West Virginia coal country. It was heavily attended by both sides, and the department later scheduled three additional listening sessions in San Francisco, Kansas City, Missouri and Gillette.

Pruitt, the EPA administrator, will be visiting coal country later in the week to see Wyoming's industry first hand. The state's delegates to Washington applauded the visit.

"In our community, it doesn't take long to understand how the coal industry is a source of reliable and affordable energy, a provider of high paying jobs and an amazing steward of the land," said Sen. Mike Enzi, former mayor of Gillette. "If a picture is worth a thousand words, being on the ground is worth more than a thousand pictures."

The New York Times

<https://www.nytimes.com/2018/03/26/opinion/pruitt-attack-science-epa.html?rref=collection%2Ftimestopic%2FEnvironmental%20Protection%20Agency>

Scott Pruitt's Attack on Science Would Paralyze the E.P.A.

By Gina McCarthy and Janet G. McCabe, 3/26/18

Scott Pruitt, the administrator of the Environmental Protection Agency, has announced that he alone will decide what is and isn't acceptable science for the agency to use when developing policies that affect your health and the environment.

It is his latest effort to cripple the agency. Mr. Pruitt, who as Oklahoma's attorney general described himself as "a leading advocate against the E.P.A.'s activist agenda," said in an interview published in The Daily Caller last week that he would no longer allow the agency to use studies that include nonpublic scientific data to develop rules to safeguard public health and prevent pollution.

Opponents of the agency and of mainstream climate science call these studies "secret science." But that's simply not true. Peer review ensures that the analytic methodologies underlying studies funded by the agency are sound.

Some of those studies, particularly those that determine the effects of exposure to chemicals and pollution on health, rely on medical records that by law are confidential because of patient privacy policies. These studies summarize the analysis of raw data and draw conclusions based on that analysis. Other government agencies also use studies like these to develop policy and regulations, and to buttress and defend rules against legal challenges. They are, in fact, essential to making sound public policy.

The agency also relies on industry data to develop rules on chemical safety that is often kept confidential for business reasons.

For instance, foundational epidemiological research into the effects of air pollution on health by scientists at Harvard and the American Cancer Society established a clear connection between exposure to fine particles and increased mortality. This research led to further studies that supported the development of air quality standards and rules requiring industry to reduce pollution, improving health and reducing costs for millions of Americans.

Yet, because the personal health data associated with individuals participating in the studies were obtained with guarantees of confidentiality, Mr. Pruitt apparently would have argued for those studies to be tossed out had he been at the helm then.

The E.P.A. administrator simply can't make determinations on what science is appropriate in rule-making without calling into question decisions by other federal agencies based on similar kinds of studies, including on the safety and efficacy of pharmaceuticals, and research into cancer and other diseases. All rely to some extent on data from individual health records. If one agency rejects studies based on that sort of data, it could open up policies by other agencies based on similar studies to challenge.

Mr. Pruitt — who is a lawyer, not a scientist — told The Daily Caller: "We need to make sure their data and methodology are published as part of the record. Otherwise, it's not transparent. It's not objectively measured, and that's important."

We don't have the details of the new policy. But don't be fooled by this talk of transparency. He and some conservative members of Congress are setting up a nonexistent problem in order to prevent the E.P.A. from using the best available science. These studies adhere to all professional standards and meet every expectation of the scientific community in terms of peer review and scientific integrity. In the case of the air pollution studies, a rigorous follow-up examination was done by the Health Effects Institute, a nonprofit research group that studies air pollution. The institute corroborated the findings.

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"The quality of the agency's work would be compromised if that work relies on a significantly smaller collection of scientific studies," the analysis found.

This approach would undermine the nation's scientific credibility. And should Mr. Pruitt reconsider regulations now in place, this new policy could be a catalyst for the unraveling of existing public health protections if the studies used to justify them could no longer be used by E.P.A.

So why would he want to prohibit his own agency from using these studies? It's not a mystery. Time and again the Trump administration has put the profits of regulated industries over the health of the American people. Fundamental research on the effects of air pollution on public health has long been a target of those who oppose the E.P.A.'s air quality regulations, like the rule that requires power plants to reduce their mercury emissions.

Mr. Pruitt's goal is simple: No studies, no data, no rules. No climate science, for instance, means no climate policy.

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This policy no doubt will become a matter of litigation. It will be interesting to hear the agency defend Mr. Pruitt's view that peer-reviewed studies that meet every standard for proper scientific method and integrity should not be considered in drafting policies and regulations that regulate threats to the environment.

Representative Bill Foster, a physicist and Democrat from Illinois, has argued that "scientists should set the standards for research, not politicians."

We couldn't agree more. Scientific research provides factual support for policies that reduce exposure to pollution and protect the American people from costly and dangerous illnesses and premature deaths. Under Mr. Pruitt's approach to science, the E.P.A. would be turning its back on its mandate to "protect human health and the environment."

The Wall Street Journal

<https://www.wsj.com/articles/asia-pacific-stocks-rise-on-lower-anxiety-about-global-trade-1522114769>

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By David Hodari, 3/27/18

U.S. stocks edged higher, extending sharp gains from the previous session, as fears of a trade war between the U.S. and China continued to fade.

The Dow Jones Industrial Average rose 23 points, or 0.1%, to 24226 shortly after the opening bell, while the S&P 500 climbed 0.1% and the tech-focused Nasdaq Composite added 0.2%.

U.S. technology and financial stocks in the S&P 500 rose, with software firm Red Hat—after an upbeat earnings call—climbing 6.7% and BB&T rising 1.7%.

Meanwhile, real estate stocks declined 0.6% and shares of health-care firms fell 0.2%.

European stocks rebounded, with the Stoxx Europe 600 climbing 1.4%, more than recouping its Monday decline, which came amid rising tensions between multiple EU nations and Russia.

Pharmaceuticals company GlaxoSmithKline climbed 5.7% higher after buying Novartis's 36.5% stake in its health-care joint venture for \$13 billion. Novartis shares rose 2.3%.

Shares in Dutch paint maker Akzo Nobel rose 2.9% after the company confirmed the \$12.6 billion sale of its specialty chemicals arm to a Carlyle Group-led consortium.

The upbeat trading in Europe echoed the sharp resurgence in equities markets in Asia-Pacific. That recovery began on Monday as the U.S. and China appeared to soften their stances over trade, after tensions between the two superpowers ratcheted up last week.

The two countries traded barbs after the Trump administration threatened \$60 billion of levies in addition to import tariffs on aluminum and steel. China responded with its own measures and the promise of immediate retaliation to further tariffs.

The friction was soothed Monday by the news that the two countries were in talks to improve U.S. access to Chinese markets.

That said, rules requiring foreign companies to form joint ventures with domestic partners in China were likely to be a sticking point, given that U.S. firms would be required to divulge trade secrets.

“Talk of these tariffs started off with the EU coming back strongly, saying they’d look at countermeasures, so the U.S. added in that caveat about allies and friends being exempted. [That exemption] has been extended to more and more countries and if its also extended to China it will look like it was a bit of saber-rattling to bring China to the table and that seems to have succeeded,” Edward Park, a director at asset manager Brooks Macdonald, said.

Some analysts see stock swings as a consequence of investor pessimism and broadly healthy equity-market performance.

“The market seemed to be assuming the worst-case scenario. That they responded this way may reflect overall positioning because we’ve had quite a good run and that correction was a bit stronger than expected,” said Geoffrey Yu, head of the U.K. investment office at UBS Wealth Management. “That volatility is going to continue due to [central bank] renormalization.”

Rising inflation has prompted growing speculation about the Federal Reserve’s interest-rate policy, with some analysts suggesting the central bank will increase rates four times in 2018 instead of the three times it has penciled in.

“If the Fed does change to four hikes this year, it’s not that much of a concern unless it’s in reaction to much higher inflation. A rapid rate hike cycle would concern investors,” Brooks Macdonald’s Mr. Park said.

Higher stock valuations may continue to drive volatility, according to Shane Oliver, head of investment strategy and chief economist at AMP Capital in Sydney. “You don’t have a valuation buffer as you had in the past,” he said.

In Asia, the Shanghai Composite Index closed 1.1% higher and the tech-heavy Shenzhen composite index rose 2.2%. Taiwan’s Taixex climbed 1.4% and Hong Kong’s Hang Seng increased by 0.8%.

Japan’s Nikkei closed 2.7% higher, clawing back some more of Friday’s 4.5% amid easing domestic political concerns. Former finance ministry official Nobuhisa Sagawa told parliament that Prime Minister Shinzo Abe didn’t order officials to alter documents in a disputed sale of government land.

The New York Times

<https://www.nytimes.com/2018/03/26/us/politics/census-citizenship-question-trump.html>

Despite Concerns, Census Will Ask Respondents If They Are U.S. Citizens

By Emily Baumgaertner, 3/26/18

WASHINGTON — The 2020 census will ask respondents whether they are United States citizens, the Commerce Department announced Monday night, agreeing to a Trump administration request with highly charged political and social implications that many officials feared would result in a substantial undercount.

In a statement released Monday, the Commerce Department, which oversees the Census Bureau, said Commerce Secretary Wilbur Ross had “determined that reinstatement of a citizenship question on the 2020 decennial census

questionnaire is necessary to provide complete and accurate census block level data,” allowing the department to accurately measure the portion of the population eligible to vote.

But his decision immediately invited a legal challenge: Xavier Becerra, California’s attorney general, plans to sue the Trump administration over the decision, a spokeswoman for Mr. Becerra said late Monday.

Critics of the change and experts in the Census Bureau itself have said that, amid a fiery immigration debate, the inclusion of a citizenship question could prompt immigrants who are in the country illegally not to respond. That would result in a severe undercount of the population — and, in turn, faulty data for government agencies and outside groups that rely on the census. The effects would also bleed into the redistricting of the House and state legislatures in the next decade.

The Justice Department had requested the change in December, arguing that asking participants about their citizenship status in the decennial census would help enforce Section 2 of the Voting Rights Act, which aims to prevent voting rights violations.

“The Justice Department is committed to free and fair elections for all Americans, and has sought reinstatement of the citizenship question on the census to fulfill that commitment,” a Justice Department spokesman, Devin M. O’Malley, told The New York Times in February.

In a memorandum explaining his decision, Mr. Ross wrote that he had considered opponents’ arguments about the potential to discourage responses.

“I find that the need for accurate citizenship data and the limited burden that the reinstatement of the citizenship question would impose outweigh fears about a potentially lower response rate,” he wrote.

The decennial census generally included a citizenship inquiry for more than 100 years through 1950, according to the Commerce Department. And other, smaller population surveys, such as the Current Population Survey and the American Community Survey, continue to ask respondents about it.

But critics dismissed administration officials’ reassurances.

“The census numbers provide the backbone for planning how our communities can grow and thrive in the coming decade,” said Mr. Becerra. “What the Trump administration is requesting is not just alarming, it is an unconstitutional attempt to discourage an accurate census count.”

Others argued that an undercount in regions with high immigrant populations would lead not only to unreliable data but also to unfair redistricting, to the benefit of Republicans.

“Adding this question will result in a bad census — deeply flawed population data that will skew public and private sector decisions to ensure equal representation, allocate government resources and anticipate economic growth opportunities — for the next 10 years,” Vanita Gupta, the chief executive of the Leadership Conference on Civil and Human Rights and a deputy attorney general in the Obama administration, said in a statement Monday night. “The stakes are too high to allow this. We urge Congress to overturn this error in judgment.”

The announcement of the citizenship question comes at a troublesome time for the Census Bureau: Its top two positions have interim occupants, and it has been forced to skip two of its three trial runs for the 2020 census because of funding shortfalls. If response rates for the census are low, critics worry that the bureau may be unable to adjust the data or deploy enough census takers to low-response communities.

The bureau is required to submit a final list of the 2020 census questions to Congress by the end of March.

TRUMP TWEETS



Donald J. Trump Retweeted



Donald J. Trump

@realDonaldTrump · Mar 25

Because of the \$700 & \$716 Billion Dollars gotten to rebuild our Military, many jobs are created and our Military is again rich. Building a great Border Wall, with drugs (poison) and enemy combatants pouring into our Country, is all about National Defense. Build WALL through MI

28K

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Trade talks going on with numerous countries that, for many years, have not treated the United States fairly. In the end, all will be happy!

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BREAKING: Dow posts third best one-day point gain ever
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Sent: 3/27/2018 9:47:20 AM
To: Dravis, Samantha [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ece53f0610054e669d9dffe0b3a842df-Dravis, Sam]
Subject: Morning Energy: How Trump favored Texas over Puerto Rico — EPA holds final 'listening session' on climate rule repeal — DOE gets pushback on 'market-based' efficiency rules

By Kelsey Tamborrino | 03/27/2018 05:45 AM EDT

With help from Nick Juliano and Eric Wolff

HOW TRUMP FAVORED TEXAS OVER PUERTO RICO: A double standard has emerged in President Donald Trump's handling of disaster relief efforts in Texas versus in Puerto Rico, POLITICO's Danny Vinik found in a new investigation out today. A review of public documents, never-before-published FEMA records and interviews with more than 50 people involved with disaster response show an imbalance that tracks with one core person's attention: the president.

Behind the scenes, people with direct knowledge of Trump's comments said the president was focused less on the details of the relief effort than on public appearances, repeatedly using conference calls and meetings to direct FEMA Administrator Brock Long to spend more time on television touting his agency's progress. And as the administration moves to rebuild Texas and Puerto Rico, the contrast in the Trump administration's responses are taking on new dimensions, Danny writes.

During the first nine days after Hurricane Harvey, FEMA provided 5.1 million meals, 4.5 million liters of water and over 20,000 tarps to Houston; but in the same period, it delivered just 1.6 million meals, 2.8 million liters of water and roughly 5,000 tarps to Puerto Rico.

The federal government has already begun funding projects to help make permanent repairs to Texas infrastructure. But in Puerto Rico, that funding has yet to begin, as details of an experimental funding system are negotiated with Trump's Office of Management and Budget — an experimental formula that multiple congressional staffers and people with knowledge said White House officials told Puerto Rico Gov. Ricardo Rosselló to agree to if wanted money for his island. Read it [here](#).

GOOD TUESDAY MORNING! I'm your host Kelsey Tamborrino. Andrew Fasoli of the American Chemistry Council was fastest in identifying former first lady Helen Herron Taft as the first to plant the saplings of the Japanese cherry trees in D.C., which now surround the Tidal Basin and Capitol grounds. For today: Who is the only former Cabinet member to be selected as "designated survivor" twice during past State of the Union addresses? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](#), [@Morning_Energy](#) and [@POLITICOPro](#).

POLITICO Space is our new, free weekly briefing on the policies and personalities shaping the second space age in Washington and beyond. **Sign up today to start receiving the newsletter right at launch on April 6.** *Presented by Boeing.*

OFFSHORE ORCHESTRATION: Interior Secretary Ryan Zinke's meeting with Florida Gov. Rick Scott at the Tallahassee airport back in January — after which Zinke declared the state "off the table" for expanded offshore drilling — wasn't as spontaneous as it first seemed, POLITICO Florida's Matt Dixon reports. Scott's office cast the announcement as a hastily arranged example of the governor's ability to influence Trump administration policy, all while dismissing any suggestion that the move had anything to do with his expected

entrance into this year's Senate race. But Matt got ahold of 1,200 documents — including emails, text messages and phone records — that show Interior officials and Scott aides had been coordinating days ahead of the meeting. More from Matt [here](#).

ONE LAST TIME: EPA will hold its final "[listening session](#)" today in Gillette, Wyo., on the proposed repeal of the Clean Power Plan. A preliminary list of speakers shows a range of voices will attend the session — including various speakers from Cloud Peak Energy, a firm headquartered in Gillette that mines coal in the Powder River Basin, and the Rocky Mountain Coal Mining Institute. Sens. [John Barrasso](#) and [Mike Enzi](#) — who have previously [applauded](#) the proposed repeal — are also scheduled to speak. Barrasso plans to emphasize how the rule would hurt energy workers in his state, an aide tells ME, and will highlight bipartisan [efforts](#) in Congress to promote carbon capture technologies.

On the other side, advocates from the American Lung Association, Moms Clean Air Force and National Wildlife Federation will speak. Moms Clean Air Force will highlight EPA's "legal and moral obligation" to action on greenhouse gas emissions, according to the group's talking points. Administrator Scott Pruitt won't be there today, but he is set to [make a separate trip](#) to Wyoming this week to visit the state's coal-mining operations.

WHERE'S PERRY? Energy Secretary Rick Perry is in California today, where he'll tour the Lawrence Berkeley National Laboratory and hold an all-hands meeting with the facility's employees at 3 p.m. The trip follows Perry's [visit](#) to the Lawrence Livermore National Lab on Monday.

REFINERS: MORE THAN EPA'S PES WAIVER IS NEEDED TO SURVIVE THE RFS : Two Philadelphia-area refiners said a consent decree between EPA and Philadelphia Energy Services was an acknowledgment by the government that the Renewable Fuel Standard is broken and needs significant reform. PBF told DOJ, which took comments on the agreement until Monday, that "one-time forgiveness of RIN obligations fails to remedy the root cause for the bankruptcy and provides the wrong incentives to the [Renewable Identification Number] market." Monroe said the agreement "is a reflection, an acknowledgment, of the economic harm caused by the RFS program." Both of them were joined by refining giant Valero in arguing that the program needs to be changed more radically than just the one-time waiver offered by EPA. Ethanol producers said in their own earlier comments that they oppose the consent decree and reject the idea that PES' bankruptcy could be blamed on the RFS.

Read Monroe's comments [here](#), PBF's [here](#) and Valero's [here](#).

JUDGE LEAVES SOLAR TARIFFS IN PLACE: A judge in the U.S. Court of International Trade on Monday rejected requests for a stay of U.S. solar tariffs pending an appeal. Silfab Solar, Heliene, Canadian Solar (USA) and Canadian Solar Solutions had been hoping the court would block the 30 percent tariff the Trump administration imposed on imported solar panel and solar cells last month. The court had rejected their motions for a temporary restraining order and preliminary injunction earlier in March.

TRADE DEADLINE: Can appliances be regulated like automobiles? That's the question the Energy Department posed last year in an effort to apply Trump's regulatory reform goals to its efficiency standards program, and responses were due by Monday. DOE asked for input on several potential reforms, including enforcing efficiency rules similar to the Corporate Average Fuel Economy program, which averages performance across an automakers' entire vehicle fleet. DOE's request for information also pointed to state-level renewable portfolio standards or California's cap-and-trade program as examples of the ideas it was considering.

But those "market based" approaches probably won't work, numerous commenters told DOE. The main barrier is "anti-backsliding" provisions in the Energy Policy and Conservation Act, which prevents DOE from weakening existing requirements. Current law "precludes the use of averaging, credit-trading, or providing feebates as an alternative to minimum energy-efficiency requirements," the Alliance to Save Energy, a pro-

efficiency group, wrote in its [comments](#). A coalition of industry trade associations agreed that such mechanisms would be unlikely to work; in their [comments](#), the groups, including the Air-Conditioning, Heating and Refrigeration Institute and the Association of Home Appliance Manufacturers, urged DOE "to focus its limited resources on reforming the existing program" through changes to a separate process improvement rule. Read additional comments from [AHRI](#), the [Natural Resources Defense Council](#), [Lennox International](#), [E2](#), [Whirlpool](#), the [Edison Electric Institute](#), [Dow](#), [Southern Company](#) and the [California Energy Commission](#).

DEFENDING EPA'S SCIENCE: Former EPA Administrator Gina McCarthy and Janet McCabe, the former acting assistant administrator of the Office of Air and Radiation, [wrote an op-ed](#) in The New York Times Monday defending EPA's use of scientific studies to support its regulations. Conservatives have long accused the agency of relying on "secret science," and Pruitt says he plans to start relying only on publicly available data. But McCarthy and McCabe say that would deprive EPA of valuable research based on individuals' private health records or proprietary information that businesses want to protect. "Opponents of the agency and of mainstream climate science call these studies 'secret science,'" the pair writes. "But that's simply not true."

BSEE: WE COULD USE YOUR HELP: Interior is calling on its career staff to come up with ways to speed up the offshore drilling permitting process, Pro's Ben Lefebvre [reports](#). The Bureau of Safety and Environmental Enforcement will assemble teams of employees across departments to periodically review the process and look for ways to improve its efficiency across the agency, BSEE said Monday.

MAIL CALL! CALLING OUT WEAK LEASE SALES: House Natural Resources ranking member [Raúl Grijalva](#) sent a [letter](#) to Zinke Monday, requesting additional information on his agency's budget priorities. Grijalva also asked Zinke to keep royalty rates for offshore drilling development stable, in light of [weak demand](#) for lease sales.

— **Sens. [Sheldon Whitehouse](#) and [Brian Schatz](#)** wrote to the CEOs of [BlackRock](#) and [JP Morgan Chase](#) questioning the firms' investment in companies active in the Amazon rainforest.

NEW JERSEY TO BLOCK DRILLING: New Jersey Gov. Phil Murphy is expected sign a bill that would prohibit state regulators from approving permits for pipelines or related infrastructure to facilitate expanded offshore drilling in federal waters. Pro New Jersey's Danielle Muoio [has more](#).

MOVER, SHAKER: Friends of the Earth announced Monday that Liz Butler will become vice president of organizing and strategic alliances. Butler will lead a staff of five organizers and 13 organizing fellows in grassroots environmental campaigns.

— **Michael Pratt is joining the American Enterprise Institute's** press office as director of media relations and marketing. Pratt previously served in several other roles at AEI in the digital and media relations departments.

QUICK HITS

— ITER nuclear fusion project avoids delays as U.S. doubles budget, [Reuters](#).

— Half of all U.S. coal plants would lose money without regulation, [Bloomberg](#).

— Federal lease sale fails to impress, but nets \$10 million for Wyoming, [Casper Star-Tribune](#).

— Former CEO of Maersk Oil to become Shell Oil president, [Houston Business Journal](#).

— Shell just outlined a radical scenario for what it would take to halt climate change, [The Washington Post](#).

— The EPA says it wants research transparency. Scientists see an attack on science, The New York Times.

HAPPENING TODAY

7:30 a.m. — The American Water Works Association holds Sustainable Water Management Conference, Seattle

8:00 a.m. — The California Solar Power Expo, San Diego

8:00 a.m. — The Mediterranean Oil and Gas Forum 2018 with Mark Menezes, undersecretary of Energy, Nicosia, Cyprus

8:45 a.m. — Energy Thought Summit, Austin, Texas

9:00 a.m. — Inter-American Dialogue discussion "Unconventional Oil and Gas in Argentina," 1155 15th Street NW

9:30 a.m. — American Fuel and Petrochemical Manufacturers holds International Petrochemical Conference, San Antonio, Texas.

11:00 a.m. — The National Academy of Sciences webinar on "Improving Characterization of Anthropogenic Methane Emissions in the United States."

12:00 p.m. — Americans for a Clean Energy Grid webinar on "Transmission Needed to Meet Corporate America's Growing Demand for Renewable Power."

5:00 p.m. — The Johns Hopkins University Paul H. Nitze School of Advanced International Studies book discussion on "The Fracking Debate: The Risks, Benefits, and Uncertainties of the Shale Revolution," 1717 Massachusetts Avenue NW

THAT'S ALL FOR ME!

To view online:

<https://www.politicopro.com/newsletters/morning-energy/2018/03/how-trump-favored-texas-over-puerto-rico-151171>

Stories from POLITICO Pro

How Trump favored Texas over Puerto Rico Back

By Danny Vinik | 03/27/2018 05:00 AM EDT

SAN JUAN, Puerto Rico — As Hurricane Maria unleashed its fury on Puerto Rico in mid-September, knocking out the island's electrical system and damaging hundreds of thousands of homes, disaster recovery experts expected that only one man could handle the enormity of the task ahead: Mike Byrne.

But Byrne, a widely acknowledged star of the Federal Emergency Management Agency, remained in Houston, which had been ravaged by Hurricane Harvey less than a month earlier.

Today, disaster recovery experts still express shock that FEMA kept Byrne in an already-stabilizing Texas and didn't send him to Puerto Rico for three more weeks. But now, the decision strikes many as emblematic of a

double standard within the Trump administration. A POLITICO review of public documents, newly obtained FEMA records and interviews with more than 50 people involved with disaster response indicates that the Trump administration — and the president himself — responded far more aggressively to Texas than to Puerto Rico.

"We have the U.S. Army and Marine Corps. We go anywhere, anytime we want in the world," bemoaned retired Army Lt. Gen. Russel Honoré, who led the military's relief efforts after Hurricane Katrina. "And [in Puerto Rico] we didn't use those assets the way they should have been used."

No two hurricanes are alike, and Harvey and Maria were vastly different storms that struck areas with vastly different financial, geographic and political situations. But a comparison of government statistics relating to the two recovery efforts strongly supports the views of disaster-recovery experts that FEMA and the Trump administration exerted a faster, and initially greater, effort in Texas, even though the damage in Puerto Rico exceeded that in Houston.

Within six days of Hurricane Harvey, U.S. Northern Command had deployed 73 helicopters over Houston, which are critical for saving victims and delivering emergency supplies. It took at least three weeks after Maria before it had more than 70 helicopters flying above Puerto Rico.

Nine days after the respective hurricanes, FEMA had approved \$141.8 million in individual assistance to Harvey victims, versus just \$6.2 million for Maria victims.

During the first nine days after Harvey, FEMA provided 5.1 million meals, 4.5 million liters of water and over 20,000 tarps to Houston; but in the same period, it delivered just 1.6 million meals, 2.8 million liters of water and roughly 5,000 tarps to Puerto Rico.

Nine days after Harvey, the federal government had 30,000 personnel in the Houston region, compared with 10,000 at the same point after Maria.

It took just 10 days for FEMA to approve permanent disaster work for Texas, compared with 43 days for Puerto Rico.

Seventy-eight days after each hurricane, FEMA had approved 39 percent of federal applications for relief from victims of Harvey, versus 28 percent for Maria.

Those imbalances track with another one: the attention of President Donald Trump. In public, Trump appeared much more concerned with the victims of Harvey than Maria. He visited Houston twice during the first eight days after the hurricane, but didn't visit Puerto Rico for 13 days. In the first week after the disasters, Trump sent three times as many tweets about Harvey as Maria — 24 about the plight of Texas and eight about Puerto Rico, including a series of comments about Puerto Rico's debt level and quality of infrastructure that local officials considered insulting and enraging while lives were still in jeopardy.

"Wow - Now experts are calling #Harvey a once in 500 year flood! We have an all out effort going, and going well!" he crowed about Texas on Aug. 27, two days after the storm made landfall.

On Sept. 30, 10 days after Maria, and while fielding criticism from Puerto Rican officials, Trump testily tweeted: "[They] want everything to be done for them and it should be a community effort. 10,000 Federal workers now on island doing a fantastic job."

Behind the scenes, according to people with direct knowledge of his comments, Trump was focused less on the details of the relief effort than on public appearances, repeatedly using conference calls and meetings designed

to update him on the relief effort to direct FEMA Administrator Brock Long to spend more time on television touting his agency's progress.

In addition, Trump spent the first weekend after the Puerto Rico crisis tweeting repeatedly about NFL players kneeling for the national anthem. Those messages, experts said, send a subtle, yet important signal to the federal bureaucracy.

"On Texas and Florida [during Hurricane Irma], the president was very vocal and engaged in the run-up to the storm. His messaging was frankly pretty good," said Jeremy Konyndyk, the former top disaster response official at USAID under former President Barack Obama. "If you look at his public messaging on a comparable timeline around Puerto Rico, there's virtually nothing. ... That sends a signal to the whole federal bureaucracy about how they should prioritize."

FEMA and administration officials defend the response to the storm, saying it posed unprecedented logistical challenges as the agency faced perhaps the most demanding stretch in its 39-year history. Hurricane Maria was the third major hurricane to strike the United States in less than a month. Combine that with an overwhelmed local government and nonexistent communications and it created a fog-of-war atmosphere that made it difficult to determine what resources were needed when and how to get them to an island whose ports and airports were heavily damaged.

In a statement to POLITICO, Long defended FEMA's efforts, arguing that, unlike in Texas, the agency was forced to take on a greater role in the post-disaster response. "We provided Puerto Rico the same, if not more support, as we have for all presidentially declared disasters across the nation," he said, "but an optimal response cannot rely on FEMA's efforts alone."

A spokesperson for the National Security Council said Trump was "personally engaged" on the response and his "primary directive" to Long was to oversee a unified and effective federal response.

But in that situation, former FEMA officials say, extra political pressure and impetus can make a difference. Puerto Rico, as a U.S. territory rather than a state, has just a single, nonvoting delegate in Congress, compared with the 36 representatives and two senators from Texas who loudly demanded proper resources for their state. Likewise, victims of Superstorm Sandy had six senators and dozens of U.S. representatives in the states of New York, New Jersey and Connecticut to demand extra disaster relief, including powerful lawmakers like Chuck Schumer, then the No. 3 Democrat in the Senate.

"After Sandy, [Rep.] Peter King was all over FEMA continuously. So was Schumer," said Michael Balboni, a former New York state legislator and an expert on disaster response. That constant pressure on senior federal officials, he added, is critical to getting the proper resources after a disaster.

In that vacuum, presidential leadership plays a larger role. But as the administration moves to rebuild Texas and Puerto Rico, the contrast in the Trump administration's responses to Harvey and Maria is taking on new dimensions. The federal government has already begun funding projects to help make permanent repairs to Texas infrastructure. But in Puerto Rico, that funding has yet to start, as local officials continue to negotiate the details of an experimental funding system that the island agreed to adopt after a long, contentious discussion with Trump's Office of Management and Budget.

Multiple congressional staffers and people with direct knowledge of the arrangement said White House officials told Puerto Rico's governor, Ricardo Rosselló, that if he didn't agree to the experimental formula, the island wouldn't get the money, effectively forcing the island to take a huge gamble since it would be responsible for any cost overruns, a requirement that doesn't exist for Texas. The White House denies making that demand.

"There is no doubt that Puerto Rico gets treated differently to a state. And there is no doubt that it has been true for the disaster response as well," Rosselló said in an interview at the governor's mansion in Old San Juan. He added, "Our objective is to eradicate this notion of second-class citizenship in the United States, so that whenever a disaster hits — whether it's Texas, Florida, New York or Puerto Rico — the federal government responds equally in all cases."

After Hurricane Harvey hit the Houston region on Aug. 25, dropping over 50 inches of rain and flooding whole swaths of the metropolitan region, FEMA quickly mobilized, sending out mission assignments to a long list of federal agencies. In less than a week, U.S. Northern Command deployed 73 helicopters and the Coast Guard sent an additional 18. Within nine days, a whopping 30,000 federal personnel were helping an army of state and local authorities with the response, conducting search-and-rescue missions, removing debris and helping victims apply for disaster assistance, among many other assignments.

The response was effective enough that by Sept. 14, Texas Gov. Greg Abbott reported that "The risk to lives has now been reduced, if not completely eliminated."

On Sept. 20, after four days of increasingly dire forecasts, Hurricane Maria made landfall in a Puerto Rico already reeling from Hurricane Irma two weeks earlier.

POLITICO's analysis of data on Harvey and Maria, pieced together through news releases, internal FEMA documents, revealed for the first time, and numbers supplied by the agency, indicates that FEMA's response to Maria was much slower than it was to Harvey. Helicopters, which are crucial to rescue people from remote, flooded areas, were slow to arrive. In the initial days, Northern Command had, at most, just a few dozen helicopters on the island and the U.S. Virgin Islands while the Coast Guard deployed just six. By Day 9, just 10,000 federal personnel were on the island, about a third as many as were dealing with Harvey at the same point. Those figures increased over time — Northern Command eventually supplied over 70 helicopters and the government deployed more than 20,000 personnel — but the ramp-up took more than three weeks.

The increase in personnel coincided with the arrival of Byrne. A former New York City firefighter, Byrne has spent his career working in emergency management, serving as a senior regional FEMA officer after 9/11 and as a private sector consultant, helping manage a \$10 billion recovery program after hurricanes Katrina and Rita. After Superstorm Sandy in 2013, he led FEMA's recovery operations, a position known as the federal coordinating officer, or FCO. Last September, he was promoted to assistant administrator for field operations, overseeing the entire disaster workforce.

Despite his promotion, Byrne still often goes out into the field to oversee the most important assignments. So it came as no surprise to disaster-recovery experts when Long, the FEMA administrator, announced on Sept. 1, a week after Harvey hit Houston, that Byrne was heading down to Houston to help with the recovery efforts.

The surprise came on Sept. 20, the day that Hurricane Maria hit Puerto Rico, when FEMA named Alejandro De La Campa the FCO, while it kept Byrne in Texas.

De La Campa, a Puerto Rican native who runs FEMA's local office on the island, has strong relationships with Puerto Rican officials but is not considered one of FEMA's top disaster response leaders, much less the best person for one of the most complicated and challenging disasters in FEMA's history. Even at the time, the decision shocked former FEMA officials, many of whom thought well of De La Campa, who goes by Alex, but were expecting Long to deploy a much more experienced official for such a critical job.

"When I started hearing things, I was thinking there are a lot of heavy hitters sitting on the bench," said Craig Fugate, the head of FEMA during the Obama administration. Fugate acknowledged that it's difficult to second guess the decision-making without being in the meetings at the time. But he said, "I would have put my heavy hitters in there."

The storm impacted every part of the island, wiping out the electricity system and leaving even the local first responders as victims, many of whom lost power and first had to protect their families. Even today, more than 5 percent of the island remains without power. While the Houston region has about twice as many people as Puerto Rico, the severity and nature of the damage caused by Maria overshadowed that of Harvey. As such, FEMA eventually both received and approved more applications for individual assistance from victims of Hurricane Maria than of Hurricane Harvey.

"You had almost a perfect storm," said Jeff Parks, who worked for Honoré on the Katrina recovery effort and traveled to Puerto Rico in a private capacity soon after Maria.

Byrne said he wasn't involved in the FCO decision for Puerto Rico but that he wasn't surprised with the selection of De La Campa, explaining that he has a "stellar reputation." FEMA declined to make De La Campa available for an interview. Asked for further information on why De La Campa was initially selected to serve as the FCO, a FEMA spokesperson said the "question has been answered and addressed."

FEMA also deployed Justo "Tito" Hernandez, an experienced first responder who previously had served as an FCO on the island, as De La Campa's deputy. Hernandez, also a Puerto Rico native, did not comment directly on the selection, instead stressing that FEMA's personnel in Puerto Rico were a team.

Still, he added, "Mike [Byrne] is the best person for the job."

The best person for the job, though, was nearly 2,000 miles away during the first three weeks after Hurricane Maria made landfall, and he was quickly missed. On Oct. 10, in a five-sentence news release, billed as an expansion of the leadership team, FEMA announced it was replacing De La Campa with Byrne.

Former FEMA officials and disaster response experts said the slow ramp-up in force — from the delay in deploying Byrne to the limited number of helicopters — in Puerto Rico and the U.S. Virgin Islands is evidence that the agency underestimated the ferocity of the storm and failed to properly pre-position assets.

"That says that they didn't have the right footprint in place," said Konyndyk. "It's one thing if that's happening over a week or two. It's very different if that's taking a month."

Federal officials caution against comparing Harvey and Maria, arguing that Texas' and Puerto Rico's very different geographic, financial and political situations make comparisons misleading. After POLITICO requested data from U.S. Northern Command on helicopters deployed on certain dates after Maria and Harvey, a spokesperson declined to provide any figures, saying that the only overlap between Florida, Texas and Puerto Rico was that all three experienced hurricanes.

"That's where the comparison stops for us," he said.

Byrne and Hernandez offered two main explanations for the limited number of military assets, particularly helicopters, in the first week after Hurricane Maria. They said it was much easier to deploy helicopters to Houston than to Puerto Rico and the U.S. Virgin Islands, which were 1,000 miles from the United States and had no working ports or airports immediately after the disaster. And even if FEMA could get more responders to Puerto Rico, they said, it had no place to house them.

But it still took weeks for FEMA and the Department of Defense to increase their forces in Puerto Rico and the U.S. Virgin Islands, even though the main airports and ports were opened within a few days. Disaster-recovery experts also faulted the government for failing to direct the aircraft carrier USS Abraham Lincoln and other ships, which have their own fleets of helicopters and were deployed off the coast for Florida to help with Hurricane Irma in early September, to help with the response efforts to Hurricane Maria. The Lincoln began to position itself to help with Irma two days before the storm hit Florida. FEMA never requested that the Department of Defense send the Lincoln to Puerto Rico and the U.S. Virgin Islands.

The USNS Comfort, a hospital ship, didn't even embark from Norfolk, Virginia, to reach Puerto Rico and the U.S. Virgin Islands until nine days after the storm, despite the fact that few hospitals in the region had consistent power, leaving thousands of patients in dire medical condition.

FEMA directed questions about the Comfort and Lincoln to the Department of Defense, which said that during Irma, the Lincoln was also not requested by FEMA for help with civil authorities but instead helped secure military installations in Florida. A spokesperson for NORTHCOM also said that an agreement between DOD and FEMA to send the Comfort was reached "on/about Sept. 25," five days after the storm. It then takes the ship roughly four days to assemble its crew, add necessary supplies and start the ship's engine before it can embark, the spokesperson said.

Other data raise questions about FEMA's claim that a lack of housing prevented a quicker ramp-up in federal personnel on the island.

According to internal FEMA documents given to POLITICO by a person involved in the response efforts, a week after Hurricane Maria, FEMA had filled only 150 of 250 beds that were set aside for first responders at the Puerto Rico Convention Center. Two weeks after Maria, FEMA had filled only 1,258 of 2,250 beds allotted for its first responders at the convention center and aboard two training vessels from the U.S. Maritime Service.

A FEMA spokesperson did not say why the beds weren't used but explained that the numbers were fluid during those days as FEMA staff frequently moved to different parts of the island. "During an emergency, deployed staff comes in and out and depending on where they are needed, they are moved around to support federal and state partners," the spokesperson said.

Nonetheless, Byrne and Hernandez said in separate interviews that FEMA had enough resources to complete its missions, whether conducting search-and-rescue operations or providing food and water to the victims.

"The fact that we ramped up to about 20,000 people in the first month, month-and-a-half, that's impressive to me," said Hernandez. "Whoever says it was slow, I ask them where were you. Where were you when we were moving as fast as we could with the resources that we had?"

Byrne added: "We didn't have any deaths from starving on this. We didn't have any deaths from dehydration. We got plenty of water and food out to people."

People on the ground, however, describe a different scene, one defined by mass confusion and little coordination among the dozens of different nonprofit groups and federal, state and local officials involved in the response, most of whom had little ability to communicate with one another. They said FEMA was mostly absent during the initial days after the storm.

"For the first couple weeks, right after the hurricane, we were the only thing moving out there," said Mike Soto, a founder of a Puerto Rican think tank who became a leader in the response effort after the storm hit Puerto

Rico. "The government was definitely catatonic. FEMA wasn't around and when they were finally here, it took them awhile."

Bernardo Márquez, the mayor of Toa Baja, a municipality of less than 100,000 people in northern Puerto Rico, said just two pallets of water and one pallet of food arrived from FEMA in the first week, forcing local officials to rely on donations from local supermarkets and nonprofits like the Red Cross. "It was slow," he said.

FEMA did deliver some supplies during the first few weeks: In the first nine days after Hurricane Maria, the agency provided 1.6 million meals, 2.8 million liters of water and roughly 5,000 tarps to the island. But that was only a third as many meals and half as much water as it provided to Texas in the same time period after Harvey. Within three days of Harvey's landfall, FEMA had delivered over 20,000 tarps to Texas.

The agency argued that any comparison of the delivery of assistance between Puerto Rico and Texas is effectively impossible. Texas is accessible by roads, making it easy for FEMA to truck food, water and other emergency supplies into Houston while Puerto Rico is 1,000 miles away from the mainland U.S. "We moved stuff. We moved stuff pretty efficiently," said Byrne. "And the challenge here was getting it by ship."

According to a document obtained by POLITICO through the person involved in the response efforts, federal officials were also slow to begin installing "blue roofs" on the island, the hard, plastic covering that allows victims to return and live in their homes before permanent repairs begin.

Twenty-five days after the storm, the Army Corps of Engineers, the federal agency responsible for installing the roofs, had completed just 260 installations in Puerto Rico out of an estimated 60,000 that were needed, equal to 0.4 percent.

There's no similar data for Harvey because Texas didn't request any blue roofs and instead handled temporary housing relief in the first weeks after the storm by itself. But 25 days after Hurricane Irma struck Florida, the Army Corps had installed 1,600 blue roofs, out of 15,000 estimated, or 10.7 percent. A week later, the Army Corps had completed more than a third of the installations in Florida, compared with just 2.8 percent during the same period in Puerto Rico.

Jacqueline Tate, a spokeswoman for the Army Corps, wrote in an email that the agency faced multiple challenges with its blue roof program in Puerto Rico, including locating where victims lived based on their provided address and road closures resulting from landslides and debris.

Experts said it's difficult to pinpoint the exact costs of all these delays.

The official death toll as a result of Hurricane Maria currently stands at 64, compared with 103 from Hurricane Harvey, but a New York Times report in December, using a statistical analysis to compare deaths in the weeks after the storm with a similar period in 2015 and 2016, put the number as high as 1,052. According to the report, deaths from sepsis, pneumonia and breathing disorders jumped considerably. Local officials and experts are suspicious of FEMA's official death count and also said the delays, if not causing deaths, significantly aggravated the pain and stress felt by many Puerto Ricans.

Eventually, officials agree, FEMA's distribution of food and water accelerated; since the storm, FEMA has distributed more than 64 million meals and 72 million liters of water, both records for the agency. But the initial delays represented lost time that can never be recovered.

For FEMA, the response to Hurricane Maria put the agency in an unfamiliar position, forcing it to take on the lead role in the response when it typically acts as a support agency, fulfilling requests from state and local officials. In Puerto Rico, the state and local governments didn't always know what they needed or what they could even request. But after FEMA struggled under similar conditions after Hurricane Katrina, Congress gave

the agency additional authorities to send commodities and help with the emergency response even before it receives official requests from local officials. Many disaster response experts suggested that FEMA failed to use those authorities effectively after Hurricane Maria.

"My big mantra is I never get time back," said Fugate, the former FEMA administrator from the Obama administration, adding that he always erred on the side of sending relief supplies rather than waiting for an official request.

As hurricane victims look to start rebuilding their lives in the aftermath of a storm, many first turn to FEMA to apply for federal assistance. Applicants can receive a quick infusion of cash — up to \$34,000, depending on their needs and the severity of the damage — to start fixing their homes, money that also helps jump-start the local economy. But that money was slow to arrive in Puerto Rico.

According to FEMA data on its individual assistance program, the agency processed applications more slowly for victims of Hurricane Maria than victims of Hurricane Harvey. Nine days after Harvey, FEMA had already approved more than \$141.8 million in federal assistance, compared with just \$6 million during the same period after Maria. In fact, from Oct. 2 to Oct. 9, FEMA approved just \$6,008 in individual assistance for Puerto Rico.

A FEMA spokesperson explained that communications were a challenge in the first days after the storm, preventing Puerto Ricans from using the online application and making it difficult for federal officials to follow up with survivors. Many victims also had trouble proving their residency with a deed or title, the spokesperson said.

Still, Puerto Ricans found a way to register in the first two weeks. By Oct. 5, the agency had received 248,281 registrations for individual assistance, rising to 496,418 by Oct. 13.

Seventy-eight days after the two hurricanes, FEMA had received 18 percent more applications from victims of Maria than from victims of Harvey but had approved 13 percent more applicants from Harvey than from Maria. At the time, 39 percent of applicants from Harvey had been approved compared with just 28 percent of applicants from Maria.

"People are grateful for what FEMA was done. Mayors won't openly say we hate FEMA," said Sen. Eduardo Bhatia, the minority leader of the Puerto Rico Senate. "But if you talk to them enough, they will say it was totally frustrating. It was an absolute mess. No communication, no coordination, no chain of command and certainly no reasonable plans given the magnitude of the problem."

A little before noon on Oct. 3, Air Force One landed at the Luis Muñiz Air National Guard Base in Carolina, Puerto Rico, where Trump was scheduled to get a first-hand look at the devastation wrought by Hurricane Maria, his first trip to the island since the storm hit 13 days earlier. He visited Texas twice in the first eight days after Harvey but was slower to visit Puerto Rico, the NSC spokesperson said, so that his trip "didn't have a negative impact on ongoing response operations."

Nonetheless, Puerto Ricans were grateful for the chance for national attention, given what they considered the still-daunting magnitude of the crisis.

Quickly, however, they realized that Trump's visit wasn't going to include the worst-hit areas, and that Trump didn't have patience for any complaints.

Instead, the carefully scripted trip appeared to be something of a victory tour, as Trump praised FEMA's response and gave an "A+" to Long, the FEMA administrator, and touted the fact that the death count at the time stood at 16, compared with nearly 2,000 after Hurricane Katrina.

At a briefing on the base, he indirectly alluded to Puerto Rico's financial woes, suggesting that the federal response to the storm was creating new challenges for Mick Mulvaney, the White House budget director. "Now, I hate to tell you, Puerto Rico," Trump said, "but you've thrown our budget a little out of whack because we've spent a lot of money on Puerto Rico, and that's fine."

On a walking tour during the afternoon, Trump visited a neighborhood in nearby Guaynabo, an effort to show the president the damage on the ground. But the area had been one of the least-affected neighborhoods in Puerto Rico, according to multiple Puerto Rican officials, because most of the houses were constructed with cement.

"Nothing happened. Everything was perfect," said Sandra Rodriguez, a communications consultant who lives eight minutes away from the neighborhood. "The only thing was, it didn't have any electric power."

At a church, Trump handed out bags of rice to local residents before taking paper towels and impersonating a basketball player as he shot them into the crowd, whose members scrambled to grab the free supplies. To many Puerto Rican residents, that image — Trump's arms arched as if shooting a three-pointer — illustrated the president's cavalier attitude toward the island.

"The president's visit made it very clear that he did not think this was a big deal," said Bhatia, the Senate minority leader. "The whole paper towel incident was silly. He was making a joke out of it."

The NSC spokesperson defended the location chosen for Trump's walking tour, saying the president was fully aware of the challenges facing Puerto Rico. "Had the president visited areas that were severely impacted by the Hurricane, security measures would have required that rescue and relief efforts be temporarily redirected, which is not what the president wanted," the spokesperson said.

James Norton, a senior official in the Department of Homeland Security under former President George W. Bush, said public appearances and visits to storm-wrecked regions play an important role in establishing priorities within the federal government — as Bush learned the hard way when he was criticized for not getting more personally involved in the Katrina recovery effort.

"Bush made every effort to correct [the mistakes made after Hurricane Katrina] given how many visits he made to the region," he said. "Compare that to Trump: He made one visit. That type of executive attention drives the bureaucracy. While there might be people working behind the scenes, not having that constant attention and trips to region does have an impact on the level of effort."

To some aides, Trump didn't seem to approach Hurricane Maria any differently than Hurricane Harvey. In both cases, he lauded the efforts of FEMA and the military, heaping praise on officials who he believed were reflecting positively on his administration. "He came across as a coach, like Mickey in those Rocky movies," one person familiar with his comments said. "'You're killing them, go get 'em.'"

But in Trump's Twitter feed, a proxy for his daily attention, he didn't seem particularly concerned with the fate of Puerto Rico after Hurricane Maria. According to a POLITICO tally, he tweeted just eight times about the island in the week after the storm, often to criticize Puerto Rico. In a three-part tweet on Sept. 25, he said Puerto Rico "is in deep trouble," due to its debt and infrastructure; during that same week, he tweeted 18 times about NFL players not standing for the national anthem. In comparison, in the week after Harvey, he was laser focused on the storm, tweeting 24 times about the relief efforts in Texas and repeatedly praising the first responders.

Trump also got into verbal disputes with local Puerto Rican officials, including the mayor of San Juan, Carmen Yulín Cruz, who criticized the federal response at a Sept. 29 news conference, saying that "We are dying and you are killing us with the inefficiency."

A day later, Trump struck back, slamming Cruz for her "poor leadership" and tweeting that she and "others in Puerto Rico ... want everything to be done for them."

"It was a little disheartening to see the exchange between the president and the mayor," said Michael Coen, former chief of staff of FEMA during the Obama administration. "It doesn't help morale at FEMA and the staff who are working hard."

On Oct. 12, more than three weeks after Hurricane Maria hit Puerto Rico, the president suggested that the federal government wasn't prepared to help the island indefinitely. "We cannot keep FEMA, the Military & the First Responders, who have been amazing (under the most difficult circumstances) in P.R. forever!" The next day, he walked back that tweet in another tweet, saying about Puerto Ricans, "I will always be with them!"

To many Puerto Rican officials and disaster experts, Trump's public comments about Puerto Rico, a territory with no voting representation in Congress, exacerbated the challenges it faces with the federal bureaucracy due to its political status. "There is certainly a different treatment and many of these things, in order to get some reaction, there has to be some pushing," said Rosselló.

The NSC spokesperson said in a statement that the idea that Trump's public comments negatively affected the federal response was a "ridiculous insinuation" and "an insult to the thousands of FEMA and other federal employees who were in Puerto Rico before, during and after the storms." The official added that such criticisms were "partisan political shots."

But there is a lot of evidence that political pressure can lead to a stepped-up disaster response.

In Texas, Senate Majority Whip John Cornyn (R-Texas) held up the nomination of the deputy director of the White House budget office for months over concerns about inadequate support for his state in the wake of Harvey. He finally allowed the nomination to move forward in February after Congress passed a bill with \$90 billion of disaster relief funding and Trump signed it.

Rep. Dan Donovan (R-N.Y.), who leads the House Homeland Security subcommittee on emergency preparedness, told POLITICO that even today, more than five years after Superstorm Sandy, he still has to keep lobbying FEMA to support his constituents on different issues resulting from the storm, such as flood insurance mitigation measures. "We are always putting pressure on them," he said.

Puerto Rico, with a single, nonvoting delegate in the House, can't hold up White House nominations. The territory doesn't have a full delegation of lawmakers — or congressional staffers — to put pressure on FEMA. "Unless you are God, you can't do the job of six people just yourself and without a vote," said Kenneth McClintock, the former secretary of state of Puerto Rico.

As of March 20, six months after Hurricane Harvey, Texas was already receiving federal dollars from FEMA for more than a dozen permanent projects to repair schools, roads and other public infrastructure that were damaged by the storm.

But for Puerto Rico, FEMA has so far not funded a single dollar for similar permanent work projects.

The gap is a result of Puerto Rico's decision to use an experimental formula for calculating the federal funds allocated to rebuild its public infrastructure. The new formula gives Puerto Rico significant flexibility during the rebuilding process, but it also requires the island to pay for any cost overruns, a burden that doesn't apply to Texas, where FEMA will pay for any excess costs. For a cash-strapped territory like Puerto Rico, which is more than \$70 billion in debt, the potential for cost overruns is a huge risk, making the decision to use the new formula across all rebuilding projects a somewhat surprising gamble.

But according to multiple congressional officials and people with direct knowledge of the arrangement, the island was forced to take that gamble. According to those people, White House officials, led by Mulvaney and Homeland Security Adviser Tom Bossert, told Puerto Rico that in order to receive money for permanent work projects, it had to adopt the experimental funding formula for all its projects.

That formula, which dates to Hurricane Katrina and was used on a major housing project after Superstorm Sandy, has never been tried on this scale and Puerto Rican officials weren't interested in being the guinea pig. But in a series of contentious meetings and conversations in late October, White House officials told Puerto Rico it had no choice, according to the congressional staffers and people with direct knowledge of the meetings.

On Nov. 2, with almost no media attention, FEMA published an amendment to its disaster declaration for Puerto Rico that required the use of the experimental funding formula across all projects. It had never been included in a disaster declaration before.

"This is unusual and when it came out, I had lots of phone calls from people," said Elizabeth Zimmerman, a former senior FEMA official who helped create the program when she was in the Obama administration.

Byrne defended the process, arguing that the administration did not force Puerto Rico to adopt the new formula.

"We made a strong case. We showed them all the pluses to it because of the flexibility you'd have, the increased use of mitigation," he said. "It speaks for itself. And at the end of the day, the governor put it in writing that that's how he wanted it done."

A senior administration official said it was "absolutely false" that FEMA forced Puerto Rico's hand.

Rosselló said the administration was "not explicit" in ordering Puerto Rico to adopt the experimental formula, which is known as 428 for its section in the Stafford Act, but he added that "they were very adamant about 428."

Rosselló also argued that the process has slowed down Puerto Rico's ability to rebuild its infrastructure. The process for authorizing permanent funding for Puerto Rico took 43 days, compared with 10 days for Texas. The U.S. Virgin Islands received that authorization within 15 days.

The senior administration official acknowledged that projects might get rebuilt quicker under the traditional payment method but said the delay reflects the time necessary to build back the island's infrastructure in a smarter, more effective way. "It does take a little more time to plan that out," the official said, adding that many emergency projects, including some road repairs and electricity generation, are ongoing. FEMA has already spent more than \$1.3 billion on such emergency projects.

Still, today, more than six months after Hurricane Maria, FEMA still hasn't funded any permanent work projects on the island as Puerto Rico and federal officials negotiate an agreement under 428. The most important piece of those negotiations is the cost estimate. Puerto Rico is on the hook for any overruns, so state officials are very concerned about who is conducting the estimate. According to Rosselló, FEMA agreed in November that Puerto Rico and FEMA would jointly be in charge of the estimate. "We had this explicitly written down in order for us to agree to 428," he said.

Byrne, however, suggested that FEMA would ultimately determine the estimate. "We're more than happy to have Puerto Rico engineers and engineering firms be part of this, and they can help us with the estimates," he said, citing an inspector general's report after Sandy that faulted FEMA for weaknesses in its financial controls in using the new formula. "At the end of the day, we're going to do the estimate." Any disagreements would go to a third-party panel for review, he added. "This is going to be fair."

Bryan Koon, who served as the director for Florida's emergency management agency from 2011 to last October, said he supports 428 and thinks it could help Puerto Rico. But if he were in charge, he said, he would object to FEMA conducting the cost estimate itself. "As a state guy, I would be opposed to that."

The senior administration official conceded that there is "tension" around the cost estimate but said it should reflect a collaborative approach. "We recognize that you don't want to take the number we're giving you and you have to recognize that we're not going to just take the number you give us," the official said. "That's the way this works."

The official also argued that the Trump administration has put Puerto Rico in a better position to use 428 by requesting and receiving from Congress an exemption from the requirement that the cost estimate be based upon the pre-disaster conditions of Puerto Rico's infrastructure. "That's a big deal," the official said. The exemption could prove lucrative to Puerto Rico, since FEMA now can now fund permanent work projects without deducting for any pre-existing damage that was not caused by Maria.

Experts on the formula said it could have additional benefits. It is, effectively, a block grant, allowing the island to more efficiently allocate resources to rebuild its roads, bridges and power system. Under the formula, FEMA also distributes the money up front, instead of reimbursing the island for individual projects, an important benefit for the cash-strapped territory that also cuts down on burdensome paperwork.

Rosselló said he was examining the formula before the White House approached him, realizing that it would be a mistake to rebuild Puerto Rico's outdated infrastructure to its previous condition. "Puerto Rico is in hurricane alley," he said. "It's going to come again."

But Rosselló and other Puerto Rican officials worry that the administration's position on 428 is representative of a broader White House strategy to limit funding toward Puerto Rico. The governor particularly pointed to the Treasury Department's decision to withhold more than half of a \$4.7 billion loan that Congress authorized for Puerto Rico in an October spending bill. Treasury said Puerto Rico didn't need the money, which was earmarked to help the island pay for essential services, since it had a cash balance of \$1.7 billion at the end of 2017. The two sides reached an agreement over the loan last week.

Rosselló believes the president is committed to funding Puerto Rico's recovery, but he's worried that it will not be a priority as the administration moves on to other issues. "When we asked for him a certain set of things ... [Trump] has responded," he said. "My concern is that somewhere along the way, it has sort of fizzled."

"I don't know who it is, but there certainly is evidence that they are trying to penny-pinch," the governor added.

The senior administration official rejected that accusation, saying, "I'm not sure where he is getting that impression" and noting that the federal government has already committed more than \$10 billion in funding to Puerto Rico. "Our No. 1 concern is to make sure we deliver for the people of Puerto Rico," the official said, adding, "Things take longer than anyone would like them to."

Puerto Rico's recovery will take many years and will continue to put pressure on the federal budget. The historic 2017 hurricane season and California wildfires have already forced Congress to pass three disaster spending bills, totaling more than \$140 billion, and another disaster spending bill could be needed later this year. The Trump administration, led by Mulvaney, has attempted to keep costs down, sending a funding request to

Congress in November that Democrats and Republicans both derided as too low. The White House budget office included in that request a list of spending cuts that Congress could use to offset the extra hurricane-related costs, which lawmakers also ignored in February's disaster spending bill.

Many Puerto Rican officials and disaster-recovery experts fear that the contentious battles over 428 and the Treasury Department loan are just the first of many future fights between Puerto Rico and the federal government. It's a fear shared by many in Puerto Rico, who, now more than ever, feel like second-class citizens.

"There is a lingering lack of knowledge about Puerto Rico and a lingering tendency to want to treat Puerto Rico differently," said McClintock, the former Puerto Rico secretary of state, "and always for the worst."

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POLITICO Florida: Records, Zinke's office refute Scott framing of impromptu oil-drilling reversal [Back](#)

By Matt Dixon | 03/27/2018 05:05 AM EDT

TALLAHASSEE — When Gov. Rick Scott and U.S. Interior Secretary Ryan Zinke announced Jan. 9 Florida was "off the table" for offshore oil drilling, the governor cast the hastily arranged news conference at the Tallahassee airport as unplanned and the Trump administration's decision as something Scott had influenced at the eleventh hour.

In fact, Zinke's top advance staffer, whose job it is to plan ahead for such events, was in Tallahassee the previous day. And top officials from the offices of both Scott and the secretary were in regular contact for several days leading up to the announcement, according to more than 1,200 documents reviewed by POLITICO Florida as part of a public records request.

The documents, which include phone records, text messages, and emails, contradict the supposed spontaneous event that portrayed Scott as single-handedly securing a politically popular win for Florida's environmental future only days after the administration had spelled out a controversial new national five-year plan to boost offshore oil drilling. The event left Scott, at least for the moment, with a big victory to hold over Sen. [Bill Nelson](#) (D-Fla.), whom the term-limited Scott is almost assuredly challenging in 2018.

The records reaffirm the perception at the time that the Trump administration's decision to reverse course and remove Florida from the list was carefully choreographed to give Scott a political win in his widely expected challenge this year to unseat Nelson.

"Whatever Rick needs, they [Trump administration] will do. There will be net more offshore drilling, but the governor will get what he needs," one Republican who spoke directly with Zinke [told POLITICO Florida](#) at the time, a prediction that came true.

It will "be a big win, and it won't be Bill Nelson bringing it home," the Republican added.

Turns out all the optics were orchestrated long before that January day.

Zinke press secretary Heather Swift told POLITICO Florida Monday that "the governor's staff was certainly aware that the secretary was traveling to Florida at the governor's request," but Scott's office — at the time — gave no indication the meeting and oil drilling deal had been hashed out prior to the Jan. 9 airport meeting.

Scott's office did not include the meeting on his original public schedule, which is released each morning. The event was sent out as part of an amended calendar around 4:50 p.m. on January 9, about an hour before the event. Around the same time, Scott's office began telling reporters to get to the airport, but there was no notice prior to the amended statement and calls from staff. There was an absolute feeling in Florida political circles at the time that the announcement came out of nowhere.

The decision to give no public notice was done despite Zinke's staff being already in Tallahassee to help coordinate the event: "Even the shortest trips require a lot of coordination and planning," Swift said.

Scott spokesman McKinley Lewis said Monday Scott wanted the meeting with Zinke to "express his strong opposition to drilling off Florida's coast," but did not discuss the public perception that the meeting was not planned.

"Governor Scott was glad to have the opportunity to quickly meet with Secretary Zinke and get commitment from him in that meeting to take Florida off the table for future off shore drilling," Lewis said.

He did not return follow up questions about why the meeting was kept off Scott's original public Jan. 9 calendar.

Records clearly show Rusty Roddy, Zinke's former advance staffer, was in Tallahassee ahead of the Jan. 9 event helping coordinate with Scott's staff.

"Head's up. Secretary having issues with flight out of Atlanta," wrote Roddy in a text message the day of the event to Scott deputy chief of staff Craig Carbone. "Arrival here TBD but looks like it will be later than planned for sure."

Roddy, who is no longer with Zinke's office, acknowledged that the event was "planned" and that he was in Tallahassee prior to the airport meeting. Additional records further confirm the "off the table" airport event was not as hastily thrown together as it then seemed publicly. In emails, Roddy indicated he was planning to be in Florida before the event as early as Friday, Jan. 5, a day after Zinke announced Florida was on the oil drilling list, and days before the Jan. 9 airport event, which officials said was not planned.

"Look forward to seeing you guys Monday," he said in a Jan. 5 email to Jackie Schutz Zeckman, Scott's former chief of staff. She resigned Monday and is likely to join Scott's Senate campaign.

The way Scott's office framed the Zinke trip helped downplay the perception of political gamesmanship from the announcement. Scott's office maintains that 2018 politics had no role in the process, a sentiment they stressed in January.

"This is not about politics," John Tupps, Scott's communications director, told POLITICO Florida at the time. "This is good policy for Florida."

Records show that between the Jan. 4 announcement that Florida could see additional oil drilling rigs off its shore and the Jan. 9 meeting where the state was taken "off the table," Carbone spoke with Roddy, the Zinke advance staffer, 17 times, while Schutz Zeckman spoke with Kate MacGregor, who at the time was acting assistant secretary of Land and Minerals Management, seven times. MacGregor was the point person for much of the discussions, and traveled with Zinke for the Tallahassee rollout, records show.

The records show a general uptick in Scott administration contact with the Interior Department officials in the months leading up to the oil drilling announcements. Those increased conversations were something Scott talked about at the time, as he said he was lobbying to keep Florida off any oil drilling lists.

There were at least 60 calls Carbone and Schutz Zeckman had over the last three months of October with Interior officials. Prior to October, Scott's office and the Interior Department had discussions about various policy issues, but the discussions became much more frequent as the oil drilling announcements approached.

Nelson, Democrats and other Scott opponents always saw political motivations in the quick about-face by the Trump administration toward Florida. Scott was one of Trump's earliest political supporters, and is the current chairman of a pro-Trump super PAC.

"I have spent my entire life fighting to keep oil rigs away from our coasts. But now, suddenly, Secretary Zinke announces plans to drill off Florida's coast and four days later agrees to 'take Florida off the table?' I don't believe," Nelson said in a statement at the time. "This is a political stunt orchestrated by the Trump administration to help Rick Scott, who has wanted to drill off Florida's coast his entire career."

That last point has been one of debate. Nelson's camp has tied Scott to oil drilling, pointing to the fact that in 2010 when first running for office, Scott said that there must be "sound policies in place" when working to "explore the expansion of domestic drilling in the U.S."

Scott now opposes offshore oil drilling, and he immediately tweeted opposition to Trump's oil drilling plan when it was first announced in early January. That garnered him a "full flop" from PolitiFact Florida earlier this year.

His stance also opened a brief rift between the two political pals, but his past statements are not likely to go away headed into the mid-term elections.

"Just like Donald Trump," the Florida Democratic Party responded in January, "Governor Scott is trying to rewrite his long anti-environment record with a tweet."

This article first appeared on POLITICO Florida on March 26, 2018.

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BSEE to review offshore safety permitting process for efficiency [Back](#)

By Ben Lefebvre | 03/26/2018 03:49 PM EDT

The Interior Department is asking career staff to come up with new ways to speed up permitting for offshore energy development.

Interior's Bureau of Safety and Environmental Enforcement will soon assemble teams of employees from various departments to periodically review the permitting process and look for ways to make it more efficient and consistent across the agency, BSEE announced today.

BSEE's regional directors and deputy regional directors will nominate employees to the teams, agency spokesman Greg Julian said.

"In the coming weeks, BSEE plans to identify permit types to be assessed and nominate team members for assessments to take place this year," Julian said.

The move comes as Interior tries to roll back regulations and otherwise speed the permitting process across all its agencies. BSEE earlier proposed to roll back Obama-era rules on offshore oil and gas well safety.

WHAT'S NEXT: Interior is still trying to decide whether to merge BSEE with the Bureau of Ocean Energy Management, which is in charge of offering offshore oil and gas drilling leases.

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'Bellwether' auction shows weak demand for offshore oil leases Back

By Ben Lefebvre | 03/21/2018 01:22 PM EDT

An Interior Department auction for offshore drilling leases generated \$124.7 million, a relatively low amount that shows little industry interest as of yet in a key part of the Trump administration's offshore energy policy.

The Trump administration has promoted offshore drilling as part of its policy to increase oil and gas production, advertising this lease sale as the largest ever in the Gulf of Mexico. Interior for the second auction in a row put its entire Gulf holdings up for lease, breaking previous practice of only offering parts of the Gulf up for auction at a time. And it again offered reduced rates for less attractive, shallow water parcels as it did at its August 2017 lease sale in the Gulf.

Interior Secretary Ryan Zinke, who has proposed opening virtually the entire U.S. coastline to oil and gas exploration, recently pointed to the auction as a "bellwether" of industry interest in expanded offshore drilling, compared to surging onshore production in states like Texas and North Dakota.

But the auction brought in about the same amount of money as an August lease sale, which raised just \$121 million — about 40 percent below the government's initial forecast. As recently as March 2017, Interior raised over \$274 million with a single lease sale.

Interior has actively promoted coastal drilling as a way to boost oil and gas production, but so far hasn't been able to buck market trends that work against companies investing billions of dollars in deepwater projects that take years to start producing.

Michael Celata, regional director for the Gulf of Mexico region at Interior's Bureau of Ocean Energy Management, argued it was unfair to compare Wednesday's sale to results before Interior started offering leases in the entire Gulf up for sale last August.

"It's difficult to compare this sale to sales from years past," Celata told reporters on a conference call Wednesday. "The best comparison is directly to the last previous sale."

Celata did not have the numbers for how much BOEM had forecast this latest lease sale would generate. Celata also said that lowering the royalty rates for shallow water tracts may have helped increase interest in the area. Data released after the sale showed companies had bid for 43 tracts in shallow water regions, nearly double the number from the March 2017 lease sale when shallow water royalty rates had been higher.

Oil production coming from projects started in years past has helped bring oil production in the U.S. Gulf of Mexico to record highs, according to the Energy Information Administration. But more recently, Exxon, Chevron and other companies have hesitated to add more area to their operations in federal waters, preferring to drill in North Dakota, Texas and other onshore shale plays that have proven much cheaper to set up and much faster in producing new oil.

But the area is also facing new competition for industry attention as Mexico has become more open to allowing foreign companies to drill in its part of the Gulf. Mexico for decades only allowed its national oil company Pemex to drill in those waters, meaning the area is much less developed than on the U.S. side.

Shell and other international oil companies participated in a January auction of Mexican offshore oil leases, bidding aggressively despite fears that a change of government later this year could roll back the country's energy policy reforms.

In a time of low oil prices and strict limits on capital spending, companies have to decide whether to gamble on buying space in a less developed area or sticking to known territory on the U.S. side, said Bernadette Johnson, VP of market intelligence for Drillinginfo, an industry research organization.

"You may do both, but many won't," Johnson said. "Companies are going to be much choosier because margins are tight and are going to stay tight."

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Subject: Morning Energy, presented by Chevron: Pruitt makes his Senate return — Emails: Pruitt pushed 'red team-blue team' climate debate — The WIFIA balancing act

By Kelsey Tamborrino | 05/16/2018 05:40 AM EDT

With help from Anthony Adragna

TIME TO FACE THE MUSIC: Scott Pruitt hits the Hill again today, and on top of the questions he can expect on his lavish spending and ethical quandaries, the EPA administrator will be asked to explain why EPA helped to bury a federal study that would have increased warnings about toxic chemicals found in hundreds of water supplies across the country. As POLITICO reported this week, emails released under the Freedom of Information Act indicate the study was being prepared for release in January, before EPA intervened. It has not been made public more than three months later and the agency producing it says it has no timeline for doing so.

Now lawmakers are looking for answers, including Republicans whose districts suffered contamination from the chemicals PFOA and PFOS, which are linked with certain cancers, thyroid problems and life-threatening pregnancy complications. Annie Snider, who broke the story, has more on the fallout [here](#).

Plus, today's hearing in front of a Senate Appropriations panel comes less than 24 hours after yet [another probe](#) was launched by the agency's inspector general into the handling of Pruitt's emails. That brings the number of probes and investigations into his behavior to an even dozen.

Sparks flying: When Pruitt last appeared on the Hill in April before two House committees, he played the [blame game](#), in part pushing the burden of some of his ethical decisions onto his staff. And since today's appearance will be his first before the Senate since the steady drip of news stories began earlier this year, he'll face a range of inquiries from Democrats, some of whom have been leading the charge against him. The subpanel's ranking Democrat, [Tom Udall](#), has been critical of Pruitt in the past and plans to question him on his spending and ethical issues. "Administrator Pruitt, it's hard to know where to begin this morning. Every day there seems to be a new scandal ... with you at the dead center," Udall will say.

Expect the New Mexico Democrat to discuss the [range of investigations](#) that currently eye Pruitt. "I can only wonder if more investigations will start based on your fast-tracking a new Superfund site at the behest of a conservative media personality and other reports that EPA has taken quick actions to help political donors and lobbyists," he'll say, referencing another [POLITICO story](#).

Both Democrats and Republicans on the subcommittee tell ME they want to discuss the policy at hand. Republican [Shelley Moore Capito](#) said she wants to ask Pruitt about a number of different things, but added she wanted to "just concentrate on the policy." Still, Democrat [Chris Van Hollen](#) said he has a long list of questions for the administrator that involve policy as well as a "betrayal of the public trust." And, fellow subpanel Democrat [Jeff Merkley](#) told ME: "[I] certainly want to get a better understanding of why he feels that he's so comfortable using government funds in all kinds of inappropriate ways, but also the policy."

Separately, EPW Chairman John Barrasso, who is not on the Appropriations committee, suggested [in a letter](#) Tuesday he'll also be watching to see what comes out of today's hearing. That letter comes in response to a request from six Democratic EPW members, who [demanded](#) Barrasso bring Pruitt before the panel. Barrasso

said EPA provided Pruitt's responses to previous questions from the panel earlier this week and added that he intends to call Pruitt for another hearing but will wait to see what comes out of the ongoing probes already looking into Pruitt's activities.

In the crowd: Environmental groups in the audience today will look for senators to ask the tough questions. Moms Clean Air Force will be bringing in local moms and their children, and the group will hand out their Pruitt "report card." Similarly, the Environmental Defense Fund will be watching to see if Pruitt dodges on questions that aim to hold him accountable. EDF will again hand out its "Non-Trivial Pruitt Questions" cards and dropped off hard copies of its "101 Questions" document to committee members' offices. **If you go:** The hearing kicks off at 9:30 a.m. in 124 Dirksen.

GONE QUIET: Sen. Jim Inhofe told reporters he hasn't talked with his buddy Pruitt in "about a month" but said the former Oklahoma attorney general is "weathering the storm" fine. But, he predicted, the tempest was not done yet. "Storms are never over," he said. "They always come back — you know that — in Washington."

WELCOME TO WEDNESDAY! I'm your host Kelsey Tamborrino. Clean Energy Business Network's Andy Barnes was the first to guess that two bathtubs remain in the Senate after they were uncovered in 1936 — although six were first installed in the chamber. Today's question: Who was the first sitting member of Congress sentenced to prison? Bonus points if you can guess the charge. Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](https://twitter.com/kelseytam), [@Morning_Energy](https://twitter.com/Morning_Energy) and [@POLITICOPro](https://twitter.com/POLITICOPro).

THIS MIGHT COME UP: New communications reveal additional details about how the controversial red team-blue team debate over climate science would have played out at EPA and who was influencing Pruitt. Pro's Alex Guillén and Anthony Adragna report on a draft press release that circulated on Nov. 4 among top EPA officials, which laid out the line of attack. "EPA is standing up a Red Team peer review of the report," they wrote, rebuffing the Fourth National Climate Assessment, which countered many Trump administration political appointees who have questioned the connection between greenhouse gas pollution and global warming. The "blue team" would essentially be the federal assessment and its authors. Read more on that here.

THE WIFIA BALANCING ACT: A battle is brewing between small and rural communities and the larger ones whose infrastructure projects can be costly — and it could upend a bipartisan effort to pass the first major infrastructure bill during the Trump era. Annie reports on the measure at hand, called the Securing Required Funding for Water Infrastructure Now, or SRF WIN Act. The provision would expand the WIFIA program that loans federal money for water infrastructure projects at Treasury's attractive long-term interest rates, but also includes changes to make the WIFIA program more accessible to small and mid-sized communities. Now the measure has sparked opposition from the groups that originally conceived of the WIFIA program, who say the new proposal tilts too far toward the small communities. Read more here.

**** A message from Chevron:** Chevron and local partners are helping to provide DOERS with the hands-on technical training needed for today's jobs in the manufacturing and energy industries. Watch the video: <https://politi.co/2rBPIuI> **

CANCEL THOSE VACATIONS: Senate Appropriations Chairman Richard Shelby told reporters he's been in talks with Majority Leader Mitch McConnell about shelving the chamber's planned August recess unless they make more progress in the appropriations process. "We might not have an August recess," he said. Asked if it would be realistic to do so in an election year, Shelby quipped: "Might not be realistic for the Democrats — they have a lot more seats." Put ME down as skeptical on this one. Never underestimate the power of late July jet fumes.

INTERIOR-EPA PACKAGE MOVES AHEAD: The House Appropriations Committee's Interior-Environment panel cleared a \$35.25 billion spending package on Tuesday, setting the measure up for committee consideration as early as next week. The bill cleared on a voice vote, Alex reports, and is likely to face contentious amendments before the full committee. Alex breaks down the bill further here.

FOR YOUR RADAR: The full House Appropriations Committee will mark up the fiscal 2019 Energy-Water bill this morning. Read the bill text here.

ENERGY NOM ON TAP: The Senate Foreign Relations Committee will hold a markup on the nomination of Frank Fannon to be an assistant secretary of State for energy resources. Fannon was a former staffer to Inhofe, who released a statement ahead of the vote that called the nominee a "good friend." Inhofe pointed out expanding U.S. energy exports to Eastern Europe, and said Fannon "can use his leadership and expertise effectively to advance American energy dominance and enforce energy sanctions, like those against Russia and Iran."

LISTEN IN: EPA announced Tuesday its Office of Enforcement and Compliance Assurance will host a series of "web-based listening sessions" beginning May 21, on specific recommendations from the agency's Superfund Task Force Recommendations Report.

NEW FOSSIL FUEL ALLIANCE COMING? The Trump administration is weighing the creation of "a new, central institution" that would advocate for natural gas and coal technology and exports, according to draft document obtained and reported on by E&E News. The draft "Clean and Advanced Fossil Fuel Alliance" talking points, though "pre-decisional," lay out a previously described loose affiliation of countries the United States is courting. Read the story here.

MONIZ UNVEILS ENERGY EMPLOYMENT REPORT: Former Energy Secretary Ernest Moniz will unveil the third installment of the 2018 U.S. Energy & Employment Report this morning. The report arrives via Energy Futures Initiative — where Moniz is CEO and president — and the National Association of State Energy Officials. It was originally established during Moniz' time at the DOE, and offers insight into the employment trends of four energy sectors. Moniz will be joined by NASEO head David Terry and author David Foster, as well as Senate Energy ranking member Maria Cantwell. The event will be livestreamed on both the NASEO and EFI websites.

JUDGES HALT ATLANTIC COAST: A federal appeals court ordered the construction of the Atlantic Coast pipeline be halted, following a legal challenge by environmental opponents who argued a review by the U.S. Fish and Wildlife Service was inadequate, the Richmond Times-Dispatch reports. The order vacates FWS' Incidental Take Statement. In a research notice sent by ClearView Energy Partners, the group said there was "a high probability that FERC will direct suspension of construction operations in these areas while the FWS revises the ITS."

NSR PERMITTING FOCUS OF HEARING: The House Energy and Commerce Environment Subcommittee holds a hearing on new source review permitting reform this morning. EPA air chief Bill Wehrum will testify, as well as Bracewell's Jeff Holmstead, NRECA's Kirk Johnson and NAM's Ross Eisenberg, among others. Although the administration doesn't have an official position on the discussion draft that is the focus of the hearing, Wehrum will say the current "program is unnecessarily complicated and confusing," and should be improved.

Eisenberg will say that NAM supports the bill and the need to reform NSR, more so now than ever. "One of our members estimates that there are over a hundred million tons of CO2 that could be reduced by deploying the full suite of available turbine upgrades at power plants," he'll say, adding that many such upgrades "have been impeded because they may potentially trigger NSR." **If you go:** It begins at 10:15 a.m. in 2322 Rayburn.

NWF MEETS WITH ZINKE: The National Wildlife Federation will meet today with Interior Secretary Ryan Zinke, where the group will discuss conservation issues. Ahead of the meeting, the group submitted five of its priorities, including concerns about some of the locations of upcoming lease sales and mining proposals and Zinke's broader conservation agenda.

Heads up! Zinke will deliver the keynote speech at next week's annual Williston Basin Petroleum Conference, in Bismarck, N.D., local KFYY-TV [reports](#).

IT'S A BIRD, IT'S A DRONE: Interior is for the first time investing in small-unmanned aircraft systems services, or drones, to help tackle wildfires. DOI [awarded](#) a "Call When Needed" contract to four U.S. companies, which will allow the agency to employ the drones when needed to support wildland fire operations, search and rescue and emergency management.

MAIL CALL! A group of 20 Democratic senators called on Pruitt Tuesday to extend the comment deadline until July 30 for the agency's "secret science" proposal to ban the use of studies that don't publicly disclose all their data, and to hold more public hearings on the topic. Read [the letter](#).

— **Ahead of the House's vote on the farm bill**, 114 state legislators signed a letter in opposition to a provision they say would exempt EPA from key requirements under the Endangered Species Act that protect pollinators. Read it [here](#).

STUDY: BUSINESSES TAKING THE LEAD: Deloitte is out with two new reports today — one on global battery storage markets and another on energy management and consumption views from businesses and consumers. The latter report found that businesses are taking the lead to address climate change. They are reviewing or changing their energy management policies in response to the U.S. pulling out of the Paris climate agreement, the report found. According to the report, the number of companies with carbon footprint goals increased to 61 percent in 2018, from slightly more than half the year before. Read that report [here](#) and the energy storage report [here](#).

REPORT OUT ON MANUFACTURING AT DOE: The Information Technology and Innovation Foundation will release its new report today reviewing DOE's "Manufacturing USA" institutes, looking at areas of progress and stability. Given the potential ITIF says the institutes have to bridge gaps in private sector investment, the report lays out national goals at stake at the nexus of manufacturing and energy, and outlines why federal action is necessary. Read the report [here](#).

QUICK HITS

— Failure at the EPA, [Pacific Standard](#).

— Why Alaska is crafting a plan to fight climate change: It's impossible to ignore, [The New York Times](#).

— Trump considers ways to boost biofuel market transparency, [Bloomberg](#).

— Whistleblower runs to change a system that burned him, [E&E News](#).

— Judge strikes down Oakland's ban on shipping coal through port, [Bloomberg](#).

— Why clean energy groups are singling out PJM for criticism on grid resilience, [GreenTech Media](#).

— What Pruitt's been doing while you weren't looking, [The Center for Public Integrity](#).

HAPPENING TODAY

9:30 a.m. — The Senate Appropriations Interior-Environment Subcommittee hearing on the EPA's fiscal 2019 budget, 124 Dirksen

10:00 a.m. — The Energy Futures Initiative and the National Association of State Energy Officials briefing to release the 2018 "U.S. Energy and Employment Report," SVC-210

10:00 a.m. — The Information Technology and Innovation Foundation discussion on "Manufacturing USA at DOE: Charting Progress, Seeking Stability," 1101 K Street NW

10:00 a.m. — House Science Committee hearing on "Using Technology to Address Climate Change," 2318 Rayburn

10:00 a.m. — Senate Foreign Relations Committee markup to vote on the nomination of Frank Fannon, 419 Dirksen

10:00 a.m. — House Appropriations Committee markup of energy and water bill, 2118 Rayburn

10:00 a.m. — The Bipartisan Policy Center discussion on "Putting P3s to Work in the United States," 1225 Eye St NW

10:15 a.m. — House Natural Resources Committee markup of various bills, 1324 Longworth

10:15 a.m. — House Energy and Commerce Environment Subcommittee hearing on "Legislation Addressing New Source Review Permitting Reform," 2322 Rayburn

12:00 p.m. — The Environmental Law Institute discussion on "The Burden of Unburdening: Administrative Law of Deregulation," 1730 M Street NW

4:30 p.m. — The Pew Charitable Trusts briefing on "Disaster Mitigation as Smart Infrastructure," 902 Hart

6:00 p.m. — The National Press Club holds Communicators Legends Dinner with former Interior Secretary Ken Salazar, 14th and F Streets NW

THAT'S ALL FOR ME!

**** A message from Chevron:** See how Chevron with local partners are helping DOERS get the hands-on technical training needed for jobs in the energy and manufacturing industries. Watch the video:
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To view online:

<https://subscriber.politicopro.com/newsletters/morning-energy/2018/05/pruitt-makes-his-senate-return-219511>

Stories from POLITICO Pro

EPA move on chemical study may trip up Pruitt [Back](#)

By Annie Snider | 05/16/2018 05:02 AM EDT

EPA Administrator Scott Pruitt is facing a new controversy over chemical contamination that could prove even more damaging than his spate of recent ethics scandals.

When Pruitt returns to Capitol Hill Wednesday, he will likely be asked to explain why EPA helped to bury a federal study that would have increased warnings about toxic chemicals found in hundreds of water supplies across the country. A handful of Republicans were quick to demand answers after POLITICO reported Monday that senior aides to Pruitt intervened after the White House warned of a "public relations nightmare" from the impending Health and Human Services Department assessment.

While Pruitt has said partisan witch hunts are to blame for the controversies around his first-class travel, extensive security spending and friendliness with lobbyists, he will struggle to make the same case this time. Emails released under the Freedom of Information Act indicate the HHS study was being prepared for release in January, before EPA intervened. It has not been made public more than three months later, and the agency producing it says it has no timeline for doing so.

Long used in Teflon and firefighting foam, the chemicals PFOA and PFOS are linked with certain cancers, thyroid problems and life-threatening pregnancy complications. Studies have found them in 98 percent of Americans' blood, and communities from West Virginia to Michigan to New York have been in an uproar after discovering that their drinking water has been contaminated with the chemicals.

Tristan Brown, who served as the Obama administration's liaison between EPA and members of Congress when the agency issued a health advisory for PFOA and PFOS in 2016, said that lawmakers on both sides of the aisle are deeply concerned about the issue. He said anger over the Trump administration's interference could snowball if powerful Republicans who have experienced contamination in their states speak out strongly.

"That could be the beginning of a breach of the dam," Brown said.

Already, key Senate Republicans have shown their willingness to break with the Trump administration when it comes to chemical contamination. In December, North Carolina's two Republican senators came out in opposition to the administration's nominee to head EPA's chemical safety office, industry consultant Michael Dourson, in part because of a crisis in their home state with a chemical similar to PFOA and PFOS, called GenX.

At least three Republican lawmakers have joined a host of Democrats in demanding answers from the Trump administration about the HHS study.

Sen. Shelley Moore Capito of West Virginia, which experienced a major chemical spill a few years ago and has a major PFOA and PFOS problem, said she wants to see the study made public.

"It's important that the findings of the study are released so we can determine the health impacts and any potential threats our communities may face as a result of exposure to perfluorinated chemicals. I would encourage the administration to look into this matter," Capito, a member of the Appropriations subcommittee with EPA jurisdiction, where Pruitt will testify Wednesday, said in a statement to POLITICO.

Rep. Mike Turner (R-Ohio), who chairs a House Armed Services subcommittee, chimed in as well.

"This is not an issue of public relations — this is an issue of public health and safety," he said in a statement Tuesday after writing to Pruitt on the matter.

"It would be unacceptable if the political considerations of those at the highest levels of the EPA led to the suppression of information concerning the public health of Americans," Rep. Brian Fitzpatrick (R-Pa.) said in a statement. "The EPA must provide my constituents with answers to these allegations immediately."

"It is vital that there are proper measures in place to perform accurate, expeditious, scientific assessments for chemicals that pose a threat to public health," he said in a statement to POLITICO, citing his state's "tragic history" with chemical contamination.

Pruitt says he is taking the chemicals issue seriously. Not long after the North Carolina senators torpedoed the chemicals nominee, Pruitt announced a "leadership summit" on PFOA, PFOS and related chemicals that is scheduled to be held at EPA headquarters next week.

But few are expecting his response to include any new regulatory action.

EPA has not regulated a single new contaminant under the Safe Drinking Water Act in more than two decades. The agency's 2016 drinking water advisory only provided advice to the states and local water managers — it set no mandatory limits.

And Pruitt's EPA doesn't even plan to go that far for other chemicals. The agency's No. 2 water official, Dennis Lee Forsgren, has told drinking water groups that under Pruitt, the agency won't issue any new health advisories for GenX or other chemicals.

Betsy Southerland, a career staffer who led work on the 2016 health advisory as director of science and technology at EPA's water office before resigning last year, said states would have to translate the information provided by EPA about the chemicals into health advisory levels or drinking water limits on their own, something few are equipped to do.

Pruitt's "not allowing EPA to provide the state with that expertise," she said.

EPA spokesman Jahan Wilcox, defending the agency's approach, said officials are "stressing that all options — not just health advisories — are on the table as we move into the National Leadership Summit and taking additional steps to address PFAS."

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EPA watchdog launches new probe into Pruitt's email habits [Back](#)

By Anthony Adragna | 05/15/2018 06:18 PM EDT

EPA's inspector general said Tuesday it would look into Scott Pruitt's use of nonpublic email accounts, bringing the number of federal probes into the EPA administrator's behavior to an even dozen.

Specifically, the inspector general said it would look into whether Pruitt is properly preserving email records as required under federal law and whether the agency is properly searching all of his accounts in response to public records requests.

Two senior Senate Environment and Public Works Committee Democrats — ranking member Tom Carper of Delaware and Jeff Merkley of Oregon — released [the letter](#), dated May 2, confirming the probe.

EPW Chairman John Barrasso (R-Wyo.) has previously raised concerns about Pruitt's use of nonpublic email accounts. In response, the agency said it searches all of his accounts when responding to public records

requests. Previous EPA administrators also routinely used nonpublic accounts for day-to-day email communications.

The new probe comes as Pruitt faces a litany of questions surrounding his spending and ethical woes. EPA's inspector general, the Government Accountability Office and the House Oversight Committee are all looking into aspects of his conduct.

Those probes involve Pruitt's first-class travel, use of security on personal trips, pay for top political aides and a sweetheart condo deal with an energy lobbyist who later met with him, among others.

In the letter, EPA Inspector General Arthur Elkins warned that a stretched budget and staff meant he could not say when the probe would begin.

"The fact is that the OIG has been funded at less than the levels we deem adequate to do all of the work that should be done, and we therefore have to make difficult decisions about whether to accept any given potential undertaking," he said. "However, despite these constraints, we have determined that the issues raised in your letter are within the authority of the OIG to review, and we will do so."

Pruitt is set to appear before a Senate Appropriations subpanel Wednesday.

To view online [click here](#).

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EPA staff in 'despair' after Pruitt blame game [Back](#)

By Emily Holden | 04/27/2018 05:33 PM EDT

Scott Pruitt may have survived his testimony on Capitol Hill, but he's coming back to a further enraged and demoralized Environmental Protection Agency staff.

Several current and former EPA officials and other people close to the agency said Pruitt did himself no favors with his congressional testimony Thursday, in which he blamed his aides for installing a \$43,000 privacy booth in his office and approving more than \$100,000 in first-class flights that he took last year. Pruitt also denied knowing key details about raises that his top staff received last year. And he declined to defend his former policy chief against Democrats' accusations that she had failed to show up for work for three months, even though she and Pruitt had been photographed attending the same meeting during the period in question.

In conversations with 11 people who know the atmosphere inside EPA, including Republican political appointees, a handful said his refusal to grovel may have pleased President Donald Trump. But others said his strategy was appalling to the current and former staffers who found themselves thrown under the bus.

"I think his credibility is damaged, and whether or not he gets fired by a tweet isn't going to diminish the fact that his credibility has been seriously damaged by all of this," one person close to the administration told POLITICO. "It shows a real lack of leadership that he did not defend, or blame, his staff. These are the people that he's asking for loyalty from. These are the people that are defending him. He's not returning the favor. That's not leadership."

A current EPA official said Friday that employees are veering between "despair" and "embarrassment," and Pruitt's televised performance did not help.

"I will tell you, it did not go unnoticed from people who watched the hearing that he did not take responsibility on the policy pieces" of the testimony, the official said. "It was not lost on us on the stuff we know about that he used very careful language, he was parsing his words, that some might say he did not speak the whole truth."

One former EPA official said even political aides are "sick of Pruitt constantly putting himself first," and "putting himself before the president's agenda."

"He's rarely been interested in selling regulatory reform as improving Americans' lives, and is far more interested in saving his political career," the former official said.

But Trump has shown no signs of abandoning his EPA chief, who has won the strong backing of conservative groups with his efforts to erase Obama-era environmental regulations. So far, that has outweighed the anger of White House staff members and exasperation of key Republican lawmakers at Pruitt's series of controversies over luxe travel, extensive security, a below-market D.C. condo rental from a lobbyist and history of questionable real estate deals in his native Oklahoma.

A senior EPA official said Pruitt's strategy of fighting the allegations was designed to appeal to Trump, who disdains members of his team who appear weak on television.

"They like fighters no matter what," the official said. "No matter what, fight. That's what we've been conditioned to."

The official predicted that the White House takeaway from the hours of hearings would be that Republican lawmakers stood with Pruitt, while Democrats squandered their opportunity by spending too much time criticizing Pruitt's deregulatory agenda — which Trump supports — rather than hitting him for the ethics issues.

"Any audience would say the White House saw a Republican bench entirely supportive of him," the EPA source said. "On the Democrat side, the White House also saw Democrats who used half their time to criticize policies he's doing that the White House likes. If they wanted to land punches, why do you ask about these policies? That's not going to do it for you."

Pruitt ally Sen. Jim Inhofe (R-Okla.) took that message from Thursday's hearings, despite saying earlier in the week that he was troubled by some recent allegations about the EPA leader's past dealings in Oklahoma. "After a full day of mudslinging and partisan questioning from the Democratic members of the committees, it is clear that the only fault they could find with Scott Pruitt is that he's successfully ending the EPA's history of overreach and over-regulation," Inhofe said in a statement Friday.

Still, the senior EPA official said, Pruitt's relatively good day in Congress could be "washed away" if his inconsistencies about what he knew about the raises generates a steady narrative that he lied to the White House, as at least one CNN pundit alleged.

And until Trump weighs in, the tension around Pruitt at EPA will remain high.

"There needs to be a halt to this because it's exhausting," the same official said.

Pruitt also still faces multiple investigations inside the executive branch and on Capitol Hill. On Friday, for example, the agency was due to deliver a "batch of documents" to the staff of House Oversight Chairman Trey Gowdy (R-S.C.), who is leading one of the probes.

Departed EPA aides who have said Pruitt didn't tolerate internal criticism of his spending and secrecy say current staffers still fear they'll be similarly swept up in the scandals — but won't be able to find jobs if they quit now and gain a reputation for disloyalty.

"They're trying to do the best they can in a toxic environment," one former staffer said. "You cannot express any idea that might be misconstrued as a political attack on Pruitt or any policy issues, so people just do what they're told. They're professional. ... They don't want to get caught in an undertow."

Another former EPA official has been getting phone calls from staffers who are frustrated by the controversies but keeping their heads down.

"Everyone in the building wants to come out and say something ... but as soon as they say something, they're out of a job," that person said.

Not everyone in the agency was upset that Pruitt pinned many of his controversies on his staff Thursday, after giving an opening statement in the House in which he confessed that his first year on the job had been "a learning process."

"When he was putting it on staff, that's the reality of it," one current EPA political appointee said. "Sure, he's the administrator; sure, he's the head of the agency. That doesn't mean he was aware of the \$40,000. He asked for a secure phone line and the next thing you know it turned into a secure phone booth. ... Overall, I think his staff continue to stand beside him today and will continue to do that."

In his testimony, Pruitt said he had never asked for a \$43,000 secure phone booth — only "access to secure communication" — or biometric locks for his office, and he said his security staffers made the call for him to fly first-class to avoid possible threats from other passengers. He said he had authorized his chief of staff, Ryan Jackson, to give raises to his top staff but had no idea that they were circumventing disapproval from the White House. And he chose not to defend his former policy chief against allegations from Democratic lawmakers that she was not in the office for months, even though an EPA spokesman had dismissed the accusations as "baseless and absurd."

A second political appointee said Pruitt didn't break any new ground with his defenses and that controversies dogging him had been "all blown out of context."

The person called Pruitt a "disruptor" and said "folks don't like that aggressive style."

"Administrator Pruitt speaks for a certain aspect of the Trump administration conservative movement," the appointee said.

Eric Wolff and Anthony Adragna contributed to this report.

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Pruitt fast-tracked California cleanup after Hugh Hewitt brokered meeting [Back](#)

By Emily Holden and Anthony Adragna | 05/07/2018 10:12 PM EDT

EPA Administrator Scott Pruitt placed a polluted California area on his personal priority list of Superfund sites targeted for "immediate and intense" action after conservative radio and television host Hugh Hewitt brokered a meeting between him and lawyers for the water district that was seeking federal help to clean up the polluted Orange County site.

The previously unreported meeting, which was documented in emails released by EPA under a Freedom of Information Act lawsuit by the Sierra Club, showed Pruitt's staff reacting quickly to the request last September by Hewitt, who has been one of Pruitt's staunchest defenders amid a raft of ethics controversies around his expensive travel, security team spending and a cheap Washington condo rental from a lobbyist.

Pruitt has drawn criticism from environmentalists and other critics for letting prominent GOP backers and industry groups influence the agency's agenda — even as he has kicked scientists off of EPA's advisory panels and moved to limit the kinds of peer-reviewed research it will consider when making decisions.

In many cases, the people whose advice Pruitt is heeding could be useful supporters for him in a future race for U.S. senator or president. They include GOP megadonor Sheldon Adelson, who — as POLITICO reported in March — persuaded Pruitt last year to take a meeting with an Israeli water purification company called Water-Gen that later won a research deal with the EPA.

Hewitt, a resident of Orange County whose son James works in EPA's press office, emailed Pruitt in September to set up a meeting between the administrator and the law firm Larson O'Brien, which employs Hewitt and represents the Orange County Water District. Pruitt had been planning to meet with the lawyers in California a month earlier, but cancelled the trip to undergo knee surgery.

"I'll join if the Administrator would like me too or can catch up later at a dinner," Hewitt wrote in his Sept. 18 message. Hewitt added that the issues surrounding the Superfund site were "Greek to me but a big deal in my home county."

Pruitt's aides responded within minutes and quickly confirmed an Oct. 18 meeting for the lawyers and a project director.

Six weeks after that meeting, on Dec. 8, the Orange County North Basin site appeared on Pruitt's list of 21 contaminated areas to address. A month later, Pruitt proposed listing the site on EPA's National Priorities List, a move that could make it eligible for long-term federal cleanup funding from the federal government if the responsible polluters cannot be identified and forced to pay for its remediation.

Since then, Hewitt has been a robust defender of Pruitt, dismissing his recent controversies as "nonsense scandals" on MSNBC in early April and saying his detractors were "just trying to stop the deregulation effort."

Pruitt has touted the agency's Superfund work as one of his key priorities, setting up a task force to seek to speed up the clean-up of the nation's worst contaminated sites. That task force had been headed by Albert "Kell" Kelly, a former banker and longtime friend, who departed the agency last week after news about loans he provided to Pruitt in Oklahoma, including the mortgage provided to Pruitt for a house he bought from a lobbyist when he was a state senator.

Environmental advocates have worried Pruitt's efforts to identify Superfund priority sites would bypass the process set up by Congress to ensure cleanup resources are divided fairly, and that he could focus on sites seen as important to his political supporters. And environmentalists have said Pruitt's rush to claim that contaminated properties have been remediated could risk turning them over to local governments and businesses that might pursue cheaper, inadequate solutions.

Elgie Holstein, senior director for strategic planning at the Environmental Defense Fund who has been tracking EPA's Superfund actions, said the connection to Hewitt is "not a surprise."

"The biggest fear we have is that No. 1, the administrator's political priorities and personal ambitions, political ambitions become the primary criteria for action under this program instead of science and health," Holstein said.

EPA never disclosed the meeting with Hewitt's contacts. It was listed on Pruitt's public calendar as a staff briefing. But on his private Outlook schedule, which the agency has released in response to lawsuits, it appeared as an "Orange County Superfund Site" meeting with Kelly and two other staffers. The records did not list the Californians in attendance at the meeting at EPA headquarters in Washington.

But EPA spokesman Jahan Wilcox confirmed that two lawyers representing the water district, Robert O'Brien and Scott Sommer, and the water district director of special projects, Bill Hunt, were there. A third lawyer, former federal Judge Stephen G. Larson, was forced to cancel his trip due to wildfires in California, according to emails.

"Hugh Hewitt helped arrange the meeting at the request of the water district but did not attend," Wilcox said.

Wilcox said the meeting was for the water district to "brief EPA on the Superfund site's cleanup efforts and request expedited cleanup," following a 2016 agreement with the agency to conduct a remedial investigation and feasibility study, at a cost of \$4 million over two years. Hunt did not immediately respond to a request for comment.

Hewitt in an email to POLITICO called Pruitt a friend and said he does not have a working relationship with him. He said that his firm has represented the water district and worked on the site with EPA's regional office for years but that he had not participated in that work.

Hewitt said he requested a meeting because the water district wanted to brief the new EPA team, he said, adding that he was an Orange County resident until 2016 as well as an Orange County Children and Families Commission member. He said that he "very much" wanted the Superfund site remediated as soon as possible.

According to an EPA fact sheet, the Orange County site has more than five square miles of polluted groundwater containing chlorinated solvents and other contaminants across the cities of Anaheim, Fullerton, and Placentia. It includes the Orange County Groundwater Basin, which provides drinking water to more than 2.4 million residents across 22 cities, according to the agency. Those pollutants can damage humans' nervous systems, kidneys and livers, and some are considered carcinogenic.

EPA has just begun its process of studying the contamination and it has not determined which companies caused the pollution in the area. But an administrative settlement with the EPA in 2016 says the area was home to "electronics manufacturing, metals processing, aerospace manufacturing, musical instrument manufacturing, rubber and plastics manufacturing, and dry cleaning."

Hewitt also thanked EPA schedulers for working to arrange a meeting between Pruitt and the California Lincoln Clubs, which describe themselves as in favor of "limited government, fiscal discipline and personal responsibility." After some rescheduling Pruitt eventually met with representatives of the group on a trip to California in March of this year, according to his public calendar. Prominent Orange County businessman John Warner also helped to connect that group with staffers.

Pruitt and his scheduling staff have frequently sought to set up meetings with or for influential Republican figures, according to the internal EPA emails.

His team accepted an invitation for him to address The Philanthropy Roundtable at an invitation-only event at the White House for "conservative and free-market foundation CEOs and individual wealth creators to discuss the greatest opportunities for foundations to protect and strengthen free society" and "what [Pruitt] views as unique opportunities for philanthropic action.

As POLITICO reported in March, Pruitt also met with an Indiana coal executive and Trump fundraiser who was seeking to soften a pollution rule.

Pruitt also crafted his travel schedule — including a tour of states in August — to meet with big business much like a member of Congress would during the annual recess.

In July, EPA's associate administrator of public engagement Tate Bennett was working with Pruitt to "essentially create an August recess for the EPA to be out in the states talking with individual companies & doing listening sessions within sectors," said Leah Curtsinger, the federal policy director for the Colorado Association of Commerce & Industry, in an email introducing Bennett to her husband, public affairs director at coal company Cloud Peak Energy and a fellow alum of Senate Majority Leader Mitch McConnell's office.

Annie Snider contributed to this report.

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Emails show Pruitt pushing 'red team-blue team' climate debate [Back](#)

By Alex Guillén and Anthony Adragna | 05/15/2018 06:39 PM EDT

EPA Administrator Scott Pruitt had hoped at least twice last year to announce his plans for a controversial red team-blue team debate that would take aim at a federal assessment supporting climate change science, according to newly released emails.

Pruitt's contentious review was abandoned because of the White House's objections, but the communications reveal new details about how the process would have worked and who was influencing Pruitt.

Many scientists have complained that a red team-blue team style debate was a poor way to examine the scientific evidence that overwhelmingly supports the findings that humans are the primary driver behind climate change. But for Pruitt, who had once suggested the event might be televised, the debate appeared to be directed at rebuffing the Fourth National Climate Assessment.

That government-wide report issued on Nov. 3 contradicted many Trump administration political appointees who have questioned the connection between greenhouse gas pollution and global warming.

A draft press release that circulated on Nov. 4 among top EPA officials, and which was shared with Pruitt on Nov. 5, laid out the line of attack, according to the documents made public on Tuesday by EPA following a records request from the Natural Resources Defense Council.

"EPA is standing up a Red Team peer review of the report," they wrote, while the "blue team" would essentially be the federal assessment and its authors.

"A robust, transparent public peer review evaluation of climate change is something everyone should support," Pruitt said in the unreleased November statement. "Now is a perfect opportunity for the formation of a 'Red Team' exercise."

The draft release also included space for quotes from two prominent climate science critics: Steve Koonin, an Obama-era Energy Department official, and William Happer, a Princeton physicist who argues that increased carbon dioxide would benefit the planet.

The duo appear to have been tapped to help guide the red-team review together.

"Your contributions even in a small way to the validity of the red team blue team approach would be appreciated," Ryan Jackson, Pruitt's chief of staff, wrote to Koonin and Happer on Nov. 4.

In an email to POLITICO, Happer said the exercise was "badly needed," while Koonin, now the director of the Center for Urban Science and Progress at New York University, told POLITICO the National Climate Assessment was "demonstrably deficient on a number of points."

EPA did not return a request for comment.

Pruitt has previously said a Wall Street Journal piece written by Koonin in April 2017 calling for a similar EPA review of climate science was his inspiration for instigating the "red team" review.

The emails, however, show that Koonin and his allies began wooing Pruitt even before that. In an email more than a week before Koonin's WSJ piece ran, Dan Yergin, the Pulitzer-winning oil historian and vice chairman of IHS Markit who joined a board advising President Donald Trump, introduced Koonin by email to Jackson.

Pruitt and Koonin met April 28, and the emails show Koonin was closely involved in the process afterward.

Koonin sent EPA a "prospectus" outlining the exercise, and though much of it was redacted by EPA before its release, Koonin suggested timing the red team review to the National Climate Assessment, which was due out six months later. Doing so would "ensure that certainties and uncertainties in projections of future climates are accurately presented to the public and decision makers," he wrote.

A revised version of the prospectus was circulated by EPA to White House officials in July after news of Pruitt's plans had leaked.

"There are a lot of press reports about EPA's planning on this. None of it is being run by us. This seems to be getting out of control," wrote Michael Catanzaro, a top energy adviser to Trump who has since left the administration, a few days after receiving Koonin's proposal.

In late June, Liz Bowman, then a top EPA spokeswoman, questioned whether the exercise could be announced as early as July 5 or 6. But it wasn't until November that top Pruitt staffers begin circulating a draft press release on the announcement.

A draft of the announcement on Nov. 5 inspired a lengthy email chain, which EPA redacted, that involved direct messages from Trump chief of staff John Kelly, strategic communications director Mercedes Schlapp, and former White House staff secretary Rob Porter.

Pruitt was touting his plans to launch the red team review as late as December. Emails early in that month indicate the agency's air chief, Bill Wehrum, would make the announcement on Dec. 12 while Pruitt traveled in

Morocco. One message that included Jackson had the subject line of "Red Team/Blue Team Announcement Planned for Tuesday, Dec. 12."

The [New York Times](#) reported in March that Kelly and other top officials stopped the announcement in the fall, and Kelly's deputy Rick Dearborn met with Pruitt in mid-December to declare the plan dead.

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WRDA faces stumbling block over small community projects [Back](#)

By Annie Snider | 05/15/2018 04:48 PM EDT

A battle over boosting funding for drinking water and wastewater projects in small communities is threatening a bipartisan effort to pass the first major infrastructure bill under the Trump administration.

The measure at issue, Securing Required Funding for Water Infrastructure Now, or SRF WIN Act, would expand the popular WIFIA program that loans federal money for water infrastructure projects at Treasury's attractive long-term interest rates. The bill includes a number of changes seeking to make the WIFIA program more accessible to small and mid-sized communities.

Senate Environment and Public Works Chairman [John Barrasso](#) (R-Wyo.) said last week that he supported adding it to this year's Water Resources Development Act, [S. 2800 \(115\)](#), through a manager's amendment. But he said attaching the measure, which was introduced by Sens. [John Boozman](#) (R-Ark.), [Cory Booker](#) (D-N.J.) and nine others, wasn't a done deal. "We're working to try and get to that," he told reporters.

The SRF measure has sparked fierce opposition from the groups that originally conceived of the WIFIA program that say the new proposal tilts too far toward the small communities, and they are now threatening to revoke their support from the overall infrastructure bill if it gets added.

"We believe that SRF WIN Act is a fundamentally flawed proposal that, if enacted, would pose a severe threat to the future viability of the WIFIA program," the American Water Works Association, the Association of Metropolitan Water Agencies and the Water Environment Federation wrote in a [letter](#) to Senate EPW leaders last week.

The fight pits small and rural communities against larger communities whose projects can often run into the billions of dollars.

The WIFIA program, authorized as part of the 2014 WRDA bill, targets those larger-scale projects, in part because they have a harder time competing for money from the State Revolving Funds, the main federal funding mechanism for municipal water projects. Those funds prioritize spending in areas with public health problems, and some states have capped the amount that can go to larger projects so they don't drain the funds.

The groups opposing the new measure argue that small and rural communities already have access to a carve-out that gives them 15 percent of WIFIA funding. The proposed changes, they say, would put larger communities at an unfair disadvantage and could ultimately lead to the demise of EPA's State Revolving Funds program.

EPA estimates that \$472.6 billion will be needed over the next two decades to improve drinking water infrastructure, alone. The federal government funds just a fraction of that — most years Congress appropriates less than \$3 billion.

Beyond the rural carve-out under WIFIA, states can also bundle smaller projects together to reach the \$20 million minimum funding requirement, and EPA recently conditionally approved one such application from the Indiana Finance Authority.

The changes being proposed in the SRF WIN Act seek to make this option more accessible, including by waiving the \$100,000 application fee for states filing such applications and authorizing \$200 million annually to go toward such projects.

"This legislation is an innovative approach to helping communities of all sizes, in every state secure loans so they can improve their crumbling infrastructure," Boozman said in a statement introducing the legislation.

Dozens of groups have endorsed including the SRF WIN Act in the Senate's WRDA bill, called America's Water Infrastructure Act, including the Chamber of Commerce, the American Society of Civil Engineers and the Vinyl Institute.

"We believe the inclusion of the SRF WIN Act in the America's Water Infrastructure Act will make a really good bill even better," more than 25 groups wrote in a [letter](#) to Senate EPW leaders on Tuesday.

But the opposing groups argue that Boozman's bill would decrease the program's leveraging rate — an aspect that has been wildly popular with lawmakers since it allows small appropriations to fund much larger infrastructure investments. EPA expects that the \$25 million it got for WIFIA in fiscal 2017 will result in \$2.3 billion worth of loans, the groups said.

"These robust rates enable the federal government to get a tremendous 'bang for the buck' when appropriating funds for water and wastewater infrastructure," AWWA, AMWA and WEF wrote.

The Senate Environment and Public Works Committee is seeking to move its WRDA bill swiftly. It will hold its second legislative [hearing](#) on the measure Thursday, with the assistant secretary of the Army for Civil Works due to testify. Barrasso said a markup will be held shortly thereafter.

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Panel moves \$35B Interior-EPA spending bill to full committee [Back](#)

By Alex Guillén | 05/15/2018 06:18 PM EDT

The House Appropriations Committee's Interior-Environment panel today cleared its \$35.25 billion spending package, teeing it up for consideration by the full committee as early as next week.

The [bill](#) cleared on a voice vote. It is likely to face contentious amendments before the full committee.

Before the bill advanced, ranking member Betty McCollum (D-Minn.) criticized the policy riders and complained that EPA has not yet reported to Congress regarding the GAO's April conclusion that EPA's construction of a soundproof booth for Administrator Scott Pruitt violated spending laws.

The bill provided \$7.96 billion for EPA, a \$100 million overall reduction from 2018 levels. Along with language repealing the Waters of the U.S. rule, the bill provided \$2.6 billion for the Clean Water and Drinking Water State Revolving Loans and \$75 million for the Water Infrastructure Finance and Innovation Act program.

Among the Interior Department's major agencies, the bill includes a \$55 million increase for the Bureau of Land Management to \$1.4 billion, a \$19 million hike for the U.S. Geological Survey to \$1.2 billion and another \$53 million to boost the National Park Service to \$3.25 billion.

The Office of Surface Mining would get \$229 million, including \$90 million for another year of a pilot program aimed at cleaning up abandoned Appalachian mines. The Fish and Wildlife Service's budget would drop by \$11 million to \$1.6 billion.

The bill also provided \$6.1 billion for the Agriculture Department's Forest Service, including \$3 billion for wildfire work.

WHAT'S NEXT: The full package will be considered by the full House Appropriations Committee at an unspecified later date.

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EPA News Highlights 3.26.18

The Oklahoman: Ban On "Secret Science" In EPA Regulation Makes Sense

The Environmental Protection Agency has announced it will now base new regulations only on the findings of scientific studies whose data and methodology are made public so they can be subjected to independent review. That's a sound move in line with basic scientific transparency and professionalism. Yet it's being treated as a sign of impending apocalypse by some on the left, which says much about the questionable validity of that group's policy prescriptions. In an interview with The Daily Caller News Foundation, Administrator Scott Pruitt said the EPA will end its use of studies that do not publish underlying data, only conclusions. "Otherwise, it's not transparent. It's not objectively measured, and that's important," Pruitt said. In the past, the EPA has advanced air-quality regulations that imposed massive costs based primarily on the findings of two studies done in the 1990s that linked fine particulate pollution to premature death. Neither study made associated data public.

RealClearPolitics: Pruitt Leads The Way On Regulatory Rollback

This month, the Environmental Protection Agency released its EPA Year in Review for 2017–2018. To call it impressive would be a gross understatement. With Administrator Scott Pruitt leading the charge, the agency has shown unrivaled commitment to carrying out the president’s agenda of deregulation. Before taking over at the EPA, Pruitt was as a leading opponent of regulatory overreach by the agency. As general of Oklahoma, for instance, he dissolved the Environmental Protection Unit and instead created a Federalism Unit to fight President Obama’s aggressive regulatory agenda. He brought more than a dozen lawsuits against the EPA, fighting such rules as the Cross State Air Pollution Rule and the Clean Water Rule, and successfully challenging the Clean Power Plan. Now, as EPA administrator, Pruitt is taking even more direct action and doing so in a cooperative and transparent manner. When Office of Management and Budget Director Mick Mulvaney discussed the deregulation effort at the Conservative Political Action Conference last month, he highlighted the rules that were top priority for the administration’s regulatory roll back: the Waters of the United States rule and the Clean Power Plan. Both fall within Pruitt’s jurisdiction at the EPA. No surprise that action on EPA regulations has moved to the forefront of the administration’s agenda.

Montana Standard: Omnibus Bill Restores EPA Funding

The Environmental Protection Agency is getting more than it asked for this fiscal year due to the \$1.3 trillion omnibus spending package passed in Congress last week and signed by President Donald Trump Friday. Trump had wanted to slash the EPA’s budget by 31 percent, a reduction of \$2.6 billion from what the EPA had to operate on in 2017. The EPA’s biggest operating budget since its inception in 1970 came along in 2010, when the Democratic-controlled Congress and President Barack Obama gave the EPA \$10.2 billion to work with. EPA administrator Scott Pruitt asked for \$5.655 billion last May to operate the agency this year. The ink on Trump’s signature to the 2,232-page bill was still wet enough Friday that the EPA had not altered its website to reflect the new spending levels for 2018. What the infusion of federal dollars will mean for the EPA — and more specifically for Butte and Anaconda and EPA Region 8 as a whole — is not clear. Because Congress could not pass a federal spending bill last fall, this bill’s passage comes six months into the current fiscal year.

Zanesville Times Recorder: Farmers Don’t Need Government Overreach

I am a farmer who raises cattle and hay. I think the EPA got far too nosy into farmers’ lives under the Obama Administration and that created a needless ordeal for us. I am glad that the Trump Administration is addressing this problem by pushing for smart reforms to EPA regulations affecting agriculture. A few years ago, the EPA told us that we had to put fences around all of our creeks and ponds so the cattle couldn’t run in them. The Waters of the United State Rule even gave the government jurisdiction over dry creeks. I don’t think matters such as these are any of the government’s business. They just don’t have the right to tell us how to do things. When it comes to banning products, we need to make sure that we aren’t going after ones that are safe. The previous administration even wanted to ban safe pesticides and that doesn’t help farmers at all. These are all examples of how the federal government further intruded into our land and our lives. Now, our leaders have a chance to correct some of the regulations that were harming farmers. That’s a good thing. After all, these regulations weren’t helping anyone anyway. We need our government officials to use common sense. We don’t need to be burdened with unnecessary regulations. Small farmers don’t make much money to begin with and we should not be harmed by government overreach. I am glad the Trump Administration is working to reverse these intrusions.

The Wall Street Journal: EPA Tentatively Decides To Ease Vehicle Emission Standards

The Environmental Protection Agency has tentatively concluded that future vehicle emissions standards should be eased, a decision long lobbied for by car companies that argued looming regulations are too stringent and need revision. The EPA has drafted a so-called final determination that outlines arguments for relaxing standards requiring auto makers to cut emissions enough so vehicles sold average more than 50 miles a gallon by 2025, said a person familiar with the matter. The EPA delivered the draft, which covers standards between 2022 and 2025, to the Office of Management and Budget this week, the person said. The EPA faces an April 1 deadline to determine whether the targets should be strengthened, relaxed or left unchanged. No changes would be imminent even with the issuing of a final determination. Rules would have to be devised afterward detailing any revisions, a process that could take weeks or months. Bloomberg News earlier reported on the draft determination.

National News Highlights 3.26.18

CNBC: Dow Rises 500 Points As Trade Tensions Ease

Stocks traded sharply higher on Monday, bouncing back from strong losses in the previous session, as trade tensions between the U.S. and China appear to ease. The Dow Jones industrial average rose 500 points, with Microsoft as the best-performing stock in the index. The S&P 500 gained 1.8 percent, with technology and financials leading all sectors higher. The Nasdaq composite advanced 2 percent. The Financial Times reported China has offered to buy more semiconductors from the U.S. to help cut its trade surplus with the U.S. The Wall Street Journal also reported that U.S. and Chinese officials are working to improve U.S. access to China's markets.

The Associated Press: US Expels 60 Russian Diplomats, Shuttters Seattle Consulate

The Trump administration expelled 60 Russian diplomats on Monday and ordered Russia's consulate in Seattle to close, as the United States and European nations sought to jointly punish Moscow for its alleged role in poisoning an ex-spy in Britain. Senior Trump administration officials said all 60 Russians were spies working in the U.S. under diplomatic cover, including a dozen at Russia's mission to the United Nations. The officials said the administration was taking the action to send a message to Russia's leaders about the "unacceptably high" number of Russian intelligence operatives in the U.S. The expelled Russians will have seven days to leave the U.S, said the officials. They weren't authorized to be identified by name and requested anonymity. They added that the Seattle consulate is a counter-intelligence concern because of its proximity to a U.S. Navy base. White House spokeswoman Sarah Huckabee Sanders said the actions would make the U.S. safer by "reducing Russia's ability to spy on Americans and to conduct covert operations" that threaten U.S. national security.

TRUMP TWEETS

The Oklahoman

<http://newsok.com/article/5588210/ban-on-secret-science-in-epa-regulation-makes-sense>

Ban On "Secret Science" In EPA Regulation Makes Sense

By The Oklahoman Editorial Board, 3/26/18

THE Environmental Protection Agency has announced it will now base new regulations only on the findings of scientific studies whose data and methodology are made public so they can be subjected to independent review. That's a sound move in line with basic scientific transparency and professionalism.

Yet it's being treated as a sign of impending apocalypse by some on the left, which says much about the questionable validity of that group's policy prescriptions.

In an interview with The Daily Caller News Foundation, Administrator Scott Pruitt said the EPA will end its use of studies that do not publish underlying data, only conclusions. "Otherwise, it's not transparent. It's not objectively measured, and that's important," Pruitt said.

In the past, the EPA has advanced air-quality regulations that imposed massive costs based primarily on the findings of two studies done in the 1990s that linked fine particulate pollution to premature death. Neither study made associated data public.

U.S. Rep. Lamar Smith, R-Texas and chairman of the House Committee on Science, Space and Technology, has long criticized the use of "secret science" and authored legislation to curtail its use by regulators. Last year, Smith said the EPA had "routinely relied on questionable science based on nonpublic information that could not be reproduced, a basic requirement of the scientific method."

"Americans deserve to see the science for themselves," Smith said. "If the EPA has nothing to hide, why not make the scientific data it uses for its regulations publicly available? What was the EPA hiding?"

That will strike most people as a fair question. But to some activists, the idea that science should involve review and scrutiny is apparently anathema. In response to a prior effort to ban "secret science" at the EPA, Andrew Rosenberg,

director of the Union of Concerned Scientists' Center for Science and Democracy, said transparency would “gut the EPA at the expense of public health and safety.”

That same group has claimed release of data would require publicizing the confidential patient data of individuals. But Steve Milloy, publisher of JunkScience.com and a senior fellow at the Energy and Environmental Legal Institute, notes that California already makes similar data available in its “Public Use Death Files,” and that has been accomplished without violating patient privacy.

Other critics object that there are costs involved in scrubbing data sets so patient privacy is protected. Perhaps, but that doesn't mean the public should be kept in the dark about the data and methods used to justify literally billions in new regulatory burden.

Scientific studies are as susceptible to human error and even outright fraud as any other endeavor — particularly when such studies are used in the political realm. Facilitating transparency and independent review will reduce the chances of bad science harming Americans with half-baked regulations, and should enhance the case for regulations when the underlying science has withstood independent scrutiny.

Given the stakes for public health and the national economy, Americans must be assured government regulations are based on sound science, not someone's “trust me” assurances.

RealClearPolitics

https://www.realclearpolicy.com/articles/2018/03/26/pruitt_leads_the_way_on_regulatory_rollback_110563.html

Pruitt Leads The Way On Regulatory Rollback

By Ken Cuccinelli, 3/26/18

This month, the Environmental Protection Agency released its EPA Year in Review for 2017–2018. To call it impressive would be a gross understatement. With Administrator Scott Pruitt leading the charge, the agency has shown unrivaled commitment to carrying out the president's agenda of deregulation.

Before taking over at the EPA, Pruitt was as a leading opponent of regulatory overreach by the agency. As general of Oklahoma, for instance, he dissolved the Environmental Protection Unit and instead created a Federalism Unit to fight President Obama's aggressive regulatory agenda. He brought more than a dozen lawsuits against the EPA, fighting such rules as the Cross State Air Pollution Rule and the Clean Water Rule, and successfully challenging the Clean Power Plan.

Now, as EPA administrator, Pruitt is taking even more direct action and doing so in a cooperative and transparent manner. When Office of Management and Budget Director Mick Mulvaney discussed the deregulation effort at the Conservative Political Action Conference last month, he highlighted the rules that were top priority for the administration's regulatory roll back: the Waters of the United States rule and the Clean Power Plan. Both fall within Pruitt's jurisdiction at the EPA. No surprise that action on EPA regulations has moved to the forefront of the administration's agenda.

From his first days at the agency, Pruitt took steps to facilitate cooperation with the states on environmental policy. Federalism is an essential principle of American governance, and Pruitt has put this principle into practice. During his first year, Pruitt travelled to 30 states to discuss the EPA's work, personally meeting with 34 governors — Democrats and Republicans — as well as over 350 stakeholder groups. This level of personal involvement is nearly unparalleled, even inside an administration with such a clear focus on deregulation. And it is paying dividends.

The EPA Year in Review booklet is nearly 40 pages long, outlining the regulatory rollback, increased transparency, and government reform measures accomplished in the last year alone. This includes finalizing 22 deregulatory actions and savings of more than \$1 billion in regulatory costs, which previously fell on Americans' shoulders. By comparison, a similar document out of the Department of Labor, headed by Secretary of Labor Alexander Acosta, is only four pages long.

As he says in a letter at the front of the EPA Year in Review, Administrator Pruitt “look[s] forward to working together to accomplish even more progress in 2018.” We applaud Mr. Pruitt’s accomplishments in his first year as head of EPA, and hope that his success provides an example to other agencies. Executive agencies can take the lead on growing the economy by freeing Americans from excessive regulatory burdens. This, the EPA — with Pruitt at the helm — has proven.

Montana Standard

http://mtstandard.com/news/local/omnibus-bill-restores-epa-funding/article_2fa78f2b-666e-5edb-b2f1-716f1690077a.html

Omnibus Bill Restores EPA Funding

By Susan Dunlap, 3/25/18

The Environmental Protection Agency is getting more than it asked for this fiscal year due to the \$1.3 trillion omnibus spending package passed in Congress last week and signed by President Donald Trump Friday.

Trump had wanted to slash the EPA’s budget by 31 percent, a reduction of \$2.6 billion from what the EPA had to operate on in 2017. The EPA’s biggest operating budget since its inception in 1970 came along in 2010, when the Democratic-controlled Congress and President Barack Obama gave the EPA \$10.2 billion to work with.

EPA administrator Scott Pruitt asked for \$5.655 billion last May to operate the agency this year.

The ink on Trump’s signature to the 2,232-page bill was still wet enough Friday that the EPA had not altered its website to reflect the new spending levels for 2018. What the infusion of federal dollars will mean for the EPA — and more specifically for Butte and Anaconda and EPA Region 8 as a whole — is not clear. Because Congress could not pass a federal spending bill last fall, this bill’s passage comes six months into the current fiscal year.

The EPA’s Washington D.C. office did not respond to a request for comment. The EPA’s Denver office responded with a note that inquiries about EPA budget concerns should be forwarded to the Washington D.C. office.

The \$1.3 trillion omnibus spending package rushed through both houses of Congress last week returns the EPA’s budget to above the spending level it had in 2017 and restores it closer to the 2016 budget level. The EPA’s 2017 general operating budget was \$8 billion. Congress reinstated the EPA’s 2018 budget to \$8.1 billion plus an added \$763 million for various EPA water infrastructure programs and Superfund site spending, according to TheHill.com.

The EPA’s 2016 budget was \$8.1 billion.

The bill passed the Senate 65-32 with three who didn’t vote. Democrat Sen. Jon Tester voted for the bill. Republican Sen. Steve Daines voted against it.

Tester said Saturday, “It is critically important for Butte’s families and businesses that the EPA live up to its commitment to remove waste and contamination. This funding bill restores the resources needed to hold polluters accountable, builds on the progress that has been made, and ensures folks in Butte have access to clean water.”

Daines was on his way to China on a delegation trip, leading a group of senators. A spokesperson said, “Senator Daines believes the Superfund sites must be cleaned up and will continue to support funding, but it’s critical that funding is implemented effectively.”

The House gave its approval of the bill by a 256-167 vote with seven abstaining. Republican Congressman Greg Gianforte also voted against the bill, although he told The Montana Standard last summer during a press conference that he wanted to “put funding back in” for the EPA.

A spokesman for Gianforte said, "Greg has consistently supported the Superfund to clean up our impacted Montana communities. Greg will continue being a strong voice to make our communities whole again while also working to protect Montanans by standing up to Washington's overspending."

There were many conservative critics of the omnibus package. One primary complaint was that no one had a chance to read the more than 2,000 pages before votes began on the House floor. Conservative Kentucky Congressman Rand Paul tweeted Thursday that it took him more than two hours just to print all 2,232 pages. He later tweeted he had ordered in pizza to help him get through it.

Trump waffled on signing the bill Friday morning. He tweeted in the early hours of the day that the bill didn't give enough money for a border wall along the U.S.-Mexico border. Trump ran his 2016 election campaign in part on the idea that the U.S. would erect a wall along its border with Mexico and that Mexico would pay for it.

The bill provides \$1.2 billion to replace fencing along the U.S.-Mexico border that is in need of repair and enhance surveillance of the border with upgraded technology, according to The New York Times.

But ultimately, Trump did sign the bill, saying on Twitter that he needed to do so "as a matter of national security." The budget provided \$654.6 billion for the Pentagon.

Zanesville Times Recorder

<https://www.zanesvilletimesrecorder.com/story/news/local/2018/03/23/farmers-need-government-overreach/33187387/>

Farmers Don't Need Government Overreach

By John Lent, 3/23/18

I am a farmer who raises cattle and hay. I think the EPA got far too nosy into farmers' lives under the Obama Administration and that created a needless ordeal for us. I am glad that the Trump Administration is addressing this problem by pushing for smart reforms to EPA regulations affecting agriculture.

A few years ago, the EPA told us that we had to put fences around all of our creeks and ponds so the cattle couldn't run in them. The Waters of the United State Rule even gave the government jurisdiction over dry creeks. I don't think matters such as these are any of the government's business. They just don't have the right to tell us how to do things.

When it comes to banning products, we need to make sure that we aren't going after ones that are safe. The previous administration even wanted to ban safe pesticides and that doesn't help farmers at all.

These are all examples of how the federal government further intruded into our land and our lives. Now, our leaders have a chance to correct some of the regulations that were harming farmers. That's a good thing. After all, these regulations weren't helping anyone anyway.

We need our government officials to use common sense. We don't need to be burdened with unnecessary regulations. Small farmers don't make much money to begin with and we should not be harmed by government overreach. I am glad the Trump Administration is working to reverse these intrusions.

John S. Lent

Malta

The Wall Street Journal

<https://www.wsj.com/articles/epa-tentatively-decides-to-ease-vehicle-emission-standards-1521842605>

EPA Tentatively Decides To Ease Vehicle Emission Standards

By Mike Spector, 3/23/18

The Environmental Protection Agency has tentatively concluded that future vehicle emissions standards should be eased, a decision long lobbied for by car companies that argued looming regulations are too stringent and need revision.

The EPA has drafted a so-called final determination that outlines arguments for relaxing standards requiring auto makers to cut emissions enough so vehicles sold average more than 50 miles a gallon by 2025, said a person familiar with the matter.

The EPA delivered the draft, which covers standards between 2022 and 2025, to the Office of Management and Budget this week, the person said. The EPA faces an April 1 deadline to determine whether the targets should be strengthened, relaxed or left unchanged.

No changes would be imminent even with the issuing of a final determination. Rules would have to be devised afterward detailing any revisions, a process that could take weeks or months. Bloomberg News earlier reported on the draft determination.

Auto makers have argued the future standards, which for 2025 equate to roughly 36 mpg in real-world driving, are too difficult to meet in an era of cheap gasoline. Low fuel prices have resulted in soaring sales of less-efficient pickup trucks and sport-utility vehicles that now eclipse 60% of the U.S. market. Electric cars that don't contribute to greenhouse-gas emissions amount to only about 1% of U.S. sales.

Still, auto makers also want to ensure that California and other states following its aggressive standards that collectively represent about 40% of the U.S. market are on board with changes, lest they face a patchwork of different rules across state lines.

California currently has an EPA waiver to set its own standards separate and apart from U.S. rules and had been in lockstep with targets the Obama administration finalized just before President Donald Trump's inauguration in January 2017. The Trump administration reopened a review of the future standards after lobbying from car companies, a move that angered California officials.

"The draft determination has been sent to OMB and is undergoing interagency review. A final determination will be signed by April 1, 2018, consistent with the original timeline," said Liz Bowman, an EPA spokeswoman. She didn't elaborate on the contents of the draft.

A spokesman for the California Air Resources Board, the state agency that regulates tailpipe emissions, said officials were "troubled" by word of the EPA's tentative decision to revise the standards. "We have not seen the document in question and California had no input into its content," the spokesman said.

Trump administration and California officials have held meetings and phone calls in recent months, but haven't agreed on any proposed changes. CARB Chairwoman Mary Nichols traveled to Washington in January to meet with officials from the White House, EPA and National Highway Traffic Safety Administration, an agency that sets its own separate fuel-economy standards and has been involved in negotiating possible changes.

Ms. Nichols and other state officials signaled a willingness to discuss possible changes at that meeting without committing to any specific proposals. She joined another check-in call with Trump administration officials in recent weeks, the person familiar with the matter said.

"California paved the way for a single national program and is fully committed to maintaining it. However, we feel that this rumored finding—if official—places that program in jeopardy," the CARB spokesman said, adding that revising the future targets would waste fuel, increase emissions and cost consumers more money.

"We won't take any action until we have the opportunity to see the document itself and any supporting data, evidence, or analysis that purports to justify what we think would be an unfounded conclusion," the CARB spokesman said.

"We can't comment on a determination we haven't seen, but remain absolutely convinced that one national program is the preferred policy path," said Mitch Bainwol, head of a Washington lobbying group representing a dozen auto makers, including General Motors Co. , Ford Motor Co. and Toyota Motor Corp.

Auto makers contend that complying with the current standards would ultimately cost them \$200 billion and threaten jobs. Vehicle prices could also rise, leading consumers to keep older automobiles that pollute more longer, the companies argue.

GM Chief Executive Mary Barra met earlier this month with EPA Administrator Scott Pruitt and Transportation Secretary Elaine Chao and "reconfirmed our priorities for modernizing fuel economy standards, which is the need for one national set of requirements and the need to comprehend new technology developments like increased shared and autonomous electric vehicles," a GM spokeswoman said.

Mr. Pruitt has expressed the view that California shouldn't dictate nationwide policy on vehicle emissions.

California Gov. Jerry Brown called the Trump administration's decision to review the standards a "gift to polluters" in a letter last year to Mr. Pruitt. Attorneys general in states across the U.S. that follow California's standards have pledged to take the Trump administration to court if federal targets are weakened.

CNBC

<https://www.cnbc.com/2018/03/26/us-stock-futures-dow-data-fed-speeches-and-politics-on-the-agenda.html>

Dow Rises 500 Points As Trade Tensions Ease

By Fred Imbert, 3/26/18

Stocks traded sharply higher on Monday, bouncing back from strong losses in the previous session, as trade tensions between the U.S. and China appear to ease.

The Dow Jones industrial average rose 500 points, with Microsoft as the best-performing stock in the index. The S&P 500 gained 1.8 percent, with technology and financials leading all sectors higher. The Nasdaq composite advanced 2 percent.

The Financial Times reported China has offered to buy more semiconductors from the U.S. to help cut its trade surplus with the U.S. The Wall Street Journal also reported that U.S. and Chinese officials are working to improve U.S. access to China's markets.

Investors "have apparently recognized that a trade war is in no one's best interests and therefore extremely unlikely," said Jeremy Klein, chief market strategist at FBN Securities, in a note. "Specifically, the President merely wants to fulfill a campaign promise while China will only enact token countermeasures to appease its citizens."

Markets overseas also jumped on Monday. In Asia, some indexes rose after news surfaced that the U.S. had agreed to excuse South Korea from steel levies. Meantime in Europe, stocks were slightly higher as investors tried to shake off worries surrounding a potential trade war.

Wall Street finished Friday's session deep in the red on Friday, with the Dow dropping more than 400 points by the close — closing at its lowest level since November and finishing in correction territory, as it was 11.6 percent down from its 52-week high. The S&P 500 ended Friday's session just outside of correction territory.

"The SPX comes into the last week of March and the 1st quarter after of the worst weekly showings in the last decade. With the recent intense back and forth action, the environment is looking more like 2011 once again," Frank Cappelleri, executive director at Instinet, said in a note to clients.

Last week, President Donald Trump signed an executive memorandum that would inflict tariffs on Chinese imports — of up to \$60 billion. China retaliated with their own set of levies, drawing up a list of 128 U.S. products that could be possible retaliation targets.

Social media firms continue to be under the radar, as abuse of people's data remains a key topic of discussion. Last week, reports emerged alleging that Cambridge Analytica, an analytics company, had gathered data from 50 million Facebook profiles without the permission of its users. While Facebook have since come out to apologize and try to rectify the matter, concerns remain. Facebook shares dropped 1.6 percent and briefly dipped into bear market territory.

On the central banking front, members of the U.S. Federal Reserve are due to deliver speeches at respective events Monday, including one by Fed Vice Chair Randal Quarles, who is due to speak at the HOPE Global Forum annual meeting in Atlanta.

The Associated Press

<https://www.yahoo.com/news/poland-summons-russias-ambassador-over-spy-case-123355904.html>

US Expels 60 Russian Diplomats, Shuttters Seattle Consulate

By Josh Lederman, 3/26/18

WASHINGTON (AP) — The Trump administration expelled 60 Russian diplomats on Monday and ordered Russia's consulate in Seattle to close, as the United States and European nations sought to jointly punish Moscow for its alleged role in poisoning an ex-spy in Britain.

Senior Trump administration officials said all 60 Russians were spies working in the U.S. under diplomatic cover, including a dozen at Russia's mission to the United Nations. The officials said the administration was taking the action to send a message to Russia's leaders about the "unacceptably high" number of Russian intelligence operatives in the U.S.

The expelled Russians will have seven days to leave the U.S, said the officials. They weren't authorized to be identified by name and requested anonymity. They added that the Seattle consulate is a counter-intelligence concern because of its proximity to a U.S. Navy base.

White House spokeswoman Sarah Huckabee Sanders said the actions would make the U.S. safer by "reducing Russia's ability to spy on Americans and to conduct covert operations" that threaten U.S. national security.

"With these steps, the United States and our allies and partners make clear to Russia that its actions have consequences," Sanders said.

The move was one of the most significant actions President Donald Trump's administration has taken to date to push back on Moscow and Russian President Vladimir Putin. Less than a week ago, Trump congratulated Putin by phone for his re-election but didn't raise the spy case, renewing questions about whether the U.S. president is too soft on the Kremlin.

The U.S. actions came as more than a dozen nations, including those in Russia's neighborhood, were expected to announce similar steps to reduce Russia's diplomatic presence in their countries or other actions to punish Moscow. Poland summoned Russia's ambassador for talks, and its foreign ministry was among several in Europe planning news conferences later Monday.

Britain has already expelled 23 Russian diplomats, accusing them of being undeclared intelligence agents, which led Russia to expel the same number of British diplomats. The European Union has already recalled its ambassador to Russia.

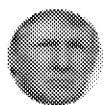
The steps on both sides of the Atlantic Ocean add to a serious escalation of tensions between Russia and the West that has been building since the March 4 poisoning of Sergei Skripal, a former Russian military intelligence officer convicted

of spying for the U.K., and his daughter, Yulia. The two remain in critical condition and unconscious. A policeman who responded to their home was also injured.

Britain has accused Moscow of perpetrating the attack using a Soviet-developed nerve agent known as Novichok. The U.S., France and Germany have agreed it's highly likely Russia was responsible.

Russia's government has denied responsibility and has blasted Britain's investigation into the poisoning. There was no immediate reaction from Russia on Friday to the U.S. announcement.

TRUMP TWEETS



Donald J. Trump ● @realDonaldTrump · 2h



So much Fake News. Never been more voluminous or more inaccurate. But through it all, our country is doing great!



18K



9.3K



40K



Donald J. Trump ● @realDonaldTrump · 4h



The economy is looking really good. It has been many years that we have seen these kind of numbers. The underlying strength of companies has perhaps never been better.



14K

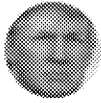


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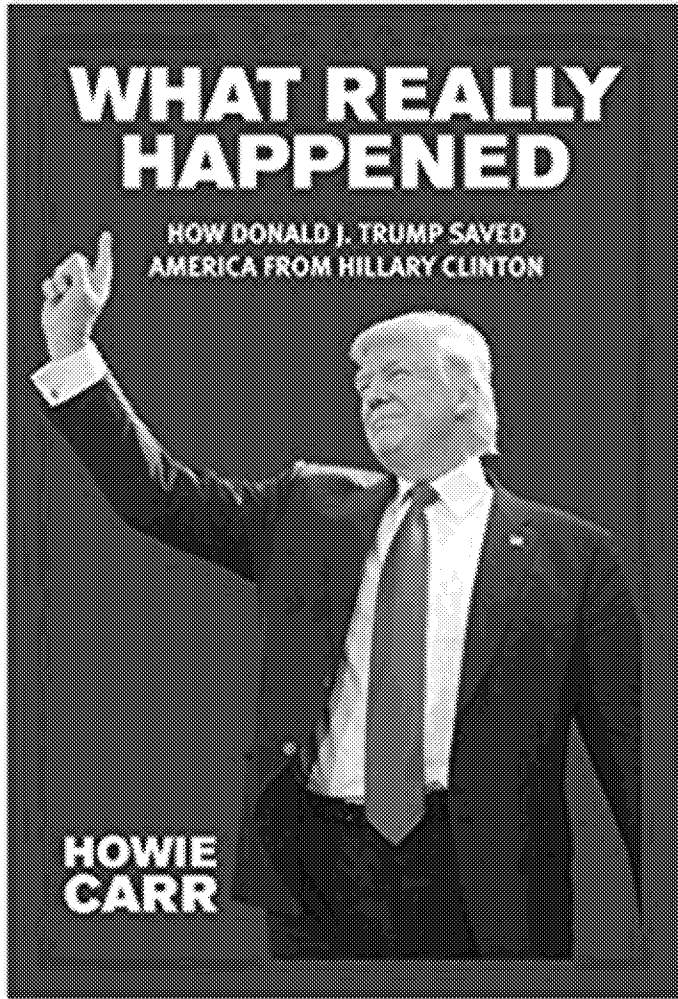
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Donald J. Trump @realDonaldTrump · 11h

.@HowieCarrShow just wrote a book which everyone is talking about. He was a great help. He is a veteran journalist who had a great influence in NH and beyond. He calls it the most amazing political campaign of modern times. The book is called, "What Really Happened." Enjoy! #MAGA



20K 13K 46K

Michael Abboud

U.S. Environmental Protection Agency
Office of Public Affairs
M: 202-564-6461

EPA News Highlights 3.26.18

The Oklahoman: Ban On "Secret Science" In EPA Regulation Makes Sense

The Environmental Protection Agency has announced it will now base new regulations only on the findings of scientific studies whose data and methodology are made public so they can be subjected to independent review. That's a sound move in line with basic scientific transparency and professionalism. Yet it's being treated as a sign of impending apocalypse by some on the left, which says much about the questionable validity of that group's policy prescriptions. In an interview with The Daily Caller News Foundation, Administrator Scott Pruitt said the EPA will end its use of studies that do not publish underlying data, only conclusions. "Otherwise, it's not transparent. It's not objectively measured, and that's important," Pruitt said. In the past, the EPA has advanced air-quality regulations that imposed massive costs based primarily on the findings of two studies done in the 1990s that linked fine particulate pollution to premature death. Neither study made associated data public.

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TRUMP TWEETS

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RealClearPolitics

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This month, the Environmental Protection Agency released its EPA Year in Review for 2017–2018. To call it impressive would be a gross understatement. With Administrator Scott Pruitt leading the charge, the agency has shown unrivaled commitment to carrying out the president’s agenda of deregulation.

Before taking over at the EPA, Pruitt was as a leading opponent of regulatory overreach by the agency. As general of Oklahoma, for instance, he dissolved the Environmental Protection Unit and instead created a Federalism Unit to fight President Obama’s aggressive regulatory agenda. He brought more than a dozen lawsuits against the EPA, fighting such rules as the Cross State Air Pollution Rule and the Clean Water Rule, and successfully challenging the Clean Power Plan.

Now, as EPA administrator, Pruitt is taking even more direct action and doing so in a cooperative and transparent manner. When Office of Management and Budget Director Mick Mulvaney discussed the deregulation effort at the Conservative Political Action Conference last month, he highlighted the rules that were top priority for the administration's regulatory roll back: the Waters of the United States rule and the Clean Power Plan. Both fall within Pruitt's jurisdiction at the EPA. No surprise that action on EPA regulations has moved to the forefront of the administration's agenda.

From his first days at the agency, Pruitt took steps to facilitate cooperation with the states on environmental policy. Federalism is an essential principle of American governance, and Pruitt has put this principle into practice. During his first year, Pruitt travelled to 30 states to discuss the EPA's work, personally meeting with 34 governors — Democrats and Republicans — as well as over 350 stakeholder groups. This level of personal involvement is nearly unparalleled, even inside an administration with such a clear focus on deregulation. And it is paying dividends.

The EPA Year in Review booklet is nearly 40 pages long, outlining the regulatory rollback, increased transparency, and government reform measures accomplished in the last year alone. This includes finalizing 22 deregulatory actions and savings of more than \$1 billion in regulatory costs, which previously fell on Americans' shoulders. By comparison, a similar document out of the Department of Labor, headed by Secretary of Labor Alexander Acosta, is only four pages long.

As he says in a letter at the front of the EPA Year in Review, Administrator Pruitt "look[s] forward to working together to accomplish even more progress in 2018." We applaud Mr. Pruitt's accomplishments in his first year as head of EPA, and hope that his success provides an example to other agencies. Executive agencies can take the lead on growing the economy by freeing Americans from excessive regulatory burdens. This, the EPA — with Pruitt at the helm — has proven.

Montana Standard

http://mtstandard.com/news/local/omnibus-bill-restores-epa-funding/article_2fa78f2b-666e-5edb-b2f1-716f1690077a.html

Omnibus Bill Restores EPA Funding

By Susan Dunlap, 3/25/18

The Environmental Protection Agency is getting more than it asked for this fiscal year due to the \$1.3 trillion omnibus spending package passed in Congress last week and signed by President Donald Trump Friday.

Trump had wanted to slash the EPA's budget by 31 percent, a reduction of \$2.6 billion from what the EPA had to operate on in 2017. The EPA's biggest operating budget since its inception in 1970 came along in 2010, when the Democratic-controlled Congress and President Barack Obama gave the EPA \$10.2 billion to work with.

EPA administrator Scott Pruitt asked for \$5.655 billion last May to operate the agency this year.

The ink on Trump's signature to the 2,232-page bill was still wet enough Friday that the EPA had not altered its website to reflect the new spending levels for 2018. What the infusion of federal dollars will mean for the EPA — and more specifically for Butte and Anaconda and EPA Region 8 as a whole — is not clear. Because Congress could not pass a federal spending bill last fall, this bill's passage comes six months into the current fiscal year.

The EPA's Washington D.C. office did not respond to a request for comment. The EPA's Denver office responded with a note that inquiries about EPA budget concerns should be forwarded to the Washington D.C. office.

The \$1.3 trillion omnibus spending package rushed through both houses of Congress last week returns the EPA's budget to above the spending level it had in 2017 and restores it closer to the 2016 budget level. The EPA's 2017 general

operating budget was \$8 billion. Congress reinstated the EPA's 2018 budget to \$8.1 billion plus an added \$763 million for various EPA water infrastructure programs and Superfund site spending, according to TheHill.com.

The EPA's 2016 budget was \$8.1 billion.

The bill passed the Senate 65-32 with three who didn't vote. Democrat Sen. Jon Tester voted for the bill. Republican Sen. Steve Daines voted against it.

Tester said Saturday, "It is critically important for Butte's families and businesses that the EPA live up to its commitment to remove waste and contamination. This funding bill restores the resources needed to hold polluters accountable, builds on the progress that has been made, and ensures folks in Butte have access to clean water."

Daines was on his way to China on a delegation trip, leading a group of senators. A spokesperson said, "Senator Daines believes the Superfund sites must be cleaned up and will continue to support funding, but it's critical that funding is implemented effectively."

The House gave its approval of the bill by a 256-167 vote with seven abstaining. Republican Congressman Greg Gianforte also voted against the bill, although he told The Montana Standard last summer during a press conference that he wanted to "put funding back in" for the EPA.

A spokesman for Gianforte said, "Greg has consistently supported the Superfund to clean up our impacted Montana communities. Greg will continue being a strong voice to make our communities whole again while also working to protect Montanans by standing up to Washington's overspending."

There were many conservative critics of the omnibus package. One primary complaint was that no one had a chance to read the more than 2,000 pages before votes began on the House floor. Conservative Kentucky Congressman Rand Paul tweeted Thursday that it took him more than two hours just to print all 2,232 pages. He later tweeted he had ordered in pizza to help him get through it.

Trump waffled on signing the bill Friday morning. He tweeted in the early hours of the day that the bill didn't give enough money for a border wall along the U.S.-Mexico border. Trump ran his 2016 election campaign in part on the idea that the U.S. would erect a wall along its border with Mexico and that Mexico would pay for it.

The bill provides \$1.2 billion to replace fencing along the U.S.-Mexico border that is in need of repair and enhance surveillance of the border with upgraded technology, according to The New York Times.

But ultimately, Trump did sign the bill, saying on Twitter that he needed to do so "as a matter of national security." The budget provided \$654.6 billion for the Pentagon.

Zanesville Times Recorder

<https://www.zanesvilletimesrecorder.com/story/news/local/2018/03/23/farmers-need-government-overreach/33187387/>

Farmers Don't Need Government Overreach

By John Lent, 3/23/18

I am a farmer who raises cattle and hay. I think the EPA got far too nosy into farmers' lives under the Obama Administration and that created a needless ordeal for us. I am glad that the Trump Administration is addressing this problem by pushing for smart reforms to EPA regulations affecting agriculture.

A few years ago, the EPA told us that we had to put fences around all of our creeks and ponds so the cattle couldn't run in them. The Waters of the United State Rule even gave the government jurisdiction over dry creeks. I don't think matters such as these are any of the government's business. They just don't have the right to tell us how to do things.

When it comes to banning products, we need to make sure that we aren't going after ones that are safe. The previous administration even wanted to ban safe pesticides and that doesn't help farmers at all.

These are all examples of how the federal government further intruded into our land and our lives. Now, our leaders have a chance to correct some of the regulations that were harming farmers. That's a good thing. After all, these regulations weren't helping anyone anyway.

We need our government officials to use common sense. We don't need to be burdened with unnecessary regulations. Small farmers don't make much money to begin with and we should not be harmed by government overreach. I am glad the Trump Administration is working to reverse these intrusions.

John S. Lent

Malta

The Wall Street Journal

<https://www.wsj.com/articles/epa-tentatively-decides-to-ease-vehicle-emission-standards-1521842605>

EPA Tentatively Decides To Ease Vehicle Emission Standards

By Mike Spector, 3/23/18

The Environmental Protection Agency has tentatively concluded that future vehicle emissions standards should be eased, a decision long lobbied for by car companies that argued looming regulations are too stringent and need revision.

The EPA has drafted a so-called final determination that outlines arguments for relaxing standards requiring auto makers to cut emissions enough so vehicles sold average more than 50 miles a gallon by 2025, said a person familiar with the matter.

The EPA delivered the draft, which covers standards between 2022 and 2025, to the Office of Management and Budget this week, the person said. The EPA faces an April 1 deadline to determine whether the targets should be strengthened, relaxed or left unchanged.

No changes would be imminent even with the issuing of a final determination. Rules would have to be devised afterward detailing any revisions, a process that could take weeks or months. Bloomberg News earlier reported on the draft determination.

Auto makers have argued the future standards, which for 2025 equate to roughly 36 mpg in real-world driving, are too difficult to meet in an era of cheap gasoline. Low fuel prices have resulted in soaring sales of less-efficient pickup trucks and sport-utility vehicles that now eclipse 60% of the U.S. market. Electric cars that don't contribute to greenhouse-gas emissions amount to only about 1% of U.S. sales.

Still, auto makers also want to ensure that California and other states following its aggressive standards that collectively represent about 40% of the U.S. market are on board with changes, lest they face a patchwork of different rules across state lines.

California currently has an EPA waiver to set its own standards separate and apart from U.S. rules and had been in lockstep with targets the Obama administration finalized just before President Donald Trump's inauguration in January

2017. The Trump administration reopened a review of the future standards after lobbying from car companies, a move that angered California officials.

“The draft determination has been sent to OMB and is undergoing interagency review. A final determination will be signed by April 1, 2018, consistent with the original timeline,” said Liz Bowman, an EPA spokeswoman. She didn’t elaborate on the contents of the draft.

A spokesman for the California Air Resources Board, the state agency that regulates tailpipe emissions, said officials were “troubled” by word of the EPA’s tentative decision to revise the standards. “We have not seen the document in question and California had no input into its content,” the spokesman said.

Trump administration and California officials have held meetings and phone calls in recent months, but haven’t agreed on any proposed changes. CARB Chairwoman Mary Nichols traveled to Washington in January to meet with officials from the White House, EPA and National Highway Traffic Safety Administration, an agency that sets its own separate fuel-economy standards and has been involved in negotiating possible changes.

Ms. Nichols and other state officials signaled a willingness to discuss possible changes at that meeting without committing to any specific proposals. She joined another check-in call with Trump administration officials in recent weeks, the person familiar with the matter said.

“California paved the way for a single national program and is fully committed to maintaining it. However, we feel that this rumored finding—if official—places that program in jeopardy,” the CARB spokesman said, adding that revising the future targets would waste fuel, increase emissions and cost consumers more money.

“We won’t take any action until we have the opportunity to see the document itself and any supporting data, evidence, or analysis that purports to justify what we think would be an unfounded conclusion,” the CARB spokesman said.

“We can’t comment on a determination we haven’t seen, but remain absolutely convinced that one national program is the preferred policy path,” said Mitch Bainwol, head of a Washington lobbying group representing a dozen auto makers, including General Motors Co. , Ford Motor Co. and Toyota Motor Corp.

Auto makers contend that complying with the current standards would ultimately cost them \$200 billion and threaten jobs. Vehicle prices could also rise, leading consumers to keep older automobiles that pollute more longer, the companies argue.

GM Chief Executive Mary Barra met earlier this month with EPA Administrator Scott Pruitt and Transportation Secretary Elaine Chao and “reconfirmed our priorities for modernizing fuel economy standards, which is the need for one national set of requirements and the need to comprehend new technology developments like increased shared and autonomous electric vehicles,” a GM spokeswoman said.

Mr. Pruitt has expressed the view that California shouldn’t dictate nationwide policy on vehicle emissions.

California Gov. Jerry Brown called the Trump administration’s decision to review the standards a “gift to polluters” in a letter last year to Mr. Pruitt. Attorneys general in states across the U.S. that follow California’s standards have pledged to take the Trump administration to court if federal targets are weakened.

CNBC

<https://www.cnbc.com/2018/03/26/us-stock-futures-dow-data-fed-speeches-and-politics-on-the-agenda.html>

Dow Rises 500 Points As Trade Tensions Ease

By Fred Imbert, 3/26/18

Stocks traded sharply higher on Monday, bouncing back from strong losses in the previous session, as trade tensions between the U.S. and China appear to ease.

The Dow Jones industrial average rose 500 points, with Microsoft as the best-performing stock in the index. The S&P 500 gained 1.8 percent, with technology and financials leading all sectors higher. The Nasdaq composite advanced 2 percent.

The Financial Times reported China has offered to buy more semiconductors from the U.S. to help cut its trade surplus with the U.S. The Wall Street Journal also reported that U.S. and Chinese officials are working to improve U.S. access to China's markets.

Investors "have apparently recognized that a trade war is in no one's best interests and therefore extremely unlikely," said Jeremy Klein, chief market strategist at FBN Securities, in a note. "Specifically, the President merely wants to fulfill a campaign promise while China will only enact token countermeasures to appease its citizens."

Markets overseas also jumped on Monday. In Asia, some indexes rose after news surfaced that the U.S. had agreed to excuse South Korea from steel levies. Meantime in Europe, stocks were slightly higher as investors tried to shake off worries surrounding a potential trade war.

Wall Street finished Friday's session deep in the red on Friday, with the Dow dropping more than 400 points by the close — closing at its lowest level since November and finishing in correction territory, as it was 11.6 percent down from its 52-week high. The S&P 500 ended Friday's session just outside of correction territory.

"The SPX comes into the last week of March and the 1st quarter after of the worst weekly showings in the last decade. With the recent intense back and forth action, the environment is looking more like 2011 once again," Frank Cappelleri, executive director at Instinet, said in a note to clients.

Last week, President Donald Trump signed an executive memorandum that would inflict tariffs on Chinese imports — of up to \$60 billion. China retaliated with their own set of levies, drawing up a list of 128 U.S. products that could be possible retaliation targets.

Social media firms continue to be under the radar, as abuse of people's data remains a key topic of discussion. Last week, reports emerged alleging that Cambridge Analytica, an analytics company, had gathered data from 50 million Facebook profiles without the permission of its users. While Facebook have since come out to apologize and try to rectify the matter, concerns remain. Facebook shares dropped 1.6 percent and briefly dipped into bear market territory.

On the central banking front, members of the U.S. Federal Reserve are due to deliver speeches at respective events Monday, including one by Fed Vice Chair Randal Quarles, who is due to speak at the HOPE Global Forum annual meeting in Atlanta.

The Associated Press

<https://www.yahoo.com/news/poland-summons-russias-ambassador-over-spy-case-123355904.html>

US Expels 60 Russian Diplomats, Shuts Seattle Consulate

By Josh Lederman, 3/26/18

WASHINGTON (AP) — The Trump administration expelled 60 Russian diplomats on Monday and ordered Russia's consulate in Seattle to close, as the United States and European nations sought to jointly punish Moscow for its alleged role in poisoning an ex-spy in Britain.

Senior Trump administration officials said all 60 Russians were spies working in the U.S. under diplomatic cover, including a dozen at Russia's mission to the United Nations. The officials said the administration was taking the action to send a message to Russia's leaders about the "unacceptably high" number of Russian intelligence operatives in the U.S.

The expelled Russians will have seven days to leave the U.S, said the officials. They weren't authorized to be identified by name and requested anonymity. They added that the Seattle consulate is a counter-intelligence concern because of its proximity to a U.S. Navy base.

White House spokeswoman Sarah Huckabee Sanders said the actions would make the U.S. safer by "reducing Russia's ability to spy on Americans and to conduct covert operations" that threaten U.S. national security.

"With these steps, the United States and our allies and partners make clear to Russia that its actions have consequences," Sanders said.

The move was one of the most significant actions President Donald Trump's administration has taken to date to push back on Moscow and Russian President Vladimir Putin. Less than a week ago, Trump congratulated Putin by phone for his re-election but didn't raise the spy case, renewing questions about whether the U.S. president is too soft on the Kremlin.

The U.S. actions came as more than a dozen nations, including those in Russia's neighborhood, were expected to announce similar steps to reduce Russia's diplomatic presence in their countries or other actions to punish Moscow. Poland summoned Russia's ambassador for talks, and its foreign ministry was among several in Europe planning news conferences later Monday.

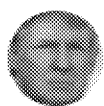
Britain has already expelled 23 Russian diplomats, accusing them of being undeclared intelligence agents, which led Russia to expel the same number of British diplomats. The European Union has already recalled its ambassador to Russia.

The steps on both sides of the Atlantic Ocean add to a serious escalation of tensions between Russia and the West that has been building since the March 4 poisoning of Sergei Skripal, a former Russian military intelligence officer convicted of spying for the U.K., and his daughter, Yulia. The two remain in critical condition and unconscious. A policeman who responded to their home was also injured.

Britain has accused Moscow of perpetrating the attack using a Soviet-developed nerve agent known as Novichok. The U.S., France and Germany have agreed it's highly likely Russia was responsible.

Russia's government has denied responsibility and has blasted Britain's investigation into the poisoning. There was no immediate reaction from Russia on Friday to the U.S. announcement.

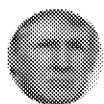
TRUMP TWEETS



Donald J. Trump @realDonaldTrump · 2h

So much Fake News. Never been more voluminous or more inaccurate. But through it all, our country is doing great!

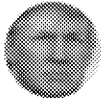
18K 9.3K 40K



Donald J. Trump @realDonaldTrump · 4h

The economy is looking really good. It has been many years that we have seen these kind of numbers. The underlying strength of companies has perhaps never been better.

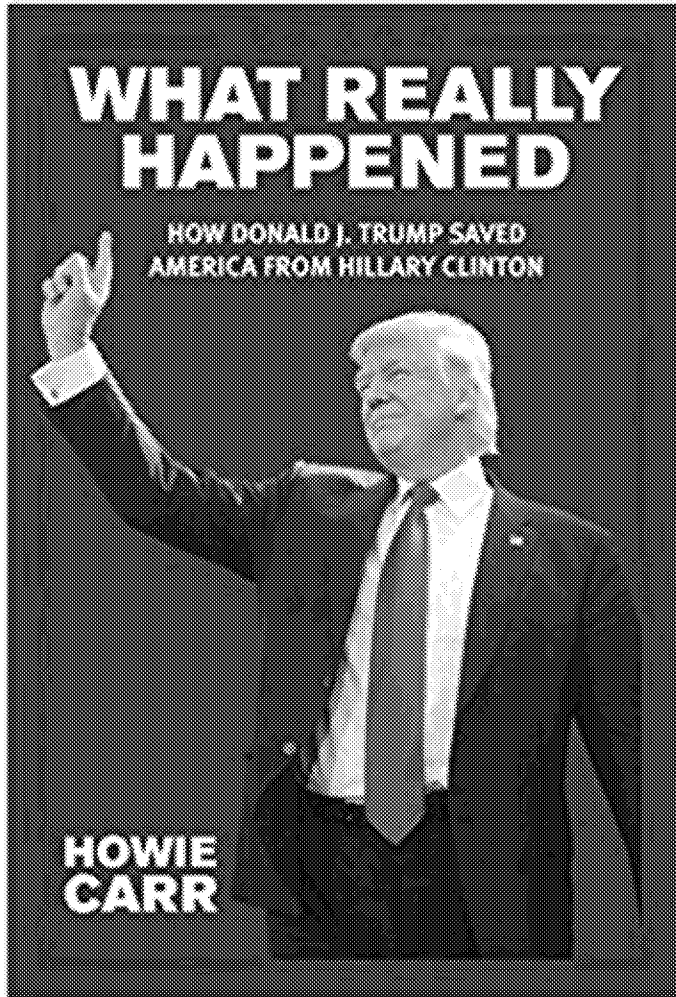
14K 9.0K 41K



Donald J. Trump @realDonaldTrump · 11h



.@HowieCarrShow just wrote a book which everyone is talking about. He was a great help. He is a veteran journalist who had a great influence in NH and beyond. He calls it the most amazing political campaign of modern times. The book is called, "What Really Happened." Enjoy! #MAGA



20K 13K 46K

Message

From: ECOS [ecos=ecos.org@mail214.atl171.mcdlv.net]
on behalf of ECOS [ecos@ecos.org]
Sent: 4/27/2018 8:21:21 PM
To: Dravis, Samantha [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ece53f0610054e669d9dffe0b3a842df-Dravis, Sam]
Subject: Pruitt Testifies on Hill and Proposes Science Rule, States Make Strides, & More

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ECOSWIRE

Friday, April 27, 2018

Vol. 20 No. 17

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Pruitt Testifies at Two Closely Watched Hearings on Capitol Hill

U.S. EPA Administrator Scott Pruitt testified yesterday at two hearings in the House of Representatives to respond to questions surrounding agency funding and policy as well as personal ethics. Appearing before the Appropriations Interior, Environment, & Related Agencies Subcommittee and the Energy & Commerce Environment Subcommittee on the agency's FY19 budget, Pruitt defended himself against criticism regarding certain management and spending practices. He also touched on policy issues including the new proposed rule to strengthen science used in regulations (see related story) and the suite of [FY18 Brownfields Grants](#) announced this week.

In addition, Pruitt addressed actions on the horizon, noting that EPA soon will announce a Waters of the U.S. replacement rule and proposed revisions to EPA's light-duty vehicle greenhouse gas standards. In response to a lawmaker's question about coal combustion residuals, Pruitt noted that few states have filed state coal ash implementation plans pursuant to the new federal policy but that the program is still nascent and EPA is working

with several states to assist in their development of permit program applications.

Pruitt's written testimony included a listing of his top priorities: enhancing drinking water and wastewater infrastructure; accelerating the remediation and revitalization of the most contaminated land; improving air quality through reductions in the number of areas not in attainment with the National Ambient Air Quality Standards; and meeting all the statutory deadlines outlined in the amended Toxic Substances Control Act. In addition, the testimony notes support for flexibility for states to address priorities and for cooperative federalism activities through the multipurpose grants program.

The testimony also includes an EPA proposal to increase compliance assistance through new voluntary oil and chemical facility compliance assistance fees allowing EPA to conduct walkthroughs and provide recommendations to facilities. It further notes that while EPA's budget request does not include plans to close Regional offices, the agency will continue "to prioritize efforts that save taxpayer dollars through space consolidation...." [McAleer/Graves/Parisien]

Pruitt Signs Proposed Rule to Eliminate 'Secret Science'

U.S. EPA Administrator Scott Pruitt signed Tuesday a proposed rule to eliminate "secret science" used in regulations issued by the agency. According to EPA, the rule seeks to ensure that all regulatory science underlying EPA actions is fully transparent, publicly available, and sufficient for independent validation. EPA says the rule aligns with the scientific community's push for increased data sharing and reproducible research.

The proposed rule has drawn mixed reviews, with opponents arguing that it skirts statutory mandates to use the best available science and address confidential trade secrets. Some express concern as to whether the policy will prevent use of studies that rely on confidential business information (CBI) or limit EPA's access to health studies, which are subject to patient confidentiality requirements. While the rule does not specifically address these points, it states that the agency believes "that concerns about access to confidential

or private information can, in many cases, be addressed through the application of solutions commonly in use across some parts of the [f]ederal government.”

EPA soon will accept public comment on a number of the proposed rule’s provisions, including authorities to address implementation issues (including CBI) and what criteria the agency should use to justify any exceptions. [Longworth]

U.S. EPA Announces First WIFIA Loan to King County, Washington

Last week, U.S. EPA issued its first loan under the Water Infrastructure Finance and Innovation Act (WIFIA) to King County, Washington.

The loan will help finance the Georgetown Wet Weather Treatment Station, which will collect and treat up to 70 million gallons of wastewater and stormwater per day. During heavy rains the combined sewer pipes spill into the Duwamish River, which drains into Puget Sound. The estimated project cost is \$275 million, and the WIFIA loan will finance nearly half of it.

For more information about the WIFIA program and the Georgetown Wet Weather Treatment Station, click [here](#). [Piper]

State News You Can Use

[Groundbreaking Ceremony Marks Progress under North Carolina](#)

State Water Plan

Pennsylvania, Federal Agencies Settle with Natural Gas
Company over Air Violations

Texas Hosts Hurricane Prep Workshop

Iowa Introduces Streamlined Public Notice of Air Quality Permits

Need-to-Know News in Air & Environmental Justice

U.S. EPA Announces Funding to Reduce Emissions from Diesel Engines Nationwide

Area of Focus: Air

On April 24, U.S. EPA announced the availability of grant funding to modernize the nation's diesel fleet by retrofitting or replacing vehicles with cleaner, more efficient diesel engines.

EPA anticipates awarding approximately \$40 million in Diesel Emission Reduction Program (DERA) grant funding to eligible applicants, subject to the availability of funds.

EPA anticipates awarding between 20 and 80 assistance agreements to projects that significantly reduce diesel emissions and exposure, especially from fleets operating at goods movements facilities in areas designated as having poor air quality. Priority for funding will be given to projects that engage and benefit local communities and applicants that demonstrate their ability to promote and continue efforts to reduce emissions after the project has ended.

Project proposals are due **June 5**. [Poole]

U.S. EPA Environmental Justice FY2017 Progress Report Notes ECOS Publication

Area of Focus: Environmental Justice

On April 19, U.S. EPA issued its Environmental Justice FY2017 Progress Report. Marking the 25th anniversary of the establishment of the Office of Environmental Justice, the FY2017 report highlights EPA's ongoing environmental justice work focused on demonstrating tangible results in minority, low-income, tribal and indigenous communities.

The report focuses on the themes of delivering environmental results; cooperative federalism; rule of law and fair process; and building community capacity and engagement.

Notably, the report cites the ECOS Green Report on State Approaches to Community Engagement and Equity Considerations in Permitting as an example of cooperative federalism and best practices regarding community involvement and equity in state permitting programs. [Poole]

U.S. EPA Launches Mobile App for EJSCREEN

Area of Focus: Environmental Justice

On April 24, U.S. EPA launched its mobile version of EJSCREEN, the agency's nationally

acclaimed environmental justice screening and mapping tool. This new version makes accessing EJSCREEN easier for those working on the ground in communities.

The mobile version offers most of the same key functions and features as the full online version, but does so in a more compact and accessible layout. Some of the features included are the ability to select locations; access reports; and map environmental, demographic and EJ indicators. [Poole]

Career Opportunities

Massachusetts DEP Seeks Deputy Director, Municipal Services

The Massachusetts Department of Environmental Protection's Bureau of Water Resources seeks applicants for the position of Deputy Director, Municipal Services. The position entails the identification of priority areas for investment of Clean Water and Drinking Water State Revolving Fund financing.

For more information, see [here](#). [Parisien]

Upcoming Events

ECOS Calls

ERIS on Research Needs

In an effort to prioritize states' research needs, ECOS and affiliate Environmental Research Institute of the States is conducting media-specific calls to gather information to inform future planning and contribute to the development of the U.S. EPA Office of Research and Development (ORD) Strategic Research Action Plan.

The water and air-focused calls were held this week. The remaining two calls are scheduled as follows:

- **Waste - April 30: 2-3 p.m. Eastern**
<http://epawebconferencing.acms.com/ecoswastecommittee/>
- **Cross-Media - May 3: 3-4 p.m. Eastern**
<http://epawebconferencing.acms.com/ecoscrossmediacall/>

The call-in number for both calls is (866) 299-3188, with access code (202) 564-6669.

ECOS members and state staff are invited to participate in the calls, and are asked to be prepared to answer the following questions: Are states' priorities the same or different from those identified in the [2016 ERIS survey of state research needs](#)? What emerging issues/challenges should ORD consider in its next Action Plan?

As the calls are held, PowerPoint presentations will be posted on ECOS' website [here](#). States are encouraged to provide comments after the calls to further inform strategic research planning. Please send comments to [Sarah Grace Longworth](#) of ECOS by May 11. [Longworth]

ERIS on State Science Contacts

ERIS will host its bimonthly State Science Contacts call on **May 4 at 11 a.m. Eastern**. The purpose of these calls is to share relevant information on science and research, receive input from states on state science needs, and provide state perspective on various

research activities.

An agenda for the call will be sent next week. If you are interested in participating, email [Sarah Grace Longworth](#) of ECOS. [Longworth]

Webinars

U.S. EPA on Emerging Sensor Technologies Report

U.S. EPA's Air and Energy National Research Program will host two webinar sessions to update stakeholders on its Emerging Sensor Technologies 2014-2018 Progress Report. The identical sessions will be held on **April 30 at 8:30-11:30 a.m. Eastern and 1:30-4:30 p.m. Eastern**, and will summarize general findings across a broad base of the agency's air sensor research activities over the past several years.

The first two hours of each session will feature presentations by EPA Sensor Performance Evaluation and Application Research team members on topics such as sensor evaluations, data analytics, ammonia detection, citizen science, and detection of select emission sources. The final portion of each session will be a question and answer period.

To register, see [here](#). [Longworth]

U.S. EPA on Lead Exposure Modeling and Research

U.S. EPA will host its monthly Tools and Resources webinar on **April 30 at 3-4 p.m. Eastern** to discuss multimedia modeling of lead exposure in children and water lead monitoring research to inform public health decisions. Specifically, EPA's Office of Research and Development (ORD) will highlight its innovative exposure-dose [modeling approach](#) to better understand the relationship between drinking water lead concentrations and children's blood lead levels considering exposures from water, soil, dust, food, and air. ORD will then discuss the future data needs to apply the approach at state and local

levels, and will report on water lead monitoring research relevant to state priorities.

To register, see [here](#). [Longworth]

ITRC on Bioavailability of Contaminants in Soil

The Interstate Technology & Regulatory Council (ITRC) will hold an online training course on Bioavailability of Contaminants in Soil: Considerations for Human Health Risk Assessment on **May 3 at 1-3:15 p.m. Eastern**.

The basis for this training course is the ITRC guidance: [Bioavailability of Contaminants in Soil: Considerations for Human Health Risk Assessment \(BCS-1\)](#). This guidance describes the general concepts of the bioavailability of contaminants in soil, reviews the state of the science, and discusses how to incorporate bioavailability into the human health risk assessment process. Training course participants will learn to apply the decision-making process to determine when a site-specific bioavailability assessment may be appropriate; consider factors that affect arsenic, lead, and PAH bioavailability; select appropriate methods to evaluate soil bioavailability; and use tools to develop site-specific soil bioavailability estimates and incorporate them into human health risk assessment

Learn more and register [here](#). [Bodi]

E-Enterprise Facility Integration Project Team on Opportunities for Involvement

The E-Enterprise Facility Integration Team Co-Chairs will host a webinar on **May 8 at 1-2:30 p.m. Eastern** to report on the team's Phase II accomplishments and plans for Phase III, which is about to begin. Co-Chairs Ron Evans and Susan Joan Smiley (U.S. EPA), Joshua Kalfas (Oklahoma), and Ben Way (Wyoming DEQ) will lead webinar presentations and answer any questions related to the Facility work.

The Facility Integration Team is currently seeking states, tribes and local governments to

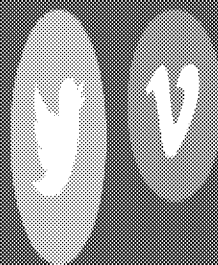
partner in Phase III. Partnership opportunities will be discussed on the webinar.

Register [here](#) and learn more [here](#). [McAleer]

U.S. EPA on Business Innovations in Reducing Food Waste

U.S. EPA will host a webinar on **May 17 at 10-11:30 a.m. Eastern** to highlight business innovations to reduce food loss and waste. Presenters include three [Food Loss and Waste 2030 Champions](#) who are leading the way in helping the country reach its 50 percent food loss and waste reduction goal. Speakers from each company will share best practices, tools, and resources to prevent food from going to waste. They will address how shifts in company culture have changed operations as well as the critical role of food waste measurement in achieving their goals.

Register [here](#). [Longworth]



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Subject: Morning Energy, presented by Anheuser-Busch: Zinke's turn on the Hill — EPA watchdog: Aides slow to turn over docs — House to take up Yucca bill today

By Kelsey Tamborrino | 05/10/2018 06:01 AM EDT

With help from Eric Wolff, Alex Guillén, Anthony Adragna and Jennifer Haberkorn

ZINKE HEADS TO THE HILL: Interior Secretary Ryan Zinke faces his Senate appropriators today to discuss his department's budget request for fiscal 2019. Expect Democrats to bring up familiar topics, such as his plans to reorganize the department and last year's decision to shrink national monuments in Utah. Subcommittee ranking member Tom Udall plans to tell Zinke that until courts weigh in on whether his move was legal, "I believe that moving forward with land management plans that will open these iconic areas to development is reckless."

Subcommittee Chair Lisa Murkowski may be interested in hearing more about Zinke's plans for oil and gas development in Alaska, after Interior kicked off its environmental review of potential drilling in part of the Arctic National Wildlife Refuge thanks to language she got included in last year's tax bill. And Sen. Lamar Alexander, another member of the subcommittee, can follow up on the maintenance backlog for the national parks, an issue the two discussed when Zinke visited Tennessee last week.

Ahead of the hearing, the Coalition to Protect America's National Parks is sending a letter to Zinke, with signatures from current and former employees of the National Park Service, calling on him to support permanent reauthorization of the Land and Water Conservation Fund, an issue with support in both parties.

If you go: The Senate Appropriations Interior-Environment Subcommittee hearing begins at 9:30 a.m. in 138 Dirksen.

— **But first:** Zinke will join Agriculture Secretary Sonny Perdue at USDA headquarters for an 8 a.m. briefing on the forecast for this year's wildfire season.

WATCHDOG: EPA AIDES SLOW TO SEND DOCS: EPA's internal watchdog complained last year that Administrator Scott Pruitt's aides were taking their sweet time handing over documents related to a probe into their boss' travels, new emails show. Although the standoff between the inspector general's office and Pruitt's staff was resolved a month later, the incident illustrates tensions between political appointees and career oversight officials that developed early on. The IG's office is in the process of conducting multiple reviews into Pruitt's actions.

The new emails, released under a FOIA request from California's Justice Department, show the IG's office was seeking information for its probe of Pruitt's frequent travel to Oklahoma on EPA business, Pro's Alex Guillén reports. That same probe was later expanded to include a wider swath of Pruitt's travel practices, including his first-class flights that cost more than \$100,000. (The investigation is slated to be completed this summer.)

At the time, the agency's assistant inspector general for audits, Kevin Christensen, wrote to a top career official in EPA's finance office to warn of a "potential situation" with the travel audit just two weeks after it began, the emails show. Christensen flagged messages showing Pruitt's chief of staff Ryan Jackson was

"screening" documents before releasing them to the Office of Inspector General. "This does not fit the definition of unfettered access or comply with the Administrator memo on access and providing information to the OIG," Christensen wrote to Jeanne Conklin, EPA's controller who oversees financial management and reporting. "When we are denied access to information until approved for release, it raises the question as to what is being withheld and approved for release."

The emails spotlight concerns about the lack of transparency atop the agency since Pruitt joined. And other emails released to California's Department of Justice also show career ethics officials warning Pruitt's aides about accepting industry awards and attending political events, further exemplifying internal tensions as Pruitt's external problems grow. Read more from Alex [here](#).

— **Related reporting:** Amid ongoing scrutiny, Pruitt met with industry representatives Wednesday, where a reporter asked if he still had the confidence of the White House. Pruitt said: "I think they've spoken very clearly," Bloomberg [reports](#).

WELCOME TO THURSDAY! I'm your host Kelsey Tamborrino. Bracewell's Frank Maisano was the first to correctly identify Detroit as home to the first paved roadway. Woodward Avenue carries the designation M-1 for its status as the first place to pour a 1-mile patch of concrete roadway. For today: Name the state first lady who simultaneously served as a member of the House. Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](#), [@Morning_Energy](#) and [@POLITICOPro](#).

TRUMP EXTENDS OLIVE BRANCH: President Donald Trump called coal baron Don Blankenship Wednesday to exchange pleasantries and offer up congratulations for waging his campaign, POLITICO's Alex Isenstadt reports. The conversation was described as straightforward, polite and cordial, and comes days after Trump tweeted that voters shouldn't vote for Blankenship in the West Virginia Republican primary. Blankenship also published an [open letter](#) to Trump on Wednesday that in part blamed the president for his loss. "Your interference in the West Virginia election displayed a lack of understanding of the likely outcome of the upcoming general election," Blankenship wrote. But he ended with a note of optimism: "I look forward to meeting with you in the near future." Alex reported the president had also reached out to Rep. [Evan Jenkins](#), who also lost in Tuesday's primary, but had yet to connect with the Republican party's winner, Patrick Morrisey, as of Wednesday evening. Read [more](#).

**** A message from Anheuser-Busch:** Anheuser-Busch announced that America's leading brewer has placed an order for up to 800 hydrogen-electric powered semi-trucks. The zero-emission trucks will be able to travel between 500 and 1,200 miles. Anheuser-Busch aims to convert its entire long-haul dedicated fleet to renewable powered trucks by 2025. [Learn more](#). **

HOUSE GOES NUCLEAR: The House will take up the long-awaited [H.R. 3053 \(115\)](#), the "Nuclear Waste Policy Amendments Act of 2018," for consideration today, with votes expected between 10:45 a.m. and 11:45 a.m. The bipartisan legislation would update how the U.S. handles nuclear waste and promote development of the Yucca Mountain repository in Nevada, among other provisions. The legislation is expected to pass, although it will face a much shakier Senate reception with Sen. [Dean Heller](#) facing a tough re-election race this year. Rep. [John Shimkus](#), who introduced the comprehensive nuclear waste package, previously said he hadn't had any recent talks with Senate counterparts about potentially moving the bill across the Capitol. Still, its appearance today is a victory for Shimkus: [Greg Walden](#) told reporters this week that Shimkus had sent handwritten letters to the homes of every member of leadership during recess encouraging the bill to come up, praising his tenacity.

COURT SAYS CRA IS A-OK: A federal judge in Alaska yesterday [dismissed](#) an environmental group's lawsuit that called the Congressional Review Act unconstitutional. The Center for Biological Diversity specifically challenged the CRA [resolution](#) successfully passed by Congress last spring that nullified an Interior Department rule regarding hunting in Alaska wildlife refuges.

Judge Sharon Gleason of the U.S. District Court for Alaska, an Obama appointee, noted that both the CRA itself and this specific resolution were passed by both chambers and signed by the president, fulfilling the constitutional requirements for creating laws. Other parts of CBD's argument similarly failed to hold water. "The Court finds that even construing all the facts in favor of CBD, CBD's constitutional claims fail to adequately allege a plausible basis for relief," Gleason wrote.

SUNNY CALIFORNIA: The California Energy Commission voted unanimously Wednesday to require solar panels be installed for all newly built single-family homes and multifamily buildings less than three stories starting in 2020. A CEC study found that installing solar would increase home prices, but that would be more than offset by lower utility bills, according to the Los Angeles Times. The move has been anticipated for years and was supported by much of the home building industry. More from the LAT [here](#).

STEELWORKERS SAY YES TO RFS: The United Steelworkers are supporting Trump's recent decisions on the Renewable Fuel Standard, which include expanding sales of 15 percent ethanol fuels and having EPA and USDA workout some kind of program for biofuel credits on exported ethanol. "While it will continue to review the details, [USW] supports a deal brokered by the President that appears to address the long-running conflict between ethanol producers and oil refiners over federal biofuels mandates," the union said in a press release.

HOUSE GOP DROPS RESCISSIONS PACKAGE: House Majority Leader [Kevin McCarthy](#) unveiled the chamber's batch of [spending cuts](#) Wednesday. Similar to the White House's [request](#), the package makes cuts to Energy Department loan guarantee programs for clean energy and vehicle technologies. The bill is expected to [go directly to the House floor](#) for a vote, Pro's Sarah Ferris [reports](#). Senate GOP leaders have said they will consider the bill if and when it passes the House.

MEANWHILE IN BONN: Things aren't going as planned for the second week of climate talks in Bonn, Germany, punting further discussions to another meeting in September. The U.N. Framework Convention on Climate Change [said](#) Wednesday that there would be an additional meeting from Sept. 3-8 in Bangkok amid a stalemate centered in part around clarity on climate finance between developed and developing countries. The new date underscores the pressure negotiators are under to advance talks enough for ministers to strike a deal later this year at the COP24 in Katowice, Poland. "We need to resolve differences on finance, accounting and transparency," Alden Meyer of the Union of Concerned Scientists [told POLITICO Europe's](#) Kalina Oroschakoff.

CALVERT: EPA-INTERIOR COMING SHORTLY: Rep. [Ken Calvert](#), who oversees EPA and Interior on the Appropriations Committee, told ME to expect their fiscal 2019 bill "pretty soon" as work's going well. "We're working on final details now," he said. As for the perennial question, yes, Calvert expects policy riders to be in play: "There's always riders," he quipped.

AUTOMAKERS WANT MORE FUEL EFFICIENCY: The Alliance of Automobile Manufacturers and the Global Automakers, trade associations which together represent most of the automakers who sell cars in the U.S., will tell Trump that they most definitely want increases in fuel efficiency standards, contra that zero increase preference of the Department of Transportation. They also want the federal government to work out a single national standard with California, rather than face either a bifurcated market or a long legal battle. "Automakers are deeply committed to increased fuel economy and safety measures that meet the needs of our customers, and we expect to share the importance of government policies that provide certainty to the auto sector, continue to reduce greenhouse gas emissions, reflect what consumers will buy and result in a national policy that includes California," the two groups said in a statement.

FOLLOW THE MONEY: The Environmental Integrity Project released a database Wednesday of political contributions from companies and conservative organizations that met with Pruitt between Feb. 21, 2017, and April 13 of this year. The database was compiled via EPA calendars, FEC reports and data from the Center for Responsive Politics. See it [here](#).

SAVE THE DATE: BLM scheduled meetings to discuss its plans for an environmental review of planned oil and gas leases in ANWR. Several will be held in Alaska, including one each in Fairbanks and Anchorage on May 29 and May 30, respectively. Another meeting is scheduled for Washington D.C. on June 15. For those who can't make the hearings, BLM plans to live stream the Fairbanks and Anchorage dates.

MAIL CALL! ISN'T IT IRONIC? Six Democratic senators wrote to Office of Information and Regulatory Affairs Administrator Neomi Rao on the office's review and evaluation process for EPA's proposed "secret science" proposal to ban the use of studies that don't publicly disclose all their data. "The review process and rollout of this rule appears to have been rushed and secretive — which is particularly ironic for a proposal that purportedly aims to improve agency transparency and decision-making processes," they write.

Separately, bipartisan Reps. Ryan Costello and Paul Tonko sent a letter to the National Academy of Sciences asking for its input on the proposed rule, which was discussed when Pruitt testified before the House E&C Committee. Read the letter here.

Of course, Pruitt seems pleased with the proposal: Bloomberg's Ari Natter snapped a photo of new signs at EPA that tout the agency's "Strengthening Transparency in Regulatory Science."

ROCK STARS: Access Fund and American Alpine Club are sponsoring their annual "Climb the Hill" event today with professional rock climbers and outdoor recreation advocacy groups, who will hit the Hill today to talk outdoor recreation and public lands. Sen. Maria Cantwell will attend a reception with the group at 3 p.m. in 385 Russell. High-profile members of the rock-climbing community and executives from REI, Patagonia and The North Face will attend.

QUICK HITS

— Pair of investor-pushed resolutions pass at Kinder Morgan, Axios.

— Saudis pledge to "mitigate" loss of Iranian oil exports from U.S. sanctions. But crude prices rise anyway, The Washington Post.

— Emails: Perdue's donors, agency coordinated on biomass, E&E News.

— Hugh Hewitt used his MSNBC gig to praise efforts to weaken a law that his firm's client is accused of violating, Media Matters.

— Emails show Heritage Foundation offered Pruitt flights, hotel, and talking points for its conference, ThinkProgress.

HAPPENING TODAY

8:00 a.m. — The Women's Council on Energy and the Environment discussion on "Congressional Energy and Environmental Priorities: 2018 and Beyond," 400 North Capitol Street NW

8:30 a.m. — The International Trade Administration meeting of the Renewable Energy and Energy Efficiency Advisory Committee, 1401 Constitution Avenue NW

8:45 a.m. — Peter G. Peterson Foundation holds "the 2018 Fiscal Summit: Debt Matters," 1301 Constitution Ave NW

9:00 a.m. — House Appropriations Interior-Environment Subcommittee two-part hearing on "American Indian/Alaska Native Public Witnesses," 2007 Rayburn

9:00 a.m. — The Environmental Law Institute conference on "Infrastructure Review and Permitting: Is Change in the Wind?" 601 Massachusetts Avenue NW

9:00 a.m. — The Washington Post discussion on "The Energy 202 Live," 1301 K Street NW

9:30 a.m. — Senate Appropriations Interior-Environment Subcommittee hearing on Interior's FY 2019 budget request, 138 Dirksen

10:00 a.m. — House Energy and Commerce Energy Subcommittee hearing examining the state of electric transmission infrastructure investment, planning, construction and alternatives, 2123 Rayburn

1:00 p.m. — The United States Energy Association forum on "Chemical Looping Prospective: An Advanced Approach to Coal Utilization," 1300 Pennsylvania Avenue NW

2:00 p.m. — Center for Climate and Energy Solutions webinar on "City-Utility Partnerships for a Cleaner Energy Future."

THAT'S ALL FOR ME!

**** A message from Anheuser-Busch:** Anheuser-Busch announced that America's leading brewer has placed an order for up to 800 hydrogen-electric powered semi-trucks from the pioneer in hydrogen-electric renewable technology, Nikola Motor Company. The zero-emission trucks — which will be able to travel between 500 and 1,200 miles and be refilled within 20 minutes, reducing idle time — are expected to be integrated into Anheuser-Busch's dedicated fleet beginning in 2020.

Through this agreement Anheuser-Busch aims to convert its entire long-haul dedicated fleet to renewable powered trucks by 2025.

"At Anheuser-Busch we're continuously searching for ways to improve sustainability across our entire value chain and drive our industry forward," said Michel Doukeris, CEO of Anheuser-Busch. "The transport industry is one that is ripe for innovative solutions and Nikola is leading the way with hydrogen-electric, zero-emission capabilities. We are very excited by the possibilities our partnership with them can offer."

Learn more. **

To view online:

<https://subscriber.politicopro.com/newsletters/morning-energy/2018/05/zinkes-turn-on-the-hill-209472>

Stories from POLITICO Pro

EPA watchdog knocked Pruitt aides for slowing probe Back

By Alex Guillén | 05/09/2018 06:43 PM EDT

EPA's internal watchdog complained last year that Scott Pruitt's top aides were delaying handing over documents to auditors probing the administrator's travel practices, according to newly released emails.

That standoff between the EPA inspector general's office and Pruitt's team was resolved a month after the IG's staff flagged the issue and warned that the reticence to release the documents came close to impeding their probe, the emails show. But the incident highlights early tension between EPA's political appointees and the internal watchdog, which is now conducting multiple reviews of Pruitt's actions.

And it shows that concerns about the lack of transparency atop the agency since Pruitt joined have rankled people inside the agency as well as outside. POLITICO reported last week that Pruitt's political appointees were screening documents produced for public records requests related to the embattled administrator, slowing the release of information.

The new emails, released under a Freedom of Information Act request from California's Justice Department, show the IG's office was seeking information for its probe of Pruitt's frequent travel to Oklahoma on EPA business, enabling him to spend numerous weekends at his home in Tulsa.

That probe was later expanded to look at Pruitt's other travel practices, including his first-class flights that cost more than \$100,000, and it is expected to be completed by this summer. The watchdog has since opened additional probes into Pruitt's security spending, condo rental, soundproof phone booth, large raises for aides and allegations of retaliation against staff who questioned him.

Kevin Christensen, EPA's assistant inspector general for audits, wrote in September to a top career official in EPA's finance office to warn of a "potential situation" with the travel audit just two weeks after it began, the emails show. He flagged messages showing Pruitt's chief of staff Ryan Jackson was "screening" documents before releasing them to the Office of Inspector General.

"This does not fit the definition of unfettered access or comply with the Administrator memo on access and providing information to the OIG," Christensen wrote to Jeanne Conklin, EPA's controller who oversees financial management and reporting. "When we are denied access to information until approved for release, it raises the question as to what is being withheld and approved for release."

The auditors were able to obtain the documents on Pruitt's flights from the EPA's finance office in Cincinnati, even as Pruitt's staff continued to withhold them, Conklin wrote to Kevin Minoli, a career official who at that time served as EPA's acting general counsel.

"Do they not understand in the [Office of the Administrator]," Conklin asked Minoli. "Perhaps someone can speak to them and make them understand that the OIG has the documents already and they appear close to impeding the audit."

Both Minoli and Conklin stated in their email exchange that neither of them advised Pruitt's staff that they had the power to delay or withhold handing over documents to the OIG.

Minoli said in an email a week later that Jackson had delayed providing the records over concerns the audit might make public some previously redacted information, such as Pruitt's calendar and flight records. Minoli said he discussed the matter with the deputy inspector general, Chuck Sheehan, and noted the IG's office "has a long-standing practice of not using privileged information in their published work unless absolutely necessary."

An EPA spokesman on Wednesday declined to comment on the incident.

Other emails released to California's Department of Justice under the FOIA request also show career ethics officials warning Pruitt's aides about accepting industry awards and attending political events.

In March 2017, the Oklahoma-based National Stripper Well Association told Pruitt it would award him its "Industry Leader Award" at an annual gala, which was sponsored by Koch Industries. The group represents the

owners of the hundreds of thousands of small wells that produce less than 15 barrels of oil or 90,000 cubic feet of natural gas per day.

But EPA ethics official Justina Fugh noted in an email to Pruitt's schedulers, Sydney Hupp and Millan Hupp, that NSWA was registered to lobby the federal government and Pruitt would violate his ethics agreement if he accepted the honor.

The group had praised Pruitt's decision that month to halt the Obama EPA's request for oil and gas companies to provide the agency with information about methane emissions, a possible first step toward regulating pollution in those existing wells. "NSWA Got a Win at EPA Already!" touted an early March [blog post](#) by the group. It is unclear whether Pruitt's award was directly connected to that decision.

Fugh warned the Hupps that Pruitt would have to walk a fine line in accepting anything from a lobbying entity. Items with "no other intrinsic value" like a plaque may be OK, she said, but "an ashtray or coffee table book" would not be.

Pruitt ultimately appears to have accepted a plaque from the NSWA, according to a [photo](#) posted on the group's site and his own internal calendars. Another photo posted on the NSWA's Facebook page shows Pruitt [posing](#) with Koch executives.

Pruitt's Outlook calendar, released in response to public records requests, lists the topic of the speaking engagement as "acceptance of award, thank you."

EPA did not say whether Pruitt officially accepted the award from the group along with the plaque, despite Fugh's advice.

"We gave the plaque to [the Office of the Executive Secretariat] who confirmed that we could keep it," EPA spokesman Jahan Wilcox said. NSWA did not say Wednesday why it honored Pruitt.

Pruitt aides hinted to ethics officials last fall that he expected to be invited to increasing numbers of political events, which ethics officials warned raises a host of Hatch Act concerns about mixing political activities with his official duties.

Earlier in his tenure, Pruitt had decided not to attend an Oklahoma GOP fundraiser after reports revealed the event would feature a speech on EPA issues.

Last fall, Ronna McDaniel, the head of the Republican National Committee, invited Pruitt to attend an Oct. 25 fundraiser in Dallas for Trump Victory, a joint fundraising committee that funnels money to the RNC and Trump's reelection campaign.

"We will get more and more of these" invites as "political season" approaches, Jackson wrote to an ethics official.

Hatch Act restrictions would allow Pruitt to attend, but he would be barred from mentioning his EPA affiliation or asking for donations, Fugh replied. EPA could not cover his travel costs, although the agency could pay for his security detail's travel, Fugh added. Event organizers could not specifically invite guests with issues before the agency and would need to rescind invitations to anyone with business before EPA.

Pruitt ultimately appears to have skipped that fundraiser.

Emily Holden contributed to this report.

To view online [click here](#).

[Back](#)

Trump calls Blankenship after pushing for his loss in West Virginia [Back](#)

By Alex Isenstadt | 05/09/2018 10:55 PM EDT

President Donald Trump connected by phone on Wednesday with Don Blankenship, the former coal baron and ex-con whose Senate candidacy he helped sink.

Trump and Blankenship spoke briefly, according to three people familiar with the discussion. The conversation was described as straightforward, polite and cordial, with the president calling to exchange pleasantries and offer his congratulations on waging the campaign.

The call came two days after Trump took to Twitter to urge West Virginia Republicans to reject Blankenship's candidacy. In the tweet, Trump argued that Blankenship, who spent a year in jail following a 2010 explosion at his Upper Big Branch Mine that killed 29 workers, would be unable to defeat Democratic Sen. Joe Manchin in November.

Trump's intervention undermined Blankenship, who had aligned himself closely with the president — so much so that he described himself as "Trumpier than Trump."

Blankenship would go on to lose the primary decisively, finishing a distant third behind state Attorney General Patrick Morrisey and Rep. Evan Jenkins.

In his remarks to supporters on Tuesday evening, Blankenship attributed his loss to the president's last-minute intervention in the contest, saying that it had halted his momentum.

"I think if there was any single factor based on the polling at different times, the debates, and all the things I saw, it was probably President Trump's lack of endorsement — I don't know what to call it, but 'Don't vote for Don' tweet," he said. "I don't know what else it would have been."

In the final hours of the race, he said he was convinced that Trump had been pushed into the intervention by Senate Majority Leader Mitch McConnell, who had aggressively opposed Blankenship.

Blankenship on Wednesday released an "open letter" to Trump in which he accused the president of spreading "fake news against me."

"Your interference in the West Virginia election displayed a lack of understanding of the likely outcome of the upcoming general election," Blankenship added. "Patrick Morrisey will likely lose the general election. It's too late to change that, but it's not helpful to do to me what others are doing to you."

The president also connected briefly with Jenkins, but as of Wednesday evening had yet to connect with Morrisey, the winner of the primary. On Tuesday, though, Morrisey spoke with Donald Trump Jr. During the call, the president's eldest son promised to be helpful.

Trump's calls on Wednesday, several Republicans said, were partly aimed at healing the wounds following a deeply divisive primary. Blankenship has yet to endorse Morrissey, who aggressively attacked him during the final days of the race.

Some in the party are concerned that the deep-pocketed Blankenship, who spent more than \$2.5 million of his own funds in the primary, could wage an effort to damage Morrissey in the general election.

To view online [click here](#).

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DOE loan guarantee programs hit hard in White House rescissions package [Back](#)

By Anthony Adragna | 05/08/2018 11:08 AM EDT

More than \$5 billion in Energy Department loan guarantee programs for clean energy and vehicle technologies would be cut under a \$15 billion rescissions [request](#) unveiled today by the White House.

The proposal would cut \$684 million from clean energy loan guarantee programs, on top of the \$4.33 billion in proposed cuts to Advanced Technology Vehicles Manufacturing loan program [already announced](#) by the Trump administration.

"This proposed rescission would eliminate subsidy amounts that are inconsistent with the President's policies," the proposal says of cutting from the loan guarantee programs.

In addition, the package would cut \$10 million in water quality research grants, which the proposal says "are duplicative with other Federal programs."

WHAT'S NEXT: The package is expected to easily pass the House but faces a less certain fate in the Senate.

To view online [click here](#).

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Trump spending cut package to head directly to House floor [Back](#)

By Sarah Ferris | 05/09/2018 01:03 PM EDT

House Republican leaders are moving quickly to tee up the White House's \$15 billion package of proposed spending cutbacks.

GOP leaders plan to release legislative text of [the White House's proposal](#) as early as today, a House GOP aide confirmed.

The package is expected to closely mirror the Trump administration's request, which targeted unspent dollars from years-old accounts.

It will not go through the House Appropriations Committee, another GOP aide confirmed. That sets up the bill directly for a floor vote.

Most Republicans have embraced the proposed cuts, even as some budget hawks complained that most of the savings are only on paper.

But some, like GOP Rep. Vern Buchanan of Florida, have rejected the idea of cutting \$7 billion of budget authority from the Children's Health Insurance Program.

White House officials have argued that most of the funding has technically expired and can't be used, so it would have zero impact on the program.

The CBO confirmed that point today, saying that there would be no actual cuts or coverage reductions for CHIP.

To view online [click here](#).

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House GOP leaders unveil rescissions bill [Back](#)

By Sarah Ferris | 05/09/2018 08:28 PM EDT

House Republican leaders today unveiled a package of spending cuts, following a request from President Donald Trump this week.

The House GOP bill contains \$10.45 billion in specific cuts, including roughly \$7 billion to the Children's Health Insurance Program.

Other cutbacks in the GOP bill — including one targeting an energy program in the 2009 Obama-era stimulus bill — do not provide specific dollar amounts.

House GOP leaders will now begin whipping support for the bill, which is expected to go directly to the House floor for a vote. Senate GOP leaders have said they will consider the bill if and when it passes the House.

Under a decades-old law, presidential rescissions requests can pass the Senate with a simple majority, instead of the usual 60-vote threshold for procedural votes.

Democrats argue that Trump's bill would require the full 60 votes, however, because it targets mandatory funding, and not solely discretionary.

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Subject: Morning Energy: Did Pruitt skate by? — EPA prepping Oversight docs — McConnell tries for West Virginia redemption

By Kelsey Tamborrino | 04/27/2018 06:01 AM EDT

With help from Anthony Adragna

DID PRUITT SKATE BY? EPA Administrator Scott Pruitt had a simple task Thursday: Keep his conservative backers happy — and in turn, keep the president happy. And he may have managed to do just that. While Democrats and environmentalists panned Pruitt's performance, the EPA chief, who is facing a heavy stack of ethical and spending quandaries, left most Republicans pleased enough with his performance that he's probably salvaged his job for now.

But of course, President Donald Trump has yet to weigh in on Pruitt's performance. And on a day that saw Trump's nominee for Veterans Affairs withdraw, triggering a long Trump rant on "Fox & Friends," that could be good news for the EPA chief, POLITICO's Nancy Cook reports. "As long as [Pruitt's] explanations hold and there are no crazy discrepancies or smoking gun or anything like that, I don't think that creates any red flags for Pruitt," said one Republican close to the White House, who predicted Pruitt would survive the scrutiny.

Still, Pruitt's shifting answers about what he knew about controversial raises for two close aides raised a lot of concerns that he hadn't been completely forthright during his interview with Fox News earlier this month. Under lawmakers' questioning, he acknowledged that he had authorized his chief of staff to award pay increases to his aides — but said he did not know how high they would be or that they would circumvent the White House's disapproval. That's different than what he told Fox's Ed Henry when he said he hadn't known about the raises until after the fact and that he did not know who authorized them.

Pruitt used the two hearings to blame his torrent of scandals on career staff, as POLITICO's Anthony Adragna, Annie Snider and Alex Guillén reported, while maintaining the headlines surrounding him aren't painting an accurate picture. "Let me be very clear: I have nothing to hide as it relates to how I've run the agency for the past 16 months," Pruitt said. (In case you missed it, POLITICO's Energy team has the full recap of the key moments here.)

But all in all, his critical audience of House Republicans exited two separate hearings Thursday believing that Pruitt fared well. "I found his responses credible," said Rep. Mike Simpson, a House appropriator. Meanwhile, Rep. Ken Calvert, the chairman of the House Appropriations Interior-Environment subcommittee, said Pruitt did "fine." "He answered our questions," he said. "... He's doing well, he's very professional, he's doing his job." And Illinois' John Shimkus, who chaired Pruitt's first hearing, said he thought Pruitt handled himself well and that Republican members were tough in their questions, Anthony recaps. "Some of it was accountability for policy, so I don't know what more [critics] want," Shimkus said. "I think that he answered the questions in the best way that he could answer them."

Of course, Pruitt's performance did not please everyone. "I think the opprobrium that you've generated on some of these spending decisions is actually warranted," GOP Rep. Ryan Costello, who is retiring from Congress, told Pruitt. Ana Unruh Cohen, managing director of government affairs at the Natural Resources Defense Council said the EPA administrator "demonstrated beyond any doubt that he is unqualified" to lead his

agency. "He should be fired before sundown," she said. And Rep. Marcy Kaptur, ranking member of the Appropriations subcommittee that questioned Pruitt, used the term "evasive" to describe the performance. "For someone who has been in the job a year and a half, he didn't seem to command a lot of the details," she said. "... I don't think we know the full extent of what he's done yet."

WHAT COMES NEXT? Keep in mind: Pruitt's under multiple investigations that have yet to fully play out. "We have a committee that's looking into these charges and we'll have a resolution," Calvert said of Pruitt's ongoing scandals. "We'll see what comes of it." Today, for one, marks the deadline set by House Oversight Chairman Trey Gowdy in his expanded probe into the embattled EPA chief's activities. He's called for a host of documents to be delivered and interviews to be scheduled by today. An EPA official said the agency is currently in the process of providing the documents, Anthony reports. The official said the documents will respond to the allegations of lavish spending and unethical conduct and may negate the need for several aides to appear for interviews.

WELCOME TO FRIDAY! I'm your host Kelsey Tamborrino, and no one guessed Alabama — the home state of the first officially designated Democratic floor leader, Oscar Underwood. For today: Name the only senator to be preceded by both of his or her parents. Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](https://twitter.com/kelseytam), [@Morning_Energy](https://twitter.com/Morning_Energy) and [@POLITICOPro](https://twitter.com/POLITICOPro).

POLITICO's Ben White is bringing Morning Money to the Milken Institute Global Conference to provide coverage of the day's events and evening happenings. The newsletter will run April 29 - May 2. **Sign up to keep up with your daily conference coverage.**

PRUITT RAISES UNDONE AFTER FOX INTERVIEW: Amid the deluge of news coming out of the hearings, Pro's Emily Holden and Nick Juliano reported via documents released by EPA that the agency reversed raises for the two top aides to Pruitt the day after his interview with Fox News. Pruitt told Fox he had "corrected them" after finding out about them. A day later, on April 5, Pruitt's chief of staff Ryan Jackson signed personnel forms reverting the aides to their previous pay grades, according to copies of the forms reviewed by POLITICO. Read more here.

McCONNELL'S WEST VIRGINIA REDEMPTION: Amid an increasingly tense GOP primary battle for Democratic Sen. Joe Manchin's seat, coal baron Don Blankenship has focused his efforts into a relentless slash-and-burn campaign targeting Majority Leader Mitch McConnell. Blankenship — who spent a year in prison following the deadly 2010 Upper Big Branch mine disaster — compared his current battle against the McConnell-led Republican establishment to his past legal fight against the federal government, POLITICO's Alex Isenstadt writes. But as the May 8 primary inches closer, McConnell is fighting back with an avalanche of attacks from a super PAC aligned with the Senate leader, among other efforts.

Blankenship's attacks have grown intensely personal. During an interview with POLITICO, Blankenship said that McConnell "has a lot of connections in China," adding that the GOP leader's wife is Transportation Secretary Elaine Chao. And during an appearance on a local radio show, Blankenship described Chao's father as a "wealthy Chinaperson," who was "well-connected in China." Read more.

DOE TO ANNOUNCE FUNDS FOR ADVANCED NUCLEAR: Energy Secretary Rick Perry will announce today the selection of 13 projects that will receive about \$60 million in funding to support cost-shared research and development in advanced nuclear technologies. The selections — broken down into categories pertaining to nuclear demonstration readiness, advanced reactor development, and regulatory assistance grants — are the first under the Office of Nuclear Energy's "U.S. Industry Opportunities for Advanced Nuclear Technology Development" funding opportunity announcement. "Making these new investments is an important step to reviving and revitalizing nuclear energy, and ensuring that our nation continues to benefit from this clean, reliable, resilient source of electricity," Perry said in a statement.

ALL IN THE TIMING: The Office of Management and Budget completed its review of EPA's proposed "secret science" rule Wednesday, E&E News' Sean Reilly reports, even though Pruitt had already signed it by then. The policy that bars the agency from relying on studies that don't publicly disclose all their data got Pruitt's signature on Tuesday, but the Reginfo.gov site showed the review completion date as Wednesday. "While OMB is sometimes slow to update the site, it was unclear why Pruitt would have signed a rule before the review was completed," Reilly writes. EPA spokeswoman Liz Bowman suggested to E&E the fault lay with OMB. "Interagency review concluded before this proposal was signed," she said in a statement. Reilly later tweeted: "[@OMBPress](https://twitter.com/OMBPress) has now changed the date on the <http://Reginfo.gov> site to show that the review of this proposed [#EPA](#) rule was completed on April 23, not April 25. A [#OMB](#) spokesman won't discuss the reason for the change on the record."

TESTER TESTS TRUMP: The president is coming after Democratic Sen. Jon Tester, in what could be a problematic move for the Montanan as he fights to win reelection. Trump was enraged over Tester's work documenting allegations of malfeasance by Rear Adm. Ronny Jackson, provoking a series of inquiries that ultimately led to Jackson withdrawing his nomination to be VA secretary. POLITICO's Burgess Everett reports Tester is now at a turning point in his relationship with Trump, who railed against him on Thursday morning. "The incident and its fallout underscores how the burly, plain-spoken Tester hasn't exactly tacked to the center in an election year," Burgess writes. "Perhaps he feels emboldened after dodging a big-name opponent; after Ryan Zinke was drafted into the Trump administration and the state attorney general passed on the race, Tester's opposition is made up of lesser known opponents that will compete in a June primary." Read more.

SENATE MAKES POMPEO OFFICIAL: The Senate narrowly confirmed Mike Pompeo on Thursday, shifting him from CIA director to secretary of State. Pompeo was confirmed 57-42, ultimately winning support from Democrats Heidi Heitkamp, Manchin, Joe Donnelly, Bill Nelson, Claire McCaskill and Doug Jones. Supreme Court Justice Samuel Alito swore in Pompeo shortly after the vote Thursday, formally installing Pompeo, who has previously doubted climate science — a point greens jumped onto ahead of the vote. "There's some who think we're warming, there's some who think we're cooling," Pompeo said in 2013.

"Democrats that jumped ship to support this dangerous climate denier must and will be held accountable by the people," Food & Water Watch Executive Director Wenonah Hauter said in a statement. But others cheered the move: Competitive Enterprise Institute director of the Center for Energy and Environment, Myron Ebell, said in a statement he was "pleased." Pompeo, he said, "understands the importance of affordable, reliable energy to Americans' health and ability to provide for our families." Pompeo will be a "forceful advocate" of Trump's decision to remove the U.S. from the Paris climate agreement, Ebell said.

MANCHIN TRIES AGAIN: Manchin sent another letter this week urging Perry and Defense Secretary Jim Mattis to examine use of the Defense Production Act to protect coal-fired power plants. "The ability to produce reliable electricity and to recover from disruptions to our grid are critical to ensuring our nation's security against the various threats facing our nation today — whether those threats be extreme weather events or adversarial foreign actors," he writes. Earlier this month, Manchin similarly wrote to the president on the issue, although, as Pro's Eric Wolff reported, it faces an uphill battle on many fronts. Read the letter.

WATCH: House Speaker Paul Ryan was asked about climate change Thursday — by the 7-year-old daughter of E&E News' Scott Walden. See it here.

PRUITT FOCUS OF NEW AD: The opposition research firm American Bridge is scheduled to air an ad this morning on "Fox and Friends" focusing on Pruitt's swirling scandals and his previous criticism of the president. Watch it here.

DEMOCRATS COME OUT IN FULL FORCE FOR CPP: Ahead of the comment deadline, eight Democratic senators signed onto a letter led by EPW ranking member Tom Carper opposing EPA's proposal to repeal the Clean Power Plan. The senators write that the law is instrumental in fighting climate change and say

that rescinding it "ignores scientific evidence on the risks of climate change and puts generations of Americans at grave health and economic risk."

— **A coalition of 16 attorneys general and municipalities** submitted a supplemental comment letter to EPA with evidence of what they say are due process violations and ethical issues due to Pruitt's involvement. The group previously wrote to EPA, claiming Pruitt had not had an open mind on CPP. "Since then, the evidence continues to grow that Administrator Pruitt should have been disqualified from participating in this rulemaking before it began," they write. "His involvement has irreparably tainted the current administrative process, and as a result, EPA must withdraw the proposed CPP repeal." Read it [here](#).

MAIL CALL! WE NEED AN EXTENSION: Sens. [Ron Wyden](#) and [Jeff Merkley](#) and Reps. [Peter DeFazio](#) and [Jared Huffman](#) wrote to Interior Secretary Ryan Zinke and Agriculture Secretary Sonny Perdue on Thursday, urging an extension on interim mineral withdrawal protections for the Chetco River in southwest Oregon. Read it [here](#).

— **Sixteen senators, led by Democratic Sen. [Tom Udall](#)**, sent [this letter](#) to Zinke asking him to pause any plans for the management of Bears Ears and Grand Staircase-Escalante national monuments until legal challenges related to the president are resolved.

— **The House Biofuel Caucus sent a letter** to Pruitt objecting to Renewable Fuel Standard waivers issued by EPA, demanding Pruitt "immediately cease all waiver activity" and provide lawmakers a "full list" with further details. Read it [here](#).

CSB TO INVESTIGATE HUSKY EXPLOSION: The Chemical Safety Board said Thursday it is sending a four-person investigative team to Superior, Wis., to the scene of the Husky Energy explosion that injured several Thursday morning. The refinery was shutting down in preparation for a five-week turnaround, CSB said, when the explosion occurred. The Superior Police Department [evacuated](#) areas within miles of the explosion, including a small hospital nearby as a precaution. As of the latest count, at least 11 people were injured in the explosion, the Associated Press [reports](#).

CHA-CHING: Following a House Natural Resources hearing Thursday on offshore energy revenue sharing for Gulf-producing states, Interior announced it would disburse nearly \$188 million to four states: Alabama, Louisiana, Mississippi and Texas, as well as their coastal political subdivisions. It is the first disbursement of funds under Phase II of the Gulf of Mexico Energy Security Act of 2006, which comes from oil and gas leasing revenues on the Outer Continental Shelf, according to DOI. See the **massive** check [here](#).

QUICK HITS

— As climate change zaps their snow, winter sports fans seek to change Washington, [McClatchy](#).

— Skinny and sweet: U.S. refiner earnings depend on the oil diet, [Reuters](#).

— India nears power success, but millions are still in the dark, [Bloomberg](#).

— Coal producer Peabody Energy doubles down on share buyback program, [S&P Global](#).

— How Oman's rocks could help save the planet, [The New York Times](#).

HAPPENING TODAY

8:30 a.m. — Administrative Law and Regulatory Practice Institute hosts Daniel Cohen, assistant general counsel for legislation, regulation and energy efficiency at the Energy Department, 1201 24th Street NW

11:15 a.m. — Agriculture Secretary Sonny Perdue discussion with former Agriculture Secretary Tom Vilsack on agriculture and water conservation, Denver, Colo.

12:00 p.m. — Women's Council on Energy and the Environment discussion on wholesale electricity pricing, 888 First Street NE

12:00 p.m. — The Nuclear Information and Resource Service, and U.S. Climate Action Network discussion on "Climate Justice and Nuclear Power in South Africa," 1200 G Street NW

THAT'S ALL FOR ME!

To view online:

<https://www.politicopro.com/newsletters/morning-energy/2018/04/did-pruitt-skate-by-187652>

Stories from POLITICO Pro

Ronny Jackson drama overshadows Pompeo success for White House Back

By Nancy Cook | 04/26/2018 06:05 PM EDT

White House aides were reveling in the pomp of French President Emmanuel Macron's state visit, viewing it as a welcome reprieve from the chaos of Cabinet confirmations, an intensifying Russia probe and a boss with a short fuse. Then reality hit.

President Donald Trump's pick for Veterans Affairs Secretary Ronny Jackson finally withdrew from the confirmation process amid escalating allegations of misconduct, and Trump called into the TV show *Fox and Friends* to deliver an unscripted interview touching on everything from the Russia probe and the investigation of his personal attorney Michael Cohen to fan-tweets from Kanye West—all before 10 a.m.

The day also included the confirmation of Mike Pompeo, previously Trump's CIA director, as secretary of state—an unexpectedly hard-fought victory that was overshadowed by routine House hearings featuring testimony from EPA Administrator Scott Pruitt, who has been accused of a string of ethics violations.

"The state visit was cool for folks in the White House and fun distraction for one hour from stories about Scott Pruitt or Michael Cohen before everyone got back to the shitshow," said one former White House official.

The president often publicly frames these hectic junctures as a White House unduly under siege from the press or other opponents. About Jackson's nomination, Trump said on Thursday: "He's a great man, and he got treated very, very unfairly. He got treated really unfairly. And he's a hell of a man."

The lack of vetting and Trump's tendency to name top-level nominees with little scrutiny dates back to the presidential transition in the fall of 2016. It's a pattern that surprises few insiders, even as it creates headaches for the White House and the nominees.

"Generally, White House aides are blaming the president from shooting from the hip and without giving it any thought, but this is how every decision he has made has gone," said the former White House official.

On Wednesday, the night before Jackson dropped out of consideration, a number of administration aides and Republicans close to the White House gathered at the Trump International Hotel for after-work drinks—and a few aides kept hoping aloud that Jackson would announce he was dropping out on TV, so no one would have to run back to the White House and everyone could keep drinking, according to one attendee.

The biggest beneficiary of this week's chaos was Pruitt, who started out the week under great scrutiny and disdain from several disparate circles of White House staffers and then ultimately skated through his two Capitol Hill hearings with little incident. Earlier in the week, those hearings were seen as a make-or-break moment for the EPA Administrator and ones that the president would pay attention to.

"As long as his explanations hold and there are no crazy discrepancies or smoking gun or anything like that, I don't think that creates any red flags for Pruitt," said one Republican close to the White House, who predicted Pruitt would survive the scrutiny.

What helps Pruitt and other Cabinet nominees who frustrate the White House or Trump is the math in the Senate. The Republicans do not have a large or cohesive enough majority to easily confirm new Cabinet secretaries, and the drama surrounding Jackson's departure puts a damper on creating any new vacancies to fill.

"In the ideal situation, the only headlines coming out of the agencies are the policy decisions advancing the president's agenda," said one senior administration aide, speaking about the spate of bad headlines surrounding Pruitt's leadership at the EPA. "That is the clear direction from the top, and we've communicated that."

But many White House officials—and the president himself—have adopted the view that the administration is unfairly maligned, no matter what it does.

Many aides were surprised that Pompeo's confirmation process seemed so shaky at certain points, given the White House's huge, upcoming foreign policy decisions on meeting with North Korea, keeping troops in Syria, and deciding the fate of the U.S.'s role in the Iran deal. The White House's Director of Legislative Affairs Marc Short devoted most of his time over the past few weeks to ensuring Pompeo got confirmed.

"We can only pick so many battles, and Pompeo has got to get done as quickly as possible," said one White House official.

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Pruitt dodges blame [Back](#)

By Anthony Adragna, Annie Snider and Alex Guillén | 04/26/2018 10:46 AM EDT

Scott Pruitt may have handled his daylong congressional grilling well enough to salvage his job for now — but only after he blamed his torrent of scandals on staff, disavowed one of his top advisers and raised new questions about what he knew about massive raises awarded to some of his closest aides.

The Environmental Protection Agency administrator shrugged off responsibility Thursday for a \$43,000 privacy booth and more than \$100,000 in first-class flights, and even said he has no idea whether his chief policy adviser showed up for work at all during a three-month stretch.

But the former Oklahoma attorney general stayed calm throughout the nearly six hours of questioning. And his televised performance brought no immediate complaints from the one person whose opinion matters — the media-obsessed president who has so far stuck with Pruitt despite a multitude of investigations and the exasperation of key White House staff.

"Let me be very clear: I have nothing to hide as it relates to how I've run the agency for the past 16 months," Pruitt told a House Energy and Commerce subcommittee, the first of two panels to subject him to hours of questioning Thursday.

But he also didn't offer enough specifics to satisfy Democratic lawmakers — and a few Republicans — who criticized the lavish spending, cozy relations with lobbyists and other controversies that have taken root on his watch. He pointedly refused to apologize, instead accusing his critics of trying to "derail" President Donald Trump's policies.

Several Republican lawmakers who defended him during the hearings said he'd held his own against a barrage of Democratic complaints.

"I think he did well," said Rep. Tom Cole (R-Okla.), adding, "I know him well enough to not believe that he's deliberately done anything wrong or that he's made decisions in an inappropriate or unethical manner."

Still, Cole admitted any decision on Pruitt's fate is in Trump's hands.

Rep. Betty McCollum (D-Minn.) said Pruitt merely tried to dodge accountability for actions such as a massive expansion of his personal security team, while sidestepping accusations that he had punished staffers who questioned whether he faces serious threats to his safety.

"He could have taken personal responsibility and really meant it," McCollum told reporters after an afternoon hearing by a House Appropriations subcommittee, where she had told Pruitt he should resign. "Instead he messed up in that he got caught up in thinking he needed more security than he needed, and that when employees pushed back on him, he did retaliate."

One aspect of Thursday's testimony drew a notable amount of attention — Pruitt's shifting explanations for what he knew, and when, about raises as high as 72 percent that went to some of his key aides.

Weeks ago, Pruitt told Fox News that he hadn't known about the raises until after the fact, that he did not know who authorized them and that the aides should not have received them. But under lawmakers' questioning Thursday, he acknowledged that he had authorized his chief of staff to award pay increases to the aides — but said he did not know how high they would be or that they would circumvent the White House's disapproval.

"I was not aware of the amount, nor was I aware of the bypassing or the [Presidential Personnel Office] process not being respected," Pruitt said, responding to a question from Rep. Paul Tonko of New York, the top Democrat on the Energy and Commerce Environment Subcommittee.

An EPA spokesman later said Pruitt had given his chief of staff, Ryan Jackson, blanket authorization to handle hiring and raises using the EPA's power under a water law that didn't require the White House's sign-off.

Lawmakers didn't ask — and Pruitt didn't say — whether he would discipline Jackson for his handling of the raises.

A preliminary report from EPA's inspector general has found that Jackson signed off on the pay hikes to Sarah Greenwalt, a Pruitt adviser who previously worked as his general counsel in the Oklahoma attorney general's

office, and Millan Hupp, a former "Team Pruitt Operations Director" who is now his director of scheduling and advance.

Pruitt also said he didn't know whether one of his top aides, Samantha Dravis, had failed to show up for work for much or all of November through January, as Sen. Tom Carper (D-Del.) has alleged. His answer essentially abandoned a past statement by an EPA spokesman, who called the accusations "baseless and absurd."

"I'm not aware that she did or did not appear for work. So that's something that is being reviewed at this point," Pruitt told lawmakers Thursday, referring to an inspector general decision to review her attendance.

Dravis, EPA's associate administrator in charge of EPA's Office of Policy until last week, was such a senior aide that she had traveled with Pruitt on official business in Morocco as recently as December. She also appears with him in a meeting photo that Pruitt's EPA Twitter account tweeted Dec. 6.

Pruitt also blamed his staff for the controversial purchase and installation of the privacy booth in his office, and said he would have stopped it if he knew the cost. He said the installation came after he'd received a phone call "of a sensitive nature" and requested "access to secure communication."

"I gave direction to my staff to address that, and out of that came a \$43,000 expenditure that I did not approve," he said. "If I'd known about it, I would have refused it."

Pruitt did not single out the staff members he was blaming for the phone booth installation, but agency staffers have told POLITICO that those and other pricey expenditures were overseen by Pasquale "Nino" Perrotta, the career employee who heads his security detail.

Even after surviving Thursday's gauntlet, Pruitt is still facing numerous investigations from Congress, the White House and government watchdogs into his taxpayer-funded first-class travel; unprecedented, 24-hour security detail; and sweetheart rental deal with the wife of a lobbyist who sought to influence his agency. A senior EPA official said Thursday that high-level staffers including Jackson, Greenwalt and Perrotta are willing to sit for interviews with staff of the House Oversight Committee, which is carrying out one of the probes of Pruitt's actions.

Ahead of Thursday's hearing, EPA distributed a 23-page document responding to various allegations.

Democrats ripped into him from the start, charging that Pruitt had put his own interests and political ambitions over the job of protecting the environment and human health, and he had shown he didn't deserve the public trust.

"I think your actions are an embarrassment to President Trump and distract from the EPA's ability to effectively carry out the president's mission, and if I were the president I wouldn't want your help," said Frank Pallone (D-N.J.). "I'd get rid of you."

Sitting in front of protesters wearing "Impeach Pruitt" T-shirts and a sign calling him "Mr. Corruption" on Thursday morning, Pruitt dismissed the wave of criticism as an attempt to undercut "transformational change" happening at the agency.

"Let's have no illusions about what's really going on here: Those who have attacked the EPA and attacked me are doing so because they want to attack and derail the president's agenda and undermine this administration's priorities," he said. "I'm simply not going to let that happen."

Rep. John Shimkus (R-Ill.), who chaired the morning hearing, said afterward that he thought Pruitt had acquitted himself well.

"I think that he answered the questions in the best way that he could answer them," Shimkus said.

Shimkus wouldn't speculate about potential next steps by the Energy and Commerce panel, saying the decision was up to full committee Chairman Greg Walden (R-Ore.). He also declined say whether he thought questions remain unanswered.

"I'm just glad he showed up," Shimkus said.

Pruitt's defenders, like Rep. David McKinley (R-W.Va.), who has praised Pruitt's rollback of climate change and water regulations, dismissed the Democrats' complaints as political posturing.

"To the public, I think this has been a lot of classic display of innuendo and McCarthyism that we're seeing too often here in Washington that I think unfortunately works against civility and respect for people in public office," he said. "Some can't resist the limelight, the opportunity to grandstand."

Rep. Joe Barton (R-Texas) said the focus on the controversies was an attempt to undermine Pruitt's, and Trump's, policies.

"If you can't debate the policies in Washington, you attack the personality, and that's what's happening to you," Barton told Pruitt. "Republicans do it when it's a Democratic president. Democrats do it when it's a Republican president. And in my opinion, it's just my opinion, that's what's happening to you."

Not every Republican came to Pruitt's defense, though. Rep. Ryan Costello of Pennsylvania offered the harshest criticism from the GOP, saying his activities deserved the anger they had provoked.

"I think the opprobrium that you've generated on some of these spending decisions is actually warranted," Costello, who is retiring from Congress, told Pruitt. "I've reviewed your answers, and I find some of them lacking or insufficient. And I believe you've not demonstrated the requisite good judgment required of an appointed executive branch official on some of these spending items."

Trump has so far stood by Pruitt, praising his work to pare back environmental rules and remaining wary of upsetting conservatives who strongly support the administrator.

The administration's desire to avoid another tough confirmation fight also appears to be weighing in Pruitt's favor. While new Secretary of State Mike Pompeo narrowly won Senate confirmation and was sworn in Thursday, Rear Adm. Ronny Jackson's nomination to head the Department of Veterans Affairs crashed and burned, and Trump also needs to win approval for a controversial pick to head the CIA.

Democrats suggested that Pruitt's controversies were the result of his penchant for abusing the perks of his position and rewarding his political backers.

"Only in recent weeks have we come to understand the extent of your political ambitions, your tendency to abuse your position for personal gain and to advance the agendas of your political benefactors in what appears to be a propensity for grift," Tonko said.

Under questioning from Rep. Anna Eshoo (D-Calif.), Pruitt declined multiple times to answer whether he felt any remorse for wasteful spending at the agency,

"I think there are changes I've made already," he said. But he deflected several questions about his first-class flights, saying his security detail decides where he sits on airplanes, and that he now plans to fly coach.

Eshoo didn't buy it.

"With all due respect, I may be elected, but I'm not a fool," she said. "That's really a lousy answer from someone that has a high position in the federal government."

Emily Holden contributed to this report.

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'Embarrassment' or 'McCarthyism': Key moments as Pruitt faces lawmakers [Back](#)

By Quint Forgey, Anthony Adragna, Alex Guillén and Annie Snider | 04/26/2018 01:40 PM EDT

Scott Pruitt, the scandal-ridden administrator of the Environmental Protection Agency, appeared on Capitol Hill on Thursday for back-to-back House committee hearings on his agency's budget request.

But the only spending most lawmakers wanted to discuss were reports of Pruitt's taxpayer-funded air travel, the sweetheart condo lease he secured from a lobbyist, and the numerous other allegations of misappropriating funds and unethical management that have tarred his tenure at the EPA.

Here are key moments from the contentious hearings, held by subcommittees of the House Energy and Commerce and House Appropriations committees:

A defiant Pruitt says he has nothing to hide. The former Oklahoma attorney general argued his critics were simply attempting to undercut the "transformational change" he's making at the agency on behalf of President Donald Trump. "Let's have no illusions about what's really going on here: Those who have attacked the EPA and attacked me are doing so because they want to attack and derail the president's agenda and undermine this administration's priorities," he said at the outside of the day's first hearing, in front of a House Energy and Commerce subcommittee. "I'm simply not going to let that happen." Pruitt maintained had "nothing to hide," and suggested some of the reports regarding his behavior were inaccurate. "Facts are facts and fiction are fiction," he said. "And a lie doesn't become truth just because it appears on the front page of a newspaper."

Pruitt acknowledged he authorized pay raises for his key aides. But he said he didn't know how much they were, or that his chief of staff — who took the blame for signing off on the salary hikes — circumvented the White House to award them. "I was not aware of the amount, nor was I aware of the bypassing or the [Presidential Personnel Office] process not being respected," Pruitt told lawmakers. Pruitt had earlier said on Fox News that he hadn't known about the raises and that the aides should not have received them. A preliminary report from EPA's inspector general found that chief of staff Ryan Jackson signed off on multiple large raises using Safe Drinking Water Act authority, which allows the agency to move forward without White House sign-off. The raises totaled as much as 72.3 percent.

But he blamed EPA's career staff for his \$43,000 privacy booth. He said career employees signed off on the expensive soundproof phone booth installed in his office — and maintained he would have refused it if he'd known about the cost. "I did have a phone call that came in of a sensitive nature and I did not have access to

secure communication," he said. "I gave direction to my staff to address that and out of that came a \$43,000 expenditure that I did not approve." The Government Accountability Office has said the agency violated spending laws by not informing Congress about the booth beforehand. To Pruitt's critics, the booth has come a prominent symbol of his reputation for high-spending and extreme secrecy. Pruitt later said he uses the booth only "rarely," and that "it depends on the nature of the call and how urgent the call is."

Pruitt also had trouble explaining the expensive biometric locks recently installed in his office. They require a code for him to enter, but he wouldn't say whether the locks feature fingerprint scanners or some other type of identification system. When Pruitt said career staffers made the decision to install the locks, Rep. Peter Welch (D-Vt.) wasn't impressed. "It's really starting to seem like there's something on the desk with a motto, 'The buck stops nowhere,'" he quipped.

It's still not clear whether one of Pruitt's top aides came to work for three months. "I'm not aware that she did or did not appear for work. So that's something that is being reviewed at this point," Pruitt said of Samantha Dravis, the associate administrator in charge of EPA's Office of Policy. Sen. Tom Carper (D-Del.) has alleged that Dravis largely did not work the months of November through January, and EPA's inspector general has agreed to review her attendance. Dravis said several weeks ago that she planned to resign, and her last day was reportedly April 20. Pruitt's comments Thursday were a shift from EPA's past statements that the no-show accusation is "completely baseless and absurd."

Democrats pounded him early and often. Those included top Energy and Commerce Democrat Frank Pallone of New Jersey, who said the scandals enveloping Pruitt are "an embarrassment to President Trump and distract from the EPA's ability to effectively carry out the president's mission. And if I were the president, I wouldn't want your help. I'd get rid of you."

Some Republicans also warned Pruitt he needs to answer questions. Environment subcommittee Chairman John Shimkus (R-Ill.) said he considered much of the media narrative surrounding the EPA chief's scandals to be "a distraction," but the committee "cannot ignore" reports of Pruitt's impropriety. "As public servants, our jobs are not based solely on the things we do, or the things we have done, but also on the way we conduct our business," Shimkus said in his opening statement. "It is no secret that there have been many stories in the press about the management and operations of the agency and your dealings with potentially regulated sectors." And full Energy and Commerce Chairman Greg Walden (R-Ore.) expressed concerns that Pruitt's progress on policy is being "undercut" by the allegations. "These issues are too persistent to ignore," said Walden, a member of House Republican leadership.

But other GOP lawmakers came to his rescue, and one likened the criticism to "McCarthyism." Rep. Joe Barton, a former Energy and Commerce chairman, and Rep. David McKinley (R-W.Va.), a staunch Pruitt ally, blamed Democrats and toxic partisanship for Pruitt's precarious professional standing. "If you can't debate the policies in Washington, you attack the personality, and that's what's happening to you," Barton lamented. McKinley accused Democrats on the panel of not being able to "resist the limelight" and said Pruitt's detractors were simply grandstanding. "I think this has been a lot of classic display of innuendo and McCarthyism that we're seeing too often here in Washington, that I think unfortunately works against civility and respect for people in public office," McKinley said.

Rep. Bill Johnson (R-Ohio) also jumped to shield Pruitt. "I think it's shameful today that this hearing has turned into a personal attack hearing and a shameful attempt to denigrate the work that's being done at the EPA and with this administration," he said. Public officials should have ethical standards "beyond reproach," Johnson said, "but so should members of Congress."

Staffers moved or dismissed under Pruitt weren't being punished, he said. "There's no truth to the assertion that decisions have been made about reassignments or otherwise as far as employment status based upon the things you reference. I'm not aware of that ever happening, and it's something I want to make very, very clear,"

Pruitt said, vowing he would not retaliate against civil servants who flag wrongdoing. The New York Times reported this month that several top staffers were reassigned or demoted after questioning Pruitt, and POLITICO reported that the agency's deputy homeland security chief was dismissed after signing off on a report questioning Pruitt's security spending.

One Republican ripped into Pruitt with particular gusto. "I think the opprobrium that you've generated on some of these spending decisions is actually warranted," Ryan Costello (R-Pa.), who is retiring from Congress, told the EPA chief. "I've reviewed your answers and I find some of them lacking or insufficient. And I believe you've not demonstrated the requisite good judgment required of an appointed executive branch official on some of these spending items." He went on to ask specifically about reports of retaliation against employees who questioned Pruitt, as well as whether security threats against him were "warranted or credible."

Pruitt: I only took that controversial trip to Morocco because the country's ambassador invited me.

"There was a free trade agreement that is in existence with Morocco and the ambassador of Morocco invited me to Morocco to negotiate the environmental chapter on that free trade agreement," Pruitt told lawmakers. The EPA administrator's December jaunt to the North African nation came under intense scrutiny when the agency, in a news release after the fact, described the trip as dual-purpose: to discuss updates to a U.S.-Morocco Free Trade Agreement "and the potential benefit of liquified [sic] natural gas (LNG) imports on Morocco's economy." Later on Thursday, Pruitt attempted to downplay his role in promoting American natural gas exports. "There was a lot of reference made to LNG only because the ambassador [of Morocco] asked me to share that with individuals when I was in country," he said.

Pruitt the leaker? After facing questions about the severity of the threats the EPA chief has faced in office — which the agency has cited to justify his pricey security budget — Pruitt read part of a report from the inspector general's office that documented threats directed at him and his family. Asked whether EPA Inspector General Arthur Elkins Jr. had written the report he cited, Pruitt replied, "I'm looking at the document that says inspector general." But a spokeswoman for the IG's office said Thursday that it came from another official, not Elkins himself. "It was an internal memo from Assistant IG for Investigations Patrick Sullivan," OIG spokeswoman Tia Elbaum said in an email. "It was leaked without authorization. It will be released in the near future as part of an OIG FOIA response."

By the time Pruitt was finished, Shimkus was "just glad he showed up." The Illinois Republican, who chaired Pruitt's first hearing, said he thought the administrator handled himself well and that GOP members were suitably tough in their questioning. "Some of it was accountability for policy, so I don't know what more [critics] want," Shimkus told POLITICO of Pruitt's performance. "I think that he answered the questions in the best way that he could answer them." Shimkus declined to speculate about potential next steps the House Energy and Commerce Committee or the Environment subcommittee would take, and didn't specifically state whether he thought questions remain unanswered after today's grilling. "I knew it would be painful," he said.

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Shimkus praises Pruitt performance in first hearing [Back](#)

By Anthony Adragna | 04/26/2018 02:39 PM EDT

Rep. [John Shimkus](#) (R-Ill.), who chaired EPA Administrator Scott Pruitt's first hearing today, said he thought Pruitt handled himself well and that Republican members were tough in their questions.

Shimkus pointed to questions from Reps. Ryan Costello (R-Pa.), Leonard Lance (R-N.J.) and Billy Long (R-Mo.) at the Energy and Commerce environment subcommittee hearing this morning.

"Some of it was accountability for policy, so I don't know what more [critics] want," Shimkus told POLITICO of Pruitt's performance. "I think that he answered the questions in the best way that he could answer them."

Shimkus declined to speculate about potential next steps, saying that decision was up to full committee Chairman Greg Walden (R-Ore.). And he declined to specifically state whether he thought questions remain unanswered.

"I'm just glad he showed up," he said. "I knew it would be painful. There would be policy and politics."

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Gowdy expands probe into EPA's Pruitt [Back](#)

By Anthony Adragna and Alex Guillén | 04/13/2018 05:45 PM EDT

House Oversight Chairman Trey Gowdy (R-S.C.) said Friday he's expanding his probe into the alleged ethical and spending abuses by EPA Administrator Scott Pruitt one day after his staff met for several hours with a former EPA aide who was pushed out of the agency.

Gowdy's latest letter is a further sign of the deepening bipartisan scrutiny facing President Donald Trump's environmental chief, whose critics accuse him of excessive spending on travel, vehicles, staff raises and luxe security features such as a \$43,000 soundproof phone booth.

The committee's new request focuses on the decision to increase Pruitt's security to round-the-clock protection, contracts to sweep Pruitt's office for electronic surveillance, his trips to Italy and Morocco, the hiring of an Italian security firm, and travel by Pruitt's security chief, Pasquale "Nino" Perrotta.

The letter comes after the committee interviewed ousted EPA employee and former Trump campaign aide Kevin Chmielewski, who is being treated as a whistleblower. A committee spokeswoman said the information he provided is consistent with allegations laid out in a letter released Thursday by House and Senate Democrats who had also spoken to him.

The committee also asked for sit-down interviews with four senior EPA officials: Perrotta; Ryan Jackson, Pruitt's chief of staff; Millan Hupp, a scheduling and advance aide; and Sarah Greenwalt, a senior counsel to Pruitt. Gowdy requested the agency schedule those interviews and provide a litany of documents by April 27. Gowdy also requested an on-the-record interview with Chmielewski, who spoke more informally with lawmakers this week.

Hupp and Greenwalt, both of whom have worked for Pruitt since he was Oklahoma's attorney general, are the two staffers who received raises via a special authority granted Pruitt under the Safe Drinking Water Act. Pruitt told Fox News last week he was not aware of the raises, although Chmielewski told Democrats this week that the raises were "100 percent Pruitt himself."

EPA spokesman Jahan Wilcox said the agency had "responded to Chairman Gowdy's inquiries and we will continue to work with him."

EPA's inspector general is also investigating complaints about Pruitt's travel spending and other practices. The inspector general's office said it will release an interim report Monday afternoon on one of its probes, which involves whether Pruitt misused special hiring authority provided by the Safe Drinking Water Act to bring some key aides into the agency.

It's unclear whether the IG has expanded that probe to include a recent controversy around EPA's use of the same water law to grant raises to the two Pruitt aides despite the White House's disapproval.

Chmielewski told Democrats this week that EPA fired him after he refused to sign off retroactively on first-class travel for one of Pruitt's closest aides, Samantha Dravis. Gowdy's letter does not request an interview with Dravis, who has announced her intent to leave the agency.

During congressional interviews earlier this week, Chmielewski outlined a detailed litany of seemingly unethical behavior against Pruitt. He said the EPA chief insisted on staying at expensive hotels while traveling even if they exceeded permissible federal spending limits, directed staff to book him on Delta Air Lines so he could accrue frequent flier miles, made a close aide "act as a personal real estate representative" and then retaliated against staff who questioned his behavior, among other allegations.

EPA has previously dismissed Chmielewski as one of a "group of disgruntled employees who have either been dismissed or reassigned." The agency did not immediately comment on the latest letter.

Gowdy's probe into Pruitt's activities has been in contrast to his GOP colleagues, who have adopted a "wait and see" approach toward the EPA chief's ethical woes. Lawmakers this week expressed discomfort with Pruitt's spending when asked and vowed to press him about it at future hearings. But they've stopped short of demanding documents or issuing subpoenas to investigate the alleged ethics lapses.

Pruitt last appeared before Congress in late January before the Senate Environment and Public Works Committee. Unlike his fellow Cabinet members, he has yet to appear before any congressional committees to defend his fiscal 2019 budget request. And he's not scheduled to return to Capitol Hill for another two weeks, when he is scheduled to attend an April 26 session with the House Energy and Commerce Committee.

"The Republicans are absolving themselves of all oversight responsibility even in the face of the most egregious conduct. They may as well stop calling committees oversight," Melanie Sloan, senior adviser at American Oversight, told POLITICO. "What would it take? Would he literally have to kill somebody before they say it's a problem?"

GOP lawmakers were less patient with Obama EPA officials. Senate and House lawmakers questioned former Administrators Lisa Jackson and Gina McCarthy, as well as other senior brass, on issues ranging from the use of nonofficial email accounts, whether they used texting to avoid record-keeping requirements, whether they allowed a senior staffer to commit time fraud and why they hadn't fired employees who spent hours watching pornography at work more quickly.

EPW Chairman John Barrasso (R-Wyo.) has said he planned to await the results of a White House review of Pruitt's conduct and would not comment on multiple occasions this week on when the administrator would return to his committee.

"He was just here earlier this year and answered questions for 2½ hours, but I expect him to come back again," Barrasso told reporters.

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EPA prepping documents in response to Oversight probe [Back](#)

By Anthony Adragna | 04/26/2018 08:11 PM EDT

EPA staff is in the process of providing documents to the House Oversight Committee that it believes will respond to allegations of lavish spending and unethical conduct by Administrator Scott Pruitt and may negate the need for several aides to appear for interviews, according to a senior EPA official.

The agency staffers believe the documents will show former Trump campaign aide Kevin Chmielewski, who served as a senior aide to Pruitt, made a number of "exaggerations" when he spoke with Democratic and Republican lawmakers, according to the official.

Senior staffers at the agency are also willing to sit for interviews with Oversight staff if desired, the official said. Those officials include: Pasquale "Nino" Perrotta, Pruitt's security chief; Ryan Jackson, Pruitt's chief of staff; Millan Hupp, a scheduling and advance aide; and Sarah Greenwalt, a senior counsel to Pruitt.

House Oversight Chairman [Trey Gowdy](#) (R-S.C.) [expanded his probe](#) into the embattled EPA chief's activities one day after his staff sat down with Chmielewski. In an April 13 letter, Gowdy requested a host of documents and that the interviews be scheduled by April 27.

In addition, an Oversight Committee aide said earlier this week the committee had informally requested on April 16 that Samantha Dravis, formerly one of Pruitt's closest aides, appear for a transcribed interview with committee staff. Dravis had not been included in Gowdy's original letter because it was thought she left the agency, but her resignation was actually effective April 20, according to the aide.

A spokeswoman for the Oversight Committee did not respond to request for comment today.

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Documents: EPA reversed raises one day after Pruitt's Fox interview [Back](#)

By Emily Holden and Nick Juliano | 04/26/2018 06:45 PM EDT

EPA reversed raises for two top aides to Administrator Scott Pruitt the day after his interview with Fox News, according to [documents](#) shared by the agency today.

Pruitt [told Fox](#) his staff had authorized the raises and he had "corrected them." A day later, on April 5, Pruitt's chief of staff, Ryan Jackson, signed personnel forms reverting the aides to their previous pay grades, according to copies of the forms reviewed by POLITICO. Jackson signed the documents "for Scott Pruitt," as he had on forms authorizing the initial pay bumps a few days earlier, according to documents [previously released](#) by EPA's inspector general.

Sarah Greenwalt, senior counsel to Pruitt, received a \$56,765 increase in her annual salary on April 1, and Millan Hupp, director of scheduling and advance, saw a \$28,130 increase that same day, according to the earlier IG documents.

Jackson reversed those moves on April 5, bumping Greenwalt's salary back to \$109,900 per year, and Hupp's to \$88,450, according to the new documents.

Pruitt signed a memo in March 2017 delegating to Jackson the ability to make hiring and salary decisions using a special section of the Safe Drinking Water Act.

"Administrator Pruitt has consistently said he was not aware of the amount of the raises or the process that was used, as he said both today and in prior interviews," EPA spokesman Jahan Wilcox said in a statement. "He was aware one of the individuals was receiving changes to job responsibilities and might be asking for a raise, but had no further involvement in the discussions, negotiations or approvals, because he had authorized his Chief of Staff and other EPA officials to handle all personnel matters."

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McConnell seeks redemption in ugly West Virginia primary [Back](#)

By Alex Isenstadt | 04/26/2018 04:48 PM EDT

HUNTINGTON, W. Va. — Don Blankenship walked into the Guyan Golf & Country Club on Tuesday afternoon and bluntly laid out his plan for the final two-week stretch of the GOP Senate primary: a relentless slash-and-burn campaign targeting Mitch McConnell.

As the assembled local GOP women's group munched on chocolate chip cookies, the coal baron who spent a year behind bars after a deadly 2010 mine explosion compared his current battle against the McConnell-led Republican establishment to his past legal fight against the federal government.

"When you've been falsely charged, when you've had seven of 10 bill of rights flagrantly violated, you tend to fight back. ... I make no apologies for that," he said, adding that when he sees people like McConnell "leading us to the left, I will speak out about it, because I know bad people join good organizations."

As the dramatic May 8 primary campaign hurtles to a close, it's taking on an all-too familiar outline. For the second time in a matter of months, an insurgent outsider is taking aim at McConnell, looking to capitalize on the broiling anti-establishment unrest that's dominating Republican politics. And just like last time, McConnell is fighting back.

In the fall, the leader's aggressive campaign to defeat Alabama Republican Roy Moore backfired spectacularly. This time, his attempt to stop the 68-year-old Blankenship seems to be faring better. Amid an avalanche of attacks from a McConnell-aligned super PAC, two new polls out this week show Blankenship, once seen as an early front-runner, plunging into third place.

Crisscrossing the state this week, Blankenship savaged the Kentucky Republican as weak-kneed, accused him of failing to stand up for the coal industry, and said he'd long ago lost touch with Republican voters.

Blankenship vowed to oppose McConnell as Senate GOP leader if he won and began airing a TV ad — which he personally composed — envisioning McConnell as a bog-enveloped "swamp captain."

At times, the attacks grew intensely personal. During an interview with POLITICO on Sunday, Blankenship said McConnell "has a lot of connections in China," adding that the GOP leader's wife, Transportation Secretary Elaine Chao, is "from China, so we have to be really concerned that we are in truth" putting America's interests first. Blankenship's girlfriend was born in China.

During an appearance on a local radio show the following day, Blankenship repeated the jab, describing Chao's father as a "wealthy Chinaperson," who was "well-connected in China."

Asked about the remarks, Josh Holmes, a longtime McConnell political adviser, charged that Blankenship is "mentally ill," noting that Blankenship had once spoken of moving to China and becoming a Chinese citizen. Holmes also said Blankenship had used a "racial blast" against the Taiwan-born Chao, whom he described as "the dictionary definition of the American dream."

"The one consistency we've seen over the last decade is that the death rattle of a primary candidate is always a tendency to attack other Republicans because they know reporters will report it," Holmes added. "At this point what's clear is that voters are writing him off and so he knows that by attacking McConnell he'll get attention."

Driving the McConnell team's offensive is a belief that Blankenship cannot defeat Democratic Sen. Joe Manchin in November.

This spring, Steven Law, president of the McConnell-aligned Senate Leadership Fund super PAC, wrote a memo to top Republican Party donors that stated Manchin was beatable — but not if Blankenship wins the primary.

"We would forfeit any chance of beating Manchin if Blankenship becomes the nominee," wrote Law, underlining the sentence for emphasis.

Republican strategists spent weeks deliberating how to take down Blankenship, concerned that an overtly Washington-led effort would only strengthen him - just as it did when Senate Leadership Fund spent millions of dollars against Moore.

Finally, a group of Republican strategists who've previously worked with Senate Leadership Fund mobilized and earlier this month launched the generically-titled Mountain Families PAC. Over the span of a little more than a week, the super PAC pummeled Blankenship with over \$700,000 in TV ads accusing him of contaminating drinking water with coal slurry.

The creative force behind the commercials was a GOP consulting firm spearheaded by Larry McCarthy, a McConnell ally who is widely viewed as the master of the political attack ad. Among his credits: the 1988 Willie Horton spot that helped to sink Democrat Michael Dukakis' presidential bid.

Apparently not finished with Blankenship, Mountain Families PAC on Thursday began purchasing additional commercial airtime.

With Blankenship cratering in polls, many Republicans are convinced that Blankenship has been effectively neutralized and that the contest has emerged as a two-person race between GOP Rep. Evan Jenkins and state Attorney General Patrick Morrisey. The coal baron has derided both as pawns of the establishment.

As he hit the trail this week, Blankenship bristled over the effort to upend his candidacy. Each time, he pointed to the super PAC's connection to the GOP leader.

"As you know," he said at the GOP women's luncheon in Huntington, "I've even been beat up by the Republican Mitch McConnell."

During a news conference on Monday afternoon, Blankenship fired back at Washington Republicans who called him unelectable, saying even his dog could beat Manchin.

At one point, he was asked point-blank whether he had a message for McConnell.

"He needs to understand that if I'm there I will not vote for him for majority leader, and so the rest of the senators should understand that they should not put him up if they need my vote," Blankenship responded.

In an interview, Blankenship recounted a personal history with McConnell, a fellow coal country pol, that he said dated back nearly three decades. He said he first met McConnell during the late 1980s while visiting the home of a GOP donor in Kentucky, and that their paths occasionally crossed over the years after. The coal company that Blankenship formerly presided over, Massey Energy, has mines in Kentucky.

Massey, Blankenship said, had been helpful to McConnell early in his political career. In 1999, Blankenship, a longtime GOP donor who for years bankrolled West Virginia campaigns, contributed \$1,000 to McConnell's reelection campaign, according to federal filings.

Over time, though, Blankenship said he came to see the Republican leader as insufficiently supportive of the mining industry. He said they haven't spoken in about a decade.

"I never felt that he fought very hard for coal. He seemed to be too willing to compromise on climate change legislation," said Blankenship, adding that West Virginians felt that McConnell didn't put up enough of a fight against President Barack Obama's push to regulate carbon emissions.

McConnell advisers dispute the criticism. "People have accused Mitch McConnell of a lot of things over the years, but I've never heard anyone say he's insufficiently pro-coal," said Holmes.

After being released from prison last year, Blankenship launched his campaign with an eye toward clearing his name and pushing back against the allegations the federal government leveled against him. As the race has progressed, he has come to see his war with McConnell as intertwined with the central theme of his candidacy: that the Washington establishment is out to get him.

At Blankenship campaign events, he hands out copies of "An American Political Prisoner," the manifesto he wrote while in jail.

The anti-McConnell campaign has a decidedly homemade flavor. Blankenship, who's staffed his campaign with West Virginia-based operatives rather than ones from Washington, personally wrote the "swamp captain" ad, an amateur-style spot that lacks the slick production of typical political commercials. After producing the concept and the script, his small group of advisers made some edits before releasing it to TV stations.

But as the race enters its final days, Blankenship finds himself playing catch-up against his more establishment-friendly rivals.

During his closing remarks in a Tuesday afternoon debate, he chose to go after one of his opponents with a familiar weapon.

"Will Evan Jenkins stand up when Mitch McConnell looks at him?" Blankenship asked as the congressman looked on. "That's the question."

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Pruitt scales back EPA's use of science [Back](#)

By Emily Holden and Annie Snider | 04/24/2018 03:17 PM EDT

Environmental Protection Agency chief Scott Pruitt announced Tuesday he would seek to bar the agency from relying on studies that don't publicly disclose all their data, a major policy change that has long been sought by conservatives that will sharply reduce the research the agency can rely on when crafting new regulations.

The unveiling of the proposed rule delivers a win to Republicans like House Science Chairman [Lamar Smith](#) (R-Texas), who unsuccessfully pushed legislation to impose the same type of change. The move also demonstrates Pruitt's persistence in pursuing President Donald Trump's anti-regulation agenda just two days before the embattled EPA chief is due to face fierce questioning from lawmakers about his hefty spending, expanded security detail and cheap condominium rental from the wife of an energy lobbyist.

At an invitation-only meeting at EPA headquarters with Smith, Sen. [Mike Rounds](#) (R-S.D.) and other supporters of the policy, Pruitt said the proposed rule was critical in ensuring that the agency was transparent about how it is making decisions to justify costly new regulations. It is the latest step Pruitt has taken to fundamentally shift the agency's approach to science.

"It is a codification of an approach that says as we do our business at the agency the science that we use is going to be transparent, it's going to be reproducible, it's going to be able to be analyzed by those in the marketplace. And those who watch what we do can make informed decisions about whether we've drawn the proper conclusions or not," Pruitt said.

Text of the proposed rule was not immediately available.

The proposal, based on legislation pushed by Smith, is intensely controversial, and scientists and public health groups say it will prevent federal regulators from enacting health and safety protections. Nearly 1,000 scientists, including former EPA career staffers, signed a [letter](#) opposing the policy sent by the Union of Concerned Scientists to Pruitt on Monday.

Their primary concern was that many of the country's bedrock air and water quality regulations are based on research that cannot disclose raw data because it includes the personal health information.

But industry has its own version of the same problem. EPA often relies on industry studies that are considered by companies to be confidential business information when determining whether new pesticides and toxic chemicals are safe to use. Internal EPA emails obtained under the Freedom of Information Act show that EPA political officials, including Nancy Beck, who became the chief of the agency's chemical safety office last year after working for years at a chemical industry lobbying group, worried that the new policy would limit the agency's ability to consider industry data or would force companies to make this proprietary data public.

"We will need to thread this one real tight!" Richard Yamada, political official who led work on the new policy wrote to Beck after she raised the concerns.

It was not immediately clear if the new proposed rule included measures to address those concerns.

Rush Holt, CEO of the American Association for the Advancement of Science, said Pruitt's changes could keep the agency from revising public health regulations as problems arise or new data comes to light.

"On the surface it sounds so innocuous or even beneficial. What could be wrong with transparency? Well it's clear to me that this is not based on an effort to be transparent. It is rather based on an effort to be just the opposite," he said.

"EPA is particularly important because when science is misused, people die," he added.

Pruitt has been discussing the new scientific policy publicly for weeks, but it only went to the White House for interagency review last week. Such swift review is very rare for the Office of Management and Budget, which often takes months to vet a new policy. At least one group, the Environmental Defense Fund, has requested a meeting with OMB officials to discuss the rule, but OMB's website shows that no meetings have been scheduled with interested groups.

Many public health studies can't be replicated without exposing people to contaminants, and environmental disasters such as the Deepwater Horizon oil spill cannot be recreated, the group said, raising intellectual property, proprietary and privacy concerns.

Pruitt's predecessor Gina McCarthy, and her air chief Janet McCabe, in an op-ed in The New York Times in March said concerns about studies are dealt with through the existing peer-review process, which ensures scientific integrity.

"[Pruitt] and some conservative members of Congress are setting up a nonexistent problem in order to prevent the E.P.A. from using the best available science," they said.

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'Jon poked the bear': Tester braces for Trump's revenge [Back](#)

By Burgess Everett | 04/26/2018 05:47 PM EDT

Jon Tester didn't intend to play a central role in taking down President Donald Trump's pick to lead the Veterans Affairs Department. Yet that's exactly what the Montana Democrat ended up doing

And now, Trump is coming after him.

The president is enraged over Tester's work documenting allegations of malfeasance by Rear Adm. Ronny Jackson, which quickly unraveled Jackson's nomination to be VA secretary and marks a turning point in the relationship between the moderate Democrat and Trump.

As Tester's reelection campaign kicks into high gear, Trump is more motivated than ever to campaign against him in the ruby-red state — accusing the senator of irresponsibly leaking the damaging information to undermine the president's nominee.

Trump said Thursday that Tester will have a "big price to pay" for his part in working to sink Jackson's nomination. But Tester is sanguine about his decision to go public with accusations about Jackson's workplace misconduct, poor prescription practices and drinking on the job.

"If he thinks it's my job to sweep his stuff under the table and ignore our military folks, he's wrong. If he thinks I should not be sticking up for veterans, he's wrong," Tester said Thursday of the president. "I look forward to working with President Trump. I've worked with him many times in the past, but we disagree."

Tester has repeatedly tried to emphasize points of agreement with Trump in his nascent reelection campaign, including sending Trump 13 of his bills to sign. But Trump and other Republicans are taking it personally that as ranking member of the Senate Veterans Affairs Committee, Tester and his staff compiled interviews with more than two dozen current and former military members describing Jackson's alleged wrongdoing and then released them this week.

Senate Majority Whip John Cornyn (R-Texas) said Tester "painted a big target on himself" this fall in Montana, which Trump won by 20 points. And a Republican senator, granted anonymity to speak candidly about a colleague, said a "livid" Trump is now set to prioritize the campaign to knock off Tester this fall.

"Jon poked the bear. Did you see the bear today? The bear was mad," the senator said. "If there was any doubt he was coming to Montana it was removed today. He overreached."

The allegations, sourced anonymously, were the death knell of Jackson's nomination.

"That was not Jon's best time with regards to his Senate career," said Sen. Pat Roberts (R-Kan.). "Man, they aim low. They really aim low. And they brought him down."

Democrats strongly reject that argument. They say Tester did the right thing by speaking up about a crucial post and that Trump and Republican are deflecting blame for the Jackson debacle.

"Sen. Tester released profoundly serious, credible allegations from military men and women who put their careers on the line," said Sen. Richard Blumenthal (D-Conn.). "The administration bungled this nomination from the start. And then it fumbled the defense of its nominee. So the blame really lies with the administration."

Former Secretary of Defense Chuck Hagel also defended Tester from partisan attacks.

"I've always admired Jon Tester's commitment to helping veterans — not using veterans for political purposes. Veterans know who their champions are, and Jon Tester is one of them," said Hagel, who also served as a Republican senator from Nebraska.

Still, in interviews this week, Tester acknowledged it was "risky" for him to release the information about Jackson. The allegations could turn out to be false, he acknowledged, and take on a more partisan tinge by coming from the Democratic minority.

Tester felt compelled to move given the circumstances and received no criticism for doing so from Senate Veterans' Affairs Chairman Johnny Isakson (R-Ga.) on Thursday. In fact, until about a week ago, Jackson's nomination appeared to be going relatively smoothly, save for concerns about his lack of experience. But then Tester's staff started getting calls. Lots of calls.

By Wednesday, 23 people had contacted the committee about Jackson's history of misconduct, according to Democratic aides. Tester spoke to some of them, while his staff handled most of the work.

And as inquiries poured in from the press, Tester felt he had no choice but to go forward publicly. Each allegation in the two-page document, including that Jackson drunkenly crashed a government vehicle and wrote his own prescriptions, was verified by at least two sources, Democratic aides said. Two more people buttressing the claims contacted the committee after the summary was released.

"I don't want to be in this situation. But the truth is. We got the information. It's our obligation to follow up," Tester said. "We did not initiate any of this. None of it. It was news to us."

Tester gradually ramped up his role in challenging Jackson's beleaguered nomination as the week wore on. After allegations about Jackson's history dangled anonymously for two days, Tester confirmed them in an NPR interview on Tuesday night then did several cable news hits before releasing the two-page summary of Jackson's alleged misconduct on Wednesday.

Sen. Dan Sullivan (R-Alaska) said Tester's move "poisons the well" in a committee that generally operates outside partisan politics, but allies said Tester had no choice and that Republicans were disingenuously claiming they wouldn't have done the same.

"Do you think if the shoe was on the other foot it would have been released? It would be irresponsible if it wasn't. Military members came forward wanting to talk about the doctor," said Sen. Claire McCaskill (D-Mo.).

But Tester is under heavy attack from Trump, the White House and Republicans for the move. Trump said Thursday that Tester's work "is going to cause him a lot of problems in his state."

"I find it outrageous for a senator for political gain to take uncorroborated allegations that have not been investigated and to throw them out in a way to besmirch somebody's character," said Marc Short, Trump's legislative director. "Very irresponsible to go on national TV and make those allegations knowing that that would besmirch that person's character."

The incident and its fallout underscores how the burly, plain-spoken Tester hasn't exactly tacked to the center in an election year. Perhaps he feels emboldened after dodging a big-name opponent; after former Rep. Ryan Zinke was drafted into the Trump administration and the state attorney general passed on the race, Tester's opposition is made up of lesser known opponents who will compete in a June primary.

And since Trump became president, Tester often votes in a different manner than his fellow red state incumbents, seemingly unworried about his state's GOP lean. He was the lone red state Democrat to oppose Mike Pompeo to be secretary of state on Thursday and voted twice against a government funding bill in January.

But Tester has also positioned himself as someone who sends Trump bills to sign, including eight on veterans issues, and is open to working with the president. And he seems to genuinely believe that if he sticks to his guns and does not try to pander to conservative voters, the politics will work out this fall.

"It was going to be difficult anyway," Tester said of his campaign. "Look, if I made decisions around here based on the election, I wouldn't be a very good senator."

Tester's decision to aggressively take on Trump is rare among at-risk senators. Now, Tester is credited with helping bring down the confirmation prospects of a man whom Trump counts as a confidant, friend and personal doctor.

And Trump is plainly angry about it, to almost no one's surprise.

"I can understand that, if [Trump] thinks it's a personal attack. If you have a friend and someone personally attacks your friend, you're going to have to fight back," said Sen. Joe Manchin (D-W.Va.). "But Jon is also going to have to do his job, too."

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Pompeo confirmed as secretary of state [Back](#)

By Nolan D. McCaskill | 04/26/2018 12:35 PM EDT

The Senate confirmed Mike Pompeo to be President Donald Trump's secretary of state on Thursday, after a handful of Democrats facing difficult reelection challenges joined every Republican in backing the CIA director.

Pompeo's hawkish foreign policy views drew strong opposition from the left, but he ultimately won over Democratic Sens. Heidi Heitkamp of North Dakota, Joe Manchin of West Virginia, Joe Donnelly of Indiana, Bill Nelson of Florida, Claire McCaskill of Missouri and Doug Jones of Alabama.

Pompeo, who was confirmed on a 57-42 vote, was sworn in early Thursday afternoon by Supreme Court Justice Samuel Alito, according to State Department spokesperson Heather Nauert.

He's wasting little time. Almost immediately after being sworn in, Pompeo was to fly to Brussels for a meeting of foreign ministers, followed by stops in Riyadh, Jerusalem and Amman over the next four days. The newly minted secretary of state is expected to discuss a range of hot issues with counterparts in Europe and the Middle East, including the fate of the Iran nuclear deal.

Pompeo ultimately received more Democratic votes for secretary of state than Rex Tillerson. And unlike Tillerson, who repeatedly clashed with and was undercut by Trump, Pompeo enjoys a positive relationship with the president. Trump applauded Pompeo's confirmation, hailing him as a "patriot" with "immense talent, energy and intellect" who will be an asset for the United States.

"He will always put the interests of America first," Trump said in a statement. "He has my trust. He has my support."

Pompeo is also expected to play a major role in talks with North Korea. He met with dictator Kim Jong Un over Easter weekend in a private trip to Pyongyang. The secret summit came ahead of an expected meeting between Trump and Kim.

The Trump administration had little margin for error in confirming Pompeo. With Sen. John McCain (R-Ariz.) out recovering from cancer treatment, Republicans' majority had slimmed to 50-49. Libertarian-leaning Sen. Rand Paul (R-Ky.), a member of the Senate Foreign Relations Committee, had also initially announced his opposition to Pompeo.

The former Kansas congressman was poised just days ago to get an unfavorable recommendation from the Senate Foreign Relations Committee until Paul flipped, citing assurances from the president and incoming secretary that the war in Iraq was a "mistake" and that the U.S. should wind down its presence in Afghanistan.

Republican leaders were determined to bring Pompeo's nomination to the floor regardless of the committee vote. But had Paul remained opposed, he and Democrats could have killed the nomination outright.

Paul's shifting position, however, all but assured Pompeo would breeze through Thursday's confirmation. Republicans maintained that he is well-qualified to be America's top diplomat and criticized Democrats for playing politics with his nomination. Fourteen Senate Democrats had voted to confirm him as CIA director in January 2017.

"From the founding of the republic until 2017, the Senate has never required a cloture vote to confirm a secretary of state nominee. Now we're at two," Senate Majority Leader Mitch McConnell complained earlier Thursday. "I guess Senate Democrats are in a history-making mood. Because over the past 15 months, they've embarked on a partisan campaign to block, obstruct and delay President Trump's nominees that is quite simply without precedent in American history."

Senate Minority Leader Chuck Schumer (D-N.Y.) said Wednesday he was troubled by Pompeo's past rhetoric and argued that he was too hawkish to be secretary of state. He also indicated that Pompeo's confirmation hearing did nothing to convince him that he would serve as a check on the president.

"This is not about denying the president his team just for the sake of it," Schumer said. "This is about the role of the Congress and, frankly, the Cabinet to provide a check on the president, who might go off the rails and undo the respect for rule of law, the tradition of rule of law that we have had in this country for so long."

Aside from concerns about his foreign policy views, many Democrats also opposed Pompeo because of past comments he's made denigrating Muslims and members of the LGBT community.

Pompeo was among a trio of controversial Cabinet and Cabinet-level nominees the president named in recent weeks, and he is expected to have the easiest time getting confirmed.

Pompeo's deputy at the CIA, Gina Haspel, is expected to have her confirmation hearing to succeed him as CIA director next month. Department of Veterans Affairs secretary nominee Ronny Jackson withdrew from consideration Thursday morning following allegations that he drank on the job and loosely dispensed pills on foreign trips.

The Senate also confirmed Richard Grenell to be the ambassador to Germany on Thursday on a 56-42 vote.

Nahal Toosi contributed to this report.

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Perry's latest bid to help coal faces uphill battle [Back](#)

By Eric Wolff | 04/25/2018 05:08 AM EDT

Energy Secretary Rick Perry's latest idea to protect coal-fired and nuclear power plants may not fare much better than his previous efforts, according to energy experts.

Perry is considering invoking the 1950 Defense Production Act to keep money-losing power plants running by designating them as crucial for national security. But that would stretch the definition of the law and almost certainly draw legal challenges — and it would hit a big hurdle in Congress, which would need to approve perhaps billions of dollars in funding to keep the plants afloat, the experts said.

At the urging of President Donald Trump, Perry has sought to keep open coal and nuclear power plants that are threatened with shutdowns amid the stagnant demand for power — and even as natural gas and renewable power sources grab a growing share of the market.

So far, Perry's had no luck. FERC earlier this year rejected his proposal to give the plants financial support, and Energy Department lawyers stymied a push last year to invoke the agency's authority under the Federal Power Act to force the plants to run.

Some experts said any attempt to use the DPA is likely to meet the same fate.

"To me, it's a tough argument to make. It's a specious argument on its surface that seems like a perversion of the intended use of the Defense Production Act," said Tom Hicks, a former acting undersecretary of the Navy under former President Barack Obama and now a principal at the advisory firm The Mabus Group. "Defense Production Act is on the vanguard of the need for resources, not on the back end for an industry being challenged by economic forces."

But the effort has been a priority for Trump and Perry, who sees saving coal-fired power generation as vital to U.S. security, according to a source familiar with the conversations on the issue.

The Cold War-era law grants the federal government powerful authorities to inject cash into companies essential for national defense in order to preserve domestic supplies of key products. But DOE will have to make the case that electricity produced specifically from coal and nuclear power plants, and not other types of power, is a critical resource.

Using the act to protect the plants when there appeared to be no immediate shortage of power supplies would be a novel application that would almost certainly face legal challenge.

"If the administration uses DPA, they're going to be using it very creatively," said Ari Peskoe, director of the Electricity Law Initiative at the Harvard Law School Environmental and Energy Law Program. "They may come up with reasoning for higher rates and who's going to pay for it. Whether that will hold up, I don't know."

Perry and his staff appear to have very few viable options for bailing out coal and nuclear power, a major energy priority for Trump, who has promised to revive the coal industry. DOE has opened a comments process for interested parties to weigh in on its use of the Federal Power Act's 202(c) emergency provisions, though that would require the agency to go through FERC, which unanimously rejected a similar Perry effort in January.

The 202(c) effort has been pushed by coal magnate Bob Murray, owner of Murray Energy, and by FirstEnergy Solutions, the unit of FirstEnergy Corp. that is in bankruptcy proceedings and which expects to shut down four coal and nuclear power plants. That company asked DOE to use the emergency authority to save not only its plants, but all 85 coal and nuclear power plants in the PJM Interconnection power market.

The DPA was last used by the Obama administration starting in 2012 to help spur the biofuels industry to develop the kind of advanced biofuels that could power ships and aircraft. The government can purchase capital equipment for the cause of national security, and it can fund advertising to support the effort.

And it allows the government to become the buyer of last resort, which could put Washington on the hook to buy excess power generated by coal and nuclear plants. Technically, this electricity could only be purchased at the "cost of production," a level that in the past has been determined by a team within the Defense Department.

While no hard estimate for the cost of a DPA subsidy exists, consultants analyzing Perry's previous bailout proposal estimated costs between \$4 billion and \$10.6 billion annually.

That's a far higher level than Congress typically allocates for the DPA. It provided \$67.4 million in the omnibus passed in March, H.R. 1625 (115), down slightly from the \$76 million it provided for all projects in 2017, according to a report submitted to Congress.

And Congress — and the Republican Party — is deeply divided on using government subsidies to save these plants. Rep. David McKinley (R-W.Va.) has some allies from other coal districts for the effort, but other free market-oriented lawmakers like Rep. Pete Olson (R-Texas) say they want to see markets function unimpeded.

McKinley's staff has been in touch with DOE and the White House, as has West Virginia Sen. Joe Manchin (D).

"I think it's an emergency national concern for the national defense of our country. I think Rick Perry agrees with it, and I think the president does also," Manchin told POLITICO.

PJM has itself said the retirement of FirstEnergy's coal plants did not pose a threat to the region's power supplies, and that it had ample generation to meet demand. It has opposed any effort to mandate to require the plants to stay online.

"We believe that a market-oriented approach consistent with the American free-enterprise system offers better results than government-mandated subsidies," said PJM spokesman Jeff Shields.

Anthony Adragna contributed to this report.

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Subject: Morning Energy, presented by Anheuser-Busch: Returning to the battlefield over California car rules — Pruitt screens friendly questions — Art of the RFS deal

By Kelsey Tamborrino | 05/09/2018 05:42 AM EDT

With help from Anthony Adragna

IF AT FIRST YOU DON'T SUCCEED: The looming fight between the Trump administration and the state of California over climate change rules for cars will cover some familiar terrain — where the liberal state and its environmentalist allies have won major legal battles in the past, Pro's Alex Guillén reports. The White House strategy appears to mirror the approach that automakers and dealers unsuccessfully pursued more than a decade ago in an attempt to reverse California's strict limits on vehicles' greenhouse gas emissions.

This again? California — which has a waiver under the Clean Air Act to enact stricter standards — is hoping things play out the same way it did the last time around, when two federal district courts upheld its rules, which other states also can choose to follow. "It's sort of déjà vu because it's going to be basically round two," said Kevin Leske, who was an assistant attorney general in Vermont in 2007 when the state fought off an industry lawsuit seeking to block the greenhouse gas rules for cars.

The details: At issue is the interplay between the long-standing Corporate Average Fuel Economy standards that were established under the 1975 Energy Policy and Conservation Act, and the relatively new emissions standards enforced nationally for the first time under the Obama administration. The Trump administration is expected to nullify the waiver granted to California and then try to circumvent any questions by arguing that EPCA preempts California from enforcing its auto emissions standards — essentially the same argument automakers and dealers deployed in multiple lawsuits over a decade ago.

But keep in mind: That strategy fell short the first time around. A U.S. district court judge in California concluded that greenhouse gas standards are too different from fuel economy regulations to fall under EPCA's "related to" preemption language. However, the cases were never appealed after a larger political deal was reached on the car rules, but advocates of the Trump administration's approach say they hope to take the issue to a higher court this time around. [Read more.](#)

GOOD WEDNESDAY MORNING! I'm your host Kelsey Tamborrino. Andrew Fasoli of the American Chemistry Council was the first to correctly guess that former President Ronald Reagan was first to watch a major league baseball game from the dugout, at a Baltimore Orioles game. For today: In what city did the nation's first paved roadway appear? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](https://twitter.com/kelseytam), [@Morning_Energy](https://twitter.com/Morning_Energy) and [@POLITICOPro](https://twitter.com/POLITICOPro).

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BEGS THE QUESTION: EPA Administrator Scott Pruitt and his staff sought extensive control over questions that could be asked to the administrator when he toured the country speaking to industry groups, POLITICO's Anthony Adragna and Emily Holden report. Even seemingly friendly questions got axed by the agency, like, "How often do you get back to Oklahoma?" That question was crossed off a proposed list of questions without

an explanation ahead of Pruitt's appearance in December at an event in Iowa, internal emails made public by the Sierra Club through a public records lawsuit show. (At the time, EPA's inspector general was already investigating Pruitt's frequent trips back home.) The emails offer new insight into EPA staff's desires to limit access by independent journalists, pre-screen questions from friendly interviewers and coordinate Pruitt's message with lobbyists ahead of gatherings with conservative or industry groups. Read the details [here](#).

WHAT HAPPENED AT THAT BIOFUELS POWWOW: President Donald Trump appears to have brokered a deal in the long-running fight between ethanol producers and oil refiners over federal biofuels mandates. At a White House meeting Tuesday with Pruitt, Agriculture Secretary Sonny Perdue and a few Republican senators. Trump reiterated his pledge to allow 15 percent ethanol fuels year-round and rejected a price cap on biofuel credits, called Renewable Identification Numbers. Those are both big wins for the corn crowd, Pro's Eric Wolff [reports](#). But ethanol producers groused about another proposed aspect of the deal that would lower compliance costs for refiners: allowing ethanol exports to qualify for RINs. Refiners, meanwhile, were wary of a separate proposal for EPA to require large refiners to take on the ethanol-blending requirements for which it issued dozens of waivers to smaller refiners.

IT'S KIND OF INFRASTRUCTURE WEEK: Close to none of Trump's big-ticket [proposals](#) to streamline environmental rules made it into the first major bill infrastructure bill introduced in Congress since his election. America's Water Infrastructure Act of 2018, as the Senate bill is called, is so far the "most significant step lawmakers have taken to help fulfill the president's marquee campaign promise to revitalize the country's transportation arteries," Pro's Annie Snider writes. The bill's authors purposefully set their sights on bipartisanship in light of the fast-approaching midterm elections. "We focus on the 80 percent where we have general agreement, and we're going to get something done," said Sen. [Tom Carper](#) (D-Del.), the top Democrat on the panel and a cosponsor of the measure. Read [more](#).

MORRISEY WINS: West Virginia Attorney General Patrick Morrisey came out on top Tuesday, clinching the Republican nomination to take on Democratic Sen. [Joe Manchin](#) come November. Coal baron Don Blankenship, who was running a controversial campaign against the Republican establishment and Mitch McConnell, ended up in third place in the most-watched race of the night. Blankenship, who was convicted in 2015 of conspiring to skirt mine standards after 29 miners were killed at Massey Energy's Upper Big Branch facility, only [received](#) 19.9 percent of the vote to Morrisey's 34.9 percent, and 29.3 percent for Rep. [Evan Jenkins](#), the other major candidate in the race. Read more on all of Tuesday's primaries [here](#).

NEW DETAILS IN PRUITT SAGA: EPA worked closely with groups such as the Heartland Institute and the CO2 Coalition — both of which dispute the scientific consensus on climate change — when planning Pruitt's proposed "red team, blue team" debate over climate science, The New York Times [reports](#) via new documents released by the NRDC. The emails show that EPA scientists were not involved in the discussion, and that political aides continued to work on the idea even after White House chief of staff John Kelly tried to squelch the plan, according to the Times. In a separate report, the Times got a hold of documents that shed new light on the day security officers, fearing for Pruitt's safety, smashed down his condo door. Read it [here](#).

— **Pruitt's former security chief** Pasquale "Nino" Perrotta told the House Oversight Committee that Pruitt and his staff missed a connecting flight on a trip to Morocco because his security detail's weapons and gear couldn't be transferred between the planes in time, the Associated Press reports, citing anonymous committee aides. The delay forced Pruitt to spend more than 24 hours in Paris, and Perrotta's version of events calls into question the official rationale given by EPA. Read that story [here](#).

**** A message from Anheuser-Busch:** Anheuser-Busch announced that America's leading brewer has placed an order for up to 800 hydrogen-electric powered semi-trucks. The zero-emission trucks will be able to travel between 500 and 1,200 miles. Anheuser-Busch aims to convert its entire long-haul dedicated fleet to renewable powered trucks by 2025. [Learn more](#). **

BARRASSO: 'CLOSELY MONITORING' PRUITT SITUATION: EPW Chairman John Barrasso told ME he's "closely monitoring" the ongoing ethical woes of Pruitt and continuing with unspecified "oversight" of the agency. "The job that he's doing — in terms of the job assigned by the president to roll back regulations and overreach by the federal government — he continues to do well," Barrasso said. "We want to make sure taxpayer money is being well spent and appropriately spent." But Barrasso wouldn't specify if he'd sent additional letters to the agency, again deferring to the White House's vague, ongoing review of the situation.

Wait and see: Senior House Republicans overseeing the EPA also appeared to be publicly sticking with Pruitt as well. Rep. John Shimkus, who oversees the EPA on the House Energy and Commerce Committee, told ME he didn't have plans for additional oversight on his subcommittee but deferred to Chairman Greg Walden on whether it was appropriate. Shimkus acknowledged his lack of oversight plans "might disappoint some of my colleagues," including some Republicans who questioned Pruitt's spending at a hearing several weeks ago. A spokesman for the committee didn't respond to requests for comments on its oversight plans.

HEWITT KNEW IT: Conservative radio host Hugh Hewitt responded Tuesday on his radio show to a POLITICO report about a meeting set up by Hewitt between Pruitt and a water utility that sought a Superfund distinction in his hometown — which it ultimately received. "I knew it was going to show up in the FOIA request," Hewitt said of the meeting request. "I just didn't think it was a story." Separately, the liberal media watchdog group Media Matters reported Tuesday, that The Washington Post's Editorial Page Editor Fred Hiatt had not known of ties between EPA and Hewitt's law firm. "Hewitt, who has not written about Pruitt since September, has agreed not to write about him going forward and has assured us that similar incidents won't occur in the future," Hiatt said in an email to the group.

PERRY PULLS UP: Energy Secretary Rick Perry will testify this morning before the House Science Committee on his department's overall budget for fiscal 2019. Members will likely discuss funding for Advanced Research Projects Agency-Energy and Department's Loan Programs, which are terminated under the budget, as well as Perry's recent moves on coal plants. "Termination of these programs will save over \$300 million in FY 2019 alone while significantly reducing financial risk to the taxpayer moving forward," Perry is expected to say. **If you go:** The hearing kicks off at 9 a.m. in 2318 Rayburn. Watch the livestream here.

AT THE SAME TIME: The House Energy and Commerce Committee is slated to hold a markup on five cybersecurity, small-scale LNG bills this morning. Included in the docket: The bipartisan H.R. 5175 (115), the "Pipeline and LNG Facility Cybersecurity Preparedness Act." The slate of bills — which also includes H.R. 4606 (115), H.R. 5174 (115), H.R. 5239 (115), H.R. 5240 (115) — were approved by the subpanel in April. H.R. 4606 — which would allow the expedited approval of small-scale shipments of liquefied natural gas — got a vote of 19-14 over the objections of most Democrats.

CHATTERJEE SEES CHALLENGES: FERC Commissioner Neil Chatterjee called out natural gas pipeline permitting in New York Tuesday, while speaking at the at the Independent Power Producers of New York conference. "The gravest threat we face to resilience and fuel security is in New England and that's not the result of coal and nuke retirements but because of gas constraints due to a lack of adequate infrastructure," Chatterjee told reporters. Read more from Pro New York's Marie French here.

INTERIOR FACES FOIA SUIT: The Wilderness Society will file a lawsuit today to compel Interior to release documents related to the administration's environmental protection plans on public lands. The group says it filed 21 requests under the Freedom of Information Act for documents related to orders issued by Trump and DOI in March 2017 aimed at removing "potential burdens" to energy development on public lands. TWS says it only received responses to two of those requests.

MAIL CALL! The Environmental Protection Network sent this letter to EPA requesting a public hearing and an extension of the 30-day public comment period on the agency's "secret science" proposal to ban the use of

studies that don't publicly disclose all their data. "The proposal is far too complex, with effects too broad and indeterminate, and requests comment on far too many issues, for a thirty-day response period," the letter says.

WATCH IT: The American Council for Capital Formation released a new ad on Tuesday calling on the president to uphold the investor-state dispute settlement mechanism in any negotiation of NAFTA. Watch it [here](#).

E2 LAUNCHES CLEAN JOBS CAMPAIGN: Environmental Entrepreneurs launched a nationwide campaign Tuesday, dubbed [Clean Jobs Count](#), "to advance awareness and support of America's fastest-growing energy sector." The campaign includes digital ads in Michigan, Ohio, Illinois and Colorado, and additional ad campaigns are planned throughout the rest of the year in at least half a dozen more states.

MOVER, SHAKER: Exelon [announced](#) Constellation CEO Joseph Nigro was promoted to Exelon senior executive vice president and CFO, succeeding Jack Thayer, who becomes senior executive vice president and chief transformation officer. ComEd President and CEO Anne Pramaggiore was promoted to CEO of Exelon Utilities, succeeding Denis O'Brien. And Joseph Dominguez, the executive vice president of governmental and regulatory affairs and public policy, was promoted to CEO of ComEd Chicago.

— **Power Ledger**, a blockchain-powered renewable energy trading platform, announced Dante Disparte was appointed its strategic adviser and ambassador.

QUICK HITS

— Thousands of Puerto Ricans are still in the dark while U.S. agencies leave, [Bloomberg](#).

— Cassidy charts own course on climate change, [E&E News](#).

— Poll: Majority of voters oppose Trump offshore drilling plan, [The Hill](#).

— Trump's pick for top U.N. migration job gave misleading answers on tweets critical of climate change, [CNN](#).

— EPA's "secret science" rule could undermine agency's "war on lead," [Science](#).

— Due to climate change, hurricanes are raining harder and may be growing stronger faster, [The Washington Post](#).

HAPPENING TODAY

9:00 a.m. — House Appropriations Interior-Environment Subcommittee [two-part hearing](#) on "American Indian/Alaska Native Public Witnesses," 2007 Rayburn

9:00 a.m. — OPIS West Coast Fuel Supply and Transportation Opportunities [conference](#), Napa Valley, Calif.

9:00 a.m. — House Science Committee [hearing](#) on "An Overview of the Budget Proposal for the Department of Energy for FY2019," 2318 Rayburn

9:00 a.m. — House Energy and Commerce Committee [markup](#) on various bills, 2123 Rayburn

9:30 a.m. — Center for Climate and Energy Solutions [discussion](#) on "Zero-Carbon Power: Maintaining U.S. Nuclear Capacity," 2000 H St NW

9:30 a.m. — NAS Committee on Earth Resources spring meeting on "Critical Minerals and Materials: Opportunities, Challenges and the Needs for U.S. Manufacturing, Economy and Security," 500 Fifth Street NW

9:30 a.m. — The U.S. Chamber of Commerce's annual Sustainability and Circular Economy Summit on "Translating Value to Ignite Action," 1615 H Street NW

10:00 a.m. — Senate Energy and Natural Resources Public Lands Subcommittee hearing on law enforcement programs at the Bureau of Land Management and the Forest Service, 366 Dirksen

10:00 a.m. — Senate Environment and Public Works Committee hearing on the "America's Water Infrastructure Act of 2018," 406 Dirksen

10:00 a.m. — House Foreign Affairs Committee markup of H.R. 5535 (115), the "Energy Diplomacy Act of 2018," 2172 Rayburn

12:00 p.m. — The Environmental Law Institute discussion on the Ramsar Convention on Wetlands of International Importance, 1730 M Street NW

4:00 p.m. — Senate Indian Affairs Committee hearing on the nomination of Tara Mac Lean Sweeney to be assistant Interior secretary for Indian affairs, 628 Dirksen

6:00 p.m. — The Environmental Law Institute holds National Wetlands Awards, 100 Maryland Avenue SW

6:30 p.m. — The Carnegie Institution for Science discussion on "Deep Earth Through a Diamond Looking Glass," 1530 P Street NW

THAT'S ALL FOR ME!

**** A message from Anheuser-Busch:** Anheuser-Busch announced that America's leading brewer has placed an order for up to 800 hydrogen-electric powered semi-trucks from the pioneer in hydrogen-electric renewable technology, Nikola Motor Company. The zero-emission trucks — which will be able to travel between 500 and 1,200 miles and be refilled within 20 minutes, reducing idle time — are expected to be integrated into Anheuser-Busch's dedicated fleet beginning in 2020.

Through this agreement Anheuser-Busch aims to convert its entire long-haul dedicated fleet to renewable powered trucks by 2025.

"At Anheuser-Busch we're continuously searching for ways to improve sustainability across our entire value chain and drive our industry forward," said Michel Doukeris, CEO of Anheuser-Busch. "The transport industry is one that is ripe for innovative solutions and Nikola is leading the way with hydrogen-electric, zero-emission capabilities. We are very excited by the possibilities our partnership with them can offer."

Learn more. **

To view online:

<https://subscriber.politicopro.com/newsletters/morning-energy/2018/05/returning-to-the-battlefield-over-california-car-rules-207821>

Stories from POLITICO Pro

Failed legal argument against California car rules gets second wind under Trump Back

The Trump administration's plan to stymie California's tough greenhouse gas emissions for cars is about to trigger an epic legal fight — and the White House appears to be planning to use the same strategy that failed to block the state's rules a decade ago.

California's supporters, however, hope any courtroom battles will play out the way they did when the auto industry tried to prevent California and other like-minded states from setting stricter emissions limits than those pushed by EPA: with a pair of resounding legal defeats.

"It's sort of déjà vu because it's going to be basically round two," said Kevin Leske, who was an assistant attorney general in Vermont in 2007 when the state fought off an industry lawsuit seeking to block the greenhouse gas rules for cars.

"Here we are, 10 or 11 years later, basically facing the prospect, it sounds like, of the Trump administration making the same arguments that the auto industry did," added Leske, now a law professor at Barry University in Florida.

If finalized, the move would be one of the biggest regulatory rollbacks of the Trump administration, and it could go even further than what automakers have asked the White House to do. And its advocates say despite the previous legal setbacks, they hope to take the issue to a higher court, something they were denied in the previous battle when a political deal ended the conflict.

In the meantime, California, which has already spearheaded a lawsuit over EPA's April decision to weaken the standards, is already preparing for a major regulatory break with the Trump administration. The state's Air Resources Board on Monday asked for public input for regulatory language that it will not consider cars complying with a weakened federal standard to be acceptable in California.

The legal issue will center on the interplay between the long-standing fuel economy standards known as the Corporate Average Fuel Economy, which is issued by the National Highway Traffic Safety Administration under the 1975 Energy Policy and Conservation Act, and the relatively new greenhouse gas emissions standards enforced nationally for the first time under the Obama administration.

In requiring a national CAFE standard, Congress barred states from issuing their own laws or regulations "related to" fuel economy standards. But California's novel approach to regulate carbon dioxide emissions via the state's special authority under the Clean Air Act gave it significant leverage to force car makers to meet stricter rules.

In order to avoid a patchwork of different regulations between California and its allies and the rest country, the Trump administration is expected to seek to nullify the waiver EPA granted California in 2009 allowing it to enforce its own rules. EPA has never tried to revoke a waiver, and legal observers note the law does not explicitly grant EPA such authority.

But the Trump administration is expected to try to circumvent any questions around revoking the waiver by arguing that EPCA preempts California from enforcing its auto emissions standards — essentially the same argument automakers and dealers deployed in multiple lawsuits over a decade ago.

A May 1 letter from Sen. Tom Carper to EPA and DOT says the draft proposal would adopt that EPCA preemption argument.

That strategy fell short first time around, when a California judge concluded that greenhouse gas standards are too different from fuel economy regulations to fall under EPCA's "related to" preemption language. Emissions

may be closely correlated to fuel efficiency, he ruled, but factors like air conditioning usage and credits for electric vehicles mean that the pollution rules are not explicitly aimed at fuel economy, and thus are not preempted

Meanwhile, a Vermont judge also ruled in 2007 that since EPA had approved the California standard under the Clean Air Act waiver, it becomes a proper government motor vehicle standard, which EPCA requires DOT to take into account when setting fuel economy targets. Congress "could not have intended that an EPA-approved emissions reduction regulation did not have the force of a federal regulation," the judge wrote.

Those two legal rulings with the span of a few months would seem to be formidable hurdles for any EPCA preemption argument. And the case gets even more difficult for the Trump administration when the Supreme Court's landmark ruling in that year's *Massachusetts v. EPA* is added in. In that case, the majority said that fuel economy and greenhouse gas rules may "overlap," but could both be administered in a way that would "avoid inconsistency."

"I think it's fair to say this ground has been trod before and it's not looking good if Pruitt's EPA trots out this EPCA preemption argument again," said Sara Colangelo, the environmental law and policy program director at Georgetown University.

Congress also passed two major Clean Air Act updates after EPCA, in 1977 and 1990, that expanded California's special powers and didn't address the exemption at all, a move Colangelo said "really signals that they intended California to maintain this special position as the laboratory for advancing pollution controls in the emissions arena."

NHTSA declined to address the preemption issue, but said in a statement that its "top priority" is safety and that the administration "must also consider economic practicability." A spokesman for California's Air Resources Board said that the preemption proposal "would harm people's health, boost greenhouse gas pollution and force drivers to pay more money at the pump for years."

Those two previous court losses are not slowing down conservatives pushing the Trump administration to adopt the preemption argument now.

Undeterred, a coalition of industry groups wrote to EPA Administrator Scott Pruitt in March urging him to revoke California's waiver by concluding it is preempted by EPCA.

"Even though these two lower courts have weighed in, I think there's opportunity now for the lawsuits to move on to a higher level," Patrick Hedger, the policy director for the FreedomWorks Foundation, a conservative advocacy group.

He added that no higher court ultimately addressed the issue. Appeals in both cases were dropped as part of the single national standard deal reached between the Obama administration, California and automakers. Hedger noted that the Supreme Court's *Massachusetts v. EPA* ruling was not specifically about EPCA preemption.

Marlo Lewis, a senior fellow at the Competitive Enterprise Institute, believes the best way to win the preemption argument is to focus on the high degree of overlap to show the two standards are "related" under EPCA

"You and your dad are different people. Are you not related?" Lewis said. "The idea that they're not related because they're not identical is just pure rhetorical flimflam."

Like many other deregulatory actions, this proposal would substantially benefit the energy-producing that voted for Trump.

For conservatives, blocking California's climate change authority is the ultimate goal, since the Democratic hold on state politics and California's size mean its aggressive action on climate change has an outsize influence on the rest of the nation.

"I think this is one step in basically saying, 'Look, we're not going to allow California on this issue or any others in the future to continue to supersede federal policy on these issues and basically impose their standards on the entire country just because of the size of the market,'" said Hedger.

Halting fuel economy standards at 2020 levels would mean needing roughly 2 billion barrels more oil over the lifetime of cars built from 2021 to 2026, said David Cooke, a senior vehicles analyst at the Union of Concerned Scientists. And that's not counting the longer-term demands that would be caused for future model years that would start with lower targets because of this potential freeze.

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Pruitt sought tight control of events even on friendly turf [Back](#)

By Anthony Adragna and Emily Holden | 05/08/2018 06:38 PM EDT

EPA Administrator Scott Pruitt and his staff went to great lengths to avoid unscripted questions when he toured the country speaking to industry groups, and even a seemingly friendly ice breaker can be deemed unacceptable.

"How often do you get back to Oklahoma?" the top official from the Iowa Association of Electric Cooperatives planned to ask Pruitt when he addressed the group last December, according to internal emails that were recently made public.

That question was crossed out when an EPA staff member sent back a proposed list of questions for Pruitt's "fireside chat" with Chuck Soderberg, the association's executive vice president. Tate Bennett, EPA's associate administrator of public engagement, did not explain why that and another question had been removed, but at the time of his Nov. 29 email the administrator was already [facing questions](#) over his travel practices. A few months earlier, EPA's inspector general had [launched an investigation](#) into whether the agency had sufficient policies in place to "prevent fraud, waste and abuse with the Administrator's travel that included trips to Oklahoma."

The [emails](#) among Bennett, other EPA staffers and representatives of the Iowa cooperatives were included in the thousands of documents obtained by the Sierra Club through a public records lawsuit. They reveal a pattern of Pruitt and his staff working to limit access by independent journalists, pre-screen questions from friendly interviewers and coordinate his message with lobbyists ahead of gatherings with conservative or industry groups.

Ahead of the Iowa event, the co-op association's director of government relations, Kevin Condon, confirmed that neither his group nor EPA would issue a media advisory, and they would cancel a press gaggle but still host an interview with the group's internal Living with Energy in Iowa magazine.

That publication also got questions [pre-approved](#) by EPA staff.

"Let me know if any of these give you heartburn," said Erin Campbell, the co-op group's director of communications. "This would be a friendly interview environment and we're keeping the conversation focused on Iowa consumers."

In another instance, before Pruitt spoke at a U.S. Chamber of Commerce event in June, EPA received a list of 10 proposed questions from the head of the group's energy institute, Karen Harbert. They touched on his regulatory philosophy, his efforts to rollback rules, and whether co-owning a minor league baseball team taught him lessons useful for running a federal agency. EPA staff did not appear to object to Harbert's proposed list.

When Pruitt was slotted to speak at a Texas Oil and Gas Association conference in October, EPA staff asked for a Q&A format with a representative of the group, rather than have the administrator take three pre-screened questions from the crowd.

EPA aides asked for the change in plans after being made aware that four reporters would be attending from the Houston Chronicle, Bloomberg BNA and Reuters.

Bennett wrote that after updating Pruitt that the media would attend, "he'd like to respectfully request that the entire format now be Q&A with two chairs on stage." She also shared a list of questions the moderator could ask, including on regulatory rollbacks, on what Pruitt would consider "true environmentalism" and on what his relationship was like with the president.

"What has it been like to run such a newsworthy agency? More difficult than you imagined?" the last question read.

And in at least one instance, a lobbyist for a group Pruitt was set to address offered to help write his speech for him. Before Pruitt and an entourage of eight staffers and security agents traveled in November to Kiawah Island, South Carolina, for a speaking engagement with the American Chemistry Council, the group's lobbyist Bryan Zumwalt asked a scheduler who to contact to help write Pruitt's speech.

"Who in your sop (sic) should I be working with to help prepare Administrator Pruitt's talking points/speech? Figure someone there might like the help on key areas to discuss," he said.

The scheduler, deputy White House liaison Hayley Ford, replied that Millan Hupp, director of scheduling and advance, and Bennett could assist.

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Trump plan leaves biofuel makers cold [Back](#)

By Eric Wolff | 05/08/2018 06:48 PM EDT

President Donald Trump's latest bid to strike a deal on biofuels on Tuesday appeared to win over oil refiners, but a plan to allow ethanol exports to qualify for credits under the federal program left biofuel producers irate.

Trump gave ethanol producers two big victories at the White House meeting by reiterating his promise to allow 15 percent ethanol fuels year-round and rejecting a price cap on the credits, called Renewable Identification Numbers, that are used to prove compliance with the Renewable Fuel Standard. But ethanol producers balked at

the plan to have EPA Administrator Scott Pruitt and Agriculture Secretary Sonny Perdue set up a system to allow ethanol exports to receive RINs.

"The notion of allowing exported ethanol to count toward an oil company's RFS obligation is extremely problematic," Bob Dinneen, president and CEO of the Renewable Fuels Association, said in a statement. "In no way will that ever be acceptable or considered a win for our industry."

But the Trump administration said it has found the right balance between competing parts of its electorate.

"After several meetings and input from stakeholders on both sides, President Trump is pleased to announce that a final decision has been made that allows E15 to be sold year-round, while providing relief to refiners," White House spokeswoman Lindsay Walters said in a statement. "This outcome will protect our hardworking farmers and refinery workers. The President is satisfied with the attention and care that all parties devoted to this issue."

Refiners backed the idea, although they were wary of a separate proposal to allow EPA to consider requiring large oil refineries to take on the ethanol-blending requirements the agency lifted from small refiners by issuing dozens of compliance waivers.

Sen. Ted Cruz (R-Texas) emerged from Tuesday's meeting calling the deal a "win-win." Refiners have been pressing for years to change the program to lower compliance costs that they say are eating away at their profits.

"President Trump brought together two sides that thought a deal couldn't be reached and he found a 'win-win' solution to one of the most intractable regulatory problems facing the nation — a problem that has been neglected for years," refiner Valero Energy said in a statement.

The group of independent refiners pushing for changes, led by Valero, Carl Icahn's CVR and some Philadelphia-area refiners, had previously sought a cap on RIN prices in exchange for supporting an increase in the sales of E15.

At Tuesday's meeting, the seventh so far held by the White House, a source said Trump agreed to definitively reject any price cap, but he also asked Pruitt and Perdue to work out a plan for how exports could ease price pressure on RINs. Currently, ethanol that is shipped abroad is stripped of the RINs that can be used to meet a refiner's RFS obligation. Sources who work with refiners say preserving those credits would increase the supply and drive down prices for refineries.

"Because biofuels exports are a long-time major objective of the farm community, allowing export RINs is literally the anticipated win-win solution, obviating the need for more direct cost containment devices," said a refining industry source close to discussions.

But ethanol producers, who have been increasing their exports in recent years, complain that allowing those shipments to earn RINS would undermine the biofuel program's goals.

"Pursuing a path that includes RIN credits on export gallons would violate the letter and spirit of the RFS, serving the interests of oil refiners who have already benefited from Administrator Pruitt's unprecedented RFS volume waivers at the further expense of America's farmers," Kevin Skunes, president of the National Corn Growers Association, said in a statement.

Sources said Tuesday's meeting included a lengthy discussion about whether EPA could potentially reallocate the 1.2 billion gallons of ethanol demand the industry says has been exempted under the dozens of compliance waivers the agency has granted to small refineries. One source said Pruitt expressed openness to shifting those gallons to large refiners, something the refiners opposed. But that reallocation discussion got tied up with the

idea of export RINs, and Pruitt and Perdue left the White House with instructions to develop some kind of proposal.

"There was discussion about how to reallocate the waived obligations so that demand for biofuels wouldn't be hurt," Sen. Chuck Grassley (R-Iowa) said in a statement. "While details weren't decided, I look forward to reviewing a plan being developed by Secretary Perdue and Administrator Pruitt. Any fix can't hurt domestic biofuels production."

Republican Sen. Pat Toomey of Pennsylvania also expressed reservations about the vague promise of changes to the program.

"The proposal discussed at our White House meeting today might result in lower RIN prices, which would relieve this artificial burden — but even that is not clear until details are established," he said in a statement.

Even as the White House has pushed for a deal, Sen. John Cornyn (R-Texas) and Rep. John Shimkus (R-Ill.) have been leading efforts in Congress to overhaul the program. Shimkus and his staff have said in the past that administrative changes to the program would undermine their effort, though they appear to be moving full-steam ahead for now.

"Executive actions aren't a substitute for legislation," said Shimkus spokesman Jordan Haverly. "The only path to an enduring and equitable deal for farmers, refiners, ethanol producers, automakers and consumers — especially one that won't spend more time in court than on the books — is through Congress. Those legislative efforts remain ongoing."

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Trump's latest strike against regulations: His infrastructure plan [Back](#)

By Annie Snider and Anthony Adragna | 02/16/2018 05:01 AM EDT

President Donald Trump's infrastructure plan would trigger one of the most significant regulation rollbacks in decades, benefiting not just roads and bridges, but businesses ranging from coal mines to homebuilders to factories.

The blueprint the White House released this week would eliminate the Environmental Protection Agency's authority to veto the Army Corps of Engineers' wetlands permits, a power that the EPA wielded during the Obama administration to block a controversial mountaintop coal mine in West Virginia. Industrial facilities like coal plants and steel factories could get 15-year Clean Water Act pollution permits — up from five years — that would be automatically renewed. For some infrastructure permits, the deadline for opponents to file legal challenges would shrink from six years to 150 days.

The proposed revisions to some of the nation's bedrock environmental regulations are drawing heavy criticism from congressional Democrats — including in the Senate, where Republicans would need at least nine extra votes to enact Trump's plan. Environmental groups say the ambition of the plan's deregulation push contrasts with the relatively meager amount of federal money the White House is proposing to contribute toward the \$1.5 trillion total.

"This isn't an infrastructure package," said Melissa Samet, an attorney with the National Wildlife Federation. "This is an all-out attack on longstanding environmental protections that have done a lot of good for this country."

Republicans and business groups have long complained that the federal government's often cumbersome permitting process, governed by laws Congress enacted decades ago, creates unnecessary delays for projects. "We built the Empire State Building in just one year," Trump said in his State of the Union address last month. "Is it not a disgrace that it can now take 10 years just to get a permit approved for a simple road?"

Supporters of Trump's plan are happy the White House is pushing for changes.

"We're very pleased with the permitting provisions," said Ross Eisenberg, a vice president at the National Association of Manufacturers. "Even some of them being signed law would be a major improvement. We don't want to blow up the process. We just want it to go faster."

Senate Environment and Public Works Chairman John Barrasso (R-Wyo.) said he hopes Democrats will come around.

"You're never going to win over every obstructing Democrat, but they've got to realize that projects have been slowed down in their states," Barrasso said.

But Democrats say the nation's real infrastructure problem is money — and the Trump proposal calls for just \$200 billion in federal investments over the next decade for needs including roads, bridges, airports, water plants, veterans' hospitals and rural broadband service. And they questioned whether Trump's aim is really just to make regulatory reviews more efficient.

"The president's contentions are not to streamline a process, but to compromise needed environmental and public health issues," Sen. Ben Cardin (D-Md.) told reporters.

Some kind of environmental streamlining has been a part of most of the major infrastructure measures Congress has passed in recent years. Provisions in the 2012 highway bill and a 2014 water bill aimed to get agencies to coordinate their permit reviews more efficiently and impose consequences for delays.

Supporters of those changes included then-Sen. Barbara Boxer (D-Calif.), an environmental stalwart, who argued that the streamlining amounted to common sense despite the opposition of some environmentalists. Many of those provisions have yet to take effect, however.

Trump's infrastructure proposal would go much further, setting strict deadlines for reviews and curtailing EPA's say over projects.

For instance, Trump has touted the proposal's two-year limit for agencies to issue final permitting decisions, including a strict 21-month limit on analyses done under the National Environmental Policy Act of 1970, one of the nation's foundational environmental laws.

The law requires federal agencies to make a public estimate of the environmental impacts when the federal government spends money or makes a permitting decision, although nothing in the law requires agencies to limit environmental damage. Repeated environmental studies under NEPA were one factor that contributed to the Obama administration's nearly seven-year review of the Keystone XL oil pipeline, a project Trump has pushed to revive this year.

Under Trump's proposal, agencies would be required to complete environmental reviews in no more than 21 months. Anyone seeking to challenge the permits would have just 150 days to sue, instead of the current six years.

Industry groups argue the act's long statute of limitations for permit challenges leaves a cloud of uncertainty over projects. But Samet, the National Wildlife Federation attorney, said 150 days runs by quickly when challengers have to track down documents that regularly run hundreds of pages, decipher them, find experts to analyze the data, hire lawyers and scrounge up the money to cover legal costs.

The result, she said: "Bad projects will move forward. There'll be nothing to stop them."

Trump's plan would also deliver on a long-sought Republican goal of curbing EPA's authority under the Clean Water Act's wetlands program — a change that would have sweeping effects not just for infrastructure projects but for nearly any kind of development.

The blueprint would remove EPA's authority to oversee the Army Corps of Engineers' determinations about which streams and wetlands are subject to Clean Water Act protections. And it would take away the EPA's ability to veto dredge-and-fill permits that it decides would cause undue harm to the environment.

EPA has used that veto authority only 13 times since the Clean Water Act was enacted, including with its 2012 reversal of a Army Corps permit for the Mingo Logan mountaintop coal mine in West Virginia — a decision that angered the coal industry's supporters in Congress. Most of the other occasions when it used that power came during Republican administrations.

Trump's proposal would also extend pollution discharge permits under the Clean Water Act from five years to 15, and allow them to be automatically renewed as long as "water quality needs do not require more stringent permit limits." Those changes that would apply not only to municipal wastewater treatment plants but also to industrial facilities.

The plan also calls for eliminating a section of the Clean Air Act that requires EPA to review, comment on and rate other agencies' environmental impact statements.

While the proposal may allow construction on projects to get started faster, it might end up creating bigger problems in the end, argued Kym Hunter, an attorney with the Southern Environmental Law Center. She said a narrower NEPA review wouldn't just keep potential environmental problems from coming to light, but it would also keep the public in the dark about whether a project would live up to its promises.

"NEPA is about taking that hard look," Hunter argued. "When it was promulgated in 1970, the idea was if you think about what you are doing you're likely to make a better decision. This [Trump proposal] would just encourage agencies to rush forward without being thoughtful, without being careful."

Trump's plan also attempts to limit the ability of courts to halt work on projects while lawsuits proceed. But that could backfire too, Hunter said, if it keeps courts from halting an ill-conceived project until after a government body has started spending money and taking on debt.

Sen. Tom Carper of Delaware, the top Democrat on the Environment and Public Works Committee, didn't dismiss the idea of making updates to the decade-old laws. But if the administration's goal is to weaken environmental regulations, he said, "we're not going to get very far."

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Trump's proposed regulatory rollbacks left out of Senate infrastructure bill [Back](#)

By Annie Snider | 05/08/2018 06:44 PM EDT

The first major infrastructure bill introduced in Congress since President Donald Trump took office ignores virtually all of the big-ticket deregulatory proposals the White House laid out in its blueprint earlier this year.

Chief among Trump's complaints about the country's infrastructure system is the amount of time it takes to get environmental permits. The package the White House unveiled in February included a meager \$200 billion in federal funding for infrastructure, and instead focused on a number of so-called environmental streamlining provisions. Among them: proposals to eliminate the EPA's authority to veto the Army Corps of Engineers' wetlands permits and reduce the length of time opponents have to file legal challenges to permits from six years to 150 days.

But none of those provisions made it into what stands to be a multibillion dollar water resources measure introduced by top Republicans and Democrats on the Senate Environment and Public Works Committee on Tuesday.

That bill, dubbed America's Water Infrastructure Act of 2018, is so far the most significant step lawmakers have taken to help fulfill the president's marquee campaign promise to revitalize the country's transportation arteries. And in a bid to have a feather in their caps to take home before the 2018 midterm elections, lawmakers in the upper chamber are charting a bipartisan course with the measure.

"We focus on the 80 percent where we have general agreement, and we're going to get something done," Sen. Tom Carper (D-Del.), the top Democrat on the panel and a cosponsor of the measure, told reporters.

The House Transportation and Infrastructure Committee is working on its own water resources bill that also could be released this month, and members are pursuing a bipartisan approach, too, as they have historically.

The Senate bill is sidestepping battles over the nation's foundational environmental laws, including the National Environmental Policy Act and the Clean Water Act. Republicans and business groups fault those laws for delays and skyrocketing costs — "Is it not a disgrace that it can now take 10 years just to get a permit approved for a simple road?" Trump asked in his State of the Union address in January — but Democrats and environmentalists defend them as critical protections.

Instead, the bill's authors set their sights on a suite of more practical changes at the Army Corps of Engineers — one of the government's most red-tape-laden bureaucracies that just about every lawmaker loves to hate.

The bill includes dozens of provisions aimed at making the agency more transparent and responsive to Congress and the communities it works with to build projects. It would make a major change to the way the Army Corps budgets, in an effort to help projects that are important to states but aren't competing well for scarce federal dollars under the current approach. And it would create a board related to water storage projects that an environment committee aide said is aimed at helping communities understand early on whether their project will be able to get a permit.

The measure also includes a number of drinking water and wastewater provisions, issues that became a major component of the last such measure in 2016, when an aid package to help Flint, Mich., recover from its lead

contamination crisis was included. The new Senate bill includes provisions to help small and rural water utilities with technical assistance, allow communities to use federal drinking water dollars to protect their water sources, and to help communities balance multiple costly wastewater upgrade requirements at the same time.

The meat of the bill is six new project authorizations for the Army Corps, including a ship channel extension project in Texas, flood control projects in New York and Hawaii, and hurricane protection projects in Florida and Texas. The bill would also increase the amount that can be spent for the Savannah Harbor expansion project, a top priority for Georgia's senators, and allow more water to be stored at a key Wyoming reservoir.

And it's not just Trump's environmental permitting changes that senators rejected in the bill; they also responded to the White House's past proposals to eliminate or significantly cut a popular Great Lakes restoration program by increasing its authorization. The bill would also require EPA to open a new program office for the Long Island Sound, where the Trump administration also proposed eliminating funding.

Asked Tuesday how work on the the House's measure is coming, Transportation Committee Chairman [Bill Shuster](#) (R-Pa.) said "good."

But one fault line is already emerging between the two chambers.

Shuster has backed a proposal from his water resources subcommittee chairman, Rep. [Garret Graves](#) (R-La.) to move the Army Corps of Engineers out of the Pentagon and to another agency like the Department of Transportation or the Interior Department. But an EPW aide said that both Republicans and Democrats in the Senate have concerns with the idea; their bill would instead mandate a study by the National Academy of Sciences into the structuring of the Army Corps.

"We're trying to pass a bipartisan bill and I think that would make it very difficult to do with the limited amount of time that we have," the aide said.

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Top takeaways from the first big primary of 2018 [Back](#)

By Steven Shepard, Elena Schneider and Scott Bland | 05/09/2018 01:13 AM EDT

Republicans can exhale now.

Convicted coal magnate Don Blankenship's surprise third-place finish in Tuesday's West Virginia GOP Senate primary sidestepped yet another debacle for the party after consecutive meltdowns in special elections in Alabama and Pennsylvania. Instead, party leaders celebrated state Attorney General Patrick Morrisey's win, which capped the first multi-state primary of 2018.

The night saw Republicans pick three of the 10 candidates who will take on Democratic senators in states President Donald Trump won, and the first House incumbent go down in a primary in 2018.

Here are POLITICO's seven takeaways from Tuesday:

1. Republicans averted catastrophe, but victory in West Virginia is far from assured.

A Blankenship nomination might well have extinguished GOP hopes of toppling Democratic Sen. Joe Manchin, despite the state's heavy Republican electorate. Blankenship was living in a Phoenix halfway house this time last year, after his conviction for conspiracy to skirt mine safety rules after an incident claimed the life of 29 miners at one of his facilities. He called Senate Majority Leader Mitch McConnell "Cocaine Mitch," and made racially charged comments about McConnell's family.

Morrissey is someone national Republicans can embrace. National Republican Senatorial Committee executive director Chris Hansen said in a statement Tuesday night that Morrissey will "fight for conservative values" and predicted his victory over Manchin in the general election.

But Morrissey enters the race with his own baggage — even if it's nothing like Blankenship's. Morrissey used to be a Washington lobbyist, and Morrissey's wife still is one. Also, Morrissey ran for Congress in 2000 — in New Jersey.

Rep. Evan Jenkins, who finished second on Tuesday night, tried to level those attacks. But the punches didn't land with Blankenship's circus-like candidacy stealing the spotlight.

With Blankenship fading into the distance, Manchin can contrast his folksy, "Pepperoni Roll," West Virginia affect against Morrissey's Jersey accent and D.C. "swamp" ties. Republicans will fire back, alleging that Manchin isn't the aw-shucks bipartisan he claims to be and doesn't stick up for Trump, who is very popular in the state.

2. Words alone can't earn the Trump mantle.

Reps. Luke Messer and Todd Rokita spent the final week of the GOP Senate primary in Indiana trying to convince voters that Mike Braun — the businessman and former one-term state representative who had surged to the front of the field on an outsider message — wasn't a reliable conservative. They cited Braun's participation in Democratic primaries for more than three decades.

But Braun easily defeated both Messer and Rokita because his outsider message, in contrast with his two D.C. insider rivals, resonated more than his Democratic past. (Braun said he only voted in Democratic primaries to influence local elections, but Messer and Rokita painted that as a lame excuse.)

Braun's argument was easier to make after Trump's 2016 presidential campaign. Trump's opponents in the GOP primaries needled the billionaire for his past donations to Democratic candidates, or his past conservative apostasies on issues like abortion and universal health care. Trump parried those attacks, barely breaking a sweat.

Ultimately, as much as Rokita (who donned a red "Make America Great Again" hat in his ads) or Messer (who talked up Trump for a Nobel Peace Prize) tried to claim the Trump mantle, Braun seemed more like the real deal. He hit Messer and Rokita for being attorneys who never practiced law, instead getting into politics at a young age. And Braun, who will now try to unseat Democratic Sen. Joe Donnelly, said he was the only candidate who had signed the front of a paycheck, while his opponents had been endorsing government checks for most of their careers.

3. House members went down hard.

It was a bad night for House members running statewide: Jenkins lost to Morrissey by more than 5 points. Rokita and Messer finished even further behind Braun.

Rep. Jim Renacci, who still won the GOP nomination to face Sen. Sherrod Brown in Ohio, failed to win a majority of the vote in the primary, despite endorsements from Trump and the state Republican Party.

For a party led by a first-time-candidate-turned-president, it's not surprising that Congress isn't the ideal springboard to higher office. But the GOP is relying on other House members to maintain its Senate majority — whether it's Martha McSally in Arizona, Marsha Blackburn in Tennessee or Kevin Cramer in North Dakota.

And for members facing competitive statewide primaries — think McSally, Kristi Noem for governor in South Dakota, Raul Labrador for Idaho governor or Diane Black for Tennessee governor — they may find their congressional résumés are more anchors than propulsion for their candidacies.

4. The first incumbent falls. Will others join?

Rep. Robert Pittenger (R-N.C.) became the first incumbent member of Congress knocked out in a primary in 2018.

Pittenger tried to align himself closely to Trump, touting in his first TV ad that he was the "strongest supporter" of the president. But Mark Harris, a pastor who nearly beat Pittenger in 2016, successfully tagged Pittenger as a part of the "Washington swamp." Republicans in primaries across the country are questioning their opponents' pro-Trump bona fides, a strategy that proved effective here.

Pittenger's loss surprised national and local Republicans, who expected the congressman to survive the primary challenge. But Harris' campaign said Pittenger's "votes didn't match his rhetoric," pointing to his support for the omnibus spending bill in March, said Andy Yates, a spokesman for the campaign. (Harris, a social conservative, said he planned to join the House Freedom Caucus.)

It's not clear that there's a long list of Pittengers about to be swept away in primaries. Still, his defeat could serve as a wake-up call to incumbents who have struggled to unite Republicans at the ballot box in the past, like Reps. Martha Roby (Ala.) and Doug Lamborn (Colo.).

5. Both parties got their men for Ohio governor.

It was an easy night for both parties watching the Ohio gubernatorial race. State Attorney General Mike DeWine easily dispatched Lt. Gov. Mary Taylor in the GOP primary, aided by the imprimatur of the state party.

And on the Democratic side, former state Attorney General Richard Cordray cruised past Rep. Dennis Kucinich after weeks of hand-wringing that the race against the at-times eccentric Kucinich was closer than it should have been.

In the end, Cordray — who until recently headed the federal Consumer Financial Protection Bureau — crushed Kucinich and four other challengers, even winning a greater percentage in the Democratic primary among a fractured field than DeWine earned in a one-on-one matchup with Taylor.

Both parties quickly pivoted to trying to attach a Washington brand to their opponents. The Republican Governors Association called Cordray "a Washington D.C. power-hungry insider," despite DeWine's 20-year congressional tenure.

Meanwhile, the Democratic Governors Association said DeWine was "a card-carrying member of the D.C. and Columbus swamp," despite the fact that Cordray was DeWine's predecessor as attorney general and was an Obama political appointee.

Either way, the gubernatorial election this year will be a rematch of the 2010 attorney general race. DeWine, four years removed from a loss to Brown, toppled the then-incumbent Cordray by 1 percentage point in the GOP wave year.

6. Chalk two up for the GOP establishment.

Establishment Republicans got more good news in Ohio when Troy Balderson and Anthony Gonzalez won primaries for open congressional seats.

Balderson, backed by former Rep. Pat Tiberi, beat Melanie Leneghan in two primaries in Ohio's 12th District on Tuesday — one for the November election, and one for an August special election to complete Tiberi's unexpired term.

The race was a proxy war between Tiberi — an long-time ally of former House Speaker John Boehner — and Rep. Jim Jordan (R-Ohio). Tiberi spent money on TV ads to back Balderson, while Jordan, the House Freedom Caucus co-founder, cut a competing TV ad for Leneghan that aired with help from conservative megadonor Richard Uihlein.

Gonzalez, a former Ohio State University football star, won a similar fight in the state's 16th District. He defeated state Sen. Christina Hagan, who had Jordan's backing in the race.

Both districts have been Republican strongholds — the 16th is even more solidly red than the 12th. But given Democrats' stronger-than-expected performances in special elections in the Trump era, Republicans are gearing up for a fight for the Tiberi seat over the next three months.

"There will be a very clear contrast between Troy and ... [Democratic nominee] Danny O'Connor in the months ahead," said Rep. Steve Stivers (R-Ohio), who chairs the National Republican Congressional Committee.

7. Women are dominating Democratic primaries

Women are running for federal office in record numbers in 2018 — and it looks like Democratic primary voters are poised to support those candidates like never before. There were 20 open Democratic House primaries with women on the ballot Tuesday night, and voters selected a female nominee in 17 of them.

It's a sharp turnaround from past years when female Democrats faced big hurdles in trying to win support from voters. A good number of the primary winners Tuesday night are running in heavily Republican seats with little chance of winning general elections. But they are still part of an important trend: Evidence is building that Democratic voters are tilting toward supporting women this year.

Keep this in mind as we approach primaries in big states full of battleground districts over the next two months: California and New York in June, and Pennsylvania next week.

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Pruitt fast-tracked California cleanup after Hugh Hewitt brokered meeting [Back](#)

By Emily Holden and Anthony Adragna | 05/07/2018 10:12 PM EDT

EPA Administrator Scott Pruitt [placed](#) a polluted California area on his personal priority list of Superfund sites targeted for "immediate and intense" action after conservative radio and television host Hugh Hewitt brokered a

meeting between him and lawyers for the water district that was seeking federal help to clean up the polluted Orange County site.

The previously unreported meeting, which was documented in emails released by EPA under a Freedom of Information Act lawsuit by the Sierra Club, showed Pruitt's staff reacting quickly to the request last September by Hewitt, who has been one of Pruitt's staunchest defenders amid a raft of ethics controversies around his expensive travel, security team spending and a cheap Washington condo rental from a lobbyist.

Pruitt has drawn criticism from environmentalists and other critics for letting prominent GOP backers and industry groups influence the agency's agenda — even as he has kicked scientists off of EPA's advisory panels and moved to limit the kinds of peer-reviewed research it will consider when making decisions.

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In July, EPA's associate administrator of public engagement Tate Bennett was working with Pruitt to "essentially create an August recess for the EPA to be out in the states talking with individual companies & doing listening sessions within sectors," said Leah Curtsinger, the federal policy director for the Colorado Association of Commerce & Industry, in an email introducing Bennett to her husband, public affairs director at coal company Cloud Peak Energy and a fellow alum of Senate Majority Leader Mitch McConnell's office.

Annie Snider contributed to this report.

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House subpanel approves cybersecurity, small-scale LNG bills [Back](#)

By Anthony Adragna | 04/18/2018 11:19 AM EDT

A House Energy and Commerce subpanel today approved a quartet of bills designed to boost DOE's efforts to protect the nation's electric grid from cyberattack.

All four cybersecurity measures — [H.R. 5174 \(115\)](#), [H.R. 5175 \(115\)](#), [H.R. 5239 \(115\)](#), [H.R. 5240 \(115\)](#) — advanced by voice vote.

H.R. 5175 asks DOE to coordinate the federal, state and business responses to physical and cybersecurity threats. H.R. 5239 would establish a voluntary DOE program to test the cybersecurity of products intended for use in the bulk-power system. H.R. 5240 would encourage public-private partnerships on cybersecurity efforts, while H.R. 5174 would have DOE bolster its emergency response efforts.

In addition, the subcommittee approved [H.R. 4606 \(115\)](#), which would allow the expedited approval of small-scale shipments of liquefied natural gas, over the objections of most Democrats. That vote was 19 to 14.

"Leave it to the Republican leadership of this committee to markup a bill that has even fewer environmental safeguards than a Trump Administration proposal," Rep. [Frank Pallone](#) (D-N.J.), ranking member of the full committee, said. "This bill is unnecessary, it is bad policy and it is a legislative earmark."

WHAT'S NEXT: The bills will get consideration by the full House Energy and Commerce Committee.

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Subject: Morning Energy, presented by Anheuser-Busch: Conservative talker has pull with Pruitt — It's primary day in coal country — Trump meets with ethanol

By Kelsey Tamborrino | 05/08/2018 05:40 AM EDT

With help from Eric Wolff and Anthony Adragna

PRUITT GETS TO IT FOR HEWITT: New emails emerged Monday that provide previously unknown details in the ongoing raft of controversies that have plagued EPA Administrator Scott Pruitt — and provide more ammo for onlookers who worry Pruitt spends too much time currying favor with his political allies.

Conservative commentator Hugh Hewitt brokered a meeting that ultimately ended with a polluted California area on Pruitt's personal priority list of Superfund sites, POLITICO's Emily Holden and Anthony Adragna report. Hewitt lives in Orange County, where the Superfund site sits, and has a son who works in EPA's press office. The TV and radio host emailed Pruitt back in September to set up a meeting between Pruitt and the law firm Larson O'Brien, which employs Hewitt and represents the Orange County Water District. "I'll join if the Administrator would like me too or can catch up later at a dinner," Hewitt wrote in the email, which was obtained under a FOIA lawsuit by the Sierra Club. He added that the issues surrounding the Superfund site were "Greek to me but a big deal in my home county."

Weeks later, the Orange County North Basin site in question appeared on Pruitt's list of 21 contaminated areas to address. Pruitt then proposed listing the site on the agency's National Priorities List, making it potentially eligible for long-term federal cleanup funding. Since the meet-up, Hewitt has been a staunch defender of Pruitt, dismissing his recent controversies as "nonsense scandals" on MSNBC in early April. EPA spokesman Jahan Wilcox confirmed that Hewitt helped arrange the meeting at the request of the water district but didn't attend.

The meeting adds to environmentalists' concerns about Pruitt. "The biggest fear we have is that No. 1 the administrator's political priorities and personal ambitions, political ambitions become the primary criteria for action under this program instead of science and health," said Elgie Holstein, senior director for strategic planning at the Environmental Defense Fund who has been tracking EPA's Superfund actions. [Read the story here.](#)

FIRST CLASS MEMO: EPA on Monday also released a copy of a memo written by the former head of Pruitt's security detail justifying his first class flights. "We have observed and increased awareness and at times lashing out from passengers which occurs while the Administrator is seated in coach with [his security detail] not easily accessible to him due to uncontrolled full flights," Pasquale "Nino" Perrotta wrote in the May 1, 2017, memo. "Therefore, we believe that the continued use of coach seats for the Administrator would endanger his life and therefore respectfully ask that he be placed in either business and or first class accommodations." The Washington Post and E&E obtained copies of the memo via a FOIA request. Perrotta retired from the agency last week.

WELCOME TO TUESDAY! I'm your host Kelsey Tamborrino. Congrats to Cummins Inc.'s Patrick Wilson, who was first to identify former House Speaker Nathaniel Banks of Massachusetts as the representative who served 11 terms and ran for election on five different party tickets. He was successful in all but the Liberal

Republican ticket. For today: What president was first to watch a major league baseball game from the dugout? Bonus points if you can name the team. Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](https://twitter.com/kelseytam), [@Morning_Energy](https://twitter.com/Morning_Energy) and [@POLITICOPro](https://twitter.com/POLITICOPro).

BLANKENSHIP'S BIG DAY: We should know by tonight who will face Sen. [Joe Manchin](#) in a West Virginia Senate race that Republicans see as one of their biggest pickup opportunities of the year — that is, unless coal baron Don Blankenship scores a surprise upset in the surprisingly tight GOP primary. President Donald Trump [tweeted](#) Monday that Blankenship "can't win the General Election in your State," though he didn't endorse one of his opponents. That likely didn't ease fears that the two other major candidates — Rep. [Evan Jenkins](#) and state Attorney General Patrick Morrisey — will split the anti-Blankenship vote evenly and allow the former Massey Energy CEO to come out ahead. Blankenship recently was released from a year in jail following an explosion at the Upper Big Branch Mine that killed 29 workers. Blankenship has called the Upper Big Branch disaster the "worst tragedy" of his life, and is working to have his [conviction thrown out](#). (He has previously lost on appeal and failed to convince the Supreme Court to take the case.) For his part, Blankenship said Monday he was confident he would win, POLITICO's Alex Isenstadt [reports](#) from Mount Hope, W. Va.

That's not all: The Mountain State is not alone in kicking the 2018 midterms into gear. Statewide primary elections also are happening today in Ohio and Indiana and North Carolina, including solar energy entrepreneur and Democrat Dan McCready, who is running in North Carolina's 9th District. Vox nicely breaks down today's big races nationwide [here](#) and POLITICO has 7 things to watch [here](#).

SCHNEIDERMAN RESIGNS: New York Attorney General Eric Schneiderman, who has sued Exxon Mobil and fought the Trump administration's deregulatory agenda, [announced](#) his resignation Monday night in the wake of a report from the [New Yorker](#) that four women had accused him of abuse in previous romantic relationships. Two of the women who went on the record "say that they eventually sought medical attention after having been slapped hard across the ear and face, and also choked," according to the magazine. In a statement, Schneiderman disputed the allegations but said they "will effectively prevent me from leading the office's work at this critical time." The resignation takes effect at the close of business today.

Before the New Yorker story broke, Schneiderman and the attorneys general from seven other states called on Pruitt to withdraw his "secret science" proposal to ban the use of studies that don't publicly disclose all their data. Read the letter [here](#).

CHOPPING BLOCK: The White House on Monday [outlined](#) its package of proposed spending cuts, rescinding \$4.3 billion from the Energy Department's Advanced Technology Vehicles Manufacturing loan program, which supports the production of fuel-efficient, advanced technology vehicles. It was part of an overall request for \$15 billion worth of rescissions from previously appropriated funds from prior years. Another package going after the FY18 omnibus is expected later this year. More [here](#).

ON THE GRID: Puerto Rico's electric grid — which failed to provide power for much of the island for several months after last year's hurricanes — will be the focus of a Senate Energy and Natural Resources hearing this morning. The CEO of the Puerto Rico Electric Power Authority Walter Higgins and Bruce Walker, assistant Energy secretary for electricity delivery and energy reliability, are among the names set to testify. "The end goal is a modern and intelligent energy system that can serve as the resilient engine for Puerto Rico's economic revitalization," Walker is expected to say. Officials [say](#) close to 95 percent of power has now been restored on the island. **If you go:** The [hearing](#) kicks off at 10 a.m. in 366 Dirksen.

— **Forty-seven U.S. and international scientific groups** sent a [letter](#) to Puerto Rico Gov. Ricardo Rosselló on Monday, urging him to keep the island's statistical agency, the Puerto Rico Institute of Statistics, and its board of directors fully independent. "To address the challenges posed by its decade-long economic recession and the devastation of back-to-back hurricanes, Puerto Rico must chart its path toward sustainable recovery using reputable and reliable data and statistical methods," the letter says.

**** A message from Anheuser-Busch:** Anheuser-Busch announced that America's leading brewer has placed an order for up to 800 hydrogen-electric powered semi-trucks. The zero-emission trucks will be able to travel between 500 and 1,200 miles. Anheuser-Busch aims to convert its entire long-haul dedicated fleet to renewable powered trucks by 2025. [Learn more](#). **

ENERGY-WATER BILL ADVANCES: The House Appropriations Energy-Water subpanel swiftly approved its \$44.7 billion energy and water spending bill on a voice vote Monday, sending the measure to the full committee for consideration. The appropriations bill largely ignores the president's budget request, earning the approval of Democrats, who applauded the boost in funding for the Army Corps of Engineers and DOE thanks to the bipartisan agreement to lift spending caps. [Read more](#).

TRUMP MEETS WITH SENATORS ON RFS: In what could perhaps be the final time, Trump plans to meet today with at least Sens. [Chuck Grassley](#), [Joni Ernst](#), [Ted Cruz](#) and [Pat Toomey](#) to discuss their dueling priorities around federal ethanol policy. Who else will be in the room remains unclear, as sources told ME conflicting stories: An ethanol source said neither Pruitt, nor the Ag secretary, would be present, while a Republican Senate aide said both would be there.

A source said Team Ethanol's main goal is to get Trump to affirm his commitment to year-round sales of 15 percent ethanol, but the rest of the agenda seems to be unclear. A biofuels source said they expect Trump to kick the biofuels battle to Congress, where Sen. [John Cornyn](#) and Rep. [John Shimkus](#) have been trying to write a bill to overhaul the RFS. Cruz said at a Capitol Hill rally last week that he would view that decision as doing nothing. Cruz and Toomey are still seeking Renewable Fuel Standard changes to dramatically lower the program's compliance costs for refineries. Trump is scheduled to meet with Republican senators at 11:15 this morning, according to his public schedule.

— **Continuing their push for year-round sales of E15**, fuel retailers from 11 states sent a letter to Trump on Monday, calling on him to instruct EPA to immediately follow up on a pledge to allow the year-round sale of E15 before summer restrictions kick in on June 1. [Read the letter here](#). Eighteen other groups, including the Sierra Club and Earthjustice, signed [onto their own letter](#) expressing concern with the administration's openness to the year-round sale of E15. And the American Energy Alliance launched a digital ad campaign Monday urging for the repeal of the RFS. [Watch that ad here](#).

EXPECTING BIG THINGS: Shimkus is expecting broad support from the House when his comprehensive nuclear waste package [H.R. 3053 \(115\)](#) gets a vote Thursday. "I think people are ready to do something rather than nothing," he told reporters Monday. Shimkus said it's been a months-long process to educate members about the importance of the legislation and added he sent texts to Speaker [Paul Ryan](#) and Majority Leader [Kevin McCarthy](#) thanking them for finally bringing the package to the floor.

But he's not crazy: Shimkus said he hadn't had any recent talks with Senate counterparts about potentially moving the bill across the Capitol and he didn't expect they would this year with one of their most vulnerable incumbents (and ardent Yucca opponent), Sen. [Dean Heller](#), locked in a competitive reelection.

WHERE'S PERRY? Perry is slated to speak today during the Washington Conference on the Americas, where Commerce Secretary Wilbur Ross and Deputy Secretary of State John Sullivan, among others, are set to also appear. Perry will deliver remarks on "energy integration in the Americas" at 3:15 p.m. See the full agenda [here](#).

E&C TACKLES EVs: The House Energy and Commerce Environment Subcommittee will listen to discussion today on how fuel vehicles and electric vehicles will coexist as electric vehicles become more popular. The hearing begins at 10:15 a.m. in 2322 Rayburn, or stream it [here](#).

MAIL CALL: A diverse coalition of energy groups — including Advanced Energy Economy, the American Petroleum Institute and the American Wind Energy Association — on Monday urged Perry not to bail out coal and nuclear plants. Read their [letter](#).

INHOFE BACKS JACKSON: An Axios [report](#) that Pruitt chief of staff Ryan Jackson has been frozen out of the EPA chief's inner circle didn't sound right to his former boss, Sen. [Jim Inhofe](#). "I've known him well since he was 18 years old and I don't think they'd be capable of sidelining him," he told ME. Inhofe admitted that if the report is true — "that's an if I'm not willing to accept," he cautioned — it would be deeply concerning.

PRUITT MEETS MOTHERS ON CHEMICAL BAN: Two mothers will meet today with Pruitt, where they will press the administrator to ban paint strippers containing methylene chloride after their sons died using products with the chemical, according to the Environmental Defense Fund. On former President Barack Obama's last day in office, his administration proposed using the updated Toxic Substances Control Act to ban the use of the chemical in most commercial paint removers. Pruitt [told lawmakers](#) recently that he thinks EPA can make a decision on its proposed ban by the end of the year.

QUICK HITS

- Pruitt's Rome trip: More time on tourism than official business, [The Daily Beast](#).
- Steel town that voted for Trump banks on renewables, [E&E News](#).
- Interior sending officers to assist patrolling the U.S., Mexico border, [The Hill](#).
- EPA proposal pushed by ex-coal lobbyist could transform agency's use of science, [S&P Global](#).
- Booming tourism emits 8 percent of greenhouse gases, study shows, [Reuters](#).
- Old-boys' club that ran power world cracking with its model, [Bloomberg](#).

HAPPENING TODAY

8:30 a.m. — CHP Association holds [CHP policy forum](#) begins, 555 13th St NW

9:00 a.m. — The Atlantic Council's Global Energy Center [discussion](#) on "Transformations in Energy Technology: Innovations for a Secure Energy Future," 1030 15th Street NW

9:00 a.m. — The Bipartisan Policy Center [discussion](#) on "Investing for the Nation's Future: A Renewed Commitment to Federal Science Funding," 1225 I Street NW

10:00 a.m. — The International Energy Agency Bioenergy Technology Collaboration Program [international webinar](#) on "Biofuels for the Marine Sector: New Opportunities and New Challenges."

10:00 a.m. — The United States Energy Association [briefing](#) on "Economic Benefits of U.S. Liquid Natural Gas Exports," 1300 Pennsylvania Avenue NW

10:00 a.m. — Senate Energy and Natural Resources Committee [hearing](#) on the current status of Puerto Rico's electric grid and proposals for the future, 366 Dirksen

10:00 a.m. — The Woodrow Wilson Center's China Environment Forum [discussion](#) on "How Low (on Energy and Carbon) Can Buildings in China and the U.S. Go?" 1300 Pennsylvania Avenue NW

10:00 a.m. — House Transportation and Infrastructure Coast Guard and Maritime Transportation Subcommittee hearing on "blue technologies," 2167 Rayburn

10:15 a.m. — House Energy and Commerce Environment Subcommittee hearing on "Sharing the Road: Policy Implications of Electric and Conventional Vehicles in the Years Ahead," 2322 Rayburn

10:15 a.m. — House Natural Resources Committee markup on various bills, 1324 Longworth

12:00 p.m. — The Americas Society/Council of the Americas annual Washington Conference on the Americas with the theme "Investing in the Americas: The New Agenda for Growth," 2201 C Street NW

3:00 p.m. — House Rules Committee meets to formulate a rule on H.R. 3053 (115), the "Nuclear Waste Policy Amendments Act of 2018," H-313

THAT'S ALL FOR ME!

**** A message from Anheuser-Busch:** Anheuser-Busch announced that America's leading brewer has placed an order for up to 800 hydrogen-electric powered semi-trucks from the pioneer in hydrogen-electric renewable technology, Nikola Motor Company. The zero-emission trucks — which will be able to travel between 500 and 1,200 miles and be refilled within 20 minutes, reducing idle time — are expected to be integrated into Anheuser-Busch's dedicated fleet beginning in 2020.

Through this agreement Anheuser-Busch aims to convert its entire long-haul dedicated fleet to renewable powered trucks by 2025.

"At Anheuser-Busch we're continuously searching for ways to improve sustainability across our entire value chain and drive our industry forward," said Michel Doukeris, CEO of Anheuser-Busch. "The transport industry is one that is ripe for innovative solutions and Nikola is leading the way with hydrogen-electric, zero-emission capabilities. We are very excited by the possibilities our partnership with them can offer."

Learn more. **

To view online:

<https://subscriber.politicopro.com/newsletters/morning-energy/2018/05/conservative-talker-has-pull-with-pruitt-206682>

Stories from POLITICO Pro

Pruitt fast-tracked California cleanup after Hugh Hewitt brokered meeting Back

By Emily Holden and Anthony Adragna | 05/07/2018 10:12 PM EDT

EPA Administrator Scott Pruitt placed a polluted California area on his personal priority list of Superfund sites targeted for "immediate and intense" action after conservative radio and television host Hugh Hewitt brokered a meeting between him and lawyers for the water district that was seeking federal help to clean up the polluted Orange County site.

The previously unreported meeting, which was documented in emails released by EPA under a Freedom of Information Act lawsuit by the Sierra Club, showed Pruitt's staff reacting quickly to the request last September by Hewitt, who has been one of Pruitt's staunchest defenders amid a raft of ethics controversies around his expensive travel, security team spending and a cheap Washington condo rental from a lobbyist.

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Annie Snider contributed to this report.

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Blankenship, predicting victory, thumbs his nose at GOP [Back](#)

By Alex Isenstadt | 05/07/2018 08:27 PM EDT

MOUNT HOPE, W. Va. — A defiant Don Blankenship on Monday shrugged off President Donald Trump's last-minute plea for Republican primary voters to reject his insurgent Senate candidacy — and flatly predicted it would fail to halt his momentum.

On the final day of the dramatic West Virginia campaign, the coal baron and ex-prisoner seemed unbothered by the president's foray into the contest, arguing that voters would see through it as the latest ploy in an establishment-led effort aimed at keeping him from winning the nomination.

"I think it's still over," he declared to reporters here during a frenzied final day of the race. "It probably tightens it a point or two, but I don't think it matters much."

At another point in the day, after a reporter asked if he was feeling confident, Blankenship had a deadpan response: "Yeah, we're gonna win."

Senior Republicans are fretting that Blankenship, who spent a year behind bars after the 2010 explosion at his Upper Big Branch Mine that killed 29 workers, has vaulted into the lead heading into Tuesday's primary. GOP officials reviewed a range of surveys over the weekend, with some showing Blankenship holding a narrow single-digit advantage over his mainstream opponents, Rep. Evan Jenkins and state Attorney General Patrick Morrisey. Others had Blankenship ahead by more.

The national GOP has waged an all-out campaign to stop him from winning the nomination. They're convinced would destroy the party's prospects of ousting Democratic Sen. Joe Manchin in November. And many Republicans say a Blankenship win would be yet another black eye for the party, which is still reeling from last year's loss in the Alabama special election.

Over the past month, a super PAC aligned with Senate Majority Leader Mitch McConnell has spent over \$1.3 million on a barrage of anti-Blankenship TV ads.

With the former prisoner gaining momentum, the effort to stop him has gone into overdrive. As the race entered its final day, Blankenship's rivals — who had spent almost the entire campaign attacking one another — turned their fire on him.

In a not-so-veiled jab at Blankenship, Jenkins held a morning campaign event at a memorial for coal workers. At one point, he noted that one of his great grandfathers died in a mine explosion.

"The president could not have made it any clearer this morning that Don Blankenship is not the guy to beat Joe Manchin," Jenkins said.

Morrissey, who spent the day hopscotching across central West Virginia, announced that he'd sent a letter to Blankenship's parole officer highlighting what he argued was a violation. At one point, he took to Twitter to suggest questions for reporters to ask Blankenship. And he released a digital advertisement unloading on the coal baron, and highlighting his role in the 2010 explosion.

"Families devastated, children left fatherless, wives widowed," a narrator intoned. Many in the party are skeptical that the 11th-hour offensive will succeed — and, behind the scenes, finger-pointing is underway. Some are pinning the blame on the White House, saying it should have rebuked Blankenship earlier. Others say the fault lies with Jenkins and Morrissey, whose near constant attacks left one another badly damaged and created an opening for Blankenship.

Still others are pinning the blame on McConnell, saying that he should have long ago used his political muscle to clear the primary field and thereby avoid the three-way dynamic that has played to Blankenship's benefit.

McConnell has privately expressed concern to associates about Blankenship, whom he has long viewed as a serious threat in the contest. A loss for the Senate GOP leader, who hails from a neighboring Appalachian state and has faced withering attacks from Blankenship, would be embarrassing.

Over the weekend, McConnell spoke by phone with the president about the contest. According to a Republican official briefed on the call, Trump informed McConnell that he planned to criticize Blankenship publicly, a step he hadn't taken previously. Among the issues that arose on the call were Blankenship's TV ads, some of which have gone after McConnell's family in deeply personal, racial terms.

White House aides spent part of Friday drafting a tweet targeting Blankenship. Then, on Monday, the president hit send.

"To the great people of West Virginia we have, together, a really great chance to keep making a big difference," he wrote. "Problem is, Don Blankenship, currently running for Senate, can't win the General Election in your State...No way! Remember Alabama. Vote Rep. Jenkins or A.G. Morrissey!"

For Blankenship, who has tied himself closely to the president and on Monday declared himself "Trumpier than Trump," the attack could have stung. Yet as the race came to a close, Blankenship seemed unbothered.

Speaking to reporters after touring a freight shipping office here, Blankenship said he placed no stock in the president's tweet. It was McConnell, Blankenship said, who convinced Trump to weigh in. After Tuesday, Blankenship added, the president would be embarrassed he followed McConnell's lead.

"It's obvious that the president is suffering from the same thing that many in the public do, which is misinformation and untruths," Blankenship said. "The lesson that will be learned here when I win is that you shouldn't blindly endorse or cast doubts or favoritism unless you actually look at their record and not depend on the people in that swamp that you're trying to drain."

At times, Blankenship seemed to take pleasure in his recalcitrance. He refused to commit to endorsing his primary rivals should they win, which he said wouldn't happen, anyway. He wouldn't apologize for running TV ads lambasting McConnell's "China family." And he reiterated that he wouldn't vote for McConnell to serve as Senate GOP leader.

At one point, Blankenship noted that he'd been disrespected at other times in his career. The Marshall University-educated businessman noted that he'd grown up poor before becoming a multimillionaire, and recalled one episode in which he easily passed a CPA exam that Ivy Leaguers he knew had struggled with.

Now, he said, he was confronting another kind of establishment.

"I've been underestimated," he said, "all my life."

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What's in Trump's \$15B spending cuts package [Back](#)

By Kaitlyn Burton | 05/07/2018 08:29 PM EDT

The White House is set to release a \$15 billion spending cuts package Tuesday. Here are some of the plan's targets, a senior administration official told reporters today:

- \$7 billion from the Children's Health Insurance Program, which covers about 9 million low-income children.
- \$4.3 billion from the Energy Department's Advanced Technology Vehicles Manufacturing loan program, which supports the production of fuel-efficient, advanced technology vehicles.
- \$800 million from the Center for Medicare and Medicaid Innovation, which was created under Obamacare.
- \$252 million from the 2015 Ebola outbreak response.
- \$148 million from the Animal and Plant Health Inspection Service for responding to disease outbreaks "that have already been resolved," the official said.
- \$107 million for technical assistance after Hurricane Sandy for emergency watershed programs.
- \$15 million from USDA's Rural Cooperative Development Grant program, which seeks to boost the economies of rural areas.

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Trump tries to woo conservatives with bid to cut spending [Back](#)

By Sarah Ferris and Kaitlyn Burton | 05/07/2018 09:05 AM EDT

The White House on Tuesday will send \$15 billion in proposed spending cuts to Congress in an attempt to demonstrate fiscal austerity to skeptical conservatives, senior administration officials confirmed Monday night.

The administration had last week planned to send Congress a package of \$11 billion in spending reductions. But since then, some conservatives have quietly pushed for an even bolder proposal, particularly after the GOP's spending binge in recent months, said Republicans familiar with the discussions.

The White House initially floated as much as \$60 billion in cuts, including an unprecedented attempt to cancel money from this year's omnibus spending bill. The proposal was later downsized to \$11 billion, and then back up to \$15 billion, targeting only unused funding from past years, which POLITICO first reported.

One senior administration official told reporters that the proposal coming Tuesday is "the largest single rescissions package at one time."

The White House also plans to make a second attempt at clawing back funding from the omnibus, but the senior administration official said that could come weeks later.

The official said President Donald Trump will be personally involved in the details of the next package, which will include "substantial" cuts in current spending based on the president's own budget request.

Unlike regular spending bills, a presidential rescissions package is given fast-track authority in both chambers. That means the proposal is one of the rare spending-related bills that is able to bypass the 60-vote threshold in the Senate.

Nearly half of the package, a whopping \$7 billion, pulls from the Children's Health Insurance Program, which covers about 9 million low-income children.

Of this, \$5 billion is fiscal 2017 funding that has already expired, and \$2 billion is money from a so-called contingency fund that states can tap into if they're short on cash.

These CHIP rollbacks "will not impact the program," the senior administration official said.

It would also cut \$800 million from the Center for Medicare & Medicaid Innovation, which was created under Obamacare.

In addition, the proposal will target 38 programs with large amounts of leftover cash, including \$148 million from the Animal and Plant Health Inspection Service, \$107 million for Hurricane Sandy in 2013 and \$252 million for the Ebola outbreak in 2015.

The senior administration official said the White House is starting with "uncontroversial" cutbacks as a sweetener to bring Democrats on board.

"I don't think we believe there's a reason we wouldn't get bipartisan support for a package like this," the official said.

The process also includes a special bonus for fiscal hawks: Whenever the president submits a rescissions request, that spending is frozen automatically for 45 legislative days, or until Congress formally rejects it.

OMB Director Mick Mulvaney said in April that he hopes for a vote in the House before the July Fourth recess, and officials told reporters Monday that the House is "very interested in this package."

The GOP-dominated House is expected to easily clear the rescissions package, but even White House officials are less confident about its fate in the Senate, White House legislative affairs director Marc Short told POLITICO on Monday. Trump is pleased with the \$15 billion proposal, Short said.

In a call with Capitol Hill staff on Monday, White House officials skirted a question about whether Majority Leader Mitch McConnell had signed off on the proposal.

"We are in discussions with the majority leader," the administration official said on the call, which POLITICO was permitted to listen to by a staffer. "We're hopeful the Senate's going to come our way but I would say it's an ongoing conversation right now."

Trump's unusually large request would come after a nearly two-decade drought of any formal rescissions proposal.

Former President Bill Clinton was the last president to propose rescissions. His three requests totaled just \$128 million, a fraction of Trump's request.

Even with Trump's record-setting sum, conservative groups are demanding the Trump administration go further by proposing to cancel funds from the omnibus, which Trump threatened to veto.

Americans for Prosperity, the right-leaning group founded by the Koch brothers, is asking the White House to reel back \$45 billion from the \$1.3 trillion omnibus.

The group on Monday released an exhaustive list of programs it believes should go on the chopping block, including homeless assistance grants, a Coast Guard security center, FBI salaries and the National Cancer Institute.

Behind the scenes, top budget officials have wrestled for weeks with Republican lawmakers on the size and scope of the rescissions package.

The debate was largely centered on whether to cut money across the board from the omnibus spending package, or whether to target individual programs.

Few Republicans wanted the across-the-board cuts as those would have hit the hard-won increases to military spending. But officials also worried that going after specific programs would spur infighting among Republicans, according to one former top GOP congressional aide briefed on the deliberations — an outcome everyone hoped to avoid ahead of the 2018 midterm elections.

Meanwhile, belt-tightening conservatives in the House are still hoping for more than \$15 billion in cuts.

An internal survey of dozens of House Republican Study Committee members found that lawmakers overwhelmingly support the largest possible rescissions request. The survey, which was obtained by POLITICO, found that 71 percent of RSC members said they would back a proposal that cut at least \$60 billion. Another 9 percent said they'd support any amount.

And 94 percent of RSC members surveyed said the rescissions package should cut at least some domestic funding from this year's \$1.3 trillion omnibus. Only 6 percent said "maybe."

Republican budget wonks also wondered if the final package would accomplish the task of reducing government spending in a meaningful way, if it indeed took previously unspent money from old programs.

"This is not a deficit reduction exercise, but more of a public relations exercise to soothe the base and convince them that the White House is fiscally responsible," said G. William Hoagland, a senior vice president at the Bipartisan Policy Center and former director of budget and appropriations for former Senate Majority Leader Bill Frist as well as the former director of the Senate Budget Committee.

"If they are finding unused budget authority and putting that in a special package to Congress as appropriators are trying to put together the [fiscal] 2019 bill, it may have the effect of creating more spending for 2019 rather than less," Hoagland said.

Nancy Cook, John Bresnahan and Matthew Nussbaum contributed to this report

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House Appropriations panel advances \$44.7B energy and water bill [Back](#)

By Annie Snider | 05/07/2018 06:15 PM EDT

A House Appropriations Committee subpanel swiftly approved its \$44.7 billion energy and water spending bill on a voice vote today, sending it to the full committee for consideration.

Democrats applauded the boost in funding that the measure provides for the Army Corps of Engineers and DOE thanks to the bipartisan agreement to lift spending caps.

"Our bill is certainly a message to the executive branch that the legislative branch rejects the ill-considered, draconian cuts we have come to expect to every important agency we fund in this bill," said Rep. [Marcy Kaptur](#), the top Democrat on the subcommittee.

Overall, the bill would provide \$7.28 billion to the Army Corps of Engineers, \$451 million over 2018 levels. That includes \$1.6 billion for harbor maintenance activities, or \$160 million more than the level appropriators committed in a major 2014 bill.

DOE's energy programs would get \$13.4 billion under the measure, with increases for fossil and nuclear energy research and cuts for renewable energy and energy efficiency.

Democrats objected to that disparity, as well as to a spate of policy riders in the bill such as a provision to repeal the Obama administration's Waters of the U.S. rule and another to override a court decision and operate the Columbia and Snake rivers' dams for hydropower production rather than protecting endangered salmon.

WHAT'S NEXT: The full House Appropriations Committee is expected to consider the measure soon.

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Subject: Morning Energy: Pruitt steps up to the plate — Tester's 'great equalizer' — Bishop still talking NEPA

By Kelsey Tamborrino | 04/26/2018 05:42 AM EDT

With help from Anthony Adragna

PRUITT STEPS UP TO THE PLATE: Scott Pruitt makes his eagerly anticipated trip to the Hill this morning, and the stakes couldn't be higher for the embattled EPA administrator. His appearances before the House E&C Committee in the morning and Appropriations panel in the afternoon — ostensibly to defend the Trump administration's proposed cuts to EPA's budget — will give lawmakers their first opportunity to directly question Pruitt since the news broke about his heavy spending, sweetheart condo rental, VIP security and first-class flights. And while both Democrats and Republicans are expected to pull no punches as they weigh Pruitt's behavior, the real audience will be sitting in 1600 Pennsylvania Ave.

Check out this graphic breakdown of Pruitt's problems by POLITICO's Emily Holden, Alex Guillén and your ME host.

— **The administrator has kept a low profile** in the lead-up to today's events — even leaving press out of a Tuesday announcement on his plan to ban secret science — but expect the cameras to be out in force this morning. ME breaks down what to expect today as Pruitt heads for the batter's box. (ME is also taking suggestions for an appropriate walk-up song. One option here.)

THE GAME PLAN: Pruitt will point out he now flies coach when he travels, and shift the blame to staffers for the raises given to two of his close aides, according to a talking points document — dubbed "hot topics" — obtained by The New York Times. He will likely also say officials who were reassigned or demoted after challenging his spending all had performance issues.

— **EPA did not dispute the authenticity** of the Times document, but spokesman Jahan Wilcox said Pruitt would tout "the accomplishments of President Trump's EPA," including "working to repeal Obama's Clean Power Plan and Waters of the United States, providing regulatory certainty, and declaring a war on lead — all while returning to Reagan-era staffing levels." You can read Pruitt's full opening statement for the E&C hearing here.

DEMOCRATS WILL SEARCH FOR ANSWERS: The afternoon session is expected to dive into Pruitt's proposed deep cuts to the agency's budget and his deregulatory actions, but that doesn't mean Democrats will ignore the ethics woes dogging the embattled chief. "Administrator Pruitt, you are letting the American people and your agency down," Rep. Betty McCollum, ranking member of the Appropriations subpanel, plans to say. Democrat Nita Lowey, the ranking House appropriator, will question Pruitt on the Antideficiency Act after the Government Accountability Office found EPA illegally failed to notify Congress about the cost of his secure phone booth. Meanwhile, E&C's top Democrat Frank Pallone wouldn't tip his hand: "I just hope he shows up," he said when ME asked for his plan of attack.

— **House Energy and Commerce Democrats** will hold a news conference at 9 a.m. to once again call for Pruitt's ouster. Kathy Castor and Paul Tonko will attend, alongside representatives from numerous green groups.

REPUBLICANS OFFER SOME ADVICE: "Answer the questions and stay calm," John Shimkus said. "And the time will eventually end." The Illinois Republican didn't let on about his line of questions to Pruitt, but added: "It's not going to all be addressing stewardship issues. There are going to be policy questions."

— **Fellow Oklahoman and member of the Approps committee** Tom Cole expects the "highly charged" hearing to contain some "pretty much straight budget questions" — at least from the Republican side. Cole said he recently spoke to Pruitt on the upcoming hearing and warned him it would be "rugged."

Keep in mind: None of the committee Republicans said they'd been in contact with the White House ahead of the session. Shimkus said the Republicans hadn't huddled ahead of time to develop a game plan as they sometimes do with high-profile hearings. And Democrats are expected to turn out in force — E&C members not on the Environment subpanel will "waive in" to the hearing. They don't need GOP permission to do so, but will have to wait until all subcommittee members participate before asking questions. ME would look here for especially fiery questions or any surprises.

STRIKE 3? Pruitt's critical audience, of course, will be President Donald Trump, who has so far stuck by him, but is expected to judge how Pruitt fares in front of the cameras, POLITICO's Anthony Adragna and Nancy Cook report. So far, Pruitt's support among Trump's conservative backers has kept him on solid ground, despite the growing resentment of a "high maintenance" EPA chief among White House officials. "The president is always nervous about offending his base, and Pruitt has real support in the base," said one Republican close to the White House. "If that base diminishes, he does not have a chance of being reelected. He generally likes what Pruitt is doing over there, but he has no relationship with Pruitt of any note. He could get someone else."

IN THE OUTFIELD: Environmental group Defend Our Future will hand out first-class boarding passes today at the Pruitt hearing, while Moms Clean Air Force will deliver these report cards. And the League of Conservation Voters and its state partners will launch television ads today urging Sens. Dean Heller and Cory Gardner to hold Pruitt accountable. Watch them here and here.

If you go: The E&C hearing will begin at 10 a.m. in 2323 Rayburn, and the Appropriations hearing at 2 p.m. in 2007 Rayburn. Watch the livestreams here and here.

IT'S THURSDAY! I'm your host Kelsey Tamborrino, and the American Petroleum Institute's Jeff Stein was the first to name Khartoum, Sudan — the capital city where the Blue and White Niles meet to form the Nile. For today: Name the state where the first officially designated Democratic floor leader hailed. Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter @kelseytam, @Morning_Energy and @POLITICOPro.

POLITICO's Ben White is bringing Morning Money to the Milken Institute Global Conference to provide coverage of the day's events and evening happenings. The newsletter will run April 29 - May 2. Sign up to keep up with your daily conference coverage.

PUBLIC LANDS CRUCIAL FOR TESTER: Democratic Sen. Jon Tester's bid for reelection could come down to how he handles public lands issues, Pro's Kevin Robillard reports. Close to one-third of the land in Tester's home state of Montana is under federal government ownership, and the Democratic senator hopes to use it to keep on board those who voted Trump — including hunters, hikers, snowmobilers and ranchers. "Public lands is one of the great equalizers. It's part of who we are," Democratic Gov. Steve Bullock told Kevin. "It doesn't matter what our political beliefs are, it's a core part of our lives."

Tester's strategy is part of a larger effort by Democrats in the West to emphasize lands. Bullock emphasized it in his reelection bid in 2016 and New Mexico Sen. Martin Heinrich, who is expected to easily win reelection in 2018, started his reelection bid with a video focused heavily on public lands issues. And Democratic strategists think it can help them in states throughout the interior west. "There a lot of people here who are

single-issue voters, and that issue is public lands," said Nick Gevock, the conservation director at the Montana Wildlife Federation. Read [more](#).

DEMOCRATS CALL FOR SPECIAL COUNSEL: In a letter Wednesday to the U.S. Office of Special Counsel, Pallone and Oversight ranking member [Elijah Cummings](#) requested an investigation into whether there is a pattern of problematic personnel practices at EPA. The Democrats point to recent reports of agency officials being reassigned, demoted or requesting new roles, after voicing concerns on Pruitt. "The reassignment or dismissal of employees who questioned Administrator Pruitt's wasteful and potentially unlawful expenditures suggests a troubling pattern of retaliation against EPA employees that may be illegal," they write. Read the letter [here](#).

BISHOP STILL TALKING NEPA: House Natural Resources Chairman [Rob Bishop](#) told ME he's been in contact with administration officials "over the last few weeks" about a series of modifications to NEPA that he says "run the gamut." His two overarching goals are to speed the permitting process and to enact categorical exclusions that will limit litigation to allow projects to advance more quickly. "It's one of the consistent problems they recognize," he said of the administration's engagement on NEPA.

Apples to oranges: Controversy over [\\$139,000 spent on doors](#) at Interior is not comparable to spending woes engulfing Pruitt, according to Bishop. "There are some real issues and there are some issues that we play around with," he said. "This is one I think people are playing with." Interior officials said previously that career facilities and security officials recommended the work and that Secretary Ryan Zinke was not aware of it.

THAT DAM BILL: The House passed a heavily watched measure, [H.R. 3144 \(115\)](#), Wednesday that would override a court decision requiring changes in the operations of major hydropower dams in the Pacific Northwest to help protect endangered salmon. The measure, from Washington Rep. [Cathy McMorris Rodgers](#), passed by a nearly party-line vote of 225-189, and now heads to the Senate, where some of the region's Democratic senators have [made known](#) their opposition. Pro's Annie Snider breaks down more [here](#).

REFINERY WORKERS HIT THE HILL: Close to 100 workers from refineries Monroe Energy, Philadelphia Energy Solutions and PBF Energy will rally for their jobs and Renewable Fuel Standard reform on the Hill today, the United Steelworkers said. The rally begins at 1 p.m. in the "Senate Swamp" — the grass across the drive from the east Senate steps. Texas Sen. [Ted Cruz](#) will participate in a press conference with the workers at the same time. Watch the livestream [here](#).

OFF-SHORE UP SUPPORT: While it didn't have quite the same build-up as Pruitt's hearings this morning, the House Natural Resources energy and mineral resources subcommittee will hold a hearing today on offshore energy revenue sharing for Gulf-producing states, with a focus on the Gulf of Mexico Energy Security Act. Democrats intend to call out the oil and gas industry and demand they take responsibility for their role in causing the destruction of Louisiana wetlands, according to a release. Former Sen. Mary Landrieu (D-La.), now a senior policy adviser at Van Ness Feldman, and John Barry, former board member of the Southeast Louisiana Flood Protection Authority — East, will testify, among others. **If you go:** The [hearing](#) begins at 10 a.m. in 1324 Longworth.

GET YOUR COMMENTS IN: [Comments](#) are due today on EPA's proposed repeal of the Clean Power Plan. The Competitive Enterprise Institute, for one, will file a comment today in support of the proposed repeal, calling the CPP "unlawful." Close to 20 other individuals from free-market groups signed onto the joint comment. Google, meanwhile, submitted its own comment Wednesday "respectfully" urging EPA to forgo the repeal. "Google continues to believe that the Clean Power Plan aligns with overall electricity sector trends and the specific goals of our company," [it says](#). The Natural Resources Defense Council and NRDC Action Fund said it generated 208,000 comments in support of keeping the CPP.

MAIL CALL! IN THE AIR TONIGHT: California Sen. [Dianne Feinstein](#) wrote to Transportation Secretary Elaine Chao Wednesday, calling on her to maintain national fuel economy standards set by California under the Clean Air Act. "I ask for your commitment to maintain the Corporate Average Fuel Economy standards at the maximum feasible level, as required by law, and to seek consensus with California so that we can continue to enjoy the success of a coordinated national program to improve fuel economy," Feinstein wrote. Read the letter [here](#).

— **Eighty-seven lawmakers signed onto a letter Wednesday** that calls on Pruitt to reinstate the "once in, always in" [policy](#) to "safeguard" from harmful air pollutants. "This is a matter of critical human health and safety," the lawmakers write. Read it [here](#).

GoT RENEWABLES? Rapper Kanye West [tweeted](#) about his connection to Trump and their "dragon energy" on Wednesday. "We are both dragon energy. He is my brother. I love everyone. I don't agree with everything anyone does." Spoiler: It's not an energy company we forgot to tell you about. Bloomberg breaks it down [here](#), but earlier in the day, West described dragon energy as, "Natural born leaders Very instinctive Great foresight." The House Natural Resources [account tweeted](#) the exchange telling West to "have your people call our people."

QUICK HITS

— Behind the scenes of Pruitt's Nevada trip, [E&E News](#).

— U.S. mine safety agency website 'hacked,' remains down, [S&P Global](#).

— Exxon Mobil boosts quarterly dividend to 82 cents, [Reuters](#).

— Climate change could make thousands of tropical islands "uninhabitable" in coming decades, new study says, [The Washington Post](#).

— Memo: Park Police officers were forbidden from wearing body cameras, [The Hill](#).

— Perry's son owns an energy investment company. Is that a problem? [McClatchy](#).

HAPPENING TODAY

8:00 a.m. — Water Leaders [summit](#) on "Building an Innovative Future for Water Policy and Technology in America," 215 Capitol Visitors Center

8:30 a.m. — George Mason University's Center for Energy Science and Policy [symposium](#) on "Energy-Water Nexus," Fairfax, Va.

9:00 a.m. — Colorado State University hosts [symposium](#) on "Water in the West," Denver

10:00 a.m. — The U.S. Energy Association [forum](#) on "fostering the deployment of CCUS technologies," 1300 Pennsylvania Ave NW

10:00 a.m. — The House Energy and Commerce Committee [hearing](#) on EPA's budget request, 2323 Rayburn

10:00 a.m. — House Science Environment and Space subcommittees [hearing](#) on "Surveying the Space Weather Landscape," 2318 Rayburn

10:00 a.m. — House Natural Resources Oversight Subcommittee hearing on "Examining the Critical Importance of Offshore Energy Revenue Sharing for Gulf Producing States," 1324 Longworth

10:00 a.m. — The Center for Strategic and International Studies' Energy and National Security Program discussion on "Challenges to Ukrainian Energy Reform and European Energy Security," 1616 Rhode Island Avenue NW

11:30 a.m. — The Atlantic Council discussion on "From an Oil Company to an Energy Company," 1030 15th Street NW

1:00 p.m. — Monroe Energy, Philadelphia Energy Solutions and PBF Energy news conference on RINs prices under the Renewable Fuel Standard, Capitol.

1:30 p.m. — Information Technology and Innovation Foundation release on "Closing the Innovation Gap in Grid-Scale Energy Storage," 1101 K Street NW

2:00 p.m. — House Appropriations Interior, Environment, and Related Agencies Subcommittee hearing on EPA's fiscal 2019 budget, 2007 Rayburn

2:00 p.m. — House Natural Resources Committee hearing on H.R. 5317 (115) and H.R. 211 (115), 1324 Longworth

2:00 p.m. — Senate Appropriations Energy and Water Development Subcommittee hearing on the Nuclear Regulatory Commission's proposed budget for FY 2019, 430 Dirksen

2:30 p.m. — The Center for a New American Security discussion on "Geopolitical Risks and Opportunities of the Lower Oil Price Era," 1152 15th Street NW

3:00 p.m. — Rep. Nydia Velázquez discussion on "21st Century Energy Solutions for Puerto Rico," S-115

5:00 p.m. — The Atlantic Council discussion on "Investing in Iraq: Reconstruction and the Role of the Energy Sector," 1030 15th Street NW

6:30 p.m. — Wild & Scenic Film Festival with screenings of feature films that cover topics from climate change to environmental justice, and a panel discussion on women in the outdoors, 1307 L Street NW

THAT'S ALL FOR ME!

To view online:

<https://www.politicopro.com/newsletters/morning-energy/2018/04/pruitt-steps-up-to-the-plate-183688>

Stories from POLITICO Pro

Pruitt scales back EPA's use of science Back

By Emily Holden and Annie Snider | 04/24/2018 03:17 PM EDT

Environmental Protection Agency chief Scott Pruitt announced Tuesday he would seek to bar the agency from relying on studies that don't publicly disclose all their data, a major policy change that has long been sought by conservatives that will sharply reduce the research the agency can rely on when crafting new regulations.

The unveiling of the proposed rule delivers a win to Republicans like House Science Chairman Lamar Smith (R-Texas), who unsuccessfully pushed legislation to impose the same type of change. The move also demonstrates Pruitt's persistence in pursuing President Donald Trump's anti-regulation agenda just two days before the embattled EPA chief is due to face fierce questioning from lawmakers about his hefty spending, expanded security detail and cheap condominium rental from the wife of an energy lobbyist.

At an invitation-only meeting at EPA headquarters with Smith, Sen. Mike Rounds (R-S.D.) and other supporters of the policy, Pruitt said the proposed rule was critical in ensuring that the agency was transparent about how it is making decisions to justify costly new regulations. It is the latest step Pruitt has taken to fundamentally shift the agency's approach to science.

"It is a codification of an approach that says as we do our business at the agency the science that we use is going to be transparent, it's going to be reproducible, it's going to be able to be analyzed by those in the marketplace. And those who watch what we do can make informed decisions about whether we've drawn the proper conclusions or not," Pruitt said.

Text of the proposed rule was not immediately available.

The proposal, based on legislation pushed by Smith, is intensely controversial, and scientists and public health groups say it will prevent federal regulators from enacting health and safety protections. Nearly 1,000 scientists, including former EPA career staffers, signed a letter opposing the policy sent by the Union of Concerned Scientists to Pruitt on Monday.

Their primary concern was that many of the country's bedrock air and water quality regulations are based on research that cannot disclose raw data because it includes the personal health information.

But industry has its own version of the same problem. EPA often relies on industry studies that are considered by companies to be confidential business information when determining whether new pesticides and toxic chemicals are safe to use. Internal EPA emails obtained under the Freedom of Information Act show that EPA political officials, including Nancy Beck, who became the chief of the agency's chemical safety office last year after working for years at a chemical industry lobbying group, worried that the new policy would limit the agency's ability to consider industry data or would force companies to make this proprietary data public.

"We will need to thread this one real tight!" Richard Yamada, political official who led work on the new policy wrote to Beck after she raised the concerns.

It was not immediately clear if the new proposed rule included measures to address those concerns.

Rush Holt, CEO of the American Association for the Advancement of Science, said Pruitt's changes could keep the agency from revising public health regulations as problems arise or new data comes to light.

"On the surface it sounds so innocuous or even beneficial. What could be wrong with transparency? Well it's clear to me that this is not based on an effort to be transparent. It is rather based on an effort to be just the opposite," he said.

"EPA is particularly important because when science is misused, people die," he added.

Pruitt has been discussing the new scientific policy publicly for weeks, but it only went to the White House for interagency review last week. Such swift review is very rare for the Office of Management and Budget, which often takes months to vet a new policy. At least one group, the Environmental Defense Fund, has requested a meeting with OMB officials to discuss the rule, but OMB's website shows that no meetings have been scheduled with interested groups.

Many public health studies can't be replicated without exposing people to contaminants, and environmental disasters such as the Deepwater Horizon oil spill cannot be recreated, the group said, raising intellectual property, proprietary and privacy concerns.

Pruitt's predecessor Gina McCarthy, and her air chief Janet McCabe, in an op-ed in The New York Times in March said concerns about studies are dealt with through the existing peer-review process, which ensures scientific integrity.

"[Pruitt] and some conservative members of Congress are setting up a nonexistent problem in order to prevent the E.P.A. from using the best available science," they said.

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Report: Pruitt plans to shift blame for scandals [Back](#)

By Emily Holden | 04/25/2018 01:55 PM EDT

EPA chief Scott Pruitt will seek to shift the blame for some of his ethics controversies by blaming his staff when he testifies at two House hearings Thursday, according to an internal EPA document reviewed by The New York Times.

Pruitt is prepared to say that he now flies coach rather than first-class, that staffers were responsible for large raises given to close aides without White House sign-off and that officials who were reportedly sidelined for questioning his behavior had performance issues, according to the Times.

The defenses are in line with what Pruitt and EPA spokespeople have said in recent months.

EPA did not dispute the authenticity of the document, but spokesman Jahan Wilcox said Pruitt would tout "the accomplishments of President [Donald] Trump's EPA," including "working to repeal Obama's Clean Power Plan and Waters of the United States, providing regulatory certainty, and declaring a war on lead — all while returning to Reagan-era staffing levels."

Pruitt is expected to face questions about his bargain condo rental from the wife of a lobbyist who has since resigned from his firm, his spending on a round-the-clock security detail and his previous refusal to fly coach. He is under investigation by three congressional committees, the EPA's inspector general and the GAO, among other oversight bodies. White House deputy press secretary Hogan Gidley told NPR today that Pruitt will have to answer questions about the potential ethics violations "in short order."

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'It could be pretty painful' when Pruitt faces Congress [Back](#)

By Anthony Adragna and Nancy Cook | 04/25/2018 06:00 PM EDT

When Scott Pruitt returns to Capitol Hill on Thursday, he will find few friends ready to greet him — and an audience of one waiting to determine his fate.

Republicans say they aren't going to give the Environmental Protection Agency chief a free pass on accusations of lavish spending, a sweetheart condo lease and luxe air travel during a pair of high-stakes hearings. Since Pruitt's previous appearance on Capitol Hill in January, he has faced an avalanche of damaging headlines and investigations that have alienated much of the White House and raised questions about his future leading the agency.

President Donald Trump has so far stuck by Pruitt. But the biggest test for the media-obsessed president may be how Pruitt fares in front of the cameras — only three weeks after he drew poor reviews for a combative interview with Fox News' Ed Henry.

House Energy and Commerce Chairman Greg Walden (R-Ore.) said Pruitt will receive a "cordial reception, but he's got some tough questions to answer."

Rep. John Shimkus (R-Ill.), whose subcommittee will be Pruitt's first stop Thursday, said the administrator should expect a "cool" reception from Republicans — who still strongly support his work to pare back EPA rules.

"It could be pretty painful, but when you accept the position of a senior administrator in a federal agency you've got to expect [that]," Shimkus, who chairs the Energy and Commerce Environment Subcommittee, told Politico. "You've just to grin and bear it and get through it."

Pruitt has few allies left in the White House, apart from the president himself. Senior administration aides characterized the hearings as potential make-or-break moments for Pruitt but said it's ultimately up to the president as to whether the White House wants to tolerate Pruitt's bad press.

Trump is largely keeping Pruitt around because he appreciates Pruitt's hard-charging agenda and because the White House does not want to go through another bruising confirmation battle over another Republican to lead EPA, according to senior administration officials and Republicans close to the White House. Already the White House expended great political energy this week on its pick for secretary of state, Mike Pompeo, a former congressman whom the White House views as eminently qualified but who is barely expected to squeak through the Senate confirmation process.

Most important, the president fears that dumping Pruitt would anger conservatives.

"The president is always nervous about offending his base, and Pruitt has real support in the base," said one Republican close to the White House. "If that base diminishes, he does not have a chance of being reelected. He generally likes what Pruitt is doing over there, but he has no relationship with Pruitt of any note. He could get someone else."

When asked at the White House briefing on Wednesday about Pruitt's spending and potential ethical violations, press secretary Sarah Huckabee Sanders would only say: "We are evaluating these concerns, and we expect the EPA administrator to answer for them."

Pruitt's waning support among White House aides has been months in the making. And at this point, many administration officials say they are tired of the terrible headlines and consider the allegations about Pruitt a nonstop swirl of distractions. It's not just Pruitt's handling of the questions that has irked White House officials but the facts themselves about the way he's led the EPA and run his own staff.

Over the past year, Pruitt has also alienated members of the communications team, National Economic Council, and Cabinet Affairs in various fights over policy like the Paris climate deal, messaging over policy rollouts, and spending decisions at the EPA. Another Republican close to the White House said Pruitt has earned a reputation among White House aides as "high maintenance."

The White House was not involved in helping to prepare Pruitt for the two Hill hearings on Thursday.

Shimkus predicted the toughest questions would come from the other side of the aisle.

"We need to make sure that we understand and recognize the valid, valid concerns that are out there on policy and administrative activity," he said. "But I don't think we'll be gouging his eyes out either — I think we'll have other folks that'll do that."

Some Pruitt supporters say he should be judged on his overall tenure.

"It should be based on his past performance, not necessarily standing in front of a microphone," House Natural Resources Chairman Rob Bishop (R-Utah) said. Bishop's committee does not have jurisdiction over EPA, but he has been a strong supporter of Pruitt's policy goals.

In his opening statement released ahead of the hearing, Pruitt will sidestep any discussion of the latest controversies, instead focusing on policy goals like Superfund cleanups and working more closely with states. "I will focus on key objectives to improve air quality, provide for clean and safe water, revitalize land and prevent contamination, ensure the safety of chemicals in the marketplace, assure compliance with the law, and improve efficiency and effectiveness," Pruitt will say in his prepared remarks.

Democrats are expected to tie the scandals facing Pruitt to his aggressive deregulatory push and proposal to slash EPA's budget by more than a quarter — which they see as just as worrisome as his alleged ethical improprieties. Multiple aides said there's such strong interest in the session that committee Democrats not on the Environment Subcommittee plan to participate, which does not require signoff from the majority.

"There's a confluence of concerns here that I think the Democrats are going to want to get answers to," Rep. Paul Tonko of New York, top Democrat on the panel, told POLITICO. "We were concerned yesterday, we're concerned today and we'll be concerned tomorrow if he's there."

There will be no shortage of things to ask him about, including the more than \$105,000 the agency has spent on his first-class flights, lavish spending on a \$43,000 soundproof phone booth and round-the-clock security, a cushy \$50-per-night condo lease from a Washington lobbyist who personally met with Pruitt to discuss the agency's Chesapeake Bay work, and a trip to Morocco in December on which he spent time promoting liquefied natural gas exports — a topic that isn't part of his agency's portfolio. Pruitt is also facing scrutiny over the significant pay raises the agency gave to a handful of his longtime aides from Oklahoma despite the White House's objections.

Federal watchdogs, the agency's inspector general, congressional investigators and the White House have launched more than a dozen investigations into various aspects of Pruitt's conduct.

But Rep. Joe Barton (R-Texas), the longest-serving member of Energy and Commerce, said Pruitt's ethics issues are "not the purpose of the hearing" and suggested many Republicans would come to the administrator's defense. However, he said the panel's GOP members have not met in advance to plot strategy.

"He's had a lot of death threats. I don't have a problem with his security costs," Barton said Wednesday. "I don't really have a major problem with his telecommunications setup. It's a difficult job to be the EPA administrator when you're a Republican."

Still, signs are increasing of weariness toward Pruitt among congressional Republicans. Three senior Senate Environment and Public Works Committee Republicans, including his staunch ally Sen. Jim Inhofe (R-Okla.), called for hearings into Pruitt's behavior earlier this week. Four House Republicans have called for his resignation. And EPW Chairman John Barrasso (R-Wyo.) said he has "serious questions" about Pruitt's spending and pledged to send additional oversight letters.

"He'll need to acquit himself well," Sen. John Thune, the No. 3 Republican in the Senate, said when asked about how important the sessions will be for Pruitt's future in the administration.

An aide to Rep. Betty McCollum of Minnesota, top Democrat on the House Appropriations Interior and Environment Subcommittee, where Pruitt will appear Thursday afternoon, told POLITICO their hearing would likely focus more on Pruitt's proposed cuts to nearly a quarter of the agency's budget and regulatory rollbacks.

"I expect the E&C hearing will have a greater focus on the ethical concerns surrounding Pruitt," the aide said.

Some Democrats on Energy and Commerce acknowledge Pruitt has in the past performed well in congressional hearings, which they said could allow him to respond to some of the charges.

"If Mr. Trump is going to look for a good performance, I bet he'll put up a great performance," said Rep. Scott Peters (D-Calif.), another member of the subpanel. "But if he doesn't address the substance of the ethical and environmental challenges, I hope that they would think about finding someone else."

Other Democrats think Pruitt's main goal will be to avoid a major gaffe but they don't see any way he will emerge from the hearing in a significantly strengthened position.

"One or two of these transgressions would be survivable but there are so many scandals that it's really hard for me to imagine that Republicans want to lower the bar this much," said Sen. Brian Schatz (D-Hawaii), an outspoken Pruitt critic. "It is actually beyond me why they're sticking by him."

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Tester leans on public lands as key reelection issue [Back](#)

By Kevin Robillard | 04/26/2018 05:05 AM EDT

HELENA, Mont. — The issue that could prove key to Democratic Sen. Jon Tester's reelection bid is under the radar in Washington politics but practically ever-present in Montana life.

Nearly a third of the land in Montana is under federal government ownership, and Tester wants to keep it that way. It's a way the Democratic senator, who is running for a third term, hopes to keep voters who pulled the lever for President Donald Trump — including hunters, hikers, snowmobilers and ranchers — on his side in 2018.

"Public lands is one of the great equalizers. It's part of who we are," Democratic Gov. Steve Bullock said in a phone interview. "It doesn't what matter what our political beliefs are, it's a core part of our lives."

Tester's strategy is part of a larger effort by Democrats in the West to emphasize the issue. Bullock emphasized it in his reelection bid in 2016 as he defeated Republican Greg Gianforte (now Montana's congressman) by 4 percentage points after hammering the Republican billionaire over stream access. New Mexico Sen. Martin Heinrich, who is expected to easily win reelection in 2018, started his reelection bid with a video focused heavily on public lands issues. And Democratic strategists think it can help them in states throughout the interior West.

"There are a lot of people here who are single-issue voters, and that issue is public lands," said Nick Gevock, the conservation director at the Montana Wildlife Federation.

Outdoor recreation is now Montana's largest industry, surpassing agriculture, and contributes \$7 billion and 71,000 jobs to the state's economy.

"They like to go hunting, they like to go fishing, they like to go hiking, they just like to get in the mountains where their cellphone doesn't work," Tester said in an interview. "I want to make sure there's not a mine put at the head of the Yellowstone River, or at the borders of Glacier Park."

A Montana Republican on the national stage is also raising the profile of the issue in-state. Conservationists had high hopes for Interior Secretary Ryan Zinke when he was first named to the job, but his decision to shrink the size of two national monuments has left them dismayed and disappointed.

"We were hopeful that, being a Montanan, he was going to live Montana values and be the Teddy Roosevelt conservationist he said he was," Gevock said, but noting Zinke's Interior Department was "putting the oil and gas industry above every other use."

Tester introduced Zinke at his confirmation hearing and had similar hopes, but is heavily critical of him today.

"It was because I thought he understood conversation. I haven't seen that over the last 14 months," Tester said, adding: "He has time to redeem himself."

The strategy is a proven vote-winner in Montana. Throughout the 2016 gubernatorial campaign, and in his earlier bids for governor and attorney general, Bullock emphasized stream access laws for fishermen. And he hammered Gianforte for fighting stream access laws in multiple television ads last cycle.

The state and national GOP platforms both support selling federal public lands to the states, where many environmentalists feel they would be exposed to oil and gas interests. Tester's opponents don't endorse those views.

"The people of Montana do not want the public lands transferred," state Auditor Matt Rosendale said in an interview, echoing the views of businessman Troy Downing and former judge Russ Fagg. (Rosendale supported selling the land during a 2014 bid for Congress but has changed his position.)

All three said they would like localities to have more say in how lands are managed and how federal authorities balance multiple uses. Rosendale, for instance, criticized the Forest Service for shutting down too many roads in the state.

But while Democrats in Montana have aggressively used the issue, public lands haven't become a top-tier issue in Colorado, Arizona or elsewhere in the interior West, which some Democratic strategists believe is a missed opportunity.

The Western Values Project, a Colorado-based nonprofit, ran ads late last year pressuring three potentially vulnerable Republicans — Arizona Rep. Martha McSally, who is now running for Senate, along with Oregon Rep. Greg Walden and Washington Rep. Jaime Herrera Beutler — over their support for Zinke's decision to shrink the national monuments.

And the attacks had an impact: In Arizona, McSally held a 3-point lead against a generic Democrat in her congressional district in a poll conducted by Global Strategy Group. But when "asked to consider a scenario where she votes to reduce the size of the Bears Ears and Grand Staircase-Escalante national monuments," her support dropped to 38 percent, with a generic Democrat winning 50 percent of the vote.

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Interior spent \$139K on Zinke office doors [Back](#)

By Anthony Adragna | 03/08/2018 05:58 PM EDT

The Interior Department is spending \$139,000 for new doors for Secretary Ryan Zinke's office suite, according to records posted online.

The work was recommended by Interior career facilities and security officials, an agency spokeswoman said, not by Zinke.

"The secretary was not aware of this contract but agrees that this is a lot of money for demo, install, materials, and labor," Heather Swift, the spokeswoman, said in a statement.

The award to Maryland-based Conquest Solutions LLC was first reported by the Associated Press. The work involves replacing three sets of double doors, including two that open onto a balcony and leak during rain storms, the AP reported. An existing set of doors to Zinke's office from a hallway do not have a lock, so the security will be upgraded with the new doors.

Swift said the work is part of a "decade-long modernization of the historic FDR-era building."

"Between regulations that require historic preservation and outdated government procurement rules, the costs for everything from pencils to printing to doors is astronomical. This is a perfect example of why the Secretary believes we need to reform procurement processes."

Housing and Urban Development Secretary Ben Carson drew criticism recently over news that HUD would spend \$31,000 on a dining set. That order was subsequently canceled.

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House passes controversial dam bill [Back](#)

By Annie Snider | 04/25/2018 04:45 PM EDT

The House passed a controversial measure to override a court decision that required changes in the operations of major hydropower dams in the Pacific Northwest to help protect endangered salmon.

The measure, H.R. 3144 (115), from Rep. Cathy McMorris Rodgers (R-Wash.), was passed by a nearly party-line vote of 225-189.

The 9th Circuit Court of Appeals earlier this month upheld a lower court decision requiring that water be spilled over the tops of dams along the Columbia and Snake rivers, including the powerhouse Grand Coulee Dam, the largest power station in the U.S., during periods when young salmon and steelhead migrate to the ocean. The suit was brought by the state of Washington, tribes and conservation groups.

McMorris Rodgers and other Republicans in the region have fought the decision because it would reduce the dams' hydropower output. Their legislation would override the courts and require that dam operations continue as they have historically to maximize power production until an environmental review of the system can be completed.

The legislation is the latest front in a yearslong battle over the nearly 100-year-old hydropower system on the rivers. Conservation groups and tribes with treaty fishing rights want it altered and operated to benefit wildlife, including calling for the removal of four dams along the Snake River.

WHAT'S NEXT: The legislation moves to the Senate, where some of the region's Democratic senators have registered their opposition.

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EPA drops 'once in, always in' policy from key Clean Air Act requirements [Back](#)

By Alex Guillén | 01/25/2018 06:11 PM EDT

EPA today withdrew a Clinton-era policy that was designed to prevent major emitters like power plants and factories from getting out of tough requirements to limit their toxic air emissions.

In a new memo, EPA air chief Bill Wehrum wrote that the "once in, always in" policy "is contrary to the plain language" of the Clean Air Act. Wehrum revoked a 1995 guidance memo outlining the policy and said EPA would consider new regulations to clarify its interpretation of the law.

Under the now-revoked guidance, any emitter that qualified as a "major" source of hazardous air pollutants would forever be subject to that tougher standard to comply with MACT rules, even if its emissions dropped low enough to be considered an "area" source subject to fewer or no requirements. Wehrum's memo said the law does not specify that such classifications are permanent.

"EPA has now determined that a major source which takes an enforceable limit on its [potential emissions] and takes measures to bring its HAP emissions below the applicable threshold becomes an area source, no matter when the source may choose to take measures to limit its" potential pollution emissions, Wehrum wrote.

Wehrum argued that the policy shift will actually encourage sources that hesitated to install emission reduction projects to move forward. Environmentalists, however, quickly blasted the change on social media.

The Bush administration twice attempted to change the OIAI policy but never succeeded.

WHAT'S NEXT: Wehrum's memo says EPA will "soon publish a Federal Register notice to take comment on adding regulatory text that will reflect EPA's plain language reading of the statute."

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Subject: Morning Energy: Perry's latest bid to save coal — NEPA focus of hearing today — More on the Pruitt front

By Kelsey Tamborrino | 04/25/2018 05:54 AM EDT

With help from Anthony Adragna

PERRY'S LATEST BID TO SAVE COAL: So far, Energy Secretary Rick Perry has had no success in his effort to construct a safety net to keep alive coal-fired and nuclear power plants threatened with shutdowns — a mission that's come straight from President Donald Trump. And Perry's latest potential gambit to use the 1950 Defense Production Act in hopes of designating the plants as crucial for national security may not fare better than his previous efforts, energy experts tell Pro's Eric Wolff.

Experts say the bid would stretch the definition of the law and almost certainly draw legal challenges. Plus invoking the act that was last used by the Obama administration to push advanced biofuels would probably hit a snag in Congress, since lawmakers would need to approve perhaps billions of dollars in funding to keep the plants afloat, the experts say.

Using the Korean War-era law to protect the plants could be a novel approach to aiding power plants, Eric writes, especially after Perry failed to gain FERC's support for his proposal to give the plants financial backing. And since Energy Department lawyers stymied a push last year to invoke the agency's authority under the Federal Power Act to force the plants to run, Perry and his staff appear to have very few viable options left.

But the fresh take on the act doesn't necessarily mean it'll work. "To me, it's a tough argument to make. It's a specious argument on its surface that seems like a perversion of the intended use of the Defense Production Act," said Tom Hicks, a former acting undersecretary of the U.S. Navy under former President Barack Obama and now a principal at the advisory firm The Mabus Group. Read [more](#).

WELCOME TO WEDNESDAY! I'm your host Kelsey Tamborrino, and James Daniel was the first to guess the most recent senator to appear on a U.S. postage stamp. It was Maine's Margaret Chase Smith, who [appeared](#) during the Distinguished Americans Issue in 2007, worth a whopping 58 cents face value. A geography question for today: The Blue Nile and the White Nile combine to form the Nile River at which capital city? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseyam](#), [@Morning_Energy](#) and [@POLITICOPro](#).

POLITICO's Ben White is bringing Morning Money to the Milken Institute Global Conference to provide coverage of the day's events and evening happenings. The newsletter will run April 29 — May 2, 2018. [Sign up](#) to keep up with your daily conference coverage.

DON'T FEAR THE NEPA? House Natural Resources will hold an oversight [hearing](#) this afternoon on what it calls the "weaponization" of the National Environmental Policy Act, and it could be a doozy. The committee notice calls NEPA — the seminal law that requires an environmental review on all federal actions — activists' "weapon of choice." Republicans have long-sought to undo parts of the law, and today's hearing will likely echo some of the rhetoric out of the Trump administration, which has supported faster NEPA reviews as part of its [infrastructure push](#). The hearing will review challenges from NEPA and will evaluate reforms to "de-

weaponize" the law to "minimize opportunities for bad faith litigation, and restore the law to its original intent," according to a committee notice.

The committee previously took up the topic last year, holding a similar hearing in November on modernizing the law for the 21st century. James Coleman, a law professor at the Southern Methodist University, is expected to say the current NEPA process is "broken" and that bipartisan efforts to fix the problem have failed. "As President Obama's regulatory czar put it, 'If the permitting bureaucracy were a supervillain, it would be the Blob,'" he'll say, according to his testimony. "Right now, the Blob is winning: We have lost decades of investment while environment reviews grow longer and longer. How can we ensure that the U.S. does not fall behind our global competitors?"

Meanwhile, Laura Alice Watt of Sonoma State University, who says she is a proponent of environmental reviews that are conducted consistently, will discuss the effect of NEPA on the Point Reyes National Seashore, where a review over the last 20 years has contributed to the erosion of active ranches. Melissa Hamsher of Eclipse Energy Resource Corporation and former CEQ official Horst Greczmiel will also testify. Democratic Rep. Donald McEachin, ranking member of the Oversight subcommittee, will say that he'll hold the administration and Republicans to account on NEPA. "Many communities — and especially vulnerable minority and low-income communities — have had to endure a decades-long pattern of environmental injustice, in no small part because they were denied a say in important decisions that affected them," McEachin is expected to say. **If you go:** The hearing kicks off at 2 p.m. in 1324 Longworth.

SPEAKING OF NEPA: The League of Conservation Voters sent this letter to House members Tuesday urging them to oppose H.R. 3144 (115), which LCV says would "attack" the Endangered Species Act and NEPA by "mandating dam operations harmful to endangered salmon and steelhead in the Pacific Northwest."

ADD THIS TO THE LIST: Two days before two House hearings and fresh off an announcement on EPA's plan to bar scientific studies that don't publicly disclose data, Administrator Scott Pruitt got another appointment to testify on his agency's budget. This time Pruitt will appear in May before the Senate appropriations subcommittee that oversees EPA's budget, Lisa Murkowski said Tuesday.

OH, TO BE A FLY ON THE WALL: Sen. Shelley Moore Capito, one of the Republican EPW members open to a hearing with Pruitt, told ME Tuesday she has a "well-timed" phone call with him scheduled for this week. "I think he wants to talk about some regulatory measures," she said. "But I'm going to probably ask him questions on the current state of some of the things that I've read and we'll see where it goes." She said the call had been set up last week.

McConnell voices support ... again: Majority Leader Mitch McConnell told reporters Tuesday he remained a supporter of Pruitt's, while noting the EPA chief's busy Thursday on the Hill. "We'll just see," he said. "I expect there will be a lot of interest."

PERROTTA WORKED FOR TRUMP-BACKED MEDIA COMPANY: Pasquale "Nino" Perrotta — the Secret Service veteran who heads Pruitt's security detail — previously worked on assignments for the tabloid publishing company American Media Inc. during the 2016 presidential campaign, The New York Times reported Tuesday. While it is unclear when Perrotta started working at AMI, the Times reports some of his activities at the company included physical security, cybersecurity and investigative services involving litigation. Read more.

OLD AD-AGE: The Natural Resources Defense Council is sponsoring an ad today in The Washington Post that calls for Pruitt's ouster. The ad — which says: "President Trump promised to drain the swamp. He should start with EPA Administrator Scott Pruitt" — will run as an insert in 3,000 copies of the Post and will be delivered to Capitol Hill on Thursday. See it.

IF YOU PLAY YOUR CARDS RIGHT: The Environmental Defense Fund mapped out what it says are Pruitt's unanswered questions surrounding scandals while he helms EPA and during his time as Oklahoma attorney general — 86 of them to be exact. The group will also hand out a deck of "Non Trivial Pruitt Questions" during Thursday's hearings with a sampling of the ethical questions. See the cards here.

Rally cry: Separately, the American Federation of Government Employees will hold a rally today from noon until 1 p.m. in support of EPA workers. Democratic Reps. Salud Carbajal, Don Beyer, Bill Foster, Sheila Jackson Lee, Alan Lowenthal, Grace Meng, Jamie Raskin and Debbie Wasserman Schultz are all set to attend the rally, which will take place outside of EPA headquarters.

MACRON ADDRESS LAWMAKERS: French President Emmanuel Macron hits the Hill this morning to address a joint session of Congress. Earlier this week, the French president said he'd call for continued U.S. intervention in Syria in his speech. "I will advocate for multilateralism," Macron said in an interview on "Fox News Sunday." But it's also possible issues concerning climate will come up — which would likely receive a welcome reception from Democrats.

Macron, a staunch supporter of the Paris accord, also briefly mentioned climate during a joint press conference with the president Tuesday. "We also talked about the climate. And here, also, we know where we stand," Macron said vaguely. "France will continue to work on major pieces, including the global compact for the environment. But I think I can say that our economic — our businesses, our researchers can continue to work on — can create solutions in the field." Both he and Trump are "attached to that," he said.

Bold move: It's probably not an indication of environmental topics to come, but Apple CEO Tim Cook brought former EPA chief Lisa Jackson to Tuesday's state dinner with Macron. Jackson, who now works as vice president of environment, policy and social initiatives at Apple, has attended events with Cook in the past — but it's an interesting move considering Jackson's not been known to mince words about the Trump administration. For what its worth, Cook will meet today with Trump in the Oval Office.

MORE NOMS: Trump sent James Hubbard's nomination to be undersecretary of Agriculture for natural resources and the environment to the Senate Tuesday. Hubbard, of Colorado, replaces Robert Bonnie, who resigned from the post.

DEMOCRATS CITE SAFETY: Three Energy and Commerce Democratic leaders on Tuesday called on the Government Accountability Office to probe EPA's enforcement of federal health and environmental safeguards. "We are concerned that President Trump's and Administrator Pruitt's policies to 'streamline' permitting processes, reduce regulatory 'burdens' for industry, and defer to states on enforcement will lead to more environmental law violations due to lax enforcement at both the state and federal level," ranking member Frank Pallone and Reps. Diana DeGette and Paul Tonko write in a letter to GAO Comptroller Gene Dodaro. Read it here.

MAIL CALL! GOING NUCLEAR: Former national security officials and nonproliferation experts will send this letter today to congressional foreign affairs leadership stating that for national security reasons, it is in the U.S.' best interest to have a nuclear cooperation agreement — a so-called 123 Agreement — with Saudi Arabia.

— **Democratic Sens. Maria Cantwell and Jeff Merkley** and Reps. Raúl Grijalva and Jared Huffman sent a letter to Interior Secretary Ryan Zinke on Tuesday, calling on him to undo plans for a 2019 lease sale in Alaska's Beaufort Sea. Read it here.

— **Sen. John Barrasso, chairman of the Senate EPW Committee and Capito**, subcommittee chairwoman on clean air and nuclear safety, sent a letter to Pruitt and Perry, asking them to protect the confidential business information of U.S. small refineries. Read the letter here.

AT IT AGAIN: Michigan GOP Rep. [Fred Upton](#) officially filed for reelection in the state's 6th District, [MLive reports](#). "We are full steam ahead and excited about the future," the Energy and Commerce lawmaker said in a statement.

A TANGLED WEB: The Environmental Data & Governance Initiative is out with a new monitoring report this morning that says EPA removed pages related to "international priorities" and "international grants and cooperative agreements," as well as corresponding links, from its [International Cooperation](#) web page. The page in question listed priority areas including "strong environmental institutions," "climate change" and "clean water," among other terms, which EDGI says were removed in December 2017. Read the report [here](#) and see screenshots [here](#).

GROUPS TO SUE OVER DRINKING WATER IN NEW JERSEY: The NRDC and Newark Education Workers Caucus say they will sue the city of Newark, N.J., and Catherine McCabe, the acting commissioner of the New Jersey Department of Environmental Protection, over lead contamination in the city's drinking water, [Pro New Jersey's Danielle Muoio reports](#). A Newark city official [said Tuesday](#) that the complaint filed by the groups is "absolutely and outrageously false."

OLYMPIANS HEAD TO HILL FOR CLIMATE: Five Winter Olympians will brief House and Senate offices today on the impact of climate change on winter sports and outdoor recreation. Cross-country skier Jessie Diggins, freestyle skier David Wise, halfpipe snowboarder Arielle Gold, biathlete Maddie Phaneuf and alpine skier Stacey Cook all will appear on the panel, which is co-hosted by nonprofit Protect Our Winters, Citizens Climate Lobby, and Sens. [Michael Bennet](#) and [Susan Collins](#). **If you go :** The briefing begins at 12:30 p.m. in 538 Dirksen.

CORRECTION: The April 24 edition of Morning Energy misstated the purpose of H.R. 3144 (115). The bill would codify the 2014 Biological Opinion until 2022, while the NEPA and the environmental impact statement processes continue.

QUICK HITS

— Trump White House offered to help prep Pruitt for hearings. EPA told the White House to "get lost," [The New York Times](#).

— Shaheen questions Air Force secretary on PFAS health study, [Seacoast Online](#).

— Harassment targeted; more disciplinary actions could follow, [E&E News](#).

— Provisions in FAA bill could strip endangered species protections, [The Hill](#).

— Zinke put birther conspiracy theorist on super PAC board, [CNN](#).

— Mines owned by Gov. Justice missed deadline for installing safety tech, [Charleston Gazette-Mail](#).

HAPPENING TODAY

8:30 a.m. — Microsoft and the delegation of the European Union to the U.S. [discussion](#) on the future of the EU electricity market, 901 K Street NW

10:00 a.m. — Senate Commerce Committee [hearing](#) on "Enhancing the Marine Mammal Protection Act," 253 Russell

11:30 a.m. — The World Resources Institute forum on "activism for energy," 10 G Street NE

12:30 p.m. — Olympians brief Congress about impact of climate change on winter sports, 538 Dirksen

2:00 p.m. — Resources for the Future webinar on "What Research Says on Key Fracking Debate Issues."

2:00 p.m. — House Natural Resources Committee hearing on "The Weaponization of the National Environmental Policy Act and the Implications of Environmental Lawfare," 1324 Longworth

2:00 p.m. — Senate Appropriations Energy and Water Development Subcommittee hearing on proposed budget estimates and justification for FY 2019 for the Nuclear Regulatory Commission, 430 Dirksen

2:00 p.m. — The Heritage Foundation discussion on "Saving 'Endangered' Species or Regulating with Bad Data," 214 Massachusetts Avenue NE

2:30 p.m. — Senate Indian Affairs Committee hearing on a pair of bills, including H.R. 1491 (115), 628 Dirksen

3:30 p.m. — Bloomberg Government and the Norwegian-American Chamber of Commerce conversation on "Investing In A Sustainable Energy Future," New York City

5:30 p.m. — The National Academy of Sciences lecture on "Distress Signals: Historical Waypoints in Northwest Atlantic Fisheries Since 1850," 2101 Constitution Avenue NW

6:30 p.m. — The Carnegie Institution for Science lecture on the sustainable use of the ocean, 1530 P Street NW

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<https://www.politicopro.com/newsletters/morning-energy/2018/04/perrys-latest-bid-to-save-coal-182338>

Stories from POLITICO Pro

Perry's latest bid to help coal faces uphill battle Back

By Eric Wolff | 04/25/2018 05:08 AM EDT

Energy Secretary Rick Perry's latest idea to protect coal-fired and nuclear power plants may not fare much better than his previous efforts, according to energy experts.

Perry is considering invoking the 1950 Defense Production Act to keep money-losing power plants running by designating them as crucial for national security. But that would stretch the definition of the law and almost certainly draw legal challenges — and it would hit a big hurdle in Congress, which would need to approve perhaps billions of dollars in funding to keep the plants afloat, the experts said.

At the urging of President Donald Trump, Perry has sought to keep open coal and nuclear power plants that are threatened with shutdowns amid the stagnant demand for power — and even as natural gas and renewable power sources grab a growing share of the market.

So far, Perry's had no luck. FERC earlier this year rejected his proposal to give the plants financial support, and Energy Department lawyers stymied a push last year to invoke the agency's authority under the Federal Power Act to force the plants to run.

Some experts said any attempt to use the DPA is likely to meet the same fate.

"To me, it's a tough argument to make. It's a specious argument on its surface that seems like a perversion of the intended use of the Defense Production Act," said Tom Hicks, a former acting undersecretary of the Navy under former President Barack Obama and now a principal at the advisory firm The Mabus Group. "Defense Production Act is on the vanguard of the need for resources, not on the back end for an industry being challenged by economic forces."

But the effort has been a priority for Trump and Perry, who sees saving coal-fired power generation as vital to U.S. security, according to a source familiar with the conversations on the issue.

The Cold War-era law grants the federal government powerful authorities to inject cash into companies essential for national defense in order to preserve domestic supplies of key products. But DOE will have to make the case that electricity produced specifically from coal and nuclear power plants, and not other types of power, is a critical resource.

Using the act to protect the plants when there appeared to be no immediate shortage of power supplies would be a novel application that would almost certainly face legal challenge.

"If the administration uses DPA, they're going to be using it very creatively," said Ari Peskoe, director of the Electricity Law Initiative at the Harvard Law School Environmental and Energy Law Program. "They may come up with reasoning for higher rates and who's going to pay for it. Whether that will hold up, I don't know."

Perry and his staff appear to have very few viable options for bailing out coal and nuclear power, a major energy priority for Trump, who has promised to revive the coal industry. DOE has opened a comments process for interested parties to weigh in on its use of the Federal Power Act's 202(c) emergency provisions, though that would require the agency to go through FERC, which unanimously rejected a similar Perry effort in January.

The 202(c) effort has been pushed by coal magnate Bob Murray, owner of Murray Energy, and by FirstEnergy Solutions, the unit of FirstEnergy Corp. that is in bankruptcy proceedings and which expects to shut down four coal and nuclear power plants. That company asked DOE to use the emergency authority to save not only its plants, but all 85 coal and nuclear power plants in the PJM Interconnection power market.

The DPA was last used by the Obama administration starting in 2012 to help spur the biofuels industry to develop the kind of advanced biofuels that could power ships and aircraft. The government can purchase capital equipment for the cause of national security, and it can fund advertising to support the effort.

And it allows the government to become the buyer of last resort, which could put Washington on the hook to buy excess power generated by coal and nuclear plants. Technically, this electricity could only be purchased at the "cost of production," a level that in the past has been determined by a team within the Defense Department.

While no hard estimate for the cost of a DPA subsidy exists, consultants analyzing Perry's previous bailout proposal estimated costs between \$4 billion and \$10.6 billion annually.

That's a far higher level than Congress typically allocates for the DPA. It provided \$67.4 million in the omnibus passed in March, H.R. 1625 (115), down slightly from the \$76 million it provided for all projects in 2017, according to a report submitted to Congress.

And Congress — and the Republican Party — is deeply divided on using government subsidies to save these plants. Rep. David McKinley (R-W.Va.) has some allies from other coal districts for the effort, but other free market-oriented lawmakers like Rep. Pete Olson (R-Texas) say they want to see markets function unimpeded.

McKinley's staff has been in touch with DOE and the White House, as has West Virginia Sen. Joe Manchin (D).

"I think it's an emergency national concern for the national defense of our country. I think Rick Perry agrees with it, and I think the president does also," Manchin told POLITICO.

PJM has itself said the retirement of FirstEnergy's coal plants did not pose a threat to the region's power supplies, and that it had ample generation to meet demand. It has opposed any effort to mandate to require the plants to stay online.

"We believe that a market-oriented approach consistent with the American free-enterprise system offers better results than government-mandated subsidies," said PJM spokesman Jeff Shields.

Anthony Adragna contributed to this report.

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Pruitt scales back EPA's use of science [Back](#)

By Emily Holden and Annie Snider | 04/24/2018 03:28 PM EDT

Environmental Protection Agency chief Scott Pruitt announced Tuesday he would seek to bar the agency from relying on studies that don't publicly disclose all their data, a major policy change that has long been sought by conservatives that will sharply reduce the research the agency can rely on when crafting new regulations.

The unveiling of the proposed rule delivers a win to Republicans like House Science Chairman Lamar Smith (R-Texas), who unsuccessfully pushed legislation to impose the same type of change. The move also demonstrates Pruitt's persistence in pursuing President Donald Trump's anti-regulation agenda just two days before the embattled EPA chief is due to face fierce questioning from lawmakers about his hefty spending, expanded security detail and cheap condominium rental from the wife of an energy lobbyist.

At an invitation-only meeting at EPA headquarters with Smith, Sen. Mike Rounds (R-S.D.) and other supporters of the policy, Pruitt said the proposed rule was critical in ensuring that the agency was transparent about how it is making decisions to justify costly new regulations. It is the latest step Pruitt has taken to fundamentally shift the agency's approach to science.

"It is a codification of an approach that says as we do our business at the agency the science that we use is going to be transparent, it's going to be reproduceable, it's going to be able to be analyzed by those in the marketplace. And those who watch what we do can make informed decisions about whether we've drawn the proper conclusions or not," Pruitt said.

Text of the proposed rule was not immediately available.

The proposal, based on legislation pushed by Smith, is intensely controversial, and scientists and public health groups say it will prevent federal regulators from enacting health and safety protections. Nearly 1,000 scientists, including former EPA career staffers, signed a letter opposing the policy sent by the Union of Concerned Scientists to Pruitt on Monday.

Their primary concern was that many of the country's bedrock air and water quality regulations are based on research that cannot disclose raw data because it includes the personal health information.

But industry has its own version of the same problem. EPA often relies on industry studies that are considered by companies to be confidential business information when determining whether new pesticides and toxic chemicals are safe to use. Internal EPA emails obtained under the Freedom of Information Act show that EPA political officials, including Nancy Beck, who became the chief of the agency's chemical safety office last year after working for years at a chemical industry lobbying group, worried that the new policy would limit the agency's ability to consider industry data or would force companies to make this proprietary data public.

"We will need to thread this one real tight!" Richard Yamada, political official who led work on the new policy wrote to Beck after she raised the concerns.

It was not immediately clear if the new proposed rule included measures to address those concerns.

Rush Holt, CEO of the American Association for the Advancement of Science, said Pruitt's changes could keep the agency from revising public health regulations as problems arise or new data comes to light.

"On the surface it sounds so innocuous or even beneficial. What could be wrong with transparency? Well it's clear to me that this is not based on an effort to be transparent. It is rather based on an effort to be just the opposite," he said.

"EPA is particularly important because when science is misused, people die," he added.

Pruitt has been discussing the new scientific policy publicly for weeks, but it only went to the White House for interagency review last week. Such swift review is very rare for the Office of Management and Budget, which often takes months to vet a new policy. At least one group, the Environmental Defense Fund, has requested a meeting with OMB officials to discuss the rule, but OMB's website shows that no meetings have been scheduled with interested groups.

Many public health studies can't be replicated without exposing people to contaminants, and environmental disasters such as the Deepwater Horizon oil spill cannot be recreated, the group said, raising intellectual property, proprietary and privacy concerns.

Pruitt's predecessor Gina McCarthy, and her air chief Janet McCabe, in an op-ed in The New York Times in March said concerns about studies are dealt with through the existing peer-review process, which ensures scientific integrity.

"[Pruitt] and some conservative members of Congress are setting up a nonexistent problem in order to prevent the E.P.A. from using the best available science," they said.

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Murkowski: Pruitt will testify to Senate appropriators [Back](#)

By Anthony Adragna | 04/24/2018 03:03 PM EDT

EPA Administrator Scott Pruitt is scheduled to testify in May before the Senate appropriations subcommittee that oversees his budget, Sen. [Lisa Murkowski](#) (R-Alaska), who chairs the panel, said today.

Murkowski did not elaborate on her plans for the hearing or how much it would delve into Pruitt's ethics and spending. But she said it was "absolutely appropriate" for the Environment and Public Works Committee to hold an oversight hearing on the administrator's conduct in office, an idea that has been endorsed by [multiple Republicans](#) on the authorization committee.

"I'm hoping they move on it sooner than later," Murkowski said of the EPW committee.

EPW Chairman [John Barrasso](#) (R-Wyo.) said today he has "serious questions" about how Pruitt has handled taxpayer dollars but stopped short of announcing plans for Pruitt to testify.

"We'll see what comes out of the hearings this Thursday," Barrasso said, referring to Pruitt's scheduled appearance of two House hearings that day.

Barrasso said he planned to send additional letters to EPA, following his recent request for details on the administrator's use of four separate email accounts. In response to that earlier letter, EPA [told him](#) all of Pruitt's accounts are searched in response to public records requests.

"You want to make sure taxpayers are getting value for their dollars," Barrasso told reporters today. "We want to make sure money is being spent appropriately."

WHAT'S NEXT: Murkowski declined to say when Pruitt would appear before her Appropriations Subcommittee on Interior, Environment and Related Agencies, but she has [said previously](#) it was expected to be the week of May 7.

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Pruitt support in Senate erodes as GOP lawmakers seek hearings [Back](#)

By Anthony Adragna | 04/23/2018 08:32 PM EDT

Scott Pruitt's wall of GOP support is developing new cracks, with three key Senate defenders calling for hearings into the embattled EPA administrator's recent controversies — and Sen. Lisa Murkowski announcing Tuesday that she plans to bring him before her appropriations panel in May.

Three other Republicans, including staunch Pruitt ally Sen. Jim Inhofe (R-Okla.), told POLITICO on Monday that they would also support hearings by the Senate Environment and Public Works Committee to look into the former Oklahoma attorney general's actions. Their words came as Pruitt, who has managed to hold onto President Donald Trump's public support for now, faces a pair of House hearings Thursday that could be make-or-break for his hopes of remaining in the Cabinet.

"I think that a couple of us on the committee think it's appropriate to have a hearing in so far as any accusation having to do with his office is concerned," Inhofe told POLITICO.

Inhofe said he was troubled by a report over the weekend in The New York Times detailing a sweetheart deal Pruitt received on an Oklahoma City home previously owned by a lobbyist while serving in a state government. The Oklahoma Republican declined to discuss which allegations he found disturbing, but said "there are some things in there that I'd like to check out and see."

Joining his call for a Senate hearing were two other senior GOP members of the EPW panel, Sens. Shelley Moore Capito (W.Va.) and John Boozman (Ark.).

"Most people have concerns about some of the allegations," Boozman said. "At some point he'll be before the committee and we'll dig deeper and see exactly what's going on."

EPW Chairman John Barrasso (R-Wyo.) said Tuesday that he has "serious questions" about how Pruitt has handled taxpayer dollars, but he stopped short of announcing plans for Pruitt to testify.

"We want to make sure money is being spent appropriately," Barrasso said.

Murkowski (R-Alaska), who chairs the subcommittee that oversees EPA's appropriations, did not elaborate on her plans for her own hearing with Pruitt, or how much it would delve into his ethics and spending. But she said it would be "absolutely appropriate" for Barrasso's panel to hold an oversight hearing on the administrator's conduct in office, an idea that multiple Republicans on the authorization committee have endorsed.

"I'm hoping they move on it sooner than later," Murkowski said of the EPW Committee.

To date, four House Republicans have called on Pruitt to resign, along with scores of elected Democrats. And Sen. Susan Collins (R-Maine), has said Pruitt was "the wrong person" to lead the agency based on his policies.

Pruitt has drawn criticism about his ethics and lavish spending in recent months. Three congressional committees, the White House and EPA's inspector general are all probing his behavior, ranging from his security expenses, high pay raises for aides, first-class travel and meetings with a coal group.

The House Oversight Committee has requested interviews with five senior agency aides. The White House said it would formally investigate Pruitt's expenses after the Government Accountability Office last week found EPA broke the law by failing to notify Congress about a \$43,000 privacy booth Pruitt had built in his office.

Pruitt will go to the Hill on Thursday to testify before a House Energy and Commerce subcommittee in the morning and at a House Appropriations subpanel in the afternoon. Those appearances will mark his first time before Congress since the recent allegations broke.

Both Inhofe and Capito said they thought those House hearings would prove pivotal for Pruitt's long-term future in the administration.

"It's really important," Capito said. "He's going to have to answer some tough questions. I'm sure they'll be put to him by both sides and we'll see what his response is."

Meanwhile, EPW ranking member Tom Carper (D-Del.) said he had a good conversation with House Oversight Chairman Trey Gowdy (R-S.C.) regarding Pruitt, but he said there was no formal bipartisan agreement to work together on an investigation.

"I just gave him plenty of encouragement that he's doing the right thing," he said.

But the mounting public criticism from Republicans suggests GOP lawmakers' patience in defending the EPA chief's behavior is waning.

"Some of the things that he's done and that he's been alleged to do are just indefensible," Sen. John Kennedy (R-La.) said. "You just can't put lipstick on those pigs. You can't."

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French president to call for American role in Syria [Back](#)

By Ian Kullgren | 04/22/2018 10:03 AM EDT

French President Emmanuel Macron said Sunday he will call for continued U.S. intervention in Syria before a joint session of Congress this week.

"I will advocate for multilateralism," Macron said in an interview on "Fox News Sunday."

Macron is visiting Washington this week in the first official state visit of the Trump presidency. In an interview with Chris Wallace at the presidential palace in Paris, Macron said he has a "special relationship" with President Donald Trump, describing them both as political outsiders.

"Both of us are probably the maverick of the systems on both sides," Macron said. "President Trump's election was unexpected in your country and probably my election was unexpected in my country."

Macron said that the United States is still an indispensable player for achieving peace in the Middle East, adding that France will rely on the U.S. in Syria once the conflict comes to an end.

"We will have to build a new Syria afterwards," he said.

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Apple's Tim Cook attending White House state dinner for Macron [Back](#)

By POLITICO Pro Staff | 04/24/2018 07:15 PM EDT

Apple CEO Tim Cook is attending tonight's White House state dinner for French President Emmanuel Macron.

Cook was spotted arriving for the dinner with former EPA Administrator Lisa Jackson, who is now vice president of environment, policy and social initiatives for Apple, according to a pool report.

Jackson served as head of the EPA under former President Barack Obama.

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Subject: Morning Energy: Heightened vetting for Pruitt-related FOIAs — EPA narrows air permitting guidelines — Coolant industry: Global warming industry is so cool it's hot

By Kelsey Tamborrino | 05/04/2018 05:41 AM EDT

With help from Anthony Adragna, Eric Wolff and Emily Holden

ALL FOIA ONE, ONE FOIA ALL: You may need to have a little patience if you're waiting for EPA to ship over any documents about Administrator Scott Pruitt's activities. Freedom of Information Act requests that relate to Pruitt get an extra layer of vetting before they are released to the public, new internal emails obtained by POLITICO show. Top aides to the administrator, including chief of staff Ryan Jackson, perform the "awareness reviews" on all or most document requests related to Pruitt — on top of the reviews done by career experts. And that is contributing to the slow flow of information released under records requests at EPA, Pro's Alex Guillén reports.

The new vetting processes described in the emails are done before the agency releases essentially any documents involving the administrator. And the emails show Pruitt's political appointees chastising career employees who released documents in accordance with FOIA without letting them screen the records first.

In one exchange from last August, Jackson and Liz Bowman — the head of EPA's Office of Public Affairs who announced on Thursday she was stepping down — expressed concern about documents related to comments Pruitt made on CNBC disputing that carbon dioxide from human activities was the primary cause of climate change. "Why did Kevin Bogardus from E&E all of a sudden get a response to a FOIA today, without any awareness from our FOIA office?" Bowman wrote on Aug. 2, adding later that the deadline wasn't until the end of the month.

ME readers will recall from February that EPA has been flooded with FOIA requests under Pruitt, forcing many groups to sue for the release of documents. But the new emails, which EPA gave to the Natural Resources Defense Council following legal action, shed new light on the cloud of secrecy that surrounds the agency.

While Obama-era EPA officials said the agency sometimes used awareness reviews during their time at the agency when career staff thought documents would generate a lot of interest, FOIA experts say the extra vetting of documents appears to be on the rise under Pruitt. "This does look like the most burdensome review process that I've seen documented," said Nate Jones, director of the FOIA Project at George Washington University's National Security Archive. Read more.

HAPPY FRIDAY! I'm your host Kelsey Tamborrino, and the American Petroleum Institute's Khary Cauthen correctly guessed that Roger Taney — who was nominated for Treasury secretary — was rejected by the Senate, 18-28, in 1834. Not all hope was lost, however, as Taney went on to become a Supreme Court justice. For today: Who was the only member of the Continental Congress to sign all four of the great state papers? Bonus points if you can name all four papers. Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](https://twitter.com/kelseytam), [@Morning_Energy](https://twitter.com/Morning_Energy) and [@POLITICOPro](https://twitter.com/POLITICOPro).

EPA NARROWS GUIDELINES: EPA will alter its interpretation of when related facilities are considered a single source for air permitting purposes in a way that could ease their permitting requirements, Alex reports.

The April 30 memo was sent by EPA air chief Bill Wehrum concerning the so-called common control designation, which says plants located near each other should be aggregated for permitting purposes and subject to stricter standards if they are operated by the same entity. Under the new guidance, that will include entities that can "dictate decisions of the other that could affect the applicability of, or compliance with, relevant air pollution regulatory requirements." The memo concerns a Pennsylvania landfill and nearby biogas processing facility that are owned by different companies. Read more.

ADD ADELSON'S NAME TO THE LIST: Yet another high-profile political ally emerged Thursday to have helped Pruitt arrange an international trip: GOP mega-donor Sheldon Adelson. According to new documents obtained by The Washington Post, Adelson arranged parts of Pruitt's canceled trip to Israel — where he was in part scheduled to unveil an agreement with Water-Gen, an Israeli water purification company championed by Adelson. Read the full report here.

MORE INFO PLEASE: Four senior House Energy and Commerce Democrats — Frank Pallone, Paul Tonko, Diana DeGette and Kathy Castor — sent a letter to Pruitt Thursday asking for the names of three people Steven Hart — a lobbyist who was also married to the EPA chief's landlord — recommended for slots on the agency's Scientific Advisory Board. "Despite your earlier claims that J. Steven Hart had no clients with business before EPA, it is now clear that Mr. Hart did represent clients with business before your agency and, in fact, lobbied you on their behalf," they wrote.

MORE TIME PLEASE: Sixty-four Democrats signed onto a letter to Pruitt calling for a 90-day comment period on a his recent "secret science" proposal to ban the use of studies that don't publicly disclose all their data. "Given the large response from scientists and stakeholders before the rule was officially proposed, a comment period of 30 days will not allow for meaningful engagement from stakeholders," the letter states. Read it here.

'NOT OKAY': Interior's inspector general found a male National Park Service regional office official made unwanted sexual advances toward a female employee on consecutive days that she told him were "not okay." The official retired before a scheduled interview and stopped responding to the IG. Read the report here.

CLOVIS OUT ... AGAIN: Sam Clovis, a former Trump campaign aide who had been serving as the Agriculture Department's liaison to the White House, is departing the department and will return home to Iowa, a USDA official confirmed to POLITICO's Liz Crampton. The president had previously nominated him to be USDA undersecretary for research, education and economics, where he faced backlash for his lack of science credentials and ultimately withdrew his name from consideration for that position in November. Greens had also particularly focused on Clovis for his comments that he did not believe in man-made climate change. Read more.

COOLANT INDUSTRY: GLOBAL WARMING INDUSTRY IS SO COOL IT'S HOT: The White House now has evidence that a global warming treaty limiting coolants would generate thousands of new jobs, and now it must decide whether to send the treaty to the Senate for ratification. A report released Thursday by the Air Conditioning Heating and Refrigeration Institute and the Alliance for Responsible Atmospheric Policy said that the amendment to the Montreal Protocol limiting use of hydrofluorocarbons, a greenhouse gas, would help American manufacturers who produce the bulk of the world's supply of advanced coolants. Ratifying the treaty would produce 33,000 additional jobs and an extra \$12.5 billion of annual manufacturing output.

The report is considered critical to help presidential aides persuade President Donald Trump to advance the treaty to the Senate, despite the president's aversion to multilateral treaties, his predecessor's accomplishments, and anything involving global warming. "U.S. ratification of the Kigali Amendment is good for American jobs, good for the economy, and crucial for maintaining U.S. leadership across the globe," said John Hurst, Chairman of The Alliance, and Vice President of Lennox International. He added, "Over 30 countries have ratified the amendment. America cannot afford to be on the sideline. America must continue to lead."

ZINKE HIRES GOP ADVISER FOR NPS: Interior Secretary Ryan Zinke hired Chuck Laudner, a Iowa Republican political consultant who was an adviser to Trump's campaign, for a position with the National Park Service, an Interior spokeswoman confirmed to Pro's Ben Lefevre. Laudner previously worked with Rick Santorum's presidential campaign in Iowa in 2012 and was executive director for the Iowa Republican Party from 2007-08. Interior hired Laudner "a few weeks ago," spokeswoman Heather Swift said, though she did not say what job he had taken.

MAY THE FOURTH BE WITH YOU: Zinke teased out some "Star Wars" related news on Thursday. In a video featuring the secretary walking alongside motorized BB-8 and R2-D2 toys, the droid rolls over an Interior logo. Zinke tweeted the video with a message: "Tomorrow is a big day. More to come. #MayTheFourthBeWithYou." See it.

BLANKENSHIP ATTACKS McCONNELL'S "CHINA FAMILY": West Virginia GOP Senate hopeful Don Blankenship released another ad on Thursday attacking Majority Leader Mitch McConnell. This time, the spot claims "Swamp Captain Mitch McConnell has created millions of jobs for China people." The ad, which POLITICO's Alex Isenstadt reports on here, is expected to start airing today. It closes with a shot of Blankenship holding two young children, one on each arm as he pronounces, "I will beat Joe Manchin and ditch cocaine Mitch for the sake of the kids." The ad arrives days ahead of the state's May 8 primary.

FOIA WHAT IT'S WORTH: The Montana-based Western Values Project filed a FOIA request to EPA in an effort to make public any communication about Zinke. The request includes all communications between select EPA employees that contain "Zinke," "RZ" or "Interior Secretary" and comes in response to a report in The Atlantic that alleges an EPA press employee planted stories about Zinke in order to distract from his boss. EPA spokesman Jahan Wilcox in a statement to the Atlantic called the allegations "categorically false."

CLIMATE LAWMAKERS REBUT CARBON LEGISLATION: The Citizens' Climate Lobby released a rebuttal to Rep. Steve Scalise's concurrent resolution, H. Con. Res. 119 (115), which expresses the sense of Congress that a carbon tax would be detrimental to the U.S. economy. The climate lobby refutes the resolution, claiming that if done correctly, a tax or fee on carbon could boost the economy. Read the rebuttal here and the bill text here.

MAIL CALL! BIOFUELS WRITE TO EPA ON STRATEGY: A coalition of Midwest biofuels associations sent a letter Thursday to EPA asking it to move administrative time and staff away from Renewable Fuel Standard exemptions and instead toward approvals for cellulosic ethanol. "The discrepancy between the way EPA is handling RFS exemptions and cellulosic ethanol pathway approvals tells you everything you need to know about how this EPA is treating the RFS," said Iowa Renewable Fuels Association Executive Director Monte Shaw in a statement. Read the letter.

— **The Business Council for Sustainable Energy**, a coalition of companies and trade associations, wrote to members of Congress on Thursday, asking that they reauthorize energy title programs in the farm bill, H.R. 2 (115). "It is essential that a healthy, robust bipartisan energy title continue as part of new comprehensive agriculture legislation," writes the group's president, Lisa Jacobson. The letter also lays out potential improvements to the programs. Read it here.

— **Congressional Western Caucus Chairman Paul Gosar led 18 lawmakers** in a letter requesting Pruitt reverse course and proceed with an intention to withdraw the Obama-era EPA's preemptive veto of the Pebble Limited Partnership mining project under Section 404(c) of the Clean Water Act. They write that EPA's January decision not to overturn the preemptive vote "has sowed tumult for interested parties."

VW'S WINTERKORN CHARGED: Former Volkswagen AG leader Martin Winterkorn was charged with conspiracy and wire fraud in connection with the company's long-running emissions cheating scheme, according to an indictment unsealed Thursday by the Justice Department. The indictment, issued by a federal

grand jury sitting in the Eastern District of Michigan, charged Winterkorn with four counts of violating federal law. The first count charges that he conspired with other senior executives and Volkswagen employees to defraud customers, the United States and violate the Clean Air Act by making false representations about the company's supposedly "clean diesel" vehicles. The other three counts concern wire fraud tied to the scheme. More from Pro's Lauren Gardner [here](#).

GOING OUT WEST: New Mexico Sen. [Martin Heinrich](#) delivers a keynote address today at the [Outdoor Economics Conference](#), and he's [expected to discuss](#) his legislation to establish the White Sands National Monument as a national park, as well as discuss the outdoor recreation industry in the region. Watch it live [here](#).

REPORT: GRID RESILIENCY IN THE FACE OF NUCLEAR CLOSURES: A new IHS Markit report released Thursday examines the effect of five nuclear closures in the PJM Interconnection, finding the closures will reduce annual net benefits for consumers from PJM grid-based electricity by about \$8 billion per year over 2013-2016. That "translates into a consumer net benefit per kilowatt-hour of PJM nuclear generation of about 3 cents per kWh," the report found. The report was prepared for Nuclear Matters, an industry-funded organization. Read it [here](#).

MOVER, SHAKER: The Joseph Rainey Center for Public Policy, a think tank focused on sustainable politics and inclusive governance, has named Sarah Hunt its founding CEO. Hunt previously was director at the Center for Innovation and Technology at the American Legislative Exchange Council.

HITTING THE ROADMAP: The Delta Institute released a "Coal Plant Redevelopment Roadmap" on Thursday to provide insight into coal-impacted municipalities and their transition processes. Modules in the roadmap will show economic and environmental impacts, as well as provide information on engagement strategies for such communities, among other topics. See it [here](#).

ON THE POD: NPR's podcast, Embedded, released a new episode Thursday on coal in Buchanan County, Va. Listen [here](#).

QUICK HITS

- Continental Resources' Harold Hamm credits OPEC for boosting oil prices, [Reuters](#).
- Pruitt reimbursed himself \$65,000 from Oklahoma attorney general campaign, [CNN](#).
- Texas officials ignore dioxin spread in Houston waterways, [Associated Press](#).
- Gassy earthquakes near Istanbul may pose new risks to region, [The New York Times](#).

HAPPENING TODAY

9:00 a.m. — The International Energy Agency [webinar](#) on "Outlook for Offshore Energy."

THAT'S ALL FOR ME!

To view online:

<https://subscriber.politicopro.com/newsletters/morning-energy/2018/05/heightened-vetting-for-pruitt-related-foias-203960>

Stories from POLITICO Pro

EPA's top spokesperson to depart [Back](#)

By Emily Holden | 05/03/2018 11:26 AM EDT

EPA's top spokeswoman is leaving the agency, the latest in a string of departures by key staffers amid the swarm of investigations into Administrator Scott Pruitt's potential ethical [lapses](#).

The exit of Liz Bowman comes after Pruitt's lead security agent, Pasquale "Nino" Perrotta, and EPA's Superfund task force head and adviser Albert "Kell" Kelly both [quit](#) earlier this week. Perrotta has cited negative media attention as contributing to his decision. His role in Pruitt's [security spending](#) was under review by the agency's inspector general, and he was interviewed by House Oversight Committee staffers on Wednesday.

EPA also confirmed Kelly was leaving because he attracted controversy over being banned from the banking industry.

Bowman, who will join Iowa Republican Sen. Joni Ernst's staff, has been associate administrator for public affairs since shortly after Pruitt was confirmed in early 2017. She was previously director of issue and advocacy communications for the American Chemistry Council.

"I leave extremely thankful for the opportunity to serve the Trump administration and Administrator Pruitt," Bowman said. "Being a member of the EPA team has allowed me to further my skills, learn from my mistakes and make lifelong friendships. It has also provided me the opportunity to develop a new, and deep, respect for the public servants who serve the American people, day in and day out, to ensure that we all have access to clean air, land and water."

EPA chief of staff Ryan Jackson said Bowman "has been an invaluable lead of our public affairs office during this past year."

"I congratulate her on pursuing great and new opportunities on Capitol Hill where we'll continue to work with her, just in a different capacity," he said.

Bowman's last day at EPA is May 11.

Daniel Lippman contributed to this report.

To view online [click here](#).

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Critics pound EPA chief after he disputes human role in climate change [Back](#)

By Alex Guillén | 03/09/2017 12:04 PM EDT

EPA Administrator Scott Pruitt said Thursday that carbon dioxide emitted by human activity is not the primary driver of climate change, a conclusion out of step with mainstream climate science that drew immediate condemnation from Democrats and environmentalists.

"I think that measuring with precision human activity on the climate is something very challenging to do, and there's tremendous disagreement about the degree of impact," Pruitt said on CNBC. "So, no, I would not agree that it's a primary contributor to the global warming that we see." He also called for continued study of the issue.

That is a stronger position than Pruitt took during his confirmation hearing, when he said that the degree of human contribution to climate change is "subject to more debate."

Democrats rushed to condemn Pruitt's remarks.

"This is just nuts: EPA chief Scott Pruitt just claimed carbon not causing climate change," Sen. Brian Schatz (D-Hawaii) tweeted a few minutes after the interview aired. "We Senate D's will be a check on his crazy views."

Most scientists agree that greenhouse gases emitted by human activity like burning fossil fuels is the primary driver of climate change. That includes Pruitt's own agency, which says that human-emitted CO2 "is the primary greenhouse gas that is contributing to recent climate change."

One prominent environmentalist suggested Pruitt should be impeached.

"Pruitt misled Congress about his willingness to do a core part of his job," Sierra Club Executive Director Michael Brune wrote on Twitter. "Contradicting science + law should mean removal from office now."

Pruitt also acknowledged on his CNBC appearance that the Supreme Court has ruled on the matter and that the Obama administration issued an "endangerment finding" concluding greenhouse gases are a threatening pollutant.

But, he added, "nowhere in the continuum, nowhere in the equation, has Congress spoken. The legislative branch has not addressed this issue at all."

Pruitt was slated to speak at the CERAWEEK oil industry conference in Houston later Thursday. He said on CNBC that he would bring a "pro-growth, pro-jobs and pro-environment" message to the conference.

To view online [click here](#).

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EPA narrows guidelines for aggregating sources for air permitting [Back](#)

By Alex Guillén | 05/03/2018 05:59 PM EDT

EPA will alter its interpretation of when related facilities are considered a single source for air permitting purposes in a way that could ease their permitting requirements.

Permitting rules say that plants located near each other should be aggregated for permitting purposes if they are operated by the same entity, known as "common control." In that case, the facilities' emissions can be aggregated and be subject to more stringent permitting requirements than if treated separately.

In an April 30 memo concerning a common control designation for a Pennsylvania landfill and nearby biogas processing facility that are owned by different companies, EPA air chief Bill Wehrum revised the agency's interpretation so that facilities meet the definition if one entity has "the power or authority ... to dictate decisions of the other that could affect the applicability of, or compliance with, relevant air pollution regulatory requirements."

A dependent relationship should not necessarily mean common control, he added. Facilities can be "economically or operationally interconnected" without being able to direct the other.

In the immediate case of the Pennsylvania landfill and processing plant, Wehrum concluded that the two are not commonly controlled because the landfill could otherwise meet methane emissions limits by burning off biogas and because the processing plant hopes to secure other sources of biogas.

WHAT'S NEXT: Ultimately, EPA's reasoning is only a recommendation. Pennsylvania regulators have the final say on whether these particular facilities fall under "common control."

To view online [click here](#).

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Sam Clovis is leaving USDA [Back](#)

By Liz Crampton | 05/03/2018 08:16 PM EDT

Sam Clovis, the former Trump campaign aide who had been serving as USDA's liaison to the White House, is leaving the Agriculture Department and will return home to Iowa, a USDA official confirmed Thursday evening.

Clovis' last day is Friday. A "goodbye party" was being held for him on Thursday night, according to a source attending the party.

Clovis had served as a co-chairman and policy adviser on the Trump campaign and later led the USDA beachhead team for the Trump transition, but ran into trouble when President Donald Trump nominated him to be USDA undersecretary for research, education and economics.

Clovis withdrew his name from consideration in November — before the Senate Agriculture Committee could hold a confirmation hearing — after facing a torrent of criticism from Senate Democrats and environmental advocates. Clovis drew fire for his skepticism of climate science, past comments on issues like race and gender, and what critics on the left said was his lack of scientific credentials that are legally required for the position, which would also have had him serve as the department's chief scientist.

Clovis had endured criticism for months, but his withdrawal came shortly after he was swept up in special counsel Robert Mueller's probe of Russian interference in the 2016 campaign and the Trump campaign's alleged ties to Russian interests. While serving on the campaign, Clovis had supervised George Papadopoulos, a Trump campaign foreign policy adviser who struck a plea deal on charges he lied to FBI investigators about his communications with Russia-linked contacts. Clovis' withdrawal followed shortly after news of Papadopoulos' plea deal.

More recently, Clovis had been posted to the Natural Resources Conservation Service to provide guidance.

"Dr. Clovis was one of the first people through the door at USDA in January 2017, and we are grateful for his time here," a USDA spokesman said. "He is a good man and a patriot who for decades has served his country admirably. While we are sad Dr. Clovis is leaving USDA, we wish him well on his future endeavors back home in Iowa."

Daniel Lippman contributed to this report.

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Zinke hires Iowa political consultant for Interior parks job [Back](#)

By Ben Lefebvre | 05/03/2018 06:55 PM EDT

Interior Secretary Ryan Zinke has hired Iowa Republican political consultant Chuck Laudner for a position with the National Park Service, an Interior spokeswoman confirmed today.

Interior hired Laudner "a few weeks ago," spokeswoman Heather Swift said, though she did not say what his job he had taken.

"Rebuilding our National Parks infrastructure is a major legislative priority of the Secretary and President and Chuck is helping make it happen," Swift said.

Laudner was an [adviser](#) to President Donald Trump's campaign, and he previously worked with Pennsylvania Republican Sen. Rick Santorum's presidential campaign in Iowa in 2012. Laudner also worked as the executive director for the Iowa Republican Party from 2007 to 2008.

Iowa has two national parks, according to the NPS website.

Laudner's appointment could be the latest example that Zinke is considering a possible presidential run. A [polling firm](#) asked Iowa residents in April their opinion on Zinke, while a political group run by former advisers to Vice President Mike Pence paid for a 30-second [television ad](#) featuring Zinke that aired in Washington, D.C. in March.

"What a curious hire," said Aaron Weiss, media director at Center for Western Priorities, a conservation group. "Chuck Laudner doesn't appear to be at all qualified for a job at the Interior Department, but he's very well-qualified to advise a politician with future ambitions in Iowa."

To view online [click here](#).

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Blankenship goes after McConnell's 'China family' in new ad [Back](#)

By Alex Isenstadt | 05/03/2018 05:25 PM EDT

West Virginia GOP Senate hopeful Don Blankenship is amping up his racial attacks on Senate Majority Leader Mitch McConnell with a new ad declaring, "Swamp captain Mitch McConnell has created millions of jobs for China people."

"While doing so, Mitch has gotten rich," Blankenship adds. "In fact, his China family has given him tens of millions of dollars."

McConnell's wife, Transportation Secretary Elaine Chao, was born in Taiwan and her parents are Chinese. Her father is chairman of a shipping company.

The new spot, which is expected to start airing on Friday, comes just ahead of the May 8 primary. As the dramatic contest comes to a close, Blankenship, a former coal baron who spent a year in prison following the 2010 explosion at his Upper Big Branch Mine that killed 29 workers, has focused his assault squarely on McConnell — sometimes in harshly racial terms.

During a recent interview with POLITICO, Blankenship said McConnell "has a lot of connections in China." He also said that Chao is "from China, so we have to be really concerned that we are in truth" putting America's interests first.

Earlier this week, Blankenship began running another TV spot labeling McConnell "cocaine Mitch." The spot is apparently in reference to a 2014 report that drugs were once found aboard a shipping vessel owned by Chao's family.

McConnell has singled out Blankenship for defeat, convinced that a Blankenship primary win would destroy the party's prospects for defeating Democratic Sen. Joe Manchin in November. A McConnell-aligned super PAC has aired about \$1.3 million in negative ads against Blankenship.

Blankenship is facing two more mainstream GOP opponents, Rep. Evan Jenkins and state Attorney General Patrick Morrisey. Recent polls have shown Blankenship fading.

With Blankenship going after Chao, McConnell's political team has swung back aggressively. Josh Holmes, a longtime McConnell political adviser, has described Blankenship as "mentally ill."

In his new spot, Blankenship responds to that accusation, saying: "Mitch's swamp people are now running false, negative ads against me. They're also childishly calling me despicable and mentally ill."

The ad closes with a shot of Blankenship holding two young children, one on each arm as he pronounces, "I will beat Joe Manchin and ditch cocaine Mitch for the sake of the kids."

Holmes fired back at Blankenship. "This clown is a walking talking case study for the limitation of a prison's ability to rehabilitate," he wrote in a text message.

While Blankenship has attempted to focus the campaign on China during the closing stretch of the race, McConnell's team has noted that in 1999 Blankenship spoke of moving to China and becoming a Chinese citizen. Blankenship's girlfriend was born in China, according to media reports.

To view online [click here](#).

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Pruitt airs environmental concerns about proposed Alaska mine [Back](#)

By Alex Guillén | 01/26/2018 07:34 PM EDT

EPA Administrator Scott Pruitt today announced he has serious concerns about any potential mining project in Alaska's Bristol Bay region, creating doubt that the controversial Pebble Mine proposal may ultimately be approved.

EPA said in a release today that it will suspend its proposed withdrawal of Obama-era restrictions after hearing from Alaskan residents and other interested parties. The proposed mine has long drawn opposition from some in the state, including independent Gov. Bill Walker, as well as environmentalists, over worries that it could harm Bristol Bay's critical salmon fisheries.

"It is my judgment at this time that any mining projects in the region likely pose a risk to the abundant natural resources that exist there," Pruitt said in a statement. "Until we know the full extent of that risk, those natural resources and world-class fisheries deserve the utmost protection."

The permitting process, which is handled at this stage by the Army Corps of Engineers, can continue, EPA said. But the agency warned that the developers will have to clear a "high bar." The agency added in a release that not revealing Pruitt's doubts at this stage would be "disingenuous." EPA has veto power over such Army Corps permits.

Pebble Limited Partnership CEO Tom Collier said in a statement that the company "can demonstrate that we can responsibly construct and operate a mine at the Pebble Deposit that meets Alaska's high environmental standards."

To view online [click here](#).

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DOJ charges former VW CEO with conspiracy, wire fraud [Back](#)

By Lauren Gardner | 05/03/2018 04:42 PM EDT

DOJ unsealed an indictment today charging former Volkswagen AG leader Martin Winterkorn with conspiracy and wire fraud linked to the automaker's effort to cheat U.S. diesel emissions standards.

Winterkorn is charged with one count of conspiracy with other VW executives to defraud the United States, along with the manufacturer's customers. The other three counts concern wire fraud tied to the scheme.

"If you try to deceive the United States, then you will pay a heavy price," Attorney General Jeff Sessions said in a statement. "The indictment unsealed today alleges that Volkswagen's scheme to cheat its legal requirements went all the way to the top of the company. These are serious allegations, and we will prosecute this case to the fullest extent of the law."

The indictment alleges that Winterkorn knew of the emissions cheating as far back as May 2014, and that he was informed again of it in July 2015. VW as a company pleaded guilty in March 2017 to criminal charges related to the regulatory deception and agreed to pay a \$2.8 billion criminal penalty.

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Subject: Morning Energy: How 'the swamp' could overtake West Virginia's primary — Groups react to EPA's proposed 'secret science' rule — API to tap Mike Sommers

By Kelsey Tamborrino | 05/01/2018 06:01 AM EDT

With help from Garrett Ross

HOW 'THE SWAMP' COULD OVERTAKE WEST VIRGINIA'S PRIMARY: West Virginia Attorney General Patrick Morrisey may be touting himself in the GOP Senate primary as a Washington outsider who wants to "blow up" D.C., but his opponents are dragging him through the muddy swamp. "Morrisey got filthy rich in the swamp lobbying for special interests," says the narrator of one of his opponent Rep. Evan Jenkins' ads, Pro's Theodoric Meyer reports. And while Morrisey, who's hoping to take on Democratic Sen. Joe Manchin this fall, has so far weathered the attacks and continues to do well in public polling, the May 8 vote will ultimately test whether GOP voters are willing to send a former lobbyist to Washington.

"Morrisey's self-described 'outsider' rhetoric cloaks an insider record: Before he was elected attorney general, Morrisey spent eight years as a Washington lobbyist, and the influence industry has fueled his campaign with hundreds of thousands of dollars in contributions," Theo writes. "It's going to be challenging, because the word 'lobbyist' has such negative connotations," said Cam Savage, a Republican operative who helped run Sen. Todd Young's successful 2016 campaign against former Democratic Sen. Evan Bayh, whose work for a Washington law and lobbying firm hindered his campaign. Read more.

IN THE OTHER CORNER of the Republican primary sits coal baron Don Blankenship, who spent a year in prison following the 2010 explosion at his Upper Big Branch Mine that killed 29 workers and who continues to escalate his attacks against Senate Majority Leader Mitch McConnell, POLITICO's Alex Isenstadt reports. The Senate hopeful is out with a new ad that dubs McConnell "Cocaine Mitch" as polls show Blankenship falling behind his more mainstream opponents. "One of my goals as U.S. senator will be to ditch Cocaine Mitch," Blankenship says toward the end of the new ad, possibly referring to a 2014 report in the liberal Nation magazine that drugs were once found aboard a shipping vessel owned by the family of McConnell's wife, Transportation Secretary Elaine Chao, Alex reports.

WELCOME TO TUESDAY! I'm your host Kelsey Tamborrino. BP America's Bob Stout was the first to correctly guess that former President Calvin Coolidge was the first president to attend the White House Correspondents' Dinner. For today: Which president brought the first professional baseball team to the White House to visit? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter @kelseytam, @Morning_Energy and @POLITICOPro.

POLITICO's Ben White is bringing Morning Money to the Milken Institute Global Conference to provide coverage of the day's events and evening happenings. The newsletter will run April 29 - May 2. Sign up to keep up with your daily conference coverage.

WHILE CONGRESS IS AWAY, THE CONFERENCES WILL PLAY: The National Hydropower Association continues its Waterpower Week in Washington today with remarks from FERC Chairman Kevin McIntyre and Thomas Smith, chief of operations and regulatory division for the U.S. Army Corps of Engineers. McIntyre will discuss the "global frontiers of waterpower," providing an update on FERC's

hydropower activities and his perspective on the industry's future. Smith will deliver remarks during the presidential luncheon this afternoon, alongside Herbie Johnson, hydro general manager at the Southern Company. The annual conference is tied to three co-located conferences, including the NHA conference, the International Marine Renewable Energy Conference and the Marine Energy Technology Symposium.

— **The Solar Summit 2018 also kicks off today in San Diego**, where Abigail Ross Hopper, president and CEO of the Solar Energy Industries Association, will discuss solar in the Trump era, with a focus on the corporate tax reform, Section 201 and other macro-level risks. Hopper will be joined on stage by Avangrid Renewables' Laura Beane and Charlie Gray, director of the Solar Energy Technologies Office at DOE's Office of Energy Efficiency & Renewable Energy.

A LOAN IN THE SUN: Coinciding with the solar conference, GTM Research is out with a new report this morning on U.S. residential solar financing. The report found that last year was the first year since 2011 when more systems have been purchased with cash and loans (59 percent) than with leases and power purchase agreements (41 percent). That's in part due to the availability of loan products, as well as a shortage of third-party ownership suppliers, and Tesla and Vivint's move away from third-party ownership, the GTM report found.

The report also said that competition has intensified in solar loans, with various solar-specific loan providers, traditional banks and credit unions entering the realm. The increased competition has led to "uber-competitive rates and therefore compressed margins, leaving questions about the financial health and long-term viability of many of these loan providers," a summary of the report said.

RULE REACTIONS: EPA is moving full-speed ahead in its controversial scientific policy that would exclude the use of studies that don't publicly disclose all data. The agency published the proposed rule in the Federal Register on Monday, kicking into gear a 30-day comment period. And already, several groups have come forward to oppose the policy, laying out what they see as the policy's adverse effects — and calling for more consideration before any formal change.

— **The Union of Concerned Scientists** — which sent a letter signed by more than 1,000 scientists to EPA Administrator Scott Pruitt last week asking him to reverse course prior to the rule's announcement — plans to send another urging for the comment period to be extended a minimum of 60 days and calling for the agency to hold three public hearings across the U.S. to receive additional input. "The current timeframe and lack of opportunities for engagement are wholly inadequate and will not allow for thorough public input of this proposed rule and its impact on science-based health and environmental safeguards." Read the letter here.

— **A group of scientific journals** released a joint statement saying that the proposal "does not strengthen policies based on scientific evidence to limit the scientific evidence that can inform them; rather, it is paramount that the full suite of relevant science vetted through peer review, which includes ever more rigorous features, inform the landscape of decision making. Excluding relevant studies simply because they do not meet rigid transparency standards will adversely affect decision-making processes."

A SOMMERS DAY: The American Petroleum Institute is expected to tap Mike Summers to replace Jack Gerard to lead the oil and gas industry lobbying group, two sources tell POLITICO's Emily Holden and Eric Wolff. Summers was former House Speaker John Boehner's chief of staff and has since spent two years leading the American Investment Council, a private equity trade group. Gerard announced earlier this year that he would step down in August. Read more.

TRUMP GRANTS TARIFF EXTENSION FOR SOME: The president extended a temporary exemption by one month for Canada, Mexico and the European Union from heavily watched steel and aluminum tariffs, the White House announced Monday. The move gives the key U.S. allies until June 1 to reach a deal with the administration to avoid the tariffs of 25 percent on steel and 10 percent on aluminum exports sent to the United

States. The tariffs were slated to take effect at 12:01 a.m. today if President Donald Trump had not moved to extend the deadline, POLITICO's Megan Cassella [reports](#).

WHISTLEBLOWER SAYS PRUITT LIED: Kevin Chmielewski, the former deputy chief of staff for operations at EPA, told ABC News Pruitt was telling a "bold-faced" lie last week when he testified to lawmakers that none of his employees were retaliated against for raising concerns about his spending decisions. Chmielewski, who was dismissed and is now acting as a whistleblower, told ABC that chief of staff Ryan Jackson called him into his office and said: "Hey — Administrator Pruitt either wants me to fire you or put you in an office so that he doesn't have to see you again." Chmielewski added: "And in addition to that, he wants to put Millan (Hupp) in your spot, as your title and your pay grade."

EPA declined to comment to ABC in response to Chmielewski's allegations, but the outlet said it obtained a personnel form filled out by EPA human resources officials that said Chmielewski resigned on March 17. "The form is not signed by Chmielewski, who says he was actually forced to leave a month before that date," ABC writes. [Read more.](#)

DEMOCRATS PRESS PRUITT ON TESTIMONY: Separately, Democratic Reps. [Doris Matsui](#) and [Paul Tonko](#) sent a letter Monday calling out a different aspect of Pruitt's testimony last week before Congress. The pair point to a contradiction between Pruitt's remarks and reports that the administration has [drafted](#) a proposed rulemaking to block California's waiver authority to set stricter standards for light-duty vehicles. "If true, these reports directly contradict your testimony last week. As you were reminded at the start of that hearing, it is a violation of the law to knowingly make false statements to a Congressional committee," Matsui and Tonko write in a letter to Pruitt. Asked last week about whether he would revoke California's special Clean Air Act waiver, Pruitt [told lawmakers](#) "not at present." The lawmakers requested Monday that Pruitt provide all documentation related to the development of the notice of proposed rulemaking by Friday. [Read the letter here.](#)

SAGE SUIT: Conservation groups are suing the Trump administration over policies that they say would "adversely impact essential habitats and populations" for the greater sage grouse. The lawsuit, filed in the U.S. District Court in Boise, concerns Interior Department's oil and gas lease auctions in Nevada, Utah, Montana, Wyoming and Idaho — and calls on the court to reverse the sales. "There's no scientific or legal support behind these policies, and no public support for them either," said Michael Saul, a senior attorney at the Center for Biological Diversity. "They're clearly intended to make fossil fuel development the dominant use of public land, and that's illegal." [Read the complaint.](#)

DOE 'ENCOURAGED' BY PJM MOVE: The Energy Department said it was "encouraged" by news Monday that PJM Interconnection [will perform](#) "stress tests" on different parts of the grid to identify fuel supply vulnerabilities. "PJM's concerns are consistent with what DOE, NERC, and others have been saying for years: premature retirements of fuel-secure resources are putting the future of our nation's electric grid at risk, and that undermines our national security," DOE press secretary Shaylyn Hynes said in a statement. DOE urges the regulatory agency "to take immediate action to stop the loss of fuel-secure capacity," Hynes said, adding that DOE continues to review all of its options within its authority to ensure a resilient grid. Recently, Energy Secretary Rick Perry [has considered](#) invoking the 1950 Defense Production Act to keep money-losing power plants running by designating them as crucial for national security.

BY PROXY: A new report from the American Council for Capital Formation out today found that proxy advisory firms — which advise shareholders on how to assess and vote on company plans — are operating with minimal oversight and are moving toward an increasingly activist stance on issues relating to the environment, as well as social and political issues. The report, titled "The Conflicted Role of Proxy Advisors," examines the impact such proxy firms have on major policies at most publicly traded companies. [Read it here.](#)

FIRST OFFICIAL DAY ON THE JOB: Today is Secretary of State Mike Pompeo's first full day in Foggy Bottom, where he will deliver a speech to introduce himself to the department. POLITICO's Nahal Toosi breaks

down the differences between Pompeo and his predecessor and former Exxon Mobil CEO Rex Tillerson [here](#). But keep an ear out for any climate mentions, as diplomats and environmentalists [gather](#) today in Bonn, Germany, to work out the kinks of the Paris climate agreement. Greens have hit Pompeo as a climate science doubter, while others like Competitive Enterprise Institute's Myron Ebell have said the Kansas Republican will be a "forceful advocate" of Trump's decision to exit the Paris accord.

A PENNY FOR YOUR FREETHOUGHT CAUCUS: Democratic Reps. [Jared Huffman](#), [Jamie Raskin](#), [Jerry McNerney](#) and [Dan Kildee](#) launched the Congressional Freethought Caucus on Monday "to promote sound public policy based on reason, science, and moral values, protect the secular character of our government, and champion the value of freedom of thought worldwide." In a [statement](#), Huffman said the caucus "will help spark an open dialogue about science and reason-based policy solutions."

PAY THE PRICE: The New York Independent System Operator and state policymakers released [a draft plan](#) on Monday to price carbon as part of the electric system, [Pro New York's Marie French](#) reports. The move comes as an early step toward addressing the impact of state subsidies for renewables and nuclear power on the competitive market. "Under the proposal, a social cost of carbon set by state regulators would be added on to regional energy prices," Marie writes. Read [more](#).

MAIL CALL! A coalition of more than 160 groups sent a letter to Interior Secretary Ryan Zinke on Monday in opposition to the department's [proposal](#) to rescind the "blanket rule" the U.S. Fish and Wildlife Service used to extend protections for endangered species. Read the [letter](#).

— **Oregon Sens. [Ron Wyden](#) and [Jeff Merkley](#)** and Reps. [Earl Blumenauer](#), [Peter DeFazio](#), [Suzanne Bonamici](#) and [Kurt Schrader](#) sent a letter Monday to Office of Management and Budget Director Mick Mulvaney and Assistant Army Secretary R.D. James., requesting federal officials support a flood protection feasibility study for Portland. Read it [here](#).

MOVER, SHAKER: The White House is expected to tap California agriculture attorney Michael Stoker to lead EPA's San Francisco-based Region 9 office, [sources tell E&E News](#). The regional office is the only one to which Trump has not appointed a leader.

A NEW LOOK: Trade association the American Exploration & Production Council is launching today a [new website](#) and [Twitter](#) and [Facebook](#) accounts. The new website will include videos, fact sheets, info-graphics and issue pages.

QUICK HITS

— Utilities, oil interests clash over EV policy at conservative policy summit, [Utility Dive](#).

— Contura, Alpha to merge, creating largest U.S. met coal producer, [Reuters](#).

— Blankenship's mine took this man's son, brother and nephew. Now Blankenship wants his vote, [Huffington Post](#).

— In cities v. fossil fuels, Exxon's allies want the accusers investigated, [InsideClimate News](#).

— Australia investing \$377 million to protect Great Barrier Reef, [NPR](#).

HAPPENING TODAY

8:45 a.m. — GreenTech Media holds [Solar Summit](#), San Diego

10:00 a.m. — CSIS Energy & National Security Program discussion on carbon pricing, 1616 Rhode Island Ave NW

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To view online:

<https://subscriber.politicopro.com/newsletters/morning-energy/2018/05/how-the-swamp-could-overtake-west-virginias-primary-197520>

Stories from POLITICO Pro

Lobbyists fuel lobbyist-turned-'outsider' Senate candidate Back

By Theodoric Meyer | 05/01/2018 05:00 AM EDT

West Virginia Attorney General Patrick Morrisey has gone a notch above pledging to "drain the swamp" during his Senate campaign. "Let's not just change Washington; let's blow it up," Morrisey says in an early TV ad, as he drops a mountain on the Capitol dome.

But Morrisey's self-described "outsider" rhetoric cloaks an insider record: Before he was elected attorney general, Morrisey spent eight years as a Washington lobbyist, and the influence industry has fueled his campaign with hundreds of thousands of dollars in contributions. Morrisey's wife is also a lobbyist, and their work in D.C. has been the subject of unforgiving attacks from both of Morrisey's opponents in the Republican Senate primary.

"Morrisey got filthy rich in the swamp lobbying for special interests," the narrator says in one of Rep. Evan Jenkins' commercials.

Morrisey has weathered the attacks, leading the field or running a close second in recent public polls of the Republican primary to take on Democrat Joe Manchin, one of the most vulnerable senators up for reelection this year. The race has attracted national attention as Washington Republicans attempt to derail the candidacy of Don Blankenship, the former coal-mining executive who spent a year in prison for his role in a mine explosion that killed 29 men. But next week's primary will also test whether GOP voters are willing to send a former lobbyist to Washington, despite President Donald Trump's vow to curb K Street's influence.

"It's going to be challenging, because the word 'lobbyist' has such negative connotations," said Cam Savage, a Republican operative who helped run Sen. Todd Young's (R-Ind.) successful 2016 campaign against former Democratic Sen. Evan Bayh, whose work for a Washington law and lobbying firm hindered his campaign.

While Morrisey has tried to deflect attention away from his lobbying past, he has embraced it behind the scenes. Morrisey's campaign raised more than \$250,000 from more than 200 current and former registered lobbyists through March 31, according to a POLITICO review of campaign finance records — accounting for nearly 20 percent of his individual donations.

Morrisey has raised even more from corporate and lobbying firm PACs, as well as from people who aren't registered lobbyists but clearly work in Washington's influence industry, such as former Rep. Mike Ferguson (R-N.J.), who heads BakerHostetler's federal policy team but isn't registered as a lobbyist. Of the \$250,000, roughly \$167,000 of it comes from lobbyists who are currently registered.

Many of Morrisey's lobbyist contributors work for health care and pharmaceutical interests, which Morrisey represented during his own years on K Street. They include Rodger Currie, the top lobbyist for Pharmaceutical

Research and Manufacturers of America, the powerful trade group for drug companies, who wrote Morrisey's campaign a \$2,000 check in December.

Former Rep. David Jolly (R-Fla.), a former lobbyist elected in 2014, said his lobbying background "was definitely an issue that my opponents tried to use to define me" in the race. He was able to overcome those attacks, he said, because he hadn't lobbied for clients that voters found objectionable.

Morrisey represented about 30 clients during his time at two Washington firms, Sidley Austin and King & Spalding, including big pharmaceutical companies such as Bayer, Novartis and Novo Nordisk. If Jolly had represented such clients, he said, he might have had a tougher race.

"These are very fair and legitimate questions," Jolly said.

Morrisey has shied away from discussing his lobbying days, instead casting himself as an outsider and conservative in contrast with Jenkins, who used to be a Democratic state legislator.

Morrisey refused to say the word "lobbyist" during a debate last week, even as Jenkins and Blankenship attacked him for lobbying for the pharmaceutical industry — a sensitive subject in a state that's struggling to combat an opiate crisis partly fueled by drug distributors. Asked by the moderators at the end of the debate to clear up a misconception about himself, Morrisey said only that he'd "never worked on opiate issues in the private sector."

Morrisey's campaign website uses similar language, describing him as a former "health care attorney in the private sector."

Jenkins, who's facing Blankenship and Morrisey in the three-way race for the nomination, has raised far less from K Street, even though, as a sitting congressman, he has plenty of opportunity to mingle with lobbyists, too.

A review of Jenkins' campaign finance reports turned up only 10 current and former lobbyists who had given a combined \$20,000 to his campaign since he filed to run last May. Four of them are currently registered. Jenkins has raised much more than Morrisey from corporate PACs: about \$136,000 to Morrisey's \$86,000, according to a POLITICO analysis.

Morrisey's campaign declined to make him available for an interview.

"Patrick Morrisey served as a law partner and practice group co-chair at two of the largest law firms in the country, focusing his practice on health care regulatory matters, legislative issues, compliance, fraud and abuse, administrative law, investigations, and solving client problems," Nachama Soloveichik, a Morrisey campaign spokeswoman, said in an statement.

Preeya Noronha Pinto, a partner at King & Spalding who lobbied alongside Morrisey and gave his campaign \$500 last year, said much of their work involved meeting with administration officials and, occasionally, members of Congress in an effort to get Medicare, Medicaid and other government health care programs to cover new drugs and medical devices developed by their clients. She said she hadn't seen the ad in which Morrisey drops a mountain on the Capitol, but she wasn't surprised he was running a campaign critical of Washington.

"I think everybody in a certain respect, even if they've worked here for years, thinks that D.C. is dysfunctional and there's a lot of room for improvement," Pinto said.

Morrisey's wife, Denise Henry Morrisey, has also been the subject of attacks based on her lobbying work.

"His wife's firm lobbies for Planned Parenthood," the narrator charges in one of Blankenship's TV ads. "The Morrisseys won't stop drug abuse or abortions by lobbying for drug companies and abortion clinics."

Soloveichik, the Morrissey campaign spokeswoman, said Denise Morrissey would stop lobbying if her husband were elected to the Senate. But she declined to say whether Denise Morrissey would give up her stake in Capitol Counsel, a top Washington firm in which she owns a 15 percent stake.

Denise Morrissey agreed to an interview with POLITICO last week but later stopped responding to emails and phone calls.

Savage, the Republican operative who worked as a consultant on Young's campaign in 2016, said it was possible to parry lobbying attacks — but only with willingness to answer questions about it.

Savage managed former GOP Sen. Dan Coats' comeback campaign in Indiana in 2010, when he won back his old seat in 2010 after working as a lobbyist. Savage credited Coats' victory, in part, to his willingness to be forthcoming about his lobbying work.

"The attacks after that kind of fell flat, to be honest with you," Savage said.

Kevin Robillard contributed to this report.

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Blankenship slams 'Cocaine Mitch' in anti-McConnell ad [Back](#)

By Alex Isenstadt | 04/30/2018 06:23 PM EDT

West Virginia Senate hopeful Don Blankenship is intensifying his offensive against Majority Leader Mitch McConnell, calling him "Cocaine Mitch" in a new TV ad released just more than a week until the Republican primary.

"One of my goals as U.S. senator will be to ditch Cocaine Mitch," Blankenship says toward the end of the [spot](#), which comes as polls show the coal baron falling behind his more mainstream opponents.

Blankenship, who spent a year in prison following the 2010 explosion at his Upper Big Branch Mine that killed 29 workers, offers no context for the jab. But he may be referring to a 2014 [report](#) in the liberal Nation magazine that drugs were once found aboard a shipping vessel owned by the family of McConnell's wife, Transportation Secretary Elaine Chao.

Blankenship has gone after McConnell in startlingly personal ways. During a recent interview with POLITICO, Blankenship said McConnell "has a lot of connections in China," and that Chao is "from China, so we have to be really concerned that we are in truth" putting America's interests first.

A McConnell representative did not respond to a request for comment.

With the May 8 primary fast approaching, Blankenship has launched a slash-and-burn campaign targeting the Senate GOP leader. Blankenship's offensive comes as polls show him falling behind GOP Rep. Evan Jenkins and state Attorney General Patrick Morrisey in the primary.

McConnell's political operation has moved aggressively to block Blankenship's path. Operatives close to the majority leader, convinced that Blankenship would lose to Democrat Joe Manchin in the November general election, have launched a super PAC that has spent about \$1.3 million on TV ads attacking the coal baron.

One ad from Mountain Families PAC describes Blankenship as a "convicted criminal," who lived a lavish lifestyle while ignoring mine safety laws.

"Don Blankenship was about the money," the spot concludes. "West Virginia families paid the price."

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Pruitt scales back EPA's use of science [Back](#)

By Emily Holden and Annie Snider | 04/24/2018 03:17 PM EDT

Environmental Protection Agency chief Scott Pruitt announced Tuesday he would seek to bar the agency from relying on studies that don't publicly disclose all their data, a major policy change that has long been sought by conservatives that will sharply reduce the research the agency can rely on when crafting new regulations.

The unveiling of the proposed rule delivers a win to Republicans like House Science Chairman [Lamar Smith](#) (R-Texas), who unsuccessfully pushed legislation to impose the same type of change. The move also demonstrates Pruitt's persistence in pursuing President Donald Trump's anti-regulation agenda just two days before the embattled EPA chief is due to face fierce questioning from lawmakers about his hefty spending, expanded security detail and cheap condominium rental from the wife of an energy lobbyist.

At an invitation-only meeting at EPA headquarters with Smith, Sen. [Mike Rounds](#) (R-S.D.) and other supporters of the policy, Pruitt said the proposed rule was critical in ensuring that the agency was transparent about how it is making decisions to justify costly new regulations. It is the latest step Pruitt has taken to fundamentally shift the agency's approach to science.

"It is a codification of an approach that says as we do our business at the agency the science that we use is going to be transparent, it's going to be reproducible, it's going to be able to be analyzed by those in the marketplace. And those who watch what we do can make informed decisions about whether we've drawn the proper conclusions or not," Pruitt said.

Text of the proposed rule was not immediately available.

The proposal, based on legislation pushed by Smith, is intensely controversial, and scientists and public health groups say it will prevent federal regulators from enacting health and safety protections. Nearly 1,000 scientists, including former EPA career staffers, signed a [letter](#) opposing the policy sent by the Union of Concerned Scientists to Pruitt on Monday.

Their primary concern was that many of the country's bedrock air and water quality regulations are based on research that cannot disclose raw data because it includes the personal health information.

But industry has its own version of the same problem. EPA often relies on industry studies that are considered by companies to be confidential business information when determining whether new pesticides and toxic chemicals are safe to use. Internal EPA emails obtained under the Freedom of Information Act show that EPA political officials, including Nancy Beck, who became the chief of the agency's chemical safety office last year after working for years at a chemical industry lobbying group, worried that the new policy would limit the agency's ability to consider industry data or would force companies to make this proprietary data public.

"We will need to thread this one real tight!" Richard Yamada, political official who led work on the new policy wrote to Beck after she raised the concerns.

It was not immediately clear if the new proposed rule included measures to address those concerns.

Rush Holt, CEO of the American Association for the Advancement of Science, said Pruitt's changes could keep the agency from revising public health regulations as problems arise or new data comes to light.

"On the surface it sounds so innocuous or even beneficial. What could be wrong with transparency? Well it's clear to me that this is not based on an effort to be transparent. It is rather based on an effort to be just the opposite," he said.

"EPA is particularly important because when science is misused, people die," he added.

Pruitt has been discussing the new scientific policy publicly for weeks, but it only went to the White House for interagency review last week. Such swift review is very rare for the Office of Management and Budget, which often takes months to vet a new policy. At least one group, the Environmental Defense Fund, has requested a meeting with OMB officials to discuss the rule, but OMB's website shows that no meetings have been scheduled with interested groups.

Many public health studies can't be replicated without exposing people to contaminants, and environmental disasters such as the Deepwater Horizon oil spill cannot be recreated, the group said, raising intellectual property, proprietary and privacy concerns.

Pruitt's predecessor Gina McCarthy, and her air chief Janet McCabe, in an op-ed in The New York Times in March said concerns about studies are dealt with through the existing peer-review process, which ensures scientific integrity.

"[Pruitt] and some conservative members of Congress are setting up a nonexistent problem in order to prevent the E.P.A. from using the best available science," they said.

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By Emily Holden and Annie Snider | 04/24/2018 03:17 PM EDT

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API's Gerard to exit on an oil industry winning streak [Back](#)

By Ben Lefebvre | 01/17/2018 06:05 PM EDT

American Petroleum Institute President and CEO Jack Gerard's plan to exit the powerful trade association could signal the end an era for oil industry lobbying.

Gerard notched up a long list of achievements during his 10-year tenure, which coincided with the oil and gas boom that turned the U.S. into the world's largest energy producer. He will step down in August after deciding not to renew his contract, API announced.

Gerard took the helm at the API after leading the American Chemistry Council and the National Mining Association. And he was well compensated, receiving \$6 million in salary and other compensation as of 2015, according to the API's latest tax forms.

During his time atop API, flagging U.S. production rebounded with the advent of fracking and horizontal drilling, allowing energy producers to tap new resources in North Dakota, Appalachia and West Texas. And as overall oil output doubled to nearly 10 million barrels a day, API's membership swelled by 50 percent, to more than 600 companies.

That helped API to expand its reach, and it doled out \$9.4 million on lobbying Washington lawmakers in 2017, quadruple the amount it spent in the year Gerard took the helm.

API helped overturn the decades-old ban on oil exports, open new areas to drilling — including the Arctic National Wildlife Refuge — and win federal approval for the Keystone XL pipeline. And under Gerard, API also introduced the term that would eventually be taken up by President Donald Trump, when in 2012 it called for a "new era of American world energy dominance."

"We've taken the nation from energy scarcity to energy abundance," Gerard said of the industry at the API's annual State of American Energy address in Washington earlier this month.

But he warned at that event that it wasn't time for API to take "a victory lap," as he cited a to-do list that contained little more than continuing a yearslong fight to repeal a biofuels mandate the industry finds burdensome and streamlining the federal permitting process.

"It's hard to say API wasn't successful under his tenure," said John Northington, a former Clinton-era Interior Department official who works as an energy consultant for many API member companies, adding that it delivered much of what the industry wanted to accomplish.

Not all energy industry insiders agreed, however. Some pointed that for an organization with annual revenue of around \$250 million — much of which it spent on advertisements, including one that ran during last year's Super Bowl, or donations to Republicans — the API's influence was limited. Despite a string of recent wins, it hadn't managed to record any progress in altering the decade-old Renewable Fuel Standard for biofuels or ending restrictions under the Jones Act against foreign-flagged ships transporting fuel between U.S. ports.

"They have this ridiculous amount of money, but they don't get a lot of results," said one refining industry source who requested anonymity to discuss the association. "They don't do bad work, but for that kind of money, you expect more."

The API's ranks have also become divided over how to handle growing public concern about the oil and gas industry's role in climate change. The group in 2016 created a task force to massage the industry's environmental image and work Democrats on a potential carbon tax, a policy that drives a wedge between companies like Exxon Mobil, which has supported such a tax, and Chevron, which has opposed it.

An API spokeswoman said it was unknown whether Gerard was retiring or would join another organization. Gerard will help lead the search for a new president and CEO, the spokeswoman added.

One possible replacement for Gerard is API's current executive vice president and chief strategy officer, Marty Durbin. Durbin had been in charge of API's government affairs before departing to become head of the lobby group America's Natural Gas Alliance, which subsequently merged with API.

Other names floated by industry insiders as potential candidates included Mike Sommers, a former chief of staff for former House Speaker John Boehner, now CEO of the American Investment Council; Karen Harbert, head of the U.S. Chamber of Commerce's Global Energy Institute; and former Sen. Blanche Lincoln, an Arkansas Democrat.

An API spokeswoman did not comment on possible candidates.

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Sources: API expected to tap Sommers as new chief [Back](#)

By Emily Holden and Eric Wolff | 04/30/2018 04:33 PM EDT

The American Petroleum Institute is expected to tap Mike Sommers, the head of a private equity trade group who worked as a top aide to former House Speaker John Boehner, to replace Jack Gerard at the helm of the powerful oil and gas industry lobby group, according to two sources.

Gerard announced his retirement earlier this year after a decade at the helm of the API, where he notched up a long list of achievements including overturning the decades-old ban on crude oil exports. He will step down in August.

API did not reply to a request for comment.

The oil and gas industry has so far gotten strong support from the Trump administration, which has moved to open the Arctic National Wildlife Refuge to exploration, is considering making wide swathes of coastal waters available to the industry, and last week said it would roll back some Obama offshore drilling rules.

But API has urged the White House to scrap its steel and aluminum tariffs, and to keep core provisions of NAFTA in place as it negotiates an update to the trade agreement.

Sommers, who was Boehner's chief of staff, has led the American Investment Council for two years, a position that kept him close to Arclight Capital Partners, The Blackstone Group, EnCap Investments and other firms that have invested heavily in energy projects. He also served as an aide to former President George W. Bush in 2005 at the National Economic Council working on agriculture, trade and food policy.

Barry Worthington, CEO of the United States Energy Association, which brings together public and private organizations, corporations and government agencies, said he'd been told Sommers would succeed Gerard.

"Jack Gerard is going to be a tough act to follow," he said.

Gerard was also one of the best-paid lobbyists in Washington, D.C. He received \$5 million in direct compensation from API, plus another \$1.2 million in perks in 2015, according to the group's latest IRS forms.

Marianne Levine and Ben Lefebvre contributed to this report.

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Trump grants key U.S. allies an extra month of tariff relief [Back](#)

By Megan Cassella | 04/30/2018 05:57 PM EDT

President Donald Trump has decided to extend by one month a temporary exemption from steel and aluminum tariffs for Canada, Mexico and the European Union, the White House announced Monday evening.

The move gives key allies — and three of the U.S.' four largest trading partners — until June 1 to reach some sort of deal with the Trump administration to avoid duties of 25 percent on steel and 10 percent on aluminum exports sent to the United States. The tariffs had been set to take effect at 12:01 a.m. Tuesday if Trump had not moved to extend the deadline.

The administration has also reached preliminary agreements with three other countries that had initially been granted a temporary exemption — Argentina, Brazil and Australia — allowing them to escape the duties as details are finalized over the next 30 days, the White House said. Trump did not set a deadline for those details to be worked out but said he would consider reimposing the tariffs if the agreements are not finalized "shortly."

One other country, South Korea, had already reached a preliminary deal for a permanent exemption from the steel tariffs because it agreed to cap its exports to the U.S. at 70 percent of the average export volume over the previous three years. Trump's official proclamation said the administration will monitor the implementation and effectiveness of that quota and left room for Trump to "revisit" his decision if needed.

"In all of these negotiations, the administration is focused on quotas that will restrain imports, prevent transshipment, and protect the national security," the White House said in its declaration. "These agreements underscore the Trump administration's successful strategy to reach fair outcomes with allies to protect our national security and address global challenges to the steel and aluminum industries."

The declaration brings some clarity to a decision-making process that until the official release left key allies wondering whether they would beginning Tuesday face penalties sure to roil international markets and disrupt global supply chains. Few people inside the White House or overseas had been sure of what or even when Trump would decide.

Imposing the duties would also have affected foreign steel industries that depend on access to the U.S. market. Canada and Mexico both send more than half of their steel produced annually into the United States, while the 28 nations of the EU together serve as the largest single supplier of steel to the U.S.

Of \$29.1 billion worth of steel that the United States imported last year, \$6.2 billion came from the 28 nations of the EU and \$2.9 billion from other European countries. About \$5.1 billion came from Canada, \$2.8 billion from South Korea, \$2.5 billion from Mexico, \$1.6 billion from Japan, \$1.4 billion from Russia and just \$976 million from China.

A U.K. government spokesperson called the extension "positive" and said EU countries would continue to work to reach a permanent solution.

"We remain concerned about the impact of these tariffs on global trade and will continue to work with the EU on a multilateral solution to the global problem of overcapacity, as well as to manage the impact on domestic markets," the spokesperson said in a statement Monday night.

Although the move grants some of the United States' closest allies another month to work out a deal, it remains unclear what sort of concessions would satisfy Trump and his administration.

Commerce Secretary Wilbur Ross and other administration officials have said in recent days that countries would have to choose between either quotas or tariffs — but the EU, Canada and Mexico have said they expect a full exemption without having to agree to such restrictions.

"We're busy alienating the few friends we have left," said Bill Reinsch, a senior adviser at the Center for Strategic and International Studies. "The president clearly, on trade issues, doesn't make a distinction between the good guys and the bad guys. If you're not doing exactly what he wants, you're a bad guy by definition — and nothing else counts."

The process of deciding on the exclusions and exemptions has been chaotic since the departure of former White House staff secretary Rob Porter, who was heavily invested in trade policy and making sure that differing viewpoints were included in the decision-making process.

U.S. Trade Representative Robert Lighthizer, meanwhile, has had myriad policy questions on his plate, including the ongoing NAFTA talks and his upcoming trip to China later this week to talk trade.

With any final decision still up in the air, some nations have indicated exactly how they will retaliate if and when Trump does impose the tariffs. The European Union last month generated a list of U.S. exports ranging from peanut butter to lipstick and yachts that would face punitive 25 percent duties on their way into the European market if Brussels is not spared. The EU's list, which is valued at roughly \$3.4 billion, is largely comprised of products from Republican states and districts that would bear the brunt of the tariff impact.

At the same time, European nations have also been working among themselves and with the United States to strike a compromise. German Chancellor Angela Merkel and French President Emmanuel Macron both traveled to the White House last week to talk face-to-face about the issue with Trump, who is still toying with the decision.

Merkel and Macron both spoke over the weekend with U.K. Prime Minister Theresa May about the "vital importance" of Europe's steel and aluminum industries and pledged to work together with the rest of the EU to push for a compromise and a permanent exemption.

To that end, EU Trade Commissioner Cecilia Malmström also spoke again over the phone on Monday with Ross.

Tensions are similarly high with Canada and Mexico, who are in intensive trade negotiations with the United States to update NAFTA.

Both countries have repeatedly made clear that they expect to be granted a full, permanent exemption from the tariffs without having to agree to quotas or any other restrictions. But their temporary reprieve was contingent upon a successful completion of the NAFTA rewrite — and with that deal still at least a week away, it remains unclear whether Trump will make the exemption permanent or at least extend it on a temporary basis while negotiations continue.

For either of the U.S. neighbors, imposition of the duties would ratchet up trade tensions at a time when all three countries are working to wrap up a NAFTA negotiation that has already been technically and politically difficult.

"Obviously, Lighthizer knows very clearly our position and how we have to react if any measure is imposed," Mexican Economy Secretary Ildefonso Guajardo said Friday during a visit to Washington to talk NAFTA. "I have been very clear that in this context a quota on steel won't be the best way to go."

If the tariffs do go ultimately into effect for any of the countries involved, a key question will be whether Trump will ratchet up the pressure again after the countries inevitably retaliate, Reinsch said.

"We act, they act, that's round one. The question will be, is [Trump] then going to start round two?" he said, noting that one round of tit-for-tat is "not that unusual" but that two would be more remarkable. "I think the trade war starts in round two."

Nancy Cook and Jakob Hanke contributed to this report.

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Source: EPA draft would halt auto standards at 2021 levels, block California authority [Back](#)

By Alex Guillén | 04/27/2018 06:28 PM EDT

A draft proposal from EPA would freeze auto emissions standards after model year 2021 and seek to block California's ability to enact its own more stringent regulations, according to a source familiar with the draft.

The text of the draft is still reportedly in flux, but if ultimately finalized, it would erase half a decade's worth of the Obama administration's much-touted emissions savings, handing a major win to the oil industry. It would also set up a nasty legal fight with California that many legal experts believe the state could win.

The Los Angeles Times first reported on the draft plan today.

EPA Administrator Scott Pruitt on Thursday told a House Energy and Commerce subcommittee that he did "not at present" have any plans to try to revoke California's Clean Air Act waiver to enforce more stringent standards.

"It's important that we work together to achieve, as was indicated earlier, a national standard," Pruitt added.

Automakers successfully lobbied the Trump administration to revisit the 2022-2025 standards — although most indicated they simply wanted more flexibility to reach the ultimate emissions goals in 2025. They had complained it would be difficult to meet the Obama administration's goals that would have ultimately lifted the average fuel economy target for the nation's fleet of cars and light trucks to 55 miles per gallon by 2025.

Industry trade groups and individual automakers have also cautioned that a single national standard is preferable to a regulatory patchwork of rules.

WHAT'S NEXT: EPA reportedly will send the proposal to the White House for review in the near future. The agency is working alongside the National Highway Traffic Safety Administration, which is writing its own separate but related fuel economy rules for 2022-2025 vehicles.

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Pruitt: EPA not going after California's waiver 'at present' [Back](#)

By Anthony Adragna | 04/26/2018 12:04 PM EDT

EPA Administrator Scott Pruitt said today his agency is "not at present" attempting to undo California's special Clean Air Act waiver allowing the state to set stricter emissions levels for vehicles.

"It's important that we work together to achieve, as was indicated earlier, a national standard," Pruitt said at a House Energy and Commerce subcommittee hearing this morning. "We are working very diligently and diplomatically with California to find answers on this issue."

California officials have warned they would diligently challenge any effort by the Trump administration to go after the waiver.

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PJM to probe fuel supply vulnerabilities [Back](#)

By Eric Wolff | 04/30/2018 11:08 AM EDT

PJM Interconnection said today it would seek to identify any fuel supply vulnerabilities in its grid and design market tools to increase resilience, a move that appears designed to head off Energy Secretary Rick Perry's effort to bail out coal-fired and nuclear power plants.

PJM says in a report out today it will run models to "stress test" different parts of the grid to see if fuel security could be compromised under different circumstances. If it finds risks of fuel constraints, it would consider allowing different prices for power from generators that are better able to hedge against fuel problems.

"As is the case with reliability standards, PJM believes the most effective way to address fuel security is to define and establish fuel security criteria and then use market forces to allow all resources to compete to meet those criteria," the report says.

The report's biggest concern appears to be a grid dominated by natural gas, since cold weather can increase demand for home heating and constrain gas supplies. The report makes only one mention of renewables.

PJM has consistently opposed efforts by DOE to exercise emergency authority under either the Federal Power Act or the Defense Production Act to directly subsidize coal or nuclear power plants struggling in the face of low cost power from natural gas and renewables.

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Perry's latest bid to help coal faces uphill battle [Back](#)

By Eric Wolff | 04/25/2018 05:08 AM EDT

Energy Secretary Rick Perry's latest idea to protect coal-fired and nuclear power plants may not fare much better than his previous efforts, according to energy experts.

Perry is considering invoking the 1950 Defense Production Act to keep money-losing power plants running by designating them as crucial for national security. But that would stretch the definition of the law and almost certainly draw legal challenges — and it would hit a big hurdle in Congress, which would need to approve perhaps billions of dollars in funding to keep the plants afloat, the experts said.

At the urging of President Donald Trump, Perry has sought to keep open coal and nuclear power plants that are threatened with shutdowns amid the stagnant demand for power — and even as natural gas and renewable power sources grab a growing share of the market.

So far, Perry's had no luck. FERC earlier this year rejected his proposal to give the plants financial support, and Energy Department lawyers stymied a push last year to invoke the agency's authority under the Federal Power Act to force the plants to run.

Some experts said any attempt to use the DPA is likely to meet the same fate.

"To me, it's a tough argument to make. It's a specious argument on its surface that seems like a perversion of the intended use of the Defense Production Act," said Tom Hicks, a former acting undersecretary of the Navy under

former President Barack Obama and now a principal at the advisory firm The Mabus Group. "Defense Production Act is on the vanguard of the need for resources, not on the back end for an industry being challenged by economic forces."

But the effort has been a priority for Trump and Perry, who sees saving coal-fired power generation as vital to U.S. security, according to a source familiar with the conversations on the issue.

The Cold War-era law grants the federal government powerful authorities to inject cash into companies essential for national defense in order to preserve domestic supplies of key products. But DOE will have to make the case that electricity produced specifically from coal and nuclear power plants, and not other types of power, is a critical resource.

Using the act to protect the plants when there appeared to be no immediate shortage of power supplies would be a novel application that would almost certainly face legal challenge.

"If the administration uses DPA, they're going to be using it very creatively," said Ari Peskoe, director of the Electricity Law Initiative at the Harvard Law School Environmental and Energy Law Program. "They may come up with reasoning for higher rates and who's going to pay for it. Whether that will hold up, I don't know."

Perry and his staff appear to have very few viable options for bailing out coal and nuclear power, a major energy priority for Trump, who has promised to revive the coal industry. DOE has opened a comments process for interested parties to weigh in on its use of the Federal Power Act's 202(c) emergency provisions, though that would require the agency to go through FERC, which unanimously rejected a similar Perry effort in January.

The 202(c) effort has been pushed by coal magnate Bob Murray, owner of Murray Energy, and by FirstEnergy Solutions, the unit of FirstEnergy Corp. that is in bankruptcy proceedings and which expects to shut down four coal and nuclear power plants. That company asked DOE to use the emergency authority to save not only its plants, but all 85 coal and nuclear power plants in the PJM Interconnection power market.

The DPA was last used by the Obama administration starting in 2012 to help spur the biofuels industry to develop the kind of advanced biofuels that could power ships and aircraft. The government can purchase capital equipment for the cause of national security, and it can fund advertising to support the effort.

And it allows the government to become the buyer of last resort, which could put Washington on the hook to buy excess power generated by coal and nuclear plants. Technically, this electricity could only be purchased at the "cost of production," a level that in the past has been determined by a team within the Defense Department.

While no hard estimate for the cost of a DPA subsidy exists, consultants analyzing Perry's previous bailout proposal estimated costs between \$4 billion and \$10.6 billion annually.

That's a far higher level than Congress typically allocates for the DPA. It provided \$67.4 million in the omnibus passed in March, H.R. 1625 (115), down slightly from the \$76 million it provided for all projects in 2017, according to a report submitted to Congress.

And Congress — and the Republican Party — is deeply divided on using government subsidies to save these plants. Rep. David McKinley (R-W.Va.) has some allies from other coal districts for the effort, but other free market-oriented lawmakers like Rep. Pete Olson (R-Texas) say they want to see markets function unimpeded.

McKinley's staff has been in touch with DOE and the White House, as has West Virginia Sen. Joe Manchin (D).

"I think it's an emergency national concern for the national defense of our country. I think Rick Perry agrees with it, and I think the president does also," Manchin told POLITICO.

PJM has itself said the retirement of FirstEnergy's coal plants did not pose a threat to the region's power supplies, and that it had ample generation to meet demand. It has opposed any effort to mandate to require the plants to stay online.

"We believe that a market-oriented approach consistent with the American free-enterprise system offers better results than government-mandated subsidies," said PJM spokesman Jeff Shields.

Anthony Adragna contributed to this report.

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Chatty Pompeo strikes early contrast with reclusive Tillerson [Back](#)

By Nahal Toosi | 04/30/2018 06:11 PM EDT

Mike Pompeo, the new secretary of state, is leaning hard into the side of the job his predecessor seemed to hate the most: public relations.

Within hours of being confirmed last week, Pompeo took along several journalists on a trip to Europe and the Middle East, answering their questions in public and private, and appearing Sunday on ABC News' "This Week." He's planning a town hall meeting with State Department staff soon. And he may even start tweeting.

The moves are in many ways a return to tradition for a secretary of state, a high-profile position where words are the most powerful tool. But they stand in marked contrast to the man Pompeo replaced, Rex Tillerson, whose early lack of visibility caused lingering damage to his reputation inside the Trump administration and beyond.

"It signals that, unlike Tillerson, Pompeo recognizes some of the basic things he needs to do to make the State Department relevant," said Ilan Goldenberg, a former Obama-era State official now with the Center for a New American Security. "By itself, it won't make Pompeo an effective secretary of state. But not doing these things really hurt Tillerson."

On Tuesday afternoon, his first full day in Foggy Bottom itself, Pompeo will deliver a speech introducing himself to the department. Staffers and journalists won't be the only ones listening; foreign diplomats will also parse Pompeo's words carefully.

Tillerson, too, gave a well-received speech his first full day on the job. But for months afterward, he almost seemed to have taken a vow of silence.

He refused to engage reporters, didn't hold a town hall until three months in and had no social media presence. U.S. diplomats soon found themselves aimless, lacking guidance from Tillerson and his small coterie of advisers. Veteran NBC News reporter Andrea Mitchell took to loudly asking questions of a silent Tillerson during his public appearances, videos of which went viral. The department's daily press briefing, a decades-old

tradition, was put on ice for nearly two months. Under pressure, Tillerson brought it back, but in a scaled back format. Headlines asked: "Where's Rex?"

Tillerson puzzled a foreign policy establishment used to secretaries of state — including Hillary Clinton and John Kerry — who sought, rather than shunned, public attention. Many State Department staffers came to see Tillerson as isolated and aloof. And foreign leaders who concluded he was ineffectual and out of the loop engaged directly with the White House instead.

Tillerson greatly increased his visibility in the second half of his 14-month tenure, but the damage was done. Trump fired Tillerson in mid-March.

The difference between Tillerson and Pompeo might be explained, in part, by their respective backgrounds: Tillerson had previously been a taciturn CEO of ExxonMobil, Pompeo a pugnacious congressman from Kansas.

"His background as a congressman is a great asset in his current position," said Brett Schaefer, a foreign policy analyst with the conservative Heritage Foundation. "He has a great deal of experience in interacting with a broad number of people and doing so in a way that is designed to listen to their concerns and respond to them."

Pompeo has also pledged to stay in close touch with his former colleagues in Congress. Tillerson drew criticism for being slow to respond to lawmakers' requests.

And while Tillerson showed no visible interest in social media, a person familiar with Pompeo's situation said he is considering using Twitter.

David Wade, a former chief of staff to Secretary of State John Kerry, argued that a secretary of state's public words matter well beyond the Washington Beltway. "Externally, you're in a race to define the American narrative against those like Russia and China which will fill in their own narrative if you're absent," he said.

Calling Tillerson "an abysmal failure at communications both internally and externally," Wade said Pompeo "can be a good communicator, and as a politician he's more talented than his predecessor." But, he added, "all the public diplomacy in the world can't get him out from under the weight of Trump's tweets and slurs about people from the Middle East to Africa."

The timing of Pompeo's Thursday confirmation vote allowed him to attend a long-scheduled meeting of NATO foreign ministers in Brussels the next day, winning him early plaudits from others in the military alliance.

"He actually jumped on a plane just after he was sworn in and he was able to address the North Atlantic Council, the foreign ministers of NATO, just 12 hours and 34 minutes after his confirmation," NATO Secretary General Jens Stoltenberg said with admiration.

Pompeo left Washington with six journalists on his plane. On his first major overseas trip, Tillerson brought just one reporter, from the conservative Independent Journal Review.

As he continued from Brussels to Saudi Arabia, Israel and Jordan over the weekend, Pompeo picked up two more reporters. He spoke to the reporters on the plane and also took questions during news conferences on the ground.

Tillerson, by contrast, generally avoided even the reporters who — having been denied seats on his official plane — chased him around the world on commercial flights.

Shortly after he took office, Tillerson took a quick trip to Bonn, Germany, for a meeting of G-20 foreign ministers. At an appearance on the sidelines with Russian Foreign Minister Sergey Lavrov, reporters were escorted out of the room before Tillerson gave remarks. Even Lavrov was puzzled: "Why did they shush them out?" he asked.

"I'm not a big media press access person. I personally don't need it," Tillerson would later tell the IJR reporter, who traveled with him to Asia a month later.

During his 15 months as CIA director, Pompeo forged a much closer relationship with Trump than Tillerson. He is believed to have a much better sense of where the president stands, and his own, often-hawkish views appear more in line with Trump's thinking. Pompeo has also been vocal about wanting to improve morale at the State Department, where many diplomats have been distressed over Trump's attempts to slash their budget and Tillerson's unwillingness to listen to their expertise.

In a news conference in Brussels, Pompeo pointed out that he'd met with U.S. diplomats who work in the Belgian capital and that he was committed to making his department more relevant.

The diplomats, he said, "may have been demoralized, but they seemed in good spirits. They are hopeful that the State Department will get its swagger back."

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Subject: Pruitt plans to change EPA policy on scientific studies

By Alex Guillén

03/20/2018 10:38 AM EDT

EPA Administrator Scott Pruitt plans to change how the agency considers scientific information when writing regulations in a way that likely will exclude certain studies, he told the [Daily Caller](#).

Pruitt told the news site he will reverse longtime agency policy to require that any studies used to support regulations make their raw data available for review and replication by independent scientists.

"We need to make sure their data and methodology are published as part of the record," Pruitt said. "Otherwise, it's not transparent. It's not objectively measured, and that's important."

The changes are in line with legislation that House Science Chairman [Lamar Smith](#) (R-Texas) has pushed for years, but which was never been passed by the Senate. Democrats, environmentalists and scientific groups have long criticized that legislation as an attempt to cherry-pick data friendly to industry from the voluminous body of epidemiological science. And EPA already releases significant amounts of this data, they said.

CBO [said last year](#) the changes "would significantly reduce the number of studies that the agency relies on." And although EPA said it could make the changes at little to no cost, CBO estimated it would spend \$5 million from 2018 through 2022. EPA [previously told CBO](#) it would have to spend \$250 million a year scrubbing information from thousands of studies "to ensure the transparency of information and data supporting some covered actions."

WHAT'S NEXT: Pruitt did not say when he will issue a formal directive changing EPA's science policy.

To view online:

<https://www.politicopro.com/energy/whiteboard/2018/03/pruitt-plans-to-change-epa-policy-on-scientific-studies-843621>

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Subject: Morning Energy: Pruitt's watershed moment — 'Secret science' policy coming — Blankenship slipping

By Kelsey Tamborrino | 04/24/2018 05:42 AM EDT

With help from Emily Holden

PRUITT'S WATERSHED MOMENT: EPA Administrator Scott Pruitt is approaching his two separate House committee hearings this week with sagging support on the hill. The make-or-break moment is approaching as once-stalwart backers begin to express concern about the controversies that have swirled in recent weeks. Republican Sen. Jim Inhofe (Okla.) — perhaps Pruitt's staunchest ally in Congress — told Pro's Anthony Adragna he thinks it's "appropriate to have a hearing in so far as any accusation having to do with his office is concerned," and he cited a report in The New York Times detailing a sweetheart deal Pruitt received on an Oklahoma City home previously owned by a lobbyist.

Sen. Shelley Moore Capito (R-W.Va.) also thought Thursday's hearings before the House Energy and Commerce and Appropriations committees would prove pivotal for Pruitt's long-term future in the administration. "It's really important," Capito said. "He's going to have to answer some tough questions. I'm sure they'll be put to him by both sides and we'll see what his response is."

And Sen. John Boozman joined his two Republican colleagues in supporting hearings by the Environment and Public Works Committee. Meanwhile, sources told Bloomberg that administration officials privately cautioned lawmakers and other conservative allies to pump the brakes on their defenses of Pruitt.

Publicly, however, the White House stands firm in its commitment to Pruitt. Press secretary Sarah Huckabee Sanders told reporters the administration is "continuing to review a number of the reports" about Pruitt, but noted the EPA chief "has done a good job of implementing the president's policies," particularly on deregulation and energy dominance. White House legislative affairs director Marc Short was more direct earlier Monday: "I think Scott Pruitt is doing a great job and we look forward to keeping him there as EPA administrator," he told MSNBC.

More to come? Earlier Monday, five senior congressional Democrats asked House Oversight Chairman Trey Gowdy to obtain further documents and hold hearings after obtaining new records they say raise "troubling" new questions about Pruitt's security expenditures. EPW ranking member Tom Carper told Anthony he had a good conversation with Gowdy regarding Pruitt, but said there was no formal bipartisan agreement to work together on an investigation. "I just gave him plenty of encouragement that he's doing the right thing," Carper said. Read more.

WELCOME TO TUESDAY! I'm your host Kelsey Tamborrino. Congrats to the Nuclear Energy Institute's Robert Powers, who was first to correctly guess Mary Walker was the first woman to receive the Medal of Honor. For today: Who is the last former senator to appear on a U.S. postage stamp? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter @kelseytam, @Morning_Energy and @POLITICOPro.

POLITICO's Ben White is bringing Morning Money to the Milken Institute Global Conference to provide coverage of the day's events and evening happenings. The newsletter will run April 29 - May 2. **Sign up to keep up with your daily conference coverage.**

BLINDED WITH SCIENCE: EPA's Pruitt is expected to unveil his new science policy that restricts the agency from relying on research that doesn't make public all its available data, a source briefed on the announcement tells Pro's Emily Holden. The proposed rule, which the agency submitted to the White House for review last week, will mirror legislation from House Science Chairman Lamar Smith (R-Texas).

Pruitt argues the change will bolster transparency, but scientists and health advocates say it is an effort to constrain rulemaking. The rollout has been delayed as agency officials tried to determine how to treat industry research used to evaluate the safety of pesticides and toxic chemicals, as Pro's Annie Snider reported last week. While academic studies often can't disclose data that includes personal health records, corporations can't reveal proprietary information either.

SCIENTISTS REACT: Close to 1,000 scientists signed onto a letter to Pruitt Monday, calling on the administrator to reverse course on his plans to revise how the agency considers outside research. "EPA can only adequately protect our air and water and keep us safe from harmful chemicals if it takes full advantage of the wealth of scientific research that is available to the agency," write the scientists, including some former EPA career staffers. Read it here.

A BLANK SLIP: GOP establishment attacks on former coal baron Don Blankenship seem to be taking hold, POLITICO's Alex Isenstadt reports via new polling. With the West Virginia Senate primary a mere two weeks away, a poll out Monday found Blankenship falling behind his more mainstream rivals, GOP Rep. Evan Jenkins and state Attorney General Patrick Morrisey. The poll found Morrisey leading with 24 percent, followed by Jenkins with 20 percent, and Blankenship trailing with 12 percent.

National Republicans have scrambled to intervene in the race, concerned that a Blankenship primary win would destroy their prospects of defeating Democratic Sen. Joe Manchin in November. Blankenship, who spent a year in jail following the deadly 2010 explosion at his Upper Big Branch Mine, has poured nearly \$2 million of his own money into a slash-and-burn style campaign savaging Jenkins and Morrisey as pawns of the establishment, Alex writes. Blankenship has also used the Senate run as a path to clear his name. So far, much of his campaign has been geared toward portraying himself as the casualty of the Obama-era Justice Department, which he says was bent on locking him up.

The new survey, which was conducted April 17-April 19 and has a margin of error of 4.9 percentage points, precedes a GOP debate today, and another that will be hosted by Fox News next week for a nationally televised audience. Read more.

SPECIAL ELECTION TODAY: Arizona voters will decide today who will pick up the seat left vacant by Rep. Trent Franks' departure in the state's 8th District. While neither candidate highlights specific environmental issues on her campaign website, Republican Debbie Lesko and Democrat Hiral Tipirneni have markedly different takes on climate change. Tipirneni's site says she believes "climate change is real and that we need to reduce carbon emissions." Meanwhile, Lesko said during a debate earlier this year that "certainly not the majority" of climate change is human-caused. "I think it just goes through cycles and it has to do a lot with the sun. So no, I'm not a global warming proponent," she said.

RULES TO MEET ON COLUMBIA RIVER BILL: The House Rules Committee will meet at 5 p.m. to formulate a rule on H.R. 3144 (115), which would void the environmental impact statement process for altering the hydropower system along the Columbia and Snake rivers. Earlier this month, the 9th Circuit Court of Appeals sided with the state of Oregon, the Nez Perce tribe and conservation groups, ruling that dam operations on the Columbia and Snake rivers must forgo hydropower production during key times of the year to protect

endangered salmon. An environmental impact statement for the system has been the subject of congressional fights, with Rep. [Cathy McMorris Rodgers](#) filing the legislation to void that process.

COAL ASH HEARING TODAY: EPA holds a [public hearing](#) today on its proposal to [roll back](#) the Obama-era regulation for the cleanup and disposal of coal ash. The hearing will begin at 9 a.m. in Arlington, Va., where there will be three sessions: 9 a.m. until noon; another beginning at 1 p.m. and ending at 4 p.m.; and a final session beginning at 5 p.m. and ending at 8 p.m.

PROMISES, PROMISES: Senate spending leaders vowed to restore chamber-wide debate on amendments to individual appropriations bills, Pro's Sarah Ferris and Kaitlyn Burton [report](#). It's a risky move, ME readers may recall, considering how Democrats [blocked](#) a largely noncontroversial Energy and Water bill in 2016 because of a proposed amendment on Iran, and in 2015, House Republicans' Interior-Environment bill was tripped up by an unrelated rider on the Confederate flag. But Senate Appropriations Chairman [Richard Shelby](#) and his Democratic counterpart [Patrick Leahy](#) told committee members in a closed-door meeting Monday that leadership has agreed to allow amendments on the Senate floor for every individual spending bill. And the two have met with Majority Leader [Mitch McConnell](#) and Minority Leader [Chuck Schumer](#) in recent days about opening up the floor for debate on spending bills.

JUDGE: ENBRIDGE PIPELINE SHOULD STICK TO PLAN : An administrative law judge recommended on Monday that Minnesota regulators approve Enbridge Energy's proposal for replacing its Line 3 crude oil pipeline. But the court stipulated that the pipeline should follow the existing route, not the company's preferred route, which would carry Canadian tar sands crude from Alberta across areas in the Mississippi River, the Associated Press reports. Administrative Law Judge Ann O'Reilly's recommendation to the Public Utilities Commission sets up further disputes, "because the existing line crosses two Ojibwe reservations where tribal governments have made it clear that they won't consent and want the old line removed altogether." Read [more](#).

A METHANE TO THE MADNESS: The comment period on the Bureau of Land Management's proposal to reverse the Methane Waste Prevention Rule ended Monday, drawing thousands of far-reaching comments. The left-leaning Center for Western Priorities [analyzed a random sample](#) of 2,000 comments, it said, finding 99.8 percent of them were opposed to the proposal. The Independent Petroleum Association of America and Western Energy Alliance meanwhile submitted joint [comments](#) applauding the move. "We were pleased to see workable changes are being considered to the rule that more accurately represent the scope of power and authority given to the BLM for regulating this type of activity," IPAA's Dan Naatz said in a statement. And, E2, an affiliate of the Natural Resources Defense Council, sent a letter to Interior Secretary Ryan Zinke on Monday, expressing its opposition to BLM's proposal. Close to 400 businesses signed onto that letter, which calls BLM's proposal "a net negative for the American public." Read it [here](#).

MAIL CALL! IN HONOR OF NATIONAL PARKS WEEK: League of Conservation Voters organized 122 groups — including the American Civil Liberties Union and the Human Rights Campaign — in a letter to members of Congress opposing the administration's moves on public lands. National monuments "have helped make our public lands more inclusive," the letter states, before calling on lawmakers to "reject any legislation that would limit the president's authority under the Antiquities Act or codify any unlawful rollbacks of existing national monuments." Read it [here](#).

FOR YOUR RADAR: The House will vote to overhaul the 1988 Stafford Act this week, Pro's Budget & Appropriations team [reports](#). The three-decade-old bill is the main piece of legislation overseeing federal disaster-relief efforts, with proposed tweaks that include new incentives to build "smarter and stronger to better withstand disasters in the future," according to GOP Majority Leader [Kevin McCarthy](#)'s office. That could equate to big changes on how states spend disaster relief money.

ICYMI: ZINKE DRAWS OLIVER'S IRE: The Interior secretary got the full treatment from HBO host John Oliver on "Last Week Tonight" on Sunday. Oliver hit Zinke for [referring to himself](#) as a geologist and said he

"has a real flair for creative license." Of course, Zinke is not the first to draw scrutiny from the HBO host. A judge recently dismissed a defamation lawsuit brought by coal magnate Bob Murray against Oliver, who referred to Murray as a "geriatric Dr. Evil." Watch the Zinke video [here](#).

STATE NEWS — CUOMO INTRODUCES PLASTIC BAG BILL: New York Gov. Andrew Cuomo introduced a [bill](#) Monday to ban the use of plastic bags throughout the state, Pro New York's Danielle Muoio reports. The legislation — a long-sought promise from Cuomo — would give the state Department of Environmental Conservation jurisdiction over all matters concerning plastic bags and recycling, but comes with caveats that left some environmental advocates saying it isn't far-reaching enough. Read [more](#).

QUICK HITS

— Trump administration official says it's a "top priority" to improve American weather forecasting model, [The Washington Post](#).

— Sources: Arrested Chevron workers could face treason charge in Venezuela, [Reuters](#).

— Trump likes coal, but that doesn't mean he's hostile to wind, [Associated Press](#).

— Halliburton writes off investment in crisis-hit Venezuela, [Financial Times](#).

— U.S. coal bailout review slows after Trump faces pushback, [Bloomberg](#).

HAPPENING TODAY

8:00 a.m. — American Fuel & Petrochemical Manufacturers holds [security conference](#), New Orleans

10:00 a.m. — Senate Energy and Natural Resources Committee [hearing](#) on the president's proposed budget request for FY 2019 for the Forest Service, 366 Dirksen

10:00 a.m. — Senate Foreign Relations Committee [hearing](#) on nominations, including Jackie Wolcott to be representative to the International Atomic Energy Agency, 419 Dirksen

10:00 a.m. — The Bipartisan Policy Center [webcast](#) on "Can America's Infrastructure Withstand the Next Natural Disasters? Lessons Learned from Previous Disasters."

3:00 p.m. — Woodrow Wilson Center [book launch discussion](#) on "Can We Price Carbon?" 1300 Pennsylvania Ave NW

5:00 p.m. — Johns Hopkins University's Energy, Resources and Environment [presentation](#) on "Cities as Innovation Centers: Investing in Resilient Infrastructure," 1619 Massachusetts Avenue NW

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Stories from POLITICO Pro

White House reiterates support for Pruitt [Back](#)

By Anthony Adragna | 04/23/2018 02:30 PM EDT

The White House says it is still standing behind EPA's Scott Pruitt, voicing support for the embattled administrator two days after it was revealed that a Washington lobbyist whose wife rented a condo to him personally lobbied Pruitt despite weeks of denying they had held any meetings.

"We're reviewing some of those allegations, however Administrator Pruitt has done a good job of implementing the president's policies, particularly on deregulation," press secretary Sarah Huckabee Sanders said at the White House briefing.

She added the administration continues its look into Pruitt's conduct, including his lavish spending, first-class travel arrangements, pay raises for political appointees and use of security personnel. White House budget director Mick Mulvaney told a congressional subcommittee last week he'd investigate the EPA chief's spending \$43,000 on a privacy booth for his office.

Pruitt is scheduled to testify at two House hearings on Thursday.

What's next: Sanders said the White House is "monitoring" additional reports about Pruitt.

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White House stands behind Pruitt despite new lobbying disclosure [Back](#)

By Anthony Adragna | 04/23/2018 01:54 PM EDT

The White House said Monday it still stands behind EPA Administrator Scott Pruitt, praising him for enacting President Donald Trump's environmental and energy policies even as it looked into reports of ethical lapses.

It was the first statement from the White House since POLITICO first reported that despite his denials, Pruitt had met with a lobbyist whose wife rented the Environmental Protection Agency chief his \$50-per-night condo. A disclosure form filled late Friday said J. Steven Hart had lobbied the EPA, although both the agency and the lobbyist contend the meeting, held last July, did not constitute formal lobbying.

"We're reviewing some of those allegations. H however, Administrator Pruitt has done a good job of implementing the president's policies, particularly on deregulation," press secretary Sarah Huckabee Sanders said at the White House briefing.

The White House has been looking into Pruitt's lavish spending on first-class travel arrangements, pay raises for political appointees and use of security personnel. Budget director Mick Mulvaney told a congressional subcommittee last week he'd investigate the EPA chief's spending of \$43,000 on a privacy booth for his office.

That's on top of several ongoing probes by the EPA's own watchdog and three by congressional committees, including the House Committee on Oversight and Government Reform.

Pruitt is scheduled to testify at two House hearings on Thursday.

Sanders' comments come as five senior congressional Democrats asked House Oversight Chairman Trey Gowdy (R-S.C.) to seek new documents and hold hearings regarding "troubling" new questions about Pruitt's security expenditures.

According to nonpublic documents cited in the Democrats' letter, Pruitt's office was not cleared for classified communications as of March 2017. EPA previously said Pruitt's need to handle such information justified the installation of the privacy booth. The Government Accountability Office concluded last week the agency violated federal law by not informing Congress of the purchase.

The letter also alleges that a security sweep of Pruitt's office — the contract for which went to a business partner of Pruitt's security chief, Pasquale "Nino" Perrotta — went outside federal contracting norms without proper pre-approval.

"Given the latest developments and these new documents, we believe these and related matters are ripe for additional document requests to EPA and that Administrator Pruitt should testify about all of these matters immediately," the lawmakers wrote. Sens. Tom Carper of Delaware and Sheldon Whitehouse of Rhode Island and Reps. Elijah Cummings of Maryland and Gerry Connolly and Don Beyer, both of Virginia, signed the letter.

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Pruitt support in Senate erodes as GOP lawmakers seek hearings [Back](#)

By Anthony Adragna | 04/23/2018 08:32 PM EDT

Scott Pruitt's wall of GOP support developed some new cracks on Monday, with three key Senate defenders calling for hearings into the embattled EPA administrator's recent controversies.

The three, including staunch Pruitt ally Sen. Jim Inhofe (R-Okla), all said they supported hearings by the Senate Environment and Public Works Committee to look into the former Oklahoma attorney general's actions.

"I think that a couple of us on the committee think it's appropriate to have a hearing in so far as any accusation having to do with his office is concerned," Inhofe told POLITICO.

Inhofe said he was troubled by a report over the weekend in The New York Times detailing a sweetheart deal Pruitt received on an Oklahoma City home previously owned by a lobbyist while serving in a state government. The Oklahoma Republican declined to discuss which allegations he found disturbing, but said "there are some things in there that I'd like to check out and see."

Joining his call for a Senate hearing were two other senior GOP members of the EPW panel, Sens. Shelley Moore Capito (W.Va.) and John Boozman (Ark.).

"Most people have concerns about some of the allegations," Boozman said. "At some point he'll be before the committee and we'll dig deeper and see exactly what's going on."

EPW Chairman John Barrasso (R-Wyo.) told reporters he expected Pruitt would come to testify at some point, but he stopped short of providing a specific timeframe or stating his intention to call a hearing.

To date, four House Republicans have called on Pruitt to resign, along with scores of elected Democrats. And Sen. Susan Collins (R-Maine), has said Pruitt was "the wrong person" to lead the agency based on his policies.

Pruitt has drawn criticism about his ethics and lavish spending in recent months. Three Congressional committees, the White House and EPA's inspector general are all probing his behavior, ranging from his security expenses, high pay raises for aides, first-class travel and meetings with a coal group.

The House Oversight Committee has requested interviews with five senior agency aides and the White House said it would formally investigate Pruitt's expenses after the Government Accountability Office last week found EPA broke the law by failing to notify Congress about a \$43,000 privacy booth Pruitt had built in his office.

Pruitt will go to the Hill on Thursday to testify before a House Energy and Commerce subcommittee in the morning and at a House Appropriations subpanel in the afternoon. Those appearances will mark his first time before Congress since the recent allegations broke.

Both Inhofe and Capito said they thought those House hearings would prove pivotal for Pruitt's long-term future in the administration.

"It's really important," Capito said. "He's going to have to answer some tough questions. I'm sure they'll be put to him by both sides and we'll see what his response is."

Meanwhile, EPW ranking member Tom Carper (D-Del.) said he had a good conversation with House Oversight Chairman Trey Gowdy (R-S.C.) regarding Pruitt, but he said there was no formal bipartisan agreement to work together on an investigation.

"I just gave him plenty of encouragement that he's doing the right thing," he said.

But the mounting public criticism from Republicans suggests GOP lawmakers' patience in defending the EPA chief's behavior is waning.

"Some of the things that he's done and that he's been alleged to do are just indefensible," Sen. John Kennedy (R-La.) said. "You just can't put lipstick on those pigs. You can't."

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EPA emails show industry worries slowed new science policy [Back](#)

By Annie Snider | 04/19/2018 05:01 PM EDT

EPA's rollout of a controversial new transparency policy that would severely restrict the scientific research the agency can rely on when drafting new regulations has been slowed down by political officials' fears that it could have major unintended consequences for chemical makers, according to newly released EPA documents.

The issue of scientific transparency has been high on the agenda of House Science Chairman [Lamar Smith](#) (R-Texas), who has found strong support from EPA Administrator Scott Pruitt — much to the consternation of public health advocates and green groups, who view the effort as backdoor attack on the agency's ability to enact environmental regulations.

Since Pruitt announced plans for the new policy last month, researchers and public health proponents have raised alarms that it could restrict the agency's ability to consider a broad swath of data about the effects of pollution on human health. But documents released under the Freedom of Information Act show that top EPA officials are more worried the new restrictions would prevent the agency from considering industry studies that frequently support their efforts to justify less stringent regulations.

Emails between EPA officials obtained by the Union of Concerned Scientists show that Nancy Beck, the top political official in the agency's chemicals office who came to the agency after serving as a key expert for the chemical industry's lead lobbying group, voiced major concerns after she received a draft of the not-yet-released policy on Jan. 31.

The new scientific transparency directive is expected to require that the raw data for all studies EPA relies on be publicly available, and that the studies be peer-reviewed. But Beck said these requirements would exclude a great deal of industry data about pesticides and toxic chemicals that her office considers when determining whether a substance is safe or must be restricted.

It costs companies "millions of dollars to do these studies," Beck wrote in an email to Richard Yamada, the political official in EPA's office of research and development who is spearheading work on the new scientific policy and is also a former staffer for the House Science Committee chairman.

"These data will be extremely valuable, extremely high quality, and NOT published," Beck wrote. "The directive needs to be revised."

Moreover, much of this data, Beck noted, is considered proprietary by companies. It is dubbed confidential business information, and even though EPA can consider it as part of its regulatory review, the data cannot legally be made public.

Yamada replied to thank Beck for the heads up. "Yes, thanks this is helpful - didn't know about the intricacies of CBI," he wrote. "We will need to thread this one real tight!"

The term "confidential business information" primarily applies to industry information. That data is separate from the personal medical information that public health researchers worry could block consideration of their work.

Yogin Kothari, a lobbyist for the Union of Concerned Scientists, said the emails show the Trump administration's EPA has been "trying to stack the deck in favor of the industries they're supposed to be regulating."

"They want to potentially create exemptions for industry, but if you look at this entire set of documents ... you will see that there's not a single consideration for the impacts on public health data, on long-term health studies, on studies that EPA does after public health disasters like the BP oil spill," he said.

EPA spokeswoman Liz Bowman emphasized the policy is not yet finalized.

"These discussions are part of the deliberative process; the policy is still being developed. It's important to understand; however, that any standards for protecting [confidential business information] would be the same for all stakeholders," she said in a statement.

The emails indicate Pruitt wanted the new science policy rolled out at the end of February, and teased his plans in an interview with conservative outlet The Daily Caller in mid-March. But the agency has yet to finalize the policy.

The transparency directive has its origins in legislation introduced by Smith during the Obama administration, that had the backing of a number of industry groups, including the American Chemistry Council. The House Science Committee chairman frequently charged that the Obama EPA used "secret science" to justify "costly new regulations."

Although versions of the measure were approved by the House multiple times, the Senate never took it up. CBO estimated that one version of Smith's legislation would cost EPA \$250 million a year, at least in the initial years, and a leaked staff response to questions from the budget office said a later version would be even more costly, would endanger confidential medical and business information, and "would prevent EPA from using the best available science."

But Smith found an ally in Pruitt. The emails indicate that Smith met with Pruitt in early January and show that Pruitt's staff quickly began working on a directive to "internally implement" the legislation.

Industry's backing for the new scientific approach began to waiver under the Trump administration, though. When a top American Chemistry Council scientist testified before Smith's committee in February 2017, she emphasized the need to protect industry information if the transparency initiative moved forward.

"One of the things that we do need to take into consideration as making that data publicly available is that there are adequate protections for confidential business information to ensure that we keep innovation and competitiveness available for the marketplace," Kimberly White told the committee.

Industry has historically claimed that a wide range of information about chemicals, ranging from the processes by which they are produced, to the locations of manufacturing plants, to their very identities, must be kept confidential in order to keep competitors from learning trade secrets. Environmental and public health advocates argue that industry claims this exemption in many cases where it's not necessary and that it often keeps important health and safety information from public view.

The issue was a key point of debate when Congress considered a major overhaul of the nation's primary chemical safety law passed 2016 and has reemerged as Pruitt's EPA sets about implementing the law.

Asked for comment on EPA's new effort to implement the scientific transparency approach internally, American Chemistry Council spokesman Scott Openshaw said the group looks forward to reviewing the directive once it's finalized.

"It is critical that any final directive properly protect confidential business information and competitive intelligence," he said in a statement.

The internal emails show that EPA political staff were particularly attuned to this concern. In a Feb. 23 email to colleagues, Beck forwarded language from a 2005 White House document that laid out narrow exemptions from its requirement that all "important scientific information" disseminated by the federal government go through peer review.

"[Y]ou may need to tweak but hopefully there is something helpful here that can be borrowed/adopted," she wrote.

Richard Denison, lead senior scientist for the Environmental Defense Fund, said that EPA's access to industry data is indeed important to its ability to review the safety of new chemicals and pesticides, but said the internal EPA communications show that Pruitt's EPA wants to "have their cake and eat it too" with the new directive.

"They're trying to force peer review studies done by academic scientists to disclose every last detail, while at the same time allowing industry studies to be kept private or aspects of those to still be kept private," he said.

He pointed out that the concerns Beck raised about the burden the new policy would place on industry are the very same ones that the CBO report said the policy would place on EPA.

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Poll: Coal baron Blankenship fading in W.Va. Senate primary [Back](#)

By Alex Isenstadt | 04/23/2018 07:26 PM EDT

WHEELING, W.Va. — A new poll out Monday evening shows recently imprisoned coal baron and Senate hopeful Don Blankenship fading in the Republican primary, amid an avalanche of establishment attacks aimed at stopping him from winning the nomination.

With the primary two weeks away, the survey shows Blankenship, who spent a year in jail following the deadly 2010 explosion at his Upper Big Branch Mine, falling far behind his more mainstream rivals, GOP Rep. Evan Jenkins and state Attorney General Patrick Morrisey. The poll found Morrisey leading with 24 percent, followed by Jenkins with 20 percent, and Blankenship trailing with 12 percent. Thirty-nine percent were undecided.

The survey, which was conducted April 17-19 and has a margin of error of 4.9 percentage points, came as Blankenship squared off against his rivals in a 90-minute debate held at Wheeling Jesuit University. The candidates spent much of the evening aligning themselves with President Donald Trump, and beating up on Democratic Sen. Joe Manchin.

They will also meet on Tuesday, and again next week for a nationally televised debate hosted by Fox News.

The survey of 411 primary voters was commissioned by GOPAC, an organization that promotes state Republican legislators, and was conducted by National Research Inc., a polling firm that worked on Trump's 2016 campaign. Neither has taken sides in the primary.

National Republicans have scrambled to intervene in the contest, fearing that a Blankenship primary win would destroy their prospects of unseating Manchin. The 68-year-old former coal executive has spent nearly \$2 million of his own to fund a slash-and-burn style campaign savaging Jenkins and Morrisey as establishment pawns.

He has also sought to clear his name. Much of Blankenship's campaign has been geared toward portraying himself as the casualty of an Obama Justice Department bent on locking him up.

Fearful that Blankenship was gaining traction, Mountain Families PAC, a super PAC overseen by strategists close to Senate Majority Leader Mitch McConnell's political operation, swung back — airing around \$700,000 worth of TV ads in recent days accusing Blankenship of contaminating drinking water.

The effort to defeat Blankenship has gone further. Earlier this month, Trump flew to West Virginia to hold an event aimed at selling his tax reform legislation. The president was seated next to Jenkins and Morrisey, a clear attempt to promote their candidacies over Blankenship, who was not in attendance.

For national Republicans, the move was not without risk. Last year, a McConnell-aligned super PAC spent millions to stop Alabama Senate candidate Roy Moore from winning the nomination, only to see it backfire. Moore used it to cast himself as the victim of the establishment, and went on to win the primary before losing the general election in a stunning upset.

Blankenship is taking a similar approach. With the contest hurtling into the final stretch, he has begun airing commercials calling McConnell a "swamp creature."

And during a news conference on Monday morning, Blankenship pledged not to support McConnell as Senate GOP leader if he's elected.

"He needs to understand that if I'm there I will not vote for him for majority leader, and so the rest of the senators should understand that they should not put him up if they need my vote," he told reporters.

The candidates largely avoided attacking each other at Monday's debate, perhaps because three lesser-known contenders were also included onstage, a setup that limited the amount of speaking time.

Blankenship used the debate to further his argument against the establishment. He called the 2010 mine explosion "heart-wrenching," and called it "one of the worst days of my life."

But he blamed the disaster on the government, saying it had taken steps to limit the amount of airflow available to the miners.

During his closing remarks, Blankenship referred to Washington as the "district of corruption," and argued that politicians there often tried to make themselves look like they were fighting over ideals when they were merely posturing.

"When I go to D.C.," he said, "it won't be a fake fight, it will be a real fight."

With candidates and outside groups crowding the TV airwaves, much of the firepower is being directed at Jenkins, a second-term congressman who in 2014 defeated longtime Democratic Rep. Nick Rahall. All told, around \$1.2 million is expected to be spent against Jenkins, according to a media buyer.

Among those spending heavily against Jenkins is Duty and Country, an outside Democratic group with offices in Washington. To date the group has spent around \$380,000 on TV, the vast majority of it against Jenkins.

At Monday's debate, Jenkins argued that Democrats were trying to "meddle" in the primary. He said their attacks on him was proof that the opposing party viewed him as the biggest threat to Manchin.

The Democratic effort, he added, was unprecedented in West Virginia politics.

"They're scared to death of Evan Jenkins on the ballot in November because they know Evan Jenkins can beat Joe Manchin," the congressman said.

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Court chooses salmon over hydropower in Columbia River fight [Back](#)

The 9th Circuit Court of Appeals has sided with the state of Oregon, the Nez Perce tribe and nearly a dozen conservation groups, ruling that hotly contested dam operations on the Columbia and Snake Rivers must forgo hydropower production during key times of the year in order to protect endangered salmon.

The three-judge panel upheld a lower court's decision requiring that water be spilled over the top of dams along the Columbia River System, including the powerhouse Grand Coulee dam, the largest power station in the U.S., during periods when young salmon and steelhead migrate to the ocean. The hydropower turbines pose a threat to the fish.

The Justice Department, representing the National Marine Fisheries Service, Army Corps of Engineers and Bureau of Reclamation, had argued that requiring such operations would cause electricity rates to spike and could threaten the reliability of the electrical grid.

The ruling stems from a years-long battle over the nearly 100-year-old hydropower system along the Columbia and Snake rivers. Conservation groups and tribes with treaty fishing rights want the system altered and operated to benefit wildlife, including calling for the removal of four dams along the Snake River. As part of that litigation, the federal agencies are also working on an environmental impact statement for the system that has been the subject of congressional fights, with Rep. Cathy McMorris Rodgers (R-Wash.) filing a measure (H.R. 3144) to void that process, and Democratic lawmakers coming out in opposition.

WHAT'S NEXT: Unless they successfully appeal the decision, the federal agencies will need to release water over the top of dams beginning this spring. The ongoing environmental impact statement process will continue.

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Senate spending leaders vow to open up floor debate for amendments [Back](#)

By Sarah Ferris and Kaitlyn Burton | 04/23/2018 06:20 PM EDT

Senate Appropriations Chairman Richard Shelby is vowing to restore chamber-wide debate on amendments to individual appropriations bills to help end Congress' stop-and-go funding cycle.

Shelby (R-Ala.), along with his Democratic counterpart Sen. Patrick Leahy, of Vermont, told committee members in a closed-door meeting today that leadership has agreed to allow amendments on the Senate floor for every individual spending bill.

"There is perhaps unanimity, but certainly strong consensus that if the appropriations process is going to work we're going to be casting votes on amendments and we stay here and we vote," Sen. Jerry Moran (R-Kan.) told reporters exiting the meeting, which was the committee's first bipartisan sit-down of fiscal 2019

"I think it's the single best way to restore the Senate the way the Senate's supposed to work. The full Senate gets a chance to offer a variety of amendments, and if you don't like it, you can vote against it," Sen. Lamar Alexander (R-Tenn.) added.

Shelby and Leahy have met with Majority Leader Mitch McConnell and Minority Leader Chuck Schumer in recent days about opening up the floor for debate on spending bills.

When asked if both leaders were on board, Shelby added: "They tell us they are, and I like to believe them." Leahy added: "We both talked with both of them. I think they both understand. The Senate can't go on like this."

It's a risky gambit, particularly in an election year. Contentious amendments have held up bills in both chambers in recent years.

Back in 2016, Senate Democrats blocked a largely noncontroversial Energy and Water bill because of a proposed amendment on Iran. In 2015, the House GOP's Interior-Environment bill was tripped up by an unrelated rider on the Confederate flag.

The number of amendments on Senate spending bills has dropped dramatically in the last two decades, as the chambers considers fewer and fewer individual bills.

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Subject: Morning Energy: Where do biofuels stand? — This week: Pruitt faces the Hill — Macron heads to Washington

By Kelsey Tamborrino | 04/23/2018 05:42 AM EDT

With help from Eric Wolff and Annie Snider

YOU CAN'T ALWAYS GET WHAT YOU WANT: Despite efforts by President Donald Trump to settle a long-running dispute between ethanol backers and the refining industry, progress on a biofuels deal has stalled. Instead, the administration has taken a piecemeal approach to the policy, pushing for an expanded market for higher blends of ethanol, while handing out exemptions to the Renewable Fuels Standard to small refiners.

Trump, for his part, has huddled multiple times with members of his Cabinet, industry and lawmakers from both corn belt and oil states, Pro's Eric Wolff reports. But so far, there's been little progress in striking a grand deal. At odds are the independent refiners, who say they feel financial stress from the RFS, and the agriculture sector, which is anxious to expand the market for corn ethanol.

Trump has promised to allow year-round sales of 15 percent ethanol blends of gasoline, while EPA Administrator Scott Pruitt has so far granted more than two dozen temporary waivers to small refineries that exempt them from the mandate requiring them to blend ethanol with gasoline. "After 18 months of pursuing various regulatory forms of relief and a handful of Oval Office confabs, the merchant refiners ended up with [an increase in E15] taking even more market share away from them in return for some small refiner hardship waivers — and some of them did not even get that," one oil refining source told Eric.

And Pruitt's controversies stemming from his first-class flights, security spending and condo rental from a lobbyist, have left the EPA chief unable to make an aggressive case for instituting price caps many refiners want on the biofuel credits, according to an administration source. Read more [here](#).

Democrats weigh in: House Energy and Commerce ranking member [Frank Pallone](#) and Agriculture ranking member [Collin Peterson](#) sent this [letter](#) to the president on Friday, expressing concern with the waivers issued by Pruitt to small refineries, writing it "undermines the goal of the RFS program, creates uncertainty and economic hardship in the agricultural community, and gives unfair advantage to specific facilities within the refining sector."

GOOD MONDAY MORNING! I'm your host Kelsey Tamborrino, and Entergy's Rob Hall was first to correctly answer that former Senate Majority Leader Robert Taft's father served as a Supreme Court chief justice. For today: Who was the first woman to be awarded the Medal of Honor? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseyam](#), [@Morning_Energy](#) and [@POLITICOPro](#).

POLITICO Space is our new weekly briefing on the policies and personalities shaping the second space age. [Sign up today](#).

ICYMI: Check out the [event videos and highlights](#) from last Tuesday's event on how private businesses can address clean energy and build a more sustainable future.

PRUITT HEADS TO THE HILL: Thursday's the day: Pruitt is scheduled to face questions from two House committees for the first time since his swirling scandals emerged in March. He'll appear before both the House Appropriations Committee and the Energy and Commerce Committee to discuss his agency's budget request for fiscal 2019, but of course lawmakers are planning to take Pruitt to task over his ethics and spending issues. "Members are going to have questions about how things are going at the EPA and how the money is being spent," E&C Chairman Greg Walden told POLITICO last week. "And we will. We should. He'll have to answer those."

Not least on the list of questions: POLITICO's Theo Meyer and Eliana Johnson were first to report this weekend that the lobbyist, J. Steven Hart, whose wife rented a \$50-per-night condo to Pruitt, also lobbied the agency while Pruitt was leading it, according to a Friday filing by his firm. That news comes despite the denials from both Hart and Pruitt that the lobbyist did not have any business before the agency. Hart announced his resignation from his lobbying firm Williams & Jensen hours before the disclosure was published. He was already planning to retire in November, but moved up his departure in the wake of the revelation that his wife had been Pruitt's landlord.

An EPA official acknowledged on Saturday that Pruitt had met with Hart, who attended a meeting with a former meat-processing executive concerned about Trump's proposal to cut spending on a Chesapeake Bay cleanup program. But the official argued that the meeting didn't meet the definition of lobbying. The disclosure, meanwhile, says Hart lobbied the EPA on issues "relating to support for EPA Chesapeake Bay Programs." A spokeswoman for House Oversight Chairman Trey Gowdy, who is already probing the administrator, told POLITICO that "the Committee has already been looking into this matter." Read more.

The hits keep coming: The Associated Press reported on Friday that state records show how, as Oklahoma's attorney general, Pruitt ordered investigations agents from his office to work as his driver and bodyguard. And a separate report from The New York Times probed how Pruitt bought a historic house in Oklahoma from a top lobbyist with the help of a shell company.

— **Another Republican called on Pruitt to resign** this weekend, marking at least four current Republican lawmakers to do so. "Yes EPA Administrator Scott Pruitt should resign. Wrong fit from start for agency dedicated to protecting our environment," New Jersey Rep. Frank LoBiondo tweeted. "#EarthDay2018 reinforces our need to promote pristine planet via clean air & water, leaving it better for future generations. Requires leadership & balance."

NOW THAT'S A MISTAKE: Three days after releasing a raft of communications between top EPA personnel to the Union of Concerned Scientists under the Freedom of Information Act, the agency removed them from its electronic library Friday. Among the documents were emails POLITICO cited on Thursday that show political officials developing a new scientific transparency policy were more concerned with the impact it could have on the agency's ability to consider industry data when reviewing pesticides and toxic chemicals for safety than they were about potentially excluding studies on the effect of pollution on public health, as many scientists have warned. EPA sent the policy, based on legislation from House Science Chairman Lamar Smith (R-Texas), to the White House for interagency review Thursday.

EPA did not respond to requests for comment over the weekend, but Yogin Kothari with UCS said the agency told him it accidentally released documents with private information and privileged attorney-client communications. His group removed emails it considered to fit that description and posted the rest on its website.

XCEL NOT SO INTO MARKETS AFTER ALL: Colorado utility Xcel Energy blew a hole in Southwest Power Pool's plans for a western power market when the company announced late Friday it had dropped out of the Mountain West Transmission Group. SPP had been working with the informal group of power providers for months to try and join the power market — and SPP had advanced the effort as recently as last month. Xcel

didn't respond to a request for comment, but the press release said there were "limited benefits" in the effort and "increasingly uncertain costs."

Perhaps most intriguing to ME is the company's point that "Xcel now sees few opportunities for westward expansion of the RTO which might have added to the value proposition." SPP faces competition from both California's already established energy-imbalance market that includes utilities in the Pacific Northwest and Nevada, and a nascent joint project between eastern market operator PJM Interconnection and western reliability manager PEAK. Xcel's press release did not say if it had engaged with either of these other projects.

MR. MACRON HEADS TO WASHINGTON: French President Emmanuel Macron makes his first official visit to Washington this week, where he'll meet with the president and deliver an address to a joint meeting of Congress. Macron and his wife will be hosted by the president and first lady at a private dinner tonight and the two leaders will participate in a bilateral meeting on Tuesday.

Officially, the two heads of state are set to discuss ongoing issues in Syria, the Iran deal and trade tensions. But keep an ear out for climate mentions, too. Macron has been critical of Trump's announcement that he would remove the U.S. from the Paris climate agreement.

Ahead of his meeting with Trump, Macron appeared on "Fox News Sunday," where he was asked whether he believes Trump will serve his full term. "I never wonder that," Macron said. "I mean, I work with him because both of us are very much at the service of our country in both side. And for me, that's why — even when we have some disagreements on climate and on some issues, I think the most important thing is to — I mean, just to remind that we are at the service of our people, that's our legitimacy."

FROM BLOOMBERG WITH LOVE: Special envoy to the U.N. for climate action Michael Bloomberg pledged to help cover the U.S. financial commitment to the Paris climate accord on Sunday. Appearing on CBS, the former New York City mayor announced he would foot the \$4.5 million bill to the U.N. Climate Change Secretariat under the 2015 agreement that was struck by former President Barack Obama.

"America made a commitment. And as an American, if the government's not going to do it, we all have a responsibility, and I'm able to do it," he said on CBS. "So yes, I'm going to send them a check for the monies that America had promised to the organization." Bloomberg will also make more funding available should the U.S. government fail to produce funds for its share of the U.N. climate budget in 2019, according to a press release announcing the action.

READY FOR TAKEOFF: Rep. Jim Bridenstine will be sworn-in at 2:30 p.m. today as the new NASA administrator. After the swearing-in ceremony, Vice President Mike Pence and Bridenstine will speak live with three NASA astronauts currently living on the International Space Station.

MAIL CALL! Senate Democrats sent a series of letters Friday, calling on the administration and agency heads to share documents related to the Koch brothers' role in influencing policy in the Trump era. The letters cite specific actions for which the Koch network has taken credit, including shrinking national monuments, exiting the Paris climate change agreement and streamlining of infrastructure permitting. "Americans have a right to know if special interests are unduly influencing public policy decisions that have profound implications for public health, the environment, and the economy," the senators write. The letters, led by Sen. Sheldon Whitehouse, come before Senate floor speeches this week from Democrats that are expected to detail the influence of the Koch brothers network. Read the letter to the White House here, EPA here and Interior here.

IN CELEBRATION OF EARTH DAY: The president touted his administration's rollback of "unnecessary and harmful regulations," and pointed toward a "market-driven economy" as an essential tool in environmental protection. "A healthy environment and a strong economy go hand in hand," a White House presidential message said. "We know that it is impossible for humans to flourish without clean air, land, and water. We also

know that a strong, market-driven economy is essential to protecting these resources." Trump said for that reason, his administration is "dedicated to removing unnecessary and harmful regulations that restrain economic growth and make it more difficult for local communities to prosper and to choose the best solutions for their environment."

REPORT OUT ON DOE BUDGET: The Information Technology and Innovation Foundation is out with a new report today analyzing the Energy Department's budget for research, development and demonstration. The report details how the administration's current budget proposal for fiscal 2019 would "impose the largest single-year decrease" in DOE history. "R&D spending as a share of sales in the U.S. energy industry is only 0.4 percent, compared with 8.5 percent in aerospace and defense, 9.8 percent in computers and electronics, and 2.4 percent in the automotive industry," the report finds. Read it [here](#).

MOVER, SHAKER: Holly Burke last week joined the League of Conservation Voters as communications coordinator. She previously worked for American Bridge.

— **Jennifer Talhelm**, formerly communications director for Sen. [Tom Udall](#), is moving to the Western Resource Advocates and will be based in Santa Fe.

QUICK HITS

- She tried to report on climate change. Sinclair told her to be more "balanced," [BuzzFeed](#).
- Oil is fast approaching \$70. Is the economy ready for it? [The Wall Street Journal](#).
- EPA sources: Pruitt aide tried to back-date departure after congressional interview request, [CNN](#).
- Environmental review for mine project expected this week, [Associated Press](#).
- America's nuclear headache: old plutonium with nowhere to go, [Reuters](#).
- Perched on a platform high in a tree, a 61-year-old woman fights a gas pipeline, [The Washington Post](#).

HAPPENING THIS WEEK

MONDAY

11:30 a.m. — Verizon [discussion](#) on "Celebrating Earth Day: The Power of Next-Gen Networks to Advance Environmental Sustainability," 1300 I Street NW

TUESDAY

8:00 a.m. — American Fuel & Petrochemical Manufacturers holds [security conference](#), New Orleans

10:00 a.m. — Senate Energy and Natural Resources Committee [hearing](#) on the president's proposed budget request for FY 2019 for the Forest Service, 366 Dirksen

10:00 a.m. — Senate Foreign Relations Committee [hearing](#) on nominations, including Jackie Wolcott to be representative to the International Atomic Energy Agency, 419 Dirksen

10:00 a.m. — The Bipartisan Policy Center [webcast](#) "Can America's Infrastructure Withstand the Next Natural Disasters? Lessons Learned from Previous Disasters."

3:00 p.m. — Woodrow Wilson Center book launch discussion with author Barry Rabe on pricing carbon, 1300 Pennsylvania Ave NW

5:00 p.m. — Johns Hopkins University's Energy, Resources and Environment presentation on "Cities as Innovation Centers: Investing in Resilient Infrastructure," 1619 Massachusetts Avenue NW

WEDNESDAY

10:00 a.m. — Senate Commerce Committee hearing on "Enhancing the Marine Mammal Protection Act," 253 Russell

11:30 a.m. — The World Resources Institute forum on "activism for energy," 10 G Street NE

12:30 p.m. — Olympians brief Congress about impact of climate change on winter sports, hosted by Sens. Michael Bennet and Susan Collins, 538 Dirksen

2:00 p.m. — Resources for the Future webinar on "What Research Says on Key Fracking Debate Issues."

2:00 p.m. — House Natural Resources Committee hearing on "The Weaponization of the National Environmental Policy Act and the Implications of Environmental Lawfare," 1324 Longworth

3:30 p.m. — Bloomberg Government and the Norwegian-American Chamber of Commerce conversation on "Investing In A Sustainable Energy Future," New York City

6:30 p.m. — The Carnegie Institution for Science lecture on the sustainable use of the ocean, 1530 P Street NW

THURSDAY

8:00 a.m. — Water Leaders summit on "Building an Innovative Future for Water Policy and Technology in America," 215 Capitol Visitors Center

8:30 a.m. — George Mason University's Center for Energy Science and Policy symposium on "Energy-Water Nexus," Fairfax, Va.

9:00 a.m. — Colorado State University hosts symposium on "Water in the West," Denver

10:00 a.m. — The U.S. Energy Association forum on "fostering the deployment of CCUS technologies," 1300 Pennsylvania Ave NW

10:00 a.m. — The House Energy and Commerce Committee hearing on EPA's budget request, 2323 Rayburn

10:00 a.m. — House Natural Resources Oversight Subcommittee hearing on "Examining the Critical Importance of Offshore Energy Revenue Sharing for Gulf Producing States," 1324 Longworth

10:00 a.m. — The Center for Strategic and International Studies' Energy and National Security Program discussion on "Challenges to Ukrainian Energy Reform and European Energy Security," 1616 Rhode Island Avenue NW

11:30 a.m. — The Atlantic Council discussion on "From an Oil Company to an Energy Company," 1030 15th Street NW

1:30 p.m. — Information Technology and Innovation Foundation release on "Closing the Innovation Gap in Grid-Scale Energy Storage," 1101 K Street NW

2:00 p.m. — House Appropriations Interior, Environment, and Related Agencies Subcommittee hearing on EPA's fiscal 2019 budget, 2007 Rayburn

2:00 p.m. — House Natural Resources Committee hearing on H.R. 5317 (115) and H.R. 211 (115), 1324 Longworth

2:00 p.m. — Senate Appropriations Energy and Water Development Subcommittee hearing on the Nuclear Regulatory Commission's proposed budget for FY 2019, 430 Dirksen

2:30 p.m. — The Center for a New American Security event on how lower oil prices have reshaped geopolitical calculations for U.S. policymakers, 1152 15th St NW

FRIDAY

12:00 p.m. — Women's Council on Energy and the Environment discussion on wholesale electricity pricing, 888 First Street NE

12:00 p.m. — The Nuclear Information and Resource Service, and U.S. Climate Action Network discussion on "Climate Justice and Nuclear Power in South Africa," 1200 G Street NW

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<https://www.politicopro.com/newsletters/morning-energy/2018/04/where-do-biofuels-stand-179483>

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Failure to strike biofuels deal opens door for smaller ethanol moves Back

By Eric Wolff | 04/23/2018 05:01 AM EDT

President Donald Trump's long-sought biofuels deal between the agricultural and refining industries appears to be turning into a piecemeal policy cobbled together through EPA that expands the market for corn ethanol while granting exemptions from the program to many small oil processors.

Trump has huddled several times with members of his Cabinet, refining and ethanol industry players, and lawmakers from both corn-belt and oil states. But so far, there's been little progress in striking a grand deal that would relieve the financial pain that some independent refiners say the Renewable Fuel Standard is causing them while acceding to agriculture-sector pressure to expand the market for corn ethanol.

Instead, Trump has promised to allow year-round sales of 15 percent ethanol blends of gasoline while EPA Administrator Scott Pruitt has handed out more than two dozen temporary waivers to small refineries that exempt them from the mandate requiring them to blend ethanol with gasoline.

"After 18 months of pursuing various regulatory forms of relief and a handful of Oval Office confabs, the merchant refiners ended up with [an increase in E15] taking even more market share away from them in return for some small refiner hardship waivers — and some of them did not even get that," said a source with an oil refining company.

For over a year, refiners have urged the administration to put a cap on the price of the biofuel credits that refiners must buy to meet their RFS compliance levels. But the move has been sharply opposed by ethanol and corn interests, as well as Sen. Chuck Grassley (R-Iowa), who as recently as last month called a potential cap "CATASTROPHIC to ethanol."

But the prices for biofuel credits, called Renewable Identification Numbers, have fallen since Pruitt's EPA began issuing at least 25 compliance waivers. Although that's angered biofuels supporters who complain it has sapped demand for ethanol, they see the administration's plan to drop the Clean Air Act rules that have barred E15 sales in the summer in some states as a boon.

"Right now we're going to have anywhere from a billion- to a billion and a half-[gallon] reduction in [ethanol] demand because of [RFS] waivers given so far," Sen. Mike Rounds (R-S.D.) told POLITICO. "I think we're moving in the right direction, but we want to make sure we get the [E15] waiver in place."

At a meeting with Midwestern senators and governors April 12, Trump announced his plan to expand E15 sales. But Trump also said there were efforts to set a transition period for the two years "where we will have a little bit of complexity," an apparent reference to refiners' worries that an increase in the number of RINs from higher E15 sales won't help push down prices for the credits in the near term.

The expansion of E15 sales came after an early April meeting at the White House, where Agriculture Secretary Sonny Perdue urged Trump to give corn farmers something to offset the ethanol demand drop they were seeing from the refinery compliance waivers, as well as the decline expected because of China's retaliatory import tariffs put in place after Trump announced his trade penalties, according to an administration source. The Washington Post reported Trump spent much of the meeting discussing the controversies around Pruitt's condo rental from a lobbyist and heavy spending on first-class travel and round-the-clock security.

Trump's discussion of Pruitt's controversies left the EPA chief unable to make an aggressive case for instituting price caps on RINs, according to an administration source, and have put him in a generally weakened position inside the White House.

And that may have killed the effort to establish RIN price caps, and given traction to the piecemeal EPA actions on E15 and the temporary compliance waivers, according to both administration and industry sources.

"[The oil industry] got what they wanted with the small refinery waivers, so we should get what we want," said Rob Walther, vice president of federal affairs for the ethanol producer POET.

Refiners, who over the last several months have sought and received RFS waivers for the 2016 and 2017 compliance years, are now expected to be pushing for the same exemptions for 2018 before they even know what their final liability for the year is.

Separately, a debate has grown over how EPA has been able to issue so many waivers to refiners this year. Though an EPA spokeswoman says the agency continued to use the same process it had under the Obama EPA to grant those exceptions, oil and ethanol industry sources acknowledge it has made crucial changes that make it far easier to get out from under the biofuel mandates.

In particular, EPA is relying on report language congressional appropriators added to 2016 and 2017 government funding bills that called on EPA to loosen its requirements for determining if a refinery should be awarded a waiver. EPA has also softened its definition of what constitutes economic hardship for a refinery as a result of a ruling from the U.S. Court of Appeals for the 10th Circuit last year.

That decision, in the case of *Sinclair Wyoming Refining v. EPA*, said the agency's test for defining economic hardship as whether a refiner was about to be pushed into bankruptcy had been too severe.

EPA has also taken a more aggressive interpretation of the law, saying it would no longer grant only partial waivers. Instead, the agency is now granting full-volume waivers to qualifying small refineries, according to an industry attorney.

The American Petroleum Institute, which represents the biggest oil companies, has opposed the waivers, and ethanol producers are furious at the use of the congressional report language to loosen the standards for receiving them. Monte Shaw, executive director of the Iowa Renewable Fuels Association, said his group has asked allies on the Appropriations Committee to consider writing their own language into future appropriations reports reversing the previous guidance.

Other groups think EPA is relying too much on that congressional guidance that is not included in the law.

"The report language does not override the plain reading of the statute," said Bob Dinneen, CEO of the Renewable Fuels Association. "While the court's decision in *Sinclair* might suggest EPA views these waivers differently, EPA has turned 180 degrees in its interpretation of the statute, and essentially now requires no demonstration of economic hardship. That's not what either the statute or the court required."

EPA staff has begun work trying to figure out how to best implement the expansion of E15 sales, which corn growers see as pivotal for the program's near future. But ethanol producers and their allies are looking ahead to the long term, in which E25 and E30 provide the octane for smaller, high-efficiency engines that get far higher fuel efficiency than current models.

"We have to move to the point to emphasize the need for octane, for these small engines that become more important in meeting CAFE standards in coming years," Rounds said. "That's where ethanol really shines."

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Lobbyist whose wife rented to Pruitt lobbied EPA despite denials [Back](#)

By Theodoric Meyer and Eliana Johnson | 04/20/2018 06:43 PM EDT

The prominent lobbyist whose wife rented a condominium to Environmental Protection Agency Administrator Scott Pruitt lobbied the agency while Pruitt was leading it, contrary to his and Pruitt's public denials that he had any business before the agency, according to a Friday filing by his firm.

The [disclosure](#) from the lobbying firm Williams & Jensen contradicts Pruitt's public statement last month that the lobbyist, J. Steven Hart, had no clients with business before the EPA, and came hours after Hart's resignation from the firm.

An EPA official acknowledged on Saturday that Pruitt had met with Hart, who attended a meeting with a former meat processing executive concerned about President Donald Trump's proposal to cut spending on a Chesapeake Bay cleanup program. But the official argued that the meeting didn't meet the definition of lobbying.

A second EPA official, agency spokesman Jahan Wilcox, told POLITICO: "We have no knowledge of any facts that precipitated Williams & Jensen electing to make this filing."

The disclosure is the latest sign of one-time allies distancing themselves from Pruitt, whose job is in jeopardy because of multiple investigations into his stewardship of the agency, ranging from spending on a 20-person security team and first-class travel to the installation of costly office furniture and a soundproof phone booth. The Government Accountability Office said earlier this week that the purchase of the booth, which cost \$43,000, violated federal law. And the staff of House Oversight Chairman Trey Gowdy (R-S.C.) has interviewed a former EPA political appointee who alleges that Pruitt lied about not knowing about steep raises given to two of his top aides.

When asked late Friday about Hart's lobbying activities, a Gowdy spokeswoman told POLITICO that 'the Committee has already been looking into this matter.'"

Sen. Sheldon Whitehouse (D-R.I.) said in a statement Saturday that any evidence of deception about Pruitt's relationship with the lobbyist-turned-landlord would bode ill for the EPA administrator.

"It doesn't get much swampier than an agency head getting a sweetheart deal on rent from a lobbyist with business before his agency, but someone lying about it afterwards does make it worse," Whitehouse said. "The laundry list of Pruitt scandals grows."

Hart announced he would resign from Williams & Jensen hours before the firm filed a disclosure showing that he lobbied the EPA for Smithfield Foods in the first quarter of 2017. While Hart, the chairman and former chief executive of the firm, has disputed that the contact he had with Pruitt and Pruitt's chief of staff, Ryan Jackson, constituted lobbying activity, the disclosure indicates otherwise.

Hart lobbied the EPA on issues "relating to support for EPA Chesapeake Bay Programs," according to the disclosure.

Pruitt told Fox News earlier this month that "Hart has no clients that have business before this agency."

Smithfield paid Williams & Jensen, which has lobbied for the company for years, \$70,000 to lobby on a variety of matters in the first quarter, according to the disclosure filing. Hart also lobbied Congress on trade, agriculture and food safety issues on Smithfield's behalf during the first quarter, alongside other Williams & Jensen lobbyists.

But Smithfield said Hart's lobbying of the EPA "was not undertaken at the direction of or on behalf of Smithfield Foods."

"These activities were conducted at the request of a then former executive and current Smithfield Foundation board member, Dennis Treacy, in his personal capacity," the company said in a statement. "Mr. Treacy is associated with several environmental organizations and is a member of the Chesapeake Bay Commission."

Treacy had been Smithfield's chief sustainability officer, as well as president of the nonprofit Smithfield Foundation, and before that had led Virginia's Department of Environmental Quality.

The first EPA official, who spoke on condition of anonymity, said Pruitt and Jackson, his chief of staff, met with Treacy and Hart on July 11 for 20 minutes in Pruitt's office. That's backed up by a chain of agency emails obtained by POLITICO, which show Treacy requesting a meeting in May to discuss his "focused and unique view of environmental protection" with Pruitt, and one finally being scheduled for July 11.

On July 10, Hart wrote to Jackson that he wanted to attend the meeting at Treacy's request. Hart added that Treacy "is a good guy and can be trusted. He is coming in as the business rep on the Chesapeake Bay Foundation — another of your controversies."

But the disclosure filed by Williams & Jensen indicates that Hart's lobbying work took place in the first three months of this year, not in 2017.

The official said Hart set up the meeting as a "personal introduction" but that Treacy used a Smithfield email address, which may have prompted Williams & Jensen to consider the meeting lobbying activity on behalf of Smithfield. Treacy wanted to talk about the president's proposed budget cuts to EPA's spending on Chesapeake Bay, the subject of one of the nation's premier ecosystem restoration projects, the official said.

The official said Pruitt discussed his meeting with Hart with EPA staff before going on Fox News for an interview this month, where Pruitt maintained that Hart had no clients with business before the agency. But "it has been clear in [Pruitt's] mind for months now this was a personal introduction of an individual who was supportive of the administration, who wanted to meet the administrator."

Smithfield Foods has had a tangled history with Chesapeake Bay: In 1997, a federal judge slapped the company with a record \$12.6 million fine for violating the Clean Water Act by dumping hog waste into a bay tributary. But Smithfield is now listed as a corporate partner of the nonprofit Alliance for the Chesapeake Bay.

Pruitt's rental of the Capitol Hill condo — a relative bargain at \$50 a night — had attracted criticism even before the filing because Hart has lobbied on energy issues in the past. Hart is also a past political donor to Pruitt, contributing a total of \$4,366 in cash and in-kind services to the former Oklahoma attorney general's campaigns and leadership PAC.

Pruitt's lease originally had J. Steven Hart's name printed on it as the landlord, but someone crossed it out and wrote in the name of his wife, Vicki. Public records show Vicki Hart's name on both the mortgage and deed. (Vicki Hart is also a lobbyist but works primarily on health care issues.)

Hart was already planning to retire in November but moved up his departure in the wake of the revelation that his wife has been Pruitt's landlord.

"Considering the last couple of weeks, I think it is easier on my family and the firm to expedite my departure," Hart wrote on Friday afternoon in an email to family and friends that was obtained by POLITICO.

Williams & Jensen confirmed Hart's departure.

"Mr. Hart informed the firm of his decision to resign today," the firm said in a statement on Friday. "We are grateful to Steve for his 35 years of service and we wish him and his family well in all of their future endeavors."

Hart did not respond to a request for comment. But he was sharply critical of the news coverage of the Pruitt scandal in the email he sent on Friday.

"As you know, these days I am no more an energy lobbyist than I am an astronaut," Hart wrote. "But, why let the facts get in the way of a good story?"

After leaving the firm, Hart wrote that he was "looking forward to devoting myself to an independent legal practice, some strategic business counseling for a few clients, golf, and shooting (not in that order)."

Alex Guillén and Emily Holden contributed to this report.

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Third Republican calls on Pruitt to resign [Back](#)

By Alex Guillén | 04/05/2018 03:34 PM EDT

Rep. [Elise Stefanik](#) (R-N.Y.) today called on EPA Administrator Scott Pruitt to resign, becoming at least the third Republican to do so even as more conservative lawmakers come to Pruitt's defense.

"I'm going to make news today," Stefanik said at a town hall meeting in South Glens Falls, about 45 miles north of Albany, according to [The Saratogian](#). "I think Scott Pruitt should resign. I fundamentally disagree with how Pruitt has handled the EPA."

Reps. [Carlos Curbelo](#) and [Ileana Ros-Lehtinen](#), both Florida Republicans, earlier this week called for Pruitt's ouster, as have a number of Democrats. Pruitt is facing increased scrutiny for ethics issues including the \$50-per-night rent he paid to rent space in a condo from a lobbyist last year.

Meanwhile, conservative Republicans like Sens. [Rand Paul](#) (R-Ky.) and [Ted Cruz](#) (R-Texas) have come to Pruitt's defense today.

"Why do Obama and his media cronies want so badly to drive @EPAScottPruitt out of office?" [tweeted](#) Cruz.

Pruitt "is likely the bravest and most conservative member of Trump's cabinet," [tweeted](#) Paul. "We need him to help @realDonaldTrump drain the regulatory swamp."

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EPA emails show industry worries slowed new science policy [Back](#)

By Annie Snider | 04/19/2018 05:01 PM EDT

EPA's rollout of a controversial new transparency policy that would severely restrict the scientific research the agency can rely on when drafting new regulations has been slowed down by political officials' fears that it could have major unintended consequences for chemical makers, according to newly released EPA documents.

The issue of scientific transparency has been high on the agenda of House Science Chairman [Lamar Smith](#) (R-Texas), who has found strong support from EPA Administrator Scott Pruitt — much to the consternation of public health advocates and green groups, who view the effort as backdoor attack on the agency's ability to enact environmental regulations.

Since Pruitt announced plans for the new policy last month, researchers and public health proponents have raised alarms that it could restrict the agency's ability to consider a broad swath of data about the effects of pollution on human health. But documents released under the Freedom of Information Act show that top EPA officials are more worried the new restrictions would prevent the agency from considering industry studies that frequently support their efforts to justify less stringent regulations.

Emails between EPA officials obtained by the Union of Concerned Scientists show that Nancy Beck, the top political official in the agency's chemicals office who came to the agency after serving as a key expert for the chemical industry's lead lobbying group, voiced major concerns after she received a draft of the not-yet-released policy on Jan. 31.

The new scientific transparency directive is expected to require that the raw data for all studies EPA relies on be publicly available, and that the studies be peer-reviewed. But Beck said these requirements would exclude a great deal of industry data about pesticides and toxic chemicals that her office considers when determining whether a substance is safe or must be restricted.

It costs companies "millions of dollars to do these studies," Beck wrote in an email to Richard Yamada, the political official in EPA's office of research and development who is spearheading work on the new scientific policy and is also a former staffer for the House Science Committee chairman.

"These data will be extremely valuable, extremely high quality, and NOT published," Beck wrote. "The directive needs to be revised."

Moreover, much of this data, Beck noted, is considered proprietary by companies. It is dubbed confidential business information, and even though EPA can consider it as part of its regulatory review, the data cannot legally be made public.

Yamada replied to thank Beck for the heads up. "Yes, thanks this is helpful - didn't know about the intricacies of CBI," he wrote. "We will need to thread this one real tight!"

The term "confidential business information" primarily applies to industry information. That data is separate from the personal medical information that public health researchers worry could block consideration of their work.

Yogin Kothari, a lobbyist for the Union of Concerned Scientists, said the emails show the Trump administration's EPA has been "trying to stack the deck in favor of the industries they're supposed to be regulating."

"They want to potentially create exemptions for industry, but if you look at this entire set of documents ... you will see that there's not a single consideration for the impacts on public health data, on long-term health studies, on studies that EPA does after public health disasters like the BP oil spill," he said.

EPA spokeswoman Liz Bowman emphasized the policy is not yet finalized.

"These discussions are part of the deliberative process; the policy is still being developed. It's important to understand; however, that any standards for protecting [confidential business information] would be the same for all stakeholders," she said in a statement.

The emails indicate Pruitt wanted the new science policy rolled out at the end of February, and teased his plans in an interview with conservative outlet The Daily Caller in mid-March. But the agency has yet to finalize the policy.

The transparency directive has its origins in legislation introduced by Smith during the Obama administration, that had the backing of a number of industry groups, including the American Chemistry Council. The House Science Committee chairman frequently charged that the Obama EPA used "secret science" to justify "costly new regulations."

Although versions of the measure were approved by the House multiple times, the Senate never took it up. CBO estimated that one version of Smith's legislation would cost EPA \$250 million a year, at least in the initial years, and a leaked staff response to questions from the budget office said a later version would be even more costly, would endanger confidential medical and business information, and "would prevent EPA from using the best available science."

But Smith found an ally in Pruitt. The emails indicate that Smith met with Pruitt in early January and show that Pruitt's staff quickly began working on a directive to "internally implement" the legislation.

Industry's backing for the new scientific approach began to waiver under the Trump administration, though. When a top American Chemistry Council scientist testified before Smith's committee in February 2017, she emphasized the need to protect industry information if the transparency initiative moved forward.

"One of the things that we do need to take into consideration as making that data publicly available is that there are adequate protections for confidential business information to ensure that we keep innovation and competitiveness available for the marketplace," Kimberly White told the committee.

Industry has historically claimed that a wide range of information about chemicals, ranging from the processes by which they are produced, to the locations of manufacturing plants, to their very identities, must be kept confidential in order to keep competitors from learning trade secrets. Environmental and public health advocates argue that industry claims this exemption in many cases where it's not necessary and that it often keeps important health and safety information from public view.

The issue was a key point of debate when Congress considered a major overhaul of the nation's primary chemical safety law passed 2016 and has reemerged as Pruitt's EPA sets about implementing the law.

Asked for comment on EPA's new effort to implement the scientific transparency approach internally, American Chemistry Council spokesman Scott Openshaw said the group looks forward to reviewing the directive once it's finalized.

"It is critical that any final directive properly protect confidential business information and competitive intelligence," he said in a statement.

The internal emails show that EPA political staff were particularly attuned to this concern. In a Feb. 23 email to colleagues, Beck forwarded language from a 2005 White House document that laid out narrow exemptions from its requirement that all "important scientific information" disseminated by the federal government go through peer review.

"[Y]ou may need to tweak but hopefully there is something helpful here that can be borrowed/adopted," she wrote.

Richard Denison, lead senior scientist for the Environmental Defense Fund, said that EPA's access to industry data is indeed important to its ability to review the safety of new chemicals and pesticides, but said the internal EPA communications show that Pruitt's EPA wants to "have their cake and eat it too" with the new directive.

"They're trying to force peer review studies done by academic scientists to disclose every last detail, while at the same time allowing industry studies to be kept private or aspects of those to still be kept private," he said.

He pointed out that the concerns Beck raised about the burden the new policy would place on industry are the very same ones that the CBO report said the policy would place on EPA.

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France's Macron arrives for 'celebration' of unlikely friendship with Trump [Back](#)

By Nicholas Vinocur and Michael Crowley | 04/22/2018 09:45 PM EDT

PARIS — French President Emmanuel Macron will receive full state honors in Washington this week, nine months after he rolled out a literal red carpet for Donald Trump on Paris' Avenue des Champs Élysées.

The three-day visit is likely to feature more displays of public affection between two leaders who talk on the phone constantly and closely coordinated recent airstrikes against Syria. Despite the U.S president's enormous unpopularity in his country, Macron virtually never criticizes Trump in public and calls him a "friend." Trump in turn reportedly even scribbled a [love note](#) to the 40-year-old French president last July.

This week's visit will be "something of a celebration of the relationship," a senior Trump administration official said.

Few would have predicted such talk just after Macron's May 2017 election defeat of the nationalist insurgent Marine LePen, whom Trump [implied](#) he supported. Macron's dark-horse win was seen as a rebuke to the western nationalist movement of which Trump has become a symbol. And while the French [adored](#) President Barack Obama as a suave intellectual, Trump is seen as the embodiment of a gauche American.

But rather than denounce Trump as many French politicians have, Macron has sought to win Trump over with flattering words. In an interview with "Fox News Sunday," Macron stressed his similarities with Trump, saying both he and the president could be called a "maverick" whose election had been unexpected.

The two men hardly see eye to eye on policy, and are expected to debate the Iran nuclear deal, Syria and trade policy, among other sensitive topics.

But Macron and Trump have worked closely together as Paris takes a larger leadership role on international issues — at a time when Britain is sidelined by political chaos and a weakened German Chancellor Angela Merkel's relationship with Trump is cool at best.

"Macron has become Trump's main European interlocutor when it comes to addressing international crises," Alexandra de Hoop Scheffer, senior transatlantic fellow at the German Marshall Fund, [wrote](#) in a recent policy paper.

Macron and Trump will share a private dinner Monday evening, followed by a bilateral meeting early Tuesday. They'll then meet with Cabinet members before a state dinner at the White House. On Wednesday, Macron will address a joint session of Congress.

In their private talks, the two men are likely to focus on security issues, including a fast-approaching decision point for the Iran nuclear deal. French officials say they share some of Trump's concerns about the July 2015 pact brokered by President Barack Obama, but are urging Trump not to abandon the agreement in mid-May, when Trump has threatened to reimpose sanctions on Tehran.

Macron has sought common ground with Trump by saying the current deal is flawed and that he might be willing to crack down on Iran's ballistic missile program. But Trump wants much stronger measures that French officials worry could abrogate the deal entirely. A Trump official said the deal would be "a major topic of discussion" during Macron's visit.

The official also said the two leaders "will discuss, probably in some detail, the way ahead in Syria."

In a televised debate last week, Macron said he had changed Trump's mind on the U.S. presence in war-torn Syria: "President Trump said the USA's will is to disengage from Syria. We convinced him that it was necessary to stay," the French leader said.

The White House quickly denied that characterization, and Macron later said he never meant the countries should maintain an indefinite military presence in the country.

But on Sunday, Macron told Fox News that he would urge international cooperation during his address to Congress, warning that Iran would benefit from a U.S. and European abandonment of Syria. "We are very much attached to the same values, and especially liberty and peace," Macron said of America and France.

Trade will also be on the agenda, after Macron and Merkel — who's due to fly into Washington on April 27, a few days after Macron leaves — both vowed to tell the U.S. president that Europe would not stand for his recent steel tariffs. U.S. officials may in turn complain to Macron's entourage about a French-led proposal to slap a 3-percent tax on U.S. internet giants.

Despite the menu of issue differences, officials on both sides sought to lower expectations for specific results from the meeting.

"It's largely symbolic," an aide to Macron said.

"I think what the President would like to hear from President Macron is his counsel and his point of view and his perspective," said the Trump official. "Whether we will actually solve, or come to closure, or a full detailed agreement on some of the issues that we've touched on is difficult to say at this remove."

As they work together internationally, Trump and Macron are both fending off political threats at home. A year into his presidency, the French president's sheen as a political prodigy and savior of European liberalism has been dulled by grinding rail strikes and sagging poll numbers.

Macron wants Trump to stand at his side as the European Union's soon-to-be sole military power with a permanent seat on the United Nations Security Council, nuclear capability and the will to intervene where others will not.

The April 14 strike on Syria's chemical facilities bolstered the burgeoning Franco-American relationship, French officials say. Macron and Trump spoke repeatedly during the crisis — and no fewer than seven times over the past month, according to accounts from the Elysée presidential palace.

While Britain also joined the strikes, Merkel barely featured in the Syrian discussions. Characteristically for intervention-averse Germany, she did not order participation in the strikes, commenting on them after the fact as "necessary and appropriate."

Once the missiles had hit their targets, Macron seized on a chance to drive home his point: While others may waver, France remains a red-blooded beacon of Western power. Paris had intervened in Syria for the "honor of the international community," he told the European Parliament in Strasbourg

One outstanding question about the Macron-Trump relationship that fascinates commentators in Europe: Does the French president really like Trump, or is he just "playing him"?

European commentators suggested as much last summer when, during Trump's visit to Paris, Macron mimicked his guest's signature thumbs-up move to TV cameras.

There may be no definitive answer. Macron is a one-time stage actor who loves to quote classical French playwrights from memory and, as he told a pair of French interviewers last weekend, has "no friends."

Quizzed about Macron's apparent affection for Trump, the French president's aides say he has concluded that befriending Trump and avoiding any direct criticism of the U.S. president that could inflame his temper are the best ways of keeping Trump — and the United States — on his nation's side.

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Subject: Morning Energy: Interior rejected staff advice on casino, docs show — Pruitt's science directive slowed by industry concerns — Francis Brooke: Rookie of the year

By Kelsey Tamborrino | 04/20/2018 05:43 AM EDT

With help from Anthony Adragna

YOU NEVER KNOW WHAT YOU'RE GONNA GET: Interior officials reversed course on plans from two American Indian tribes to build a casino last year, new documents show. The heavily redacted documents released via FOIA show officials rejected recommendations from federal experts on Indian gaming, Pro's Nick Juliano reports, raising further questions about whether Interior Secretary Ryan Zinke and his political appointees caved to lobbying pressure from MGM Resorts International.

The tribes' treatment is now the subject of an Interior inspector general investigation, a spokeswoman told Nick. And while the documents don't reveal the contents of the internal deliberations by the staff of the Bureau of Indian Affairs' Office of Indian Gaming, they do show that the career staffers were circulating what they labeled as "approval" letters just 48 hours before their bosses refused to either OK or reject the tribes' application, leaving the casino in legal limbo.

No direct effort by MGM to lobby experts in BIA's Indian gaming office can be seen in the docs, but they show a timeline that indicates Interior officials closest to gaming issues were ready to side with the tribes after about six weeks of internal review. The department arrived at the opposite conclusion less than 48 hours after their recommendations went to Associate Deputy Secretary James Cason, a veteran of three Republican administrations, who was one of President Donald Trump's first hires at the department.

The emails also indicate even Interior career staff were unsure how they would explain the sudden about-face from higher-ups. "As for why we didn't approve the Mohegan compact amendment, you say the letter speaks for itself," Troy Woodward, a senior policy adviser in the Office of Indian Gaming, wrote to a colleague who wondered how he should answer questions. And "like Forrest Gump, say: 'that's all I've got to say about that.'" Read more.

WELCOME TO FRIDAY! I'm your host Kelsey Tamborrino, and NRECA's Kirk Johnson knew all the states with just one representative in the House: Alaska, Delaware, North Dakota, South Dakota, Montana, Vermont and Wyoming. For today: Who was the Senate majority leader whose father served as chief justice? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](https://twitter.com/kelseytam), [@Morning_Energy](https://twitter.com/Morning_Energy) and [@POLITICOPro](https://twitter.com/POLITICOPro).

POLITICO Space is our new weekly briefing on the policies and personalities shaping the second space age. Sign up today.

CONCERN ON ALL FRONTS: Scientists aren't the only ones expressing concern with EPA Administrator Scott Pruitt's plans to revise how the agency considers outside research, emails show. As the administrator weighs next steps on a scientific transparency directive announced earlier this year — which is expected to require that the raw data for all studies be publicly available and peer-reviewed — members of Pruitt's staff expressed concern it could block their own use of industry data, Pro's Annie Snider reports.

Emails between EPA officials obtained by the Union of Concerned Scientists show that Nancy Beck, the top political official in the agency's chemicals office, voiced concerns after she received a draft of the not-yet-released policy on Jan. 31. The directive in question has origins in legislation introduced by Rep. Lamar Smith during the Obama administration, but its requirements would exclude a great deal of data about pesticides and toxic chemicals that Beck's office considers when determining whether a substance is safe or must be restricted. "These data will be extremely valuable, extremely high quality, and NOT published," Beck wrote in an email to an official in EPA's office of research and development. "The directive needs to be revised." Read more here.

THE ROOKIE: The energy industry is unsure what to make of the relatively unknown Francis Brooke, who will soon replace Mike Catanzaro as the top White House energy aide. A 28-year-old former baseball pitcher, Brooke spent the last year in Vice President Mike Pence's office serving in a junior role to Catanzaro and George David Banks. But Pro's Ben Lefebvre and Eric Wolff report energy lobbyists worry his promotion could leave them without steady hands to steer the White House as big decisions on the coal industry, biofuels and energy trade pile up — especially in the crucial run-up to the midterm elections. "It shows you this administration doesn't care about these issues," said one lobbyist who works extensively with the administration on energy policy. "I expect agencies are now going to have to play a bigger role. There's not going to be a lot of policy issues that will be determined over the next eight months or so." Read more.

WHAT'S THE HOLD UP? House Natural Resources Chairman Rob Bishop says a comprehensive GOP energy bill is "being held up" until the Pentagon weighs how offshore drilling near Florida could affect national security, following backlash from the offshore proposal that led two Florida Republicans to pursue a permanent moratorium. A pending energy bill, H.R. 4239 (115), is one potential vehicle to extend that moratorium. Bishop told Anthony he is waiting for a Defense Department report on how expanded drilling near Florida would affect "mission compatibility." A committee spokeswoman said the results of the study would help determine next steps on the moratorium.

— **On the anniversary of the Deepwater Horizon oil spill**, New Jersey Gov. Phil Murphy is expected to sign into law today a bill that bans offshore drilling in state waters. The Center for American Progress, in anticipation of the legislation, cheered the move. Florida Sen. Bill Nelson, meanwhile, marked the anniversary by joining legislation Thursday intended to block the oil industry from rolling back Interior drilling safety rules adopted in response to the spill.

TRAVEL COMPANIONS: In preparation for a planned trip that was later canceled because of Hurricane Harvey, Pruitt spent nearly \$45,000 to fly five people to Australia, according to Reuters. While not a violation of government policy, Reuters reports two of Pruitt's aides and three security agents flew on business-class tickets costing roughly \$9,000 to set up advance meetings for the administrator. Pruitt was scheduled to participate in environment-related meetings with Australian officials.

Agency officials did not dispute the figures. EPA spokesman Jahan Wilcox told Reuters Hurricane Harvey, which caused major flooding in Texas, caused him to cancel the trip and instead go to Corpus Christi to assess the agency's relief efforts. "This is not news," he said, adding Pruitt's team was "adhering to the federal government's travel policy."

WHAT ABOUT HIS EMAILS? EPA told Senate Environment and Public Works Chairman John Barrasso that all of Pruitt's four emails were searched whenever there was a FOIA records request, but that a "full review" is being conducted just to make sure. "As long as EPA Administrators have had secondary email accounts, EPA staff have routinely searched requested accounts in response to FOIA and Congressional inquiries," Steve Fine, EPA's deputy chief information officer, wrote in a letter released by Barrasso.

DEMS WADE INTO WEST VIRGINIA PRIMARY: Republicans aren't the only ones trying to meddle in West Virginia's Senate primary. National Democrats are also jumping into the game, POLITICO's Alex Isenstadt reports, with an effort launched Thursday that could be designed to help coal baron Don Blankenship

win the Republican nomination. Washington-based super PAC Duty and Country has begun airing ads hitting the other two GOP contenders in the field: Rep. [Evan Jenkins](#) and state Attorney General Patrick Morrisey, ahead of the state's May 8 primary. But Blankenship was notably omitted from their target list, Alex writes. [Read more.](#)

— **Fox News Channel announced Thursday** its "America's Election Headquarters 2018" midterm election series would kick-off in West Virginia, with a GOP Senate primary debate on May 1. Candidates will need to reach a 10 percent threshold in a Fox poll next week to be invited to the debate.

ABOUT THAT CRA THREAT: Sen. [Lisa Murkowski](#) doesn't sound super gung-ho about using the Congressional Review Act on a 2016 plan from the Bureau of Land Management (that GAO [concluded](#) last year met the definition of a federal rule). "Obviously, we've got some issues that need to be resolved in the Tongass and whether this is the best way to do it is something we've been analyzing," she told reporters. Of course, floor time in the Senate is a valuable commodity so carving out time for the Alaska-centric issue may be a heavier lift. Background [here](#) on the Senate Republicans' new novel push to undo federal rules.

IT'S ALMOST EARTH DAY: Sunday marks Earth Day, where the Earth Day Network is using the date to promote its goal of [ending plastic pollution](#). The organization says more than 1 billion people from 192 countries will take part in the event on April 22. For its part, EPA promotes a list of Earth Day events [here](#).

CFA FLAGS FUNDRAISER AT PRUITT CONDO: Washington-based watchdog group Campaign for Accountability filed a complaint Thursday with the FEC against GOP Sen. [Mike Crapo](#) and Vicki Hart, the lobbyist co-owner of the controversial condo where Pruitt lived. The complaint alleges Crapo and Hart violated the Federal Election Campaign Act and FEC regulations when they failed to disclose improper in-kind contributions. Read it [here](#).

GOING PUBLIC: The Sierra Club filed a lawsuit for documents related to EPA's Office of Public Affairs after EPA failed to respond to its FOIA requests concerning whether the agency improperly — and potentially illegally — used the Office of Public Affairs' staff time to promote topics outside the scope of the office. Read it [here](#).

MAIL CALL! BIRD IS THE WORD: Sixty-two Democrats, led by Rep. [Alan Lowenthal](#), sent a letter to Zinke on Thursday regarding Interior's interpretation of the Migratory Bird Treaty Act. "We ask that you continue to enforce this foundational bird conservation law as every administration from across the political spectrum has done for more than forty years," the [letter](#) says.

— **Thirty-one outdoor businesses** will send [this letter](#) to Zinke today, calling on DOI to acknowledge the role of the outdoor recreation industry in its proposal to reverse the Methane Waste Prevention Rule. They request best practices are implemented to improve air quality in oil fields across the country, among other issues.

SPEAKING OF METHANE: Earlier this week BP released its "[advancing the energy transition](#)" report, [committing](#) to near-term carbon reductions and setting a target methane intensity of 0.2 percent and holding it below 0.3 percent. The Environmental Defense Fund [highlights](#) the report Thursday in a post arguing on the next frontier of methane targets, as annual shareholder resolution meetings are on the horizon.

SOLAR BILL SPOTLIGHT: Democratic Rep. [Jacky Rosen](#) introduced the bipartisan "Protecting American Solar Jobs Act," [H.R. 5571 \(115\)](#) this week, which would repeal tariffs introduced by the Trump administration on imported solar panels. It would undo increases in duty and a tariff-rate quota on certain crystalline silicon photovoltaic cells.

QUICK HITS

- Explosion reported at Valero oil refinery in Texas, [NBC](#).
- Girl Scouts to press EPA on coal ash, [WCIA](#).
- Wehrum: EPA "still thinking about" Obama mercury standards, [E&E News](#).
- Otter poop helps scientists track pollution at a Superfund site, [Scientific American](#).
- Trump's looming trade war gives Democrats an opening in farm country, [Reuters](#).
- Forget rising interest rates, banks are still loving solar power, [Bloomberg](#).

HAPPENING TODAY

8:30 a.m. — Elemental Excelerator holds [Earth Day Energy Summit](#), Hawaii

8:45 a.m. — Brookings holds a [discussion](#) on "A new EIB bond product in support of the Global Goals: Building a sustainable financial system," 2175 K St NW

9:00 a.m. — The George Washington University Elliott School of International Affairs [discussion](#) on "The French Leadership on Global Climate Actions," 1957 E Street NW

12:00 p.m. — Environmental Law Institute [conference](#) of lawyers committed to addressing the climate emergency, 2000 H Street, NW

12:30 p.m. — John Hopkins School of Advanced International Studies [discussion](#) on renewable energy's future in Puerto Rico, 1619 Massachusetts Avenue NW

1:00 p.m. — Global American Business Institute [discussion](#) on Korea's long-term natural gas plan, 1001 Connecticut Avenue NW

1:30 p.m. — House Transportation and Infrastructure Water Resources and Environment Subcommittee [field roundtable](#) on "America's Water Resources Infrastructure: Concepts for the Next Water Resources Development Act, Part II," Coos Bay, Ore.

THAT'S ALL FOR ME!

To view online:

<https://www.politicopro.com/newsletters/morning-energy/2018/04/interior-rejected-staff-advice-on-casino-docs-show-177901>

Stories from POLITICO Pro

Zinke's agency held up Indians' casino after MGM lobbying [Back](#)

By Nick Juliano | 02/01/2018 05:00 AM EDT

Two casino-owning American Indian tribes are accusing Interior Secretary Ryan Zinke of illegally blocking their plans to expand operations in Connecticut — a delay that stands to benefit politically connected gambling giant MGM Resorts International.

The Interior Department's refusal to sign off on the tribes' plans for a third Connecticut casino came after Zinke and other senior department officials held numerous meetings and phone calls with MGM lobbyists and the company's Republican supporters in Congress, according to a POLITICO review of Zinke's schedule, lobbying registrations and other documents. The documents don't indicate whether they discussed the tribes' casino project.

Federal law gives Interior just 45 days to issue a yes-or-no verdict after a tribe submits proposed changes to its gaming compact with a state, as the Mohegan and Mashantucket Pequot tribes note in a suit they filed against Zinke and the department. But the department declined to make any decision in this case, an inaction that raises questions about whether an intensive lobbying campaign by one of the gambling industry's biggest players muscled aside the interests of both the tribes and the state of Connecticut.

"I think the Department of Interior has been derelict in failing to give approval" to the tribes' request, Sen. Richard Blumenthal (D-Conn.) told POLITICO. "We asked for a meeting, but they were unresponsive. They never even responded."

Meanwhile, MGM and its allies had direct access to Interior. Zinke had multiple conversations last year with Sen. Dean Heller and Rep. Mark Amodei — two Nevada Republicans whose state is a major center of employment for MGM, and who have each tried to impede the tribes' casino plans. The company also doubled its lobbying spending and assembled a team that includes Bush-era Interior Secretary Gale Norton and Florida-based Trump fundraiser Brian Ballard.

The proposed Connecticut casino would sit on non-tribal land just across the border from a billion-dollar casino that MGM is planning in Springfield, Massachusetts. The Pequot tribe's Foxwoods Casino in Connecticut previously provoked the ire of former New Jersey casino owner Donald Trump, who complained during a 1993 congressional hearing that "they don't look like Indians to me."

An Interior spokeswoman did not respond to requests for comment, but the department is due to respond by next week to the suit the tribes filed in November. MGM has sought to join the suit on Interior's side.

MGM and its supporters say the tribes are trying to circumvent restrictions on "off-reservation" gambling while still maintaining their exclusive access to Connecticut's lucrative casino market, and that the new property would provide unfair competition to its Springfield project.

Interior officials sent the tribes encouraging signals as recently as May. But by mid-September the department reversed course, saying it would be premature to either approve or reject the plans.

"It's 100 percent about delaying us for as long as they possibly can," said Andrew Doba, a spokesman for the joint enterprise the tribes created for their new project.

The case is far from the first legal dispute to arise from Interior's role as the overseer of Indian tribes' gambling agreements with the states. Clinton-era Secretary Bruce Babbitt faced a special prosecutors' investigation after Interior rejected three Wisconsin tribes' plans for a casino that other, Democrat-supporting tribes opposed — though he ultimately was cleared. Indian gambling also played a key role in the George W. Bush-era Jack Abramoff scandal.

In the Connecticut case, the tribes have been operating two casinos — the Pequot tribe's Foxwoods and the Mohegan Sun — since the early 1990s. Their success in the market between Boston and New York provided competition to casinos in Atlantic City, including the formerly Trump-owned Taj Mahal.

As gambling spread across the U.S. in recent decades, MGM and other casino developers — including Trump — pursued projects in Connecticut but were ultimately unsuccessful. State law there limits casino ownership to the two in-state tribes and their new joint venture.

The tribes say they are fully complying with state law and the federal Indian Gaming Regulatory Act, which allows federally recognized tribes to operate casinos on their reservations or lands held in trust by the federal government. The casino they want to open is technically a commercial project that would be operated by MMCT Venture, a company jointly owned by the tribes that owns the casino site in East Windsor and entered into a development agreement with the town.

Connecticut Gov. Dannel Malloy and the state legislature signed off on that arrangement last year, so long as the tribes agreed to amend their gaming compacts that guaranteed a certain share of slot revenues would go to the state. The Indian Gaming Regulatory Act requires Interior to approve such compact amendments after a brief review window, unless the amendments violate the terms of the federal law.

The lawsuit seeks to force approval of the contract, arguing that the law does not allow Interior to refuse to render a verdict.

"IGRA and its implementing regulations leave the Secretary with no discretion to proceed in any other manner," Connecticut and the tribes argue in their lawsuit, filed in U.S. District Court for the District of Columbia on Nov. 29.

At one point, Interior seemed inclined to agree with the tribes' interpretation of the law. In a May 12 technical guidance letter to the tribes, Associate Deputy Interior Secretary James Cason acknowledged that the Indian Gaming Regulatory Act provides for a 45-day review period for compact amendments and that the department may disapprove them only for violating the act, other federal laws or trust obligations to the tribes.

While Cason stressed that his advice was nonbinding and did not constitute a preliminary decision, he endorsed earlier guidance from the Obama administration that the Connecticut amendment reflected the "unique circumstances" at play and that opening a new casino would not affect the tribes' exclusivity agreement with the state.

But the tribes' request drew opposition from out-of-state lawmakers like Heller and Amodei.

"Under that framework, the tribes seek to expand off-reservation gaming without going through the procedures mandated by" the Indian Gaming Regulatory Act, Amodei wrote in a July 28 letter to Cason, following up on a discussion earlier that day. Amodei asked whether Interior planned to allow the 45-day review period to lapse, which would allow the amendments to be "deemed approved."

Ultimately, Interior decided against approval. Acting Assistant Secretary for Indian Affairs Michael Black told the tribes in a Sept. 15 letter that approving or disapproving the amendment to their gaming compact was "premature and likely unnecessary," and said Interior had "insufficient information" to make a decision. However, he did not cite any legal justification for that move, nor did he outline what additional information the department would need.

Interior has on at least one occasion returned a gaming compact amendment rather than make a yes-or-no decision, although the circumstances were slightly different at the time. In 2013, the department told the Cheyenne-Arapaho tribes in Oklahoma that it could not process their amendments because of incomplete information. But in that case, the department replied in less than 30 days rather than wait for the entire review period to elapse, and it cited specific regulations and outlined what additional information it needed from the tribes.

Black copied Amodei and Heller on his letter but did not include any Connecticut lawmakers. (He did say a separate letter was going to Malloy, the Connecticut governor.) Zinke and Heller also spoke on the phone on Sept. 15, according to an entry on Zinke's calendar. And the day before Black sent the letter, Zinke and Cason were scheduled to meet at the White House with deputy chief of staff Rick Dearborn, although Zinke's calendar does not list the subject of the meeting.

Ahead of the decision, MGM "participated in Interior's review" through meetings and correspondence in which the company urged Interior to either return the amendments without making a decision or to disapprove them for violating the Indian Gaming Regulatory Act, according to a statement filed in court by Uri Clinton, MGM's senior vice president and legal counsel.

MGM brought on heavyweights including Norton — who disclosed her work for the company just last month — as well as Ballard, a lobbyist who has helped raise millions for Trump's campaign. MGM's spending on lobbyists for all issues more than doubled last year, to \$1.5 million spread across five outside firms and its own newly formed in-house team.

An affiliated company, MGM Public Policy LLC, also paid \$270,000 last year to hire a team of lobbyists from Brownstein Hyatt Farber Schreck LLP to work on issues including gaming. That's the firm at which Deputy Interior Secretary David Bernhardt worked until he joined the administration last year, though he has agreed to recuse himself from matters involving former clients of his firm without prior authorization.

"MGM Resorts last year established a public policy office in Washington to engage more directly on Federal legislative and policy issues," an MGM spokesman said in a statement. "Our advocacy activity reflected that increased engagement. As the largest employer in Nevada, part of that advocacy is routinely engaging our elected representatives."

Heller and Amodei each had multiple meetings and phone calls with Zinke last year, according to the secretary's calendar, although it's unclear whether they discussed the Connecticut casinos. On one occasion, Zinke joined Heller for dinner at a Las Vegas steakhouse on July 30, when he was in the state touring national monuments, one of several pieces of Interior's portfolio of interest to Nevada.

A Heller spokeswoman did not respond to a request for comment. But the senator has tried to advance MGM's interests in the past: In 2016, he offered an amendment to a defense bill that would have prevented Indian tribes from operating commercial casinos in the same state where they operate casinos on the reservation — precisely what the Connecticut tribes are trying to do. The amendment never came to a vote, and Heller does not appear to have ever discussed it publicly.

MGM employees and the company's political action committee have given \$96,000 this cycle to Heller's reelection campaign and leadership PAC, making the company his largest single source of contributions, according to the Center for Responsive Politics. Amodei has received no donations from company employees or its PAC.

Interior's Sept. 15 decision came two weeks after Zinke invited several lobbyists for MGM to join him and other guests for a social visit on his office balcony, which overlooks the National Mall. They included, according to Zinke's calendar, Ballard and other lobbyists from his firm Florida-based firm Ballard Partners, which opened its first Washington, D.C., office in 2017. Also present were Zinke's former family attorney and a major GOP fundraiser, according to copies of the secretary's calendar.

MGM hired Ballard in March and paid the firm \$270,000 last year, according to disclosure filings. Ballard was Florida finance chairman for Trump's 2016 campaign and helped organize a fundraiser at the Trump International Hotel in Washington last summer at which donors gave \$35,000 to attend or \$100,000 to join the host committee.

Ballard declined to discuss his work for MGM or any other client and said he could not recall the details of that particular meeting, which took place Aug. 29, according to Zinke's calendar. But Ballard said he had met Zinke and thinks "the world of him."

In October, MGM brought on Norton, who served as Interior secretary from 2001 to 2006, to lobby on issues related to the Connecticut tribes. Norton began lobbying for MGM on Oct. 25, according to disclosures filed Jan. 19.

The next day, Oct. 26, Interior officials spoke to the tribes and asked them to explain why the department was obligated to weigh in on their casino since it was being built by a commercial entity and not on tribal land.

In a brief interview last week, Norton said she did not know why her disclosure form was filed so late — lobbyists are required to file disclosures within 45 days — and she did not respond to follow-up inquiries.

Meanwhile, a new state legislative session begins in February in Connecticut. MGM plans to ask legislators there to allow an open bidding process for new casinos in the state, arguing that Interior's refusal to act shows that the state's attempt to limit casino ownership to the tribes would not work.

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Interior rejected staff advice when scuttling tribes' casino, documents suggest [Back](#)

By Nick Juliano | 04/20/2018 05:02 AM EDT

Trump administration officials rejected recommendations from federal experts on Indian gaming policy when they blocked two American Indian tribes from opening a casino last year, documents obtained by POLITICO indicate.

The heavily blacked-out documents add to questions about whether Interior Secretary Ryan Zinke and his political appointees buckled to lobbying pressure from MGM Resorts International, a gambling industry giant that is planning its own casino just 12 miles from the project proposed by the Mohegan and Mashantucket Pequot tribes.

Interior's inspector general is investigating the department's handling of the tribes' casino application, a spokeswoman told POLITICO, after Connecticut lawmakers asked the internal watchdog to look into the matter.

The documents, released under the Freedom of Information Act, don't reveal the contents of the internal deliberations by the staff of the Bureau of Indian Affairs' Office of Indian Gaming. But they show that the career staffers were circulating what they labeled "approval" letters just 48 hours before their political bosses reversed course and refused to either OK or reject the tribes' application — a nondecision that left the Indians' East Windsor project in legal limbo.

To fight off the potential competition, MGM [spent heavily on lobbyists](#), including George W. Bush-era Interior Secretary Gale Norton and firms with ties to the Trump administration, while enlisting the assistance of friendly lawmakers such as Sen. [Dean Heller](#) and Rep. [Mark Amodei](#). MGM lobbyists and the two Nevada Republicans

held a handful of meetings and conversations with Associate Deputy Secretary James Cason in the months and days before he edited Interior's letter holding up the tribes' plans.

A spokesman for the tribes' casino project said they were caught off guard by Interior's about-face and are glad to see the department's internal watchdog probing the matter.

"We are grateful there's an IG investigation into this issue because since last fall, none of the department's actions have passed the smell test," said Andrew Doba, a spokesman for MMCT Venture, the company the tribes formed to own and operate the new casino. "Something clearly happened to pollute the process, which should be problematic for an administration that promised to drain the swamp."

The tribes have also sued, arguing that Zinke ignored his responsibilities under the Indian Gaming Regulatory Act to either approve or reject their application in a timely manner and to act to protect the tribes' interests.

Cason and spokespeople for Interior and the Bureau of Indian Affairs did not respond to requests for comment this week.

But the emails show that even Interior's career staff was unsure how they would explain the sudden about-face.

"As for why we didn't approve the Mohegan compact amendment, you say the letter speaks for itself," Troy Woodward, a senior policy adviser in the Office of Indian Gaming, wrote in a Sept. 26 email to a colleague who anticipated having to answer questions about it at a gaming industry conference. And "like Forrest Gump, say: 'that's all I've got to say about that.'"

The dispute is complicated by the peculiarities of federal law on Indian gaming, which seeks to promote tribes' economic development but also discourages the spread of off-reservation gambling. The two Connecticut tribes, which already operate two lucrative casinos on their reservations, are exploring a gray area with their proposed third casino, which a jointly owned private company would operate on nonreservation land.

MGM, which plans to open a casino later this year in nearby Springfield, Mass., says the tribes' approach would set a worrisome precedent for other states.

"This is an unusual situation, and we're kind of pushing the bounds on IGRA," says Kathryn Rand, dean of the University of North Dakota School of Law and a co-director of its Institute for the Study of Tribal Gaming Law and Policy. Rand is not affiliated with MGM or the Connecticut tribes.

The newly released documents do not show any effort by MGM to make its case to experts in BIA's Indian gaming office. They also indicate that Interior officials closest to Indian gaming issues were ready to side with the tribes after about six weeks of internal review.

Instead, Interior reversed course with little official explanation less than 48 hours after their recommendations went to Cason, a veteran of the previous three Republican administrations who was one of President Donald Trump's first hires at the department.

On Sept. 11, Woodward emailed around copies of "the edited letters for Pequot and Mohegan," which he said had "been through the surname process," a system for internal review. The contents of the letters were redacted, but each was about two pages long, and file names referred to both as "draft approval" letters.

The following day, Woodward alerted colleagues that "Jim wants some changes," referring to Cason. But on Sept. 13, Woodward still sent "approval" letters "for Mike Black's signature," referring to the then-acting

assistant secretary for Indian affairs, along with a notice the department was required to publish in the Federal Register. Again, the attachments were redacted, but each was two pages long.

A day later, "Jim's edits" came back, and the documents were no longer referred to as "approval" letters.

Instead, Black signed a one-page letter on Sept. 15 informing the tribes that it would be "premature and likely unnecessary" to weigh in on their gaming applications at all.

Returning the applications without approving or disapproving them appears to be an option Interior officials did not consider until earlier that day. A pair of redacted memos circulated that morning, including one "regarding Secretarial Authority to not act on a compact," according to its title.

It is unclear precisely what happened over those days, but by then Cason had received ample input from MGM and its allies. As early as June, Cason met with a senior adviser to Zinke and a lobbyist from Ballard Partners, a Trump-connected firm MGM hired last year, to discuss issues related to the company, according to his calendars. And he was in touch with MGM supporters several more times over the intervening months up to the days before Interior's response was being finished.

On Sept. 13, Cason met with Amodei, and the following day he had a teleconference with Heller, according to Cason's calendar. MGM is a major employer in Nevada, and both lawmakers had previously raised concerns about the Connecticut tribes' proposals and the potential expansion of off-reservation gambling.

Cason's Sept. 14 meeting with Heller included some officials who were working on the Connecticut case, according to his calendar and the BIA emails. Later that day, Cason joined Zinke at a meeting at the White House with Rick Dearborn, Trump's deputy chief of staff for policy.

The president has his own history of clashes with the Mashantucket Pequot, whose Foxwoods Casino competed with his Atlantic City properties to draw gamblers from New York City. "They don't look like Indians to me," Trump infamously declared in a 1993 congressional hearing.

Several weeks after Interior released its decision, Norton sent Zinke a 24-page memo outlining legal arguments in support of the decision on behalf of MGM. Among the evidence she cited was Trump's congressional testimony, though not that particular phrase.

"Supreme Court precedent and President Trump's testimony counsel against approving Connecticut's discriminatory framework, the sole function of which is to grant MMCT, a private corporation, a monopoly over commercial, off-reservation, state-regulated gaming," the former Interior secretary wrote in her Oct. 30 memo to Zinke.

Black's ambiguous Sept. 15 letter, which Cason had edited, left the tribes unable to proceed with their planned casino.

The tribes' lawsuit is pending in U.S. District Court for the District of Columbia, and MGM has asked to intervene in the case, although both Interior and the tribes say it does not have standing to do so.

The case hinges on dueling interpretations of the goals of the Indian gaming law — essentially, whether more weight should be given to IGRA's goal of supporting tribes' economic prospects or its prohibitions on off-reservation gaming in most circumstances.

In court filings, Interior has also stressed the importance of procedural differences between the two tribes' prior gaming agreements, which it says should prevent the Mashantucket Pequot from participating in the case at all.

While the Mohegan tribe was operating under a state gaming compact, the Mashantucket were never able to reach an agreement with Connecticut officials back in the 1980s — so Foxwoods has been operating under the terms of "secretarial procedures" authorized under a different section of the law.

The law says amendments to gaming compacts, such as the Mohegan's, must be approved within 45 days unless Interior can demonstrate that their terms violate federal law or the department's trust responsibilities to the tribe. But it contains no such deadline for secretarial procedures such as the Mashantucket Pequot's.

Interior and MGM say that because the department has no obligation to act on the Pequot's proposed amendment, the entire case is effectively moot. However, the newly disclosed emails suggest that career officials were aware of that distinction throughout their review and did not see it as a reason to deny the tribes' request.

Rand, the law school dean, said courts have not previously grappled with the issue. "That I think is a real interesting and open question that we wouldn't have a whole lot to go on," she said.

This case is also unusual because of the nature of the two tribes at issue and the lucrative market the two sides are battling over.

"That might be a bit implicit in MGM's arguments — that the Mohegans and the Pequots aren't acting like tribal governments in this enterprise, they're operating like competitors. And because of their status ... they don't need the protection that other tribes do," Rand said in an interview this week. "The counterargument, of course, is that tribal sovereignty doesn't depend on whether the tribe needs the federal government's help. Tribal sovereignty is just a fact."

Black's Sept. 15 letter also does not mention the procedural difference between the tribes as a factor in deciding to return the applications without acting on them.

To view online [click here](#).

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EPA emails show industry worries slowed new science policy [Back](#)

By Annie Snider | 04/19/2018 05:01 PM EDT

EPA's rollout of a controversial new transparency policy that would severely restrict the scientific research the agency can rely on when drafting new regulations has been slowed down by political officials' fears that it could have major unintended consequences for chemical makers, according to newly released EPA documents.

The issue of scientific transparency has been high on the agenda of House Science Chairman [Lamar Smith](#) (R-Texas), who has found strong support from EPA Administrator Scott Pruitt — much to the consternation of public health advocates and green groups, who view the effort as backdoor attack on the agency's ability to enact environmental regulations.

Since Pruitt announced plans for the new policy last month, researchers and public health proponents have raised alarms that it could restrict the agency's ability to consider a broad swath of data about the effects of pollution on human health. But documents released under the Freedom of Information Act show that top EPA

officials are more worried the new restrictions would prevent the agency from considering industry studies that frequently support their efforts to justify less stringent regulations.

Emails between EPA officials obtained by the Union of Concerned Scientists show that Nancy Beck, the top political official in the agency's chemicals office who came to the agency after serving as a key expert for the chemical industry's lead lobbying group, voiced major concerns after she received a draft of the not-yet-released policy on Jan. 31.

The new scientific transparency directive is expected to require that the raw data for all studies EPA relies on be publicly available, and that the studies be peer-reviewed. But Beck said these requirements would exclude a great deal of industry data about pesticides and toxic chemicals that her office considers when determining whether a substance is safe or must be restricted.

It costs companies "millions of dollars to do these studies," Beck wrote in an email to Richard Yamada, the political official in EPA's office of research and development who is spearheading work on the new scientific policy and is also a former staffer for the House Science Committee chairman.

"These data will be extremely valuable, extremely high quality, and NOT published," Beck wrote. "The directive needs to be revised."

Moreover, much of this data, Beck noted, is considered proprietary by companies. It is dubbed confidential business information, and even though EPA can consider it as part of its regulatory review, the data cannot legally be made public.

Yamada replied to thank Beck for the heads up. "Yes, thanks this is helpful - didn't know about the intricacies of CBI," he wrote. "We will need to thread this one real tight!"

The term "confidential business information" primarily applies to industry information. That data is separate from the personal medical information that public health researchers worry could block consideration of their work.

Yogin Kothari, a lobbyist for the Union of Concerned Scientists, said the emails show the Trump administration's EPA has been "trying to stack the deck in favor of the industries they're supposed to be regulating."

"They want to potentially create exemptions for industry, but if you look at this entire set of documents ... you will see that there's not a single consideration for the impacts on public health data, on long-term health studies, on studies that EPA does after public health disasters like the BP oil spill," he said.

EPA spokeswoman Liz Bowman emphasized the policy is not yet finalized.

"These discussions are part of the deliberative process; the policy is still being developed. It's important to understand; however, that any standards for protecting [confidential business information] would be the same for all stakeholders," she said in a statement.

The emails indicate Pruitt wanted the new science policy rolled out at the end of February, and teased his plans in an interview with conservative outlet The Daily Caller in mid-March. But the agency has yet to finalize the policy.

The transparency directive has its origins in legislation introduced by Smith during the Obama administration, that had the backing of a number of industry groups, including the American Chemistry Council. The House

Science Committee chairman frequently charged that the Obama EPA used "secret science" to justify "costly new regulations."

Although versions of the measure were approved by the House multiple times, the Senate never took it up. CBO estimated that one version of Smith's legislation would cost EPA \$250 million a year, at least in the initial years, and a leaked staff response to questions from the budget office said a later version would be even more costly, would endanger confidential medical and business information, and "would prevent EPA from using the best available science."

But Smith found an ally in Pruitt. The emails indicate that Smith met with Pruitt in early January and show that Pruitt's staff quickly began working on a directive to "internally implement" the legislation.

Industry's backing for the new scientific approach began to waiver under the Trump administration, though. When a top American Chemistry Council scientist testified before Smith's committee in February 2017, she emphasized the need to protect industry information if the transparency initiative moved forward.

"One of the things that we do need to take into consideration as making that data publicly available is that there are adequate protections for confidential business information to ensure that we keep innovation and competitiveness available for the marketplace," Kimberly White told the committee.

Industry has historically claimed that a wide range of information about chemicals, ranging from the processes by which they are produced, to the locations of manufacturing plants, to their very identities, must be kept confidential in order to keep competitors from learning trade secrets. Environmental and public health advocates argue that industry claims this exemption in many cases where it's not necessary and that it often keeps important health and safety information from public view.

The issue was a key point of debate when Congress considered a major overhaul of the nation's primary chemical safety law passed 2016 and has reemerged as Pruitt's EPA sets about implementing the law.

Asked for comment on EPA's new effort to implement the scientific transparency approach internally, American Chemistry Council spokesman Scott Openshaw said the group looks forward to reviewing the directive once it's finalized.

"It is critical that any final directive properly protect confidential business information and competitive intelligence," he said in a statement.

The internal emails show that EPA political staff were particularly attuned to this concern. In a Feb. 23 email to colleagues, Beck forwarded language from a 2005 White House document that laid out narrow exemptions from its requirement that all "important scientific information" disseminated by the federal government go through peer review.

"[Y]ou may need to tweak but hopefully there is something helpful here that can be borrowed/adopted," she wrote.

Richard Denison, lead senior scientist for the Environmental Defense Fund, said that EPA's access to industry data is indeed important to its ability to review the safety of new chemicals and pesticides, but said the internal EPA communications show that Pruitt's EPA wants to "have their cake and eat it too" with the new directive.

"They're trying to force peer review studies done by academic scientists to disclose every last detail, while at the same time allowing industry studies to be kept private or aspects of those to still be kept private," he said.

He pointed out that the concerns Beck raised about the burden the new policy would place on industry are the very same ones that the CBO report said the policy would place on EPA.

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Energy industry puzzles over new White House adviser [Back](#)

By Ben Lefebvre and Eric Wolff | 04/19/2018 07:14 PM EDT

The appointment of a 28-year-old former congressional staffer as the top White House energy aide left many industry lobbyists scratching their heads — and nervous that the new hire may have trouble filling the shoes of the more experienced adviser he's replacing.

The relatively unknown [Francis Brooke](#) will step into the role as replacement for Mike Catanzaro, who will exit the White House next week. Catanzaro and NSC energy adviser George David Banks, another energy adviser who departed earlier this year, have been the top two energy experts in the White House, and they'll take with them decades of experience.

Brooke spent the last year in Vice President Mike Pence's office serving in a junior role to Catanzaro and Banks. But energy lobbyists worry his elevation will leave them without steady hands in the White House just as the administration confronts big decisions on the coal industry, an intra-party biofuels fight and thorny energy trade issues. Putting a relative rookie into the role also shows that the administration may not devote as much attention to energy issues in the run-up to the 2018 elections, sources said.

"It shows you this administration doesn't care about these issues," said one lobbyist who works extensively with the administration on energy policy, but who requested anonymity to discuss people he expects to work with. "I expect agencies are now going to have to play a bigger role. There's not going to be a lot of policy issues that will be determined over the next eight months or so."

Brooke joins the White House with far less energy-sector experience than Banks and Catanzaro, who came to their jobs with long histories in industry and government. He started his career as an intern for Mick Mulvaney in October 2012 when the White House budget director was a South Carolina congressman. After that, he had stints as a staff assistant for Rep. [Andy Barr](#) (R-Ky.) and legislative aide for Senate Majority Leader [Mitch McConnell](#) (R-Ky.). Pence's office tapped him to be associate director of policy in February 2017.

His family was involved in international politics in the previous decade. His father, [Francis Brooke Sr.](#), helped foster the relationship between officials in the George W. Bush administration and Ahmed Chalabi, the controversial Iraqi exile who helped convince the U.S. to invade his country.

Pence's office confirmed Brooke's biographical information but did not offer further details about his time working with the vice president.

McConnell's office did not respond to questions about Brooke. A spokeswoman for Barr said Brooke had been "one of the Congressman's most trusted legislative assistants and handled a wide variety of issues including energy, environment, and health care."

Previous to that, Brooke's biggest notice came from pitching 97 innings in the 2012 season with Northwestern University, making 13 starts and ending with a 2.51 earned run average. He would later serve as a coach to the Republicans' congressional baseball team, and he was on the Arlington, Va., practice field when a gunman shot Rep. Steve Scalise of Louisiana.

Lobbyists say they worry that with the departures of Catanzaro and Banks, Brooke will not be able to help the White House navigate complex energy issues with technical details that can be headache-inducing.

"There is angst downtown that without Mike there, no one knows who is going to make the trains run on time," said Andeavor's Stephen Brown said before Brooke was officially named to the position. "Mike was always the adult in the room on energy issues with substantive knowledge, not just a political perspective."

Brooke, along with Wells Griffith, an Energy Department official on a three-month loan to the White House, will have almost no time to get acclimated to their jobs. The Department of Energy is grappling with whether to try to use emergency authority to keep economically distressed coal-fired power plants running. And the two new staffers may need to help Trump navigate the dispute between refiners seeking changes to the Renewable Fuel Standard and corn farmers who are counting on the president to live up to his promise to protect ethanol.

They will also have to cope with White House officials on trade issues, such as the steel tariffs that oil and gas companies have complained could hamper the construction of new pipelines.

But some current and former administration officials say they have confidence Brooke is up to the job. They say he worked closely with Banks and Catanzaro on all their key issues, including traveling with Banks to the U.N. climate conference at Bonn, Germany, as a key adviser.

"He knows all the players, he's been in all the meetings," said one administration source. "He has the right temperament, the right judgment. People get into these jobs and they use them for vanity tours. Brooke doesn't do that. He's going to be great."

Banks, who left the White House in February, agreed.

"I think that he's ready for the role," said Banks, former adviser to Trump on the NSC. "Francis has been deeply engaged in all of the major energy environment [initiatives]. Some people wouldn't have the experience he's had in working these issues for over a year in the White House. He's incredibly bright, disciplined person."

Critics of the administration's energy policy rollbacks hoped Brooke's lack of experience would depoliticize some of the big decisions before the administration.

"Of course it's weird that there's no senior person covering energy issues," said John Morton, former senior director for energy and climate change on the NSC during the Obama administration. "Though with this administration, it's often a blessing in disguise when a policy area gets neglected by Trump appointees, as it allows more talented career staff to manage affairs."

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Bishop: Drilling moratorium holding up energy bill vote in House [Back](#)

By Anthony Adragna | 04/19/2018 05:32 PM EDT

House Natural Resources Chairman [Rob Bishop](#) says a wide-ranging GOP energy bill is "being held up" until the Pentagon weighs in on how offshore drilling near Florida could affect national security.

The Trump administration earlier this year proposed allowing drilling in the Eastern Gulf of Mexico after an existing moratorium expires in 2022. Although Interior Secretary Ryan Zinke [quickly backed away](#) from the idea, the resulting firestorm led two Florida Republicans to pursue [a permanent moratorium](#), which they said has the backing of Speaker [Paul Ryan](#).

A pending energy bill, [H.R. 4239 \(115\)](#), is one potential vehicle to extend the moratorium. But Bishop, a strong supporter of the oil industry, did not include any limits on offshore drilling when the bill passed out of his committee last year.

The Utah Republican told POLITICO this week he is waiting for the Defense Department report on how expanded drilling near Florida would affect "mission compatibility." A committee spokeswoman said the report's findings would influence "how to move forward on a potential agreement regarding the future of the Eastern Gulf once the moratorium expires in 2022."

Oil and gas leasing within 125 miles off the Florida coastline and areas of the Gulf of Mexico is currently off limits until 2022.

Bishop said in the interview Wednesday that the absence of House Majority Whip [Steve Scalise](#) (R-La.), lead sponsor of the legislation, for surgery is an additional factor in getting the bill floor time.

WHAT'S NEXT: When the measure will get floor consideration remains unclear.

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Report: EPA spent \$45,000 on Australia trip Pruitt canceled [Back](#)

By Emily Holden | 04/19/2018 05:34 PM EDT

Five EPA employees spent \$45,000 traveling to Australia last year to prepare for a trip by EPA Administrator Scott Pruitt that was ultimately canceled, Reuters [reported](#) today.

The two advance team aides and three security agents spent about \$9,000 each on business-class tickets to fly to Australia in August, an expense that is permitted under government rules on flights lasting 14 hours or more. The two EPA staffers were advance director Millan Hupp, the Oklahoma aide who followed Pruitt to Washington and has drawn scrutiny for receiving a large raise, and Kevin Chmielewski, the former deputy chief of staff for operations who was dismissed and is now acting as a whistleblower to lawmakers about Pruitt's spending habits.

Agency officials did not dispute the figures. EPA spokesman Jahan Wilcox said Pruitt did not go to Australia because of Hurricane Harvey. Pruitt traveled from his home in Tulsa, Okla. to Corpus Christi, Texas, to assess relief efforts on Aug. 30, according to his schedule and flight records.

Pruitt spent at least \$105,000 on first class flights and at least \$3 million on a round-the-clock [security detail](#). Records show about one-quarter of the \$120,000 costs for a trip to Italy in June for a G-7 environment meeting was to cover Pruitt's security. EPA's inspector general and various other government officials are investigating Pruitt's travel and spending.

Flight vouchers EPA has shared with lawmakers show Pruitt originally intended to travel to Sydney and Melbourne from Aug. 31 through Sept. 8 to "discuss best practices regarding the environmental operations" within the country.

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EPA tells Barrasso all Pruitt's emails searched for FOIA [Back](#)

By Alex Guillén | 04/19/2018 05:24 PM EDT

EPA today told Senate Environment and Public Works Chairman [John Barrasso](#) (R-Wyo.) that all four of Administrator Scott Pruitt's emails were searched whenever there was a Freedom of Information Act records request, but that a "full review" is being conducted just to make sure.

"As long as EPA Administrators have had secondary email accounts, EPA staff have routinely searched requested accounts in response to FOIA and Congressional inquiries. That practice has not changed under Administrator Pruitt's leadership," Steve Fine, EPA's deputy chief information officer, wrote in a [letter](#) released today by Barrasso.

Fine added: "However, in response to your concern, my office is conducting a full review of the searches conducted regarding FOIA requests seeking Administrator Pruitt's records. If additional documents exist, we will contact the relevant requesters, and we will update you once our review is complete."

"I look forward to receiving the findings of the agency's full review that's being conducted in response to my letter," Barrasso said in a statement.

WHAT'S NEXT: Fine did not say how long EPA's review of FOIA request fulfillment will take.

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Democrats meddle in West Virginia's GOP Senate primary [Back](#)

By Alex Isenstadt | 04/19/2018 04:23 PM EDT

National Democrats launched a campaign Thursday to intervene in the upcoming West Virginia Senate GOP primary — an effort that could be designed to help recently imprisoned coal baron Don Blankenship win the Republican nomination.

Duty and Country, a Washington-based Super PAC, began airing TV and web ads savaging the two mainstream Republican candidates, Rep. Evan Jenkins and state Attorney General Patrick Morrisey, who are competing in the May 8 primary. Left off the group's target list, however, was Blankenship, who spent one year in prison following the 2010 explosion at his Upper Big Branch Mine that killed 29 workers.

In propping up Blankenship, the Democratic Party is wading into an intensifying GOP civil war. Republicans are growing increasingly worried about Blankenship, who has been gaining traction in the primary. GOP officials in Washington are concerned that if Blankenship wins the nomination, he'll ruin the party's prospects of defeating Democratic Sen. Joe Manchin in November.

Last week, national Republicans launched a super PAC named Mountain Families PAC aimed at stopping Blankenship. The organization, which is staffed by consultants who've previously worked for a political group aligned with Senate Majority Leader Mitch McConnell, has begun airing TV commercials accusing Blankenship of contaminating drinking water by pumping toxic slurry while setting up a separate piping system to his mansion.

The Democratic group is spending over \$380,000 to air the commercials. One of the [TV spots](#) says that as the former head of West Virginia State Medical Association, Jenkins pushed doctors to use an insurance company that overcharged, allowing his organization to profit. Another [ad](#) describes Morrisey as a carpetbagger, calling him a "millionaire New Yorker and former lobbyist who came down here and ran for office with no idea of the real challenges West Virginians face."

The Democratic group has also begun sending out mailers describing Jenkins as "part of the swamp, part of the problem."

A Duty and Country spokesman, Mike Plante, said the group had no plans to go after Blankenship and was instead focused on his two rivals.

"We made the strategic decision based on data that shows that either Patrick Morrisey or Evan Jenkins is more likely to be the nominee, so that's where we're focusing our attention," he said.

Duty and Country appears to have close ties to the national Democratic Party. In its federal filings, it lists the same downtown Washington address as other major party groups, including Senate Majority PAC, the main Democratic super PAC devoted to electing Senate Democrats.

In another twist, West Virginia attorney Booth Goodwin, who served as U.S. attorney in the case against Blankenship, is listed as the group's treasurer.

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GOP maneuver could roll back decades of regulation [Back](#)

By Zachary Warmbrodt | 04/17/2018 10:16 AM EDT

Republicans are preparing to open a new front in their push to roll back regulations across the government, using a maneuver that could enable them to strike down decisions by federal agencies that reach back decades.

As soon as Tuesday, GOP senators, backed by President Donald Trump, will use the Congressional Review Act to topple safeguards issued by the CFPB in 2013 that were intended to discourage discrimination in auto lending.

While Republicans in the Trump era have already taken advantage of the 1996 law to remove more than a dozen recently issued rules, this would be the first time that Congress will have used it to kill a regulatory policy that is several years old.

Now, actions going back to President Bill Clinton's administration could be in play under the procedure GOP lawmakers are undertaking, forcing numerous agencies to reconsider how they roll out new regulations.

"It's a hugely important precedent," Sen. Pat Toomey (R-Pa.), the architect of the effort, said in an interview. "It's potentially a big, big opening."

While conservatives are applauding the effort as a way to rein in rogue bureaucrats and boost the economy, consumer advocates are warning that the consequences could be dire.

"This takes an already incredibly dangerous law and cranks it up to 11," said James Goodwin, senior policy analyst at the Center for Progressive Reform.

Republicans are leveraging two key provisions of the Congressional Review Act.

They're again taking advantage of fast-track authority that allows a simple majority of the Senate to pass a resolution rolling back a rule if the vote occurs within a window that's open for no more than a few months. The provision enables senators to avoid a filibuster.

But the more novel use lies in the law's requirement that federal agencies submit rules to Congress for their potential disapproval. Republicans have landed on a way to target a wide array of decisions — including regulatory guidance — that haven't typically been implemented as formal rules under the Administrative Procedure Act.

"You have this unimaginably large universe of stuff that is now eligible for repeal under the CRA," Goodwin said, citing a hypothetical Occupational Safety and Health Administration workplace safety poster as a potential example. "Agencies don't submit all this stuff because it would be an administrative nightmare."

In the case of the auto-lending policy, the CFPB released it as a guidance document rather than a formal rule governed by the notice-and-comment requirements of the APA. As such, it wasn't technically submitted to lawmakers for the purposes of the Congressional Review Act. That means the clock for congressional review never started.

That changed last year. For advocates of deregulation, the stars had aligned thanks to the ascendance of a Republican president eager to roll back rules and the Republicans retaining control of Congress.

Toomey, the former president of the conservative Club for Growth, went on the hunt for ways the GOP could take advantage of its congressional majority to eliminate federal rules.

He found a way to wield the power that the Congressional Review Act gives a majority of the Senate to sidestep obstruction via filibuster when it comes to years-old regulatory actions.

To do so, he asked the Government Accountability Office to determine whether the CFPB auto-lending guidance qualified as a rule for the purposes of the Congressional Review Act. In December, GAO told him that

it did in fact satisfy the legal definition of a rule, starting the clock for Republicans to undo it without having to seek any help from Democrats.

"When regulators regulate by guidance rather than through the process they're supposed to use, which is the Administrative Procedure Act and do a proper rulemaking, they shouldn't be able to get away with that," Toomey said. "If we can get a determination that the guidance rises to the significance of being a rule, then from that moment the clock starts on the CRA opportunity."

Amit Narang, regulatory policy advocate at Public Citizen, said it "is really going to open up a Pandora's box." Public Citizen and 60 other advocacy groups covering the gamut of finance, the environment, labor and gay rights are calling on Congress to oppose the CFPB rollback, saying it would set a dangerous precedent.

They warned it would put at risk not only protections for workers, consumers, minorities and the environment, but also regulatory certainty for businesses.

"Expanding the power of the CRA to overturn guidance from decades ago will threaten protections hardworking families rely on, making it harder for middle class Americans to get ahead and responsible businesses to follow the law," Sen. Sherrod Brown (D-Ohio) said.

Critics have also questioned the need to undo the CFPB auto-lending guidance because the bureau is now led by a Trump appointee, acting Director Mick Mulvaney, who could eliminate it himself. Mulvaney told lawmakers last week he was reviewing the policy. The National Automobile Dealers Association and the American Financial Services Association are supporting the rollback of the anti-discrimination measure, arguing that the way the CFPB crafted the guidance was flawed.

The Senate opened debate on the bill Tuesday following a 50-47 procedural vote. Sen. Joe Manchin (D-W.Va.) was the only Democrat to support moving forward with the legislation.

Other lawmakers have begun to test the waters. In November, GAO in a response to a request from Sen. Lisa Murkowski (R-Alaska) confirmed that a 2016 plan from the Bureau of Land Management was a rule for the purposes of review under the CRA. A spokeswoman for Murkowski did not respond to a request for comment.

Paul Larkin, a senior legal research fellow at the Heritage Foundation, has been advocating for Congress to take advantage of this deregulatory pathway in the Congressional Review Act, saying it could force agencies to comply with formal rulemaking requirements and help the economy by cutting red tape.

"This would indicate that Congress believes it can reach back beyond what the conventional wisdom was," he said.

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From: Gomez, Laura [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=575BA24FC19D429C8302A05102353238-LGOMEZ]
Sent: 1/24/2018 7:21:47 PM
To: Gomez, Laura [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=575ba24fc19d429c8302a05102353238-lgomez]; Yamada, Richard (Yujiro) [yamada.richard@epa.gov]; Orme-Zavaleta, Jennifer [Orme-Zavaleta.Jennifer@epa.gov]; Bahadori, Tina [Bahadori.Tina@epa.gov]; Vandenberg, John [Vandenberg.John@epa.gov]; Rodan, Bruce [rodan.bruce@epa.gov]; Linkins, Samantha [Linkins.Samantha@epa.gov]; Davis, Matthew [Davis.Matthew@epa.gov]; Lubetsky, Jonathan [Lubetsky.Jonathan@epa.gov]; Schwab, Justin [Schwab.Justin@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]; Ringel, Aaron [ringel.aaron@epa.gov]; Rodrick, Christian [rodrick.christian@epa.gov]; Moody, Christina [Moody.Christina@epa.gov]; Woods, Clint [woods.clint@epa.gov]; Shoaff, John [Shoaff.John@epa.gov]; Feeley, Drew (Robert) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=abae82aa36da4d3383eae19a8efa683c-Feeley, Rob]; Bolen, Brittany [bolen.brittany@epa.gov]; Sinks, Tom [Sinks.Tom@epa.gov]; Blancato, Jerry [Blancato.Jerry@epa.gov]; Teichman, Kevin [Teichman.Kevin@epa.gov]
Subject: CONFIRMED: EPA PRE-INTERNAL CALL : HONEST ACT IMPLEMENTATION
Attachments: BILLS-115hr1430rfs.pdf
Location: DIAL IN: { **Personal Matters / Ex. 6** }
Start: 1/26/2018 7:00:00 PM
End: 1/26/2018 8:30:00 PM
Show Time As: Busy

Purpose: To internally discuss EPA implementation of HR 1430 (ATTACHED)

This is an internal call in preparation for a briefing with Committee on House Science, Space and Technology (HSST). DAA Ringel (OCIR) will lead a discussion with respective program offices regarding the agency's implementation efforts of the HONEST ACT.

Appointment

From: Ringel, Aaron [ringel.aaron@epa.gov]
Sent: 2/9/2018 6:59:08 PM
To: Ringel, Aaron [ringel.aaron@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Yamada, Richard (Yujiro) [yamada.richard@epa.gov]

Subject: House Science Committee/HONEST Act Reforms
Location: 3442WJCN

Start: 2/13/2018 5:00:00 PM
End: 2/13/2018 5:30:00 PM
Show Time As: Busy

Recurrence: (none)

Richard to call Aaron's office Personal Matters / Ex. 6

From: Shoaff, John [Shoaff.John@epa.gov]
Sent: 5/23/2018 5:11:20 PM
To: Atkinson, Emily [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bb2155adef6a44aea9410741f0c01d27-Atkinson, Emily]
CC: Hockstad, Leif [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5a4fb1f8930645efa34dfa7485bc6da-LHOCKSTA]; Mazza, Carl [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0ef03c34ecaf4e219c037be57464ecf9-CMazza]
Subject: SAB Mtg Prep
Attachments: draft+SAB+meeting+agenda_5_16_18.pdf; SABWkGrpSpring2017Att+ABC.pdf; WG_Memo_Fall17_RegRevAttsABC.pdf; WkGrp_memo_2080-AA14_final_05132018.pdf; Best Practices for EPA Engagement with the Science Advisory Board March 2015.pdf

Emily,

Could you add this to the meeting invitation for the SAB prep discussion tomorrow at 4:15. Thank you!

Draft agenda

1. Preparation & Coverage

- a. Scene Setting & Review of Regulatory Actions (Thurs. 5/31, 3:15-5:00)(see tables of actions below & recommendations from SAB WG in 3rd column)

SAB Discussions about EPA Planned Actions and their Supporting Science

- Public Comments
- Presentation from the Work Group Chair

- Discussion
- Disposition of the Planned Actions

Dr. Michael Honeycutt

Registered speakers

Dr. Alison Cullen,
Chair, SAB Work Group on EPA Planned Actions for SAB Consideration of the Underlying Science
SAB Members

- b. Coverage options and possible supplementation of prior Q&As

2. Review/Planning as it relates to other Agenda sessions

3. Next steps

Tables – Summary of Proposed Actions that the SAB WG Considered for Additional SAB Comment on the Supporting Science

Spring 2017

**Table 1: Summary of Proposed Actions that the SAB Work Group Considered for
Additional SAB Comment on the Supporting Science**

RIN¹	Planned Action Title	Workgroup Recommendation
<u>2040-AF37</u>	National Primary Drinking Water Regulations: Finished Water Storage Facility Inspection Requirements Addendum to the Revised Total Coliform Rule	No further SAB consideration is merited.
<u>2040-AF74</u>	Definition of "Waters of the United States" – Recodification of Preexisting Rules	No further SAB consideration is merited.
<u>2040-AF75</u>	Second Action: Definition of "Waters of the U.S."	Defer a determination until sufficient information is available
<u>2050-AG87</u>	Clean Water Act Hazardous Substances Spill Prevention	No further SAB consideration is merited.
<u>2060-AR57</u>	Review of the Primary National Ambient Air Quality Standards for Nitrogen Dioxide	No further SAB consideration is merited.
<u>2060-AT30</u>	National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries	No further SAB consideration is merited.
<u>2060-AT34</u>	National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing Residual Risk and Technology Review	No further SAB consideration is merited.
<u>2060-AT54</u>	Review of the 2016 Oil and Gas New Source Performance Standards for New, Reconstructed, and Modified Sources	Merits review by the SAB.
<u>2060-AT55</u>	Review of the Clean Power Plan	Merits review by the SAB
<u>2060-AT56</u>	Review of the Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Generating Units	Merits review by the SAB
<u>2070-AK34</u>	Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h)	Defer a determination until sufficient information is available
<u>2070-AK37</u>	Review of Pesticides; Certification of Pesticide Applicators	No further SAB consideration is merited.

Fall 2017

RIN¹	Planned Action Title	Workgroup Recommendation
<u>2010-AA12</u>	Increasing Consistency, Reliability, and Transparency in the Rulemaking Process	Defer SAB consideration of the planned action until more information is available
<u>2060-AT67</u>	State Guidelines for Greenhouse Gas Emissions From Existing Electric Utility Generating Units	Does not merit further SAB review
<u>2060-AT77</u>	Reconsideration of Final Determination: Mid Term Evaluation of Greenhouse Gas Emissions Standards for Model Year 2022-2025 Light Duty Vehicles	Merits SAB Review
<u>2060-AT68</u>	Review of the Primary National Ambient Air Quality Standards for Sulfur Oxides	Does not merit further SAB review
<u>2060-AT74</u>	National Emission Standards for Hazardous Air Pollutants for Hydrochloric Acid Production Residual Risk and Technology Review	Does not merit further SAB review
<u>2060-AT79</u>	Repeal of Emission Requirements for Glider Vehicles, Glider Engines, and Glider Kits	Merits SAB Review
<u>2070-AK43</u>	Pesticides; Agricultural Worker Protection Standard; Reconsideration of Several Requirements	Does not merit further SAB review
<u>2060-AS35</u>	Review of the Secondary National Ambient Air Quality Standards for Ecological Effects of Oxides of Nitrogen, Oxides of Sulfur and Particulate Matter.	Does not merit further SAB review
<u>2060-AT31</u>	Fuels Regulation Modernization - Phase 1	Does not merit further SAB review

Other

RIN	Planned Action Title	Workgroup Recommendation
<u>2080-AA14</u>	Proposed Rule: Strengthening Transparency in Regulatory Science RIN	Merits review by the SAB.

Attachments/Background (for purposes of discussion, focus is mostly with the SAB Agenda though other items below include detailed background for which we also have some original materials in Word files)

1. SAB Agenda
2. Spring 2017 SAB WG Memo (including recommendations for SAB review of actions & associated background – templates on each action, SAB WG Qs & Answers in response at attachments B & C)
3. Fall 2017 SAB WG Memo (& associated background)
4. SAB WG Memo on Scientific Transparency action
5. SAB Best Practices

Note FYI that public comments are also being posted to the SAB Meeting site:

<https://yosemite.epa.gov/sab/sabproduct.nsf//MeetingCalBOARD/7D239353BCECF85B852582600058B716?OpenDocument>

JOHN SHOAFF | DIRECTOR

OFFICE OF AIR POLICY & PROGRAM SUPPORT (OAPPS)

OFFICE OF AIR & RADIATION | U.S. EPA | WJC NORTH 5442-B

1200 PENNSYLVANIA AVE. NW | MC 6103A | WASHINGTON, D.C. | 20460 | USA

Shoaff.john@epa.gov |

Personal Matters / Ex. 6

MEMORANDUM

TO: Members of the Chartered SAB and SAB Liaisons

FROM: Alison Cullen, Chair, SAB Work Group on EPA Planned Actions for SAB Consideration of the Underlying Science */signed/*

DATE: May 12, 2018

SUBJECT: Preparations for Chartered Science Advisory Board (SAB) Discussions of Proposed Rule: Strengthening Transparency in Regulatory Science RIN (2080-AA14)

The Chartered Science Advisory Board convened Work Groups to discuss whether to review the adequacy of the science supporting planned regulatory actions identified by the EPA as major actions in the Spring and Fall 2017 semi-annual regulatory agenda at its May 31, 2018 meeting. To support this discussion a SAB Work Group was charged with identifying actions for further consideration by the Chartered SAB.

The Environmental Protection Agency announced the proposed rulemaking entitled Strengthening Transparency in Regulatory Science RIN (2080-AA14) on April 25, 2018 at a press event and published a *Federal Register* notice on April 30, 2018 with a 30-day public comments period. The Work Group notes that this planned action was not identified as a major action in either of the Spring 2017 nor Fall 2017 semi-annual Regulatory Agendas.

This memorandum summarizes the charge to the Work Group, their discussion regarding the planned action and issues and questions for the SAB to discuss at its May 31, 2018 meeting.

Background

The Environmental Research, Development, and Demonstration Authorization Act of 1978 (ERDDAA) requires the EPA to make available to the SAB proposed criteria documents, standards, limitations, or regulations provided to any other Federal agency for formal review and comment, together with relevant scientific and technical information on which the proposed action is based. The SAB may then make available to the Administrator, within the time specified by the Administrator, its advice and comments on the adequacy of the scientific and technical basis of the proposed action.

EPA's current process is to provide the SAB with information about the publication of the semi-annual regulatory agenda and to provide descriptions of major planned actions that are not yet proposed but appear in the semi-annual regulatory agenda. These descriptions provide available information regarding the science informing agency actions. This process for engaging the SAB supplements the EPA's process for program and regional offices to request science advice from the SAB.

The SAB Work Group then follows a process adopted by the Chartered SAB in 2013¹ to initiate its review of major planned actions identified in the Unified Regulatory Agenda by EPA. This semi-annual regulatory agenda is available at <https://www.reginfo.gov/public/do/eAgendaMain>. The current SAB

¹ Available at [http://yosemite.epa.gov/sab/sabproduct.nsf/WebSABSO/ProcScreen2017/\\$File/SABProtocol2017.pdf](http://yosemite.epa.gov/sab/sabproduct.nsf/WebSABSO/ProcScreen2017/$File/SABProtocol2017.pdf)

Work Group was formed in December 2017 to review the Fall 2017 semi-annual Regulatory Agenda and includes SAB members with broad expertise in scientific and technological issues related to the proposed actions.

The Work Group met by teleconference on May 3, 2018 to discuss its recommendations on considered actions in the Fall 2017 semi-annual regulatory agenda and included the proposed rule: Strengthening Transparency in Regulatory Science RIN (2080-AA14)² as part of the discussions. Members were made aware of the proposed rule via the *Federal Register* and news articles. The EPA did not provide a description of the planned action. SAB members on the Work Group teleconference include Drs. Alison Cullen (Work Group chair), Robert Blanz, Otto Doering, H. Christopher Frey, John Graham, Michael Honeycutt (SAB chair) Merl Lindstrom, Jay Turner, and Messers. Richard Poirot and Robert Merritt.

Work Group Discussions Regarding Strengthening Transparency in Regulatory Science RIN (2080-AA14)

Table 1: Summary of Proposed Actions that the SAB Work Group Considered for Additional SAB Comment on the Supporting Science		
RIN	Planned Action Title	Workgroup Recommendation
<u>2080-AA14</u>	Proposed Rule: Strengthening Transparency in Regulatory Science RIN	Merits review by the SAB.
¹ There is no additional information available on the planned action provided in the Unified Regulatory Agenda on the OMB website http://www.reginfo.gov/ . The OMB review was completed on April 23, 2018. The hyperlink is to the FR notice for the proposed rule.		

Recommendation: This action merits further review by the SAB. The proposed rule deals with issues of scientific practice and proposes constraints that the agency may apply to the use of scientific studies in particular contexts. As such, this rule deals with a myriad of scientific issues for which the Agency should seek expert advice from the Science Advisory Board.

Rationale: In reviewing the Federal Register, Work Group members noted that EPA published a proposed rule that would limit the use of science based on human subject data and would impose requirements for the analysis of dose-response relationships widely used in risk assessments across a wide range of agency programs.

The Work Group recognizes that the long-term trend in most scientific fields is for authors to supply public access to data and analytic methods after scientific findings are published. Such transparency may help to detect and discourage scientific fraud, facilitate various forms of robustness analysis, and allow supplementary lines of knowledge to be developed from the same data. Some fields of science are moving faster than others in the direction of transparency.

² Available at: <https://www.federalregister.gov/documents/2018/04/30/2018-09078/strengthening-transparency-in-regulatory-science>

For studies published many years ago, it may not be feasible to deliver public access to data and analytic methods. There are also sensitive situations where public access may infringe on legitimate confidentiality and privacy interests, and where exceptions from complete public access may be appropriate. In addition, there are considerations associated with the cost and effort that would be involved in making large and complex existing datasets available within Institutional Review Board requirements, including the issue of who would be responsible for shouldering this burden. Thus, the development of guidelines and rules in this arena requires careful collaboration between the government and the scientific community.

Although the proposed rule cites several valuable publications that support enhanced transparency, the precise design of the rule appears to have been developed without a public process for soliciting input from the scientific community. Nor does the preamble to the rule describe precisely how the proposal builds on previous efforts to promote transparency such as the Information Quality Act and EPA's Information Quality Guidelines.

The proposed rule does not include any assessment of the impact of data restrictions on existing or future regulatory programs. Without access to the restricted data, regulatory programs could become more or less stringent than they otherwise would be, with consequences for both regulatory costs and benefits. The Work Group also found that the rule is highly controversial (indeed a similar legislative effort in the House has been stalled in Congress for several years) and could have long-term implications. Furthermore, the rule could have the effect of removing legal, ethical, and peer-reviewed studies of health effects as sources to support the agency's regulatory efforts. The proposed rule does not acknowledge that the epidemiologic science community, for example, has been making significant efforts to make data available where possible and to develop studies based on publicly available data where appropriate. On the other hand, the rule might stimulate researchers to make stronger efforts toward transparency so that their work may be considered in regulatory deliberations. It might be easier to accomplish the rule's objectives if the focus were on future studies rather than on studies that are already designed and published with terms that make complete transparency difficult or impossible to accomplish. It might also be easier if the rule took into account reasonable areas for accommodation or exception in situations for which it is not possible to release a dataset publicly either entirely, or without revision, for legitimate reasons pertaining to the use, for example, of human subject data.

Among the key science issues that the rule touches upon are the following:

- Restrictions on the use of epidemiologic studies that are based on confidential human subject data. Although the epidemiologic community recognizes the need to make data public to the extent possible, in some cases it is not possible to make public full datasets. These include, but are not limited to, cases in which studies are subject to prior Institutional Review Board (IRB) conditions or in which prospective cohort studies include extensive personal data from which it would be possible to identify individual persons.

- The proposed rule fails to mention that there are various ways to assess the validity of prior epidemiologic studies without public access to data and analytic methods. For example, the Health Effects Institute (HEI) conducted a re-analysis of the influential Harvard Six Cities and American Cancer Society (ACS) epidemiologic studies and was able to replicate its findings and to assess the robustness of the findings via sensitivity analysis³. HEI did uncover some sensitivities in the original ACS cohort findings associated with multiple pollutants and with interactions of pollution with socio-economic status (SES) variables such as educational attainment. Furthermore, over time, additional studies have confirmed the basic findings. Thus, in this particular case, an unusually rigorous form of peer review and independent reanalysis, coupled with many follow-up studies, has accomplished a measure of confidence in findings without public access to data and analytic methods. And we note that some of the recent confirmation studies have used publicly available data.
- The proposed rule oversimplifies the argument that “concerns about access to confidential or private information can, in many case, be addressed through the application of solutions commonly in use across some parts of the Federal government.” For studies already completed or underway, the participation of human subjects is undertaken according to terms approved by the cognizant IRB. These terms can vary from study to study. In some cases, the data cannot be released simply by redacting portions of it. For example, data may have been collected with an assurance to the participating individuals that their data would be kept confidential⁴.
- The requirement of the consideration of multiple dose-response models should explicitly state that this consideration is based on information relevant to the selection of the most scientifically-appropriate model(s) such as biological plausibility, mode of action, or mechanism of action. Deviations from the use of default models should be evaluated on a case-by-case basis and have adequate scientific justification for use of an alternative model better supported by the chemical-specific data. Concepts such as “replication” and “validation”, although they are surely crucial in sound science, are not clearly defined in the rule.
- The proposed rule fails to mention that EPA has mechanisms for vetting science through several expert panels, including the EPA Science Advisory Board, the EPA Clean Air Scientific Advisory Committee, and the EPA FIFRA Scientific Advisory Panel (FIFRA is the Federal Insecticide, Fungicide, and Rodenticide Act). For example, the EPA CASAC routinely reviews and evaluates epidemiologic and toxicological studies that are the basis for dose-response relationships used in risk and exposure assessments for air pollutants regulated under the National Ambient Air Quality Standards. Although such mechanisms do not typically engage in reanalysis of original data using the same methods as the original investigators, they do entail a rigorous review process that goes beyond the typical journal peer review procedures.

³ Health Effects Institute, 2000. Reanalysis of the Harvard Six Cities Study and the American Cancer Society Study of Particulate Air Pollution and Mortality. Daniel Krewski, Richard T. Burnett, Mark S. Goldberg, Kristin Hoover, Jack Siemiatycki, Michael Jerrett, Michal Abrahamowicz, and Warren H. White.
<https://www.healtheffects.org/publication/reanalysis-harvard-six-cities-study-and-american-cancer-society-study-particulate-air>

⁴ Ibid.

Work Group Recommendations Regarding Improvements to the Process for Identifying EPA Planned Actions for SAB Consideration

The Work Group notes that the Proposed Rule on Strengthening Transparency in Regulatory Science was not included in previous semi-annual regulatory agendas, is not available on the OMB website www.reginfo.gov and that the EPA did not provide a description of the action. The Work Group continues to urge the EPA to improve the process for future review of the semi-annual regulatory agenda and strongly recommends that EPA enhance descriptions of future planned actions by providing specific information on the peer review associated with the scientific basis for actions and more description of the scientific and technological bases for actions. EPA should provide such information in the initial descriptions provided to the work group.

Effective SAB evaluation of planned actions requires the agency to characterize the following.

- All relevant key information associated with the planned action.
- The science supporting the regulatory action. If there is new science to be used, provide a description of what is being developed. If the agency is relying on existing science, provide a short description.
- The nature of the planned or completed peer review. To the extent possible, provide information about the type of peer review, the charge questions provided to the reviewers, how relevant peer review comments are/were integrated into the planned action, and information about the qualifications of the reviewer(s).

This SAB made several of these recommendations in previous reviews⁵. We request that the chartered SAB highlight to the Administrator the need for the Agency to provide more complete information to support future SAB decisions about the adequacy of the science supporting actions in future regulatory agendas.

References: Proposed Rule: Strengthening Transparency in Regulatory Science (RIN 2080-AA14) FR Vol 83, Num. 83, pages 18768-18774. Available at: <https://www.federalregister.gov/documents/2018/04/30/2018-09078/strengthening-transparency-in-regulatory-science>

⁵ SAB Discussions about EPA Planned Actions in the Fall 2012 Unified (Regulatory) Agenda and their Supporting Science (see page 5 of the Work Group memorandum)

SAB Discussions about EPA Planned Actions in the Spring 2013 Unified Agenda and their Supporting Science (Letter to the Administrator and Work Group memorandum [see page 5])

SAB Discussions about EPA Planned Actions in the Spring 2017 Unified Agenda and their Supporting Science (see page 7)

Message

From: Yamada, Richard (Yujiro) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4C34A1E0345E4D26B361B5031430639D-YAMADA, YUJ]
Sent: 2/21/2018 5:01:53 PM
To: Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]
CC: Feeley, Drew (Robert) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=abae82aa36da4d3383eae19a8efa683c-Feeley, Rob]; Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: FW: latest version
Attachments: data_access_memo V4 (002) cw 2-20.2.docx

Deliberative Process / Ex. 5

From: Beck, Nancy
Sent: Tuesday, February 20, 2018 9:25 PM
To: Woods, Clint <woods.clint@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>
Subject: RE: latest version

Deliberative Process / Ex. 5

Nancy B. Beck, Ph.D., DABT
Deputy Assistant Administrator, OCSPP

Personal Matters / Ex. 6

Beck.Nancy@epa.gov

From: Woods, Clint
Sent: Tuesday, February 20, 2018 7:21 PM
To: Beck, Nancy <Beck.Nancy@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>
Subject: RE: latest version

Deliberative Process / Ex. 5

From: Beck, Nancy
Sent: Tuesday, February 20, 2018 7:07 PM
To: Yamada, Richard (Yujiro) <yamada.richard@epa.gov>
Cc: Woods, Clint <woods.clint@epa.gov>
Subject: RE: latest version

Thanks!

Nancy B. Beck, Ph.D., DABT
Deputy Assistant Administrator, OCSPP

Personal Matters / Ex. 6

beck.nancy@epa.gov

From: Yamada, Richard (Yujiro)
Sent: Tuesday, February 20, 2018 7:06 PM
To: Beck, Nancy <Beck.Nancy@epa.gov>
Cc: Woods, Clint <woods.clint@epa.gov>
Subject: Re: latest version

I believe this is latest - thanks

<https://www.congress.gov/115/bills/hr1430/BILLS-115hr1430rfs.pdf>

Sent from my iPhone

On Feb 20, 2018, at 6:48 PM, Beck, Nancy <Beck.Nancy@epa.gov> wrote:

Do either of you have the most recent version of the secret science bill?

Thanks.

Nancy B. Beck, Ph.D., DABT
Deputy Assistant Administrator, OCSPP

Personal Matters / Ex. 6

beck.nancy@epa.gov

From: Yamada, Richard (Yujiro)
Sent: Thursday, February 15, 2018 6:13 PM
To: Beck, Nancy <Beck.Nancy@epa.gov>; Woods, Clint <woods.clint@epa.gov>
Cc: Schwab, Justin <Schwab.Justin@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Feeley, Drew (Robert) <Feeley.Drew@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>
Subject: latest version

(this email contains deliberative and pre-decisional information)

Hi Guys,

Deliberative Process / Ex. 5

Thanks much,

Richard

Richard Yamada
Deputy Assistant Administrator
Office of Research and Development
U.S. Environmental Protection Agency

Personal Matters / Ex. 6

yamada.richard@epa.gov

From: EPA Press Office [press=epa.gov@cmail20.com]
on behalf of EPA Press Office [press@epa.gov]
Sent: 3/20/2018 12:50:01 PM
To: Feeley, Drew (Robert) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=abae82aa36da4d3383eae19a8efa683c-Feeley, Rob]
Subject: Scott Pruitt Will End EPA's Use Of 'Secret Science' To Justify Regulations

The Daily Caller

Scott Pruitt Will End EPA's Use Of 'Secret Science' To Justify Regulations

Michael Bastasch

March 19, 2018

<http://dailycaller.com/2018/03/19/epa-scott-pruitt-secret-science/>

Environmental Protection Agency (EPA) Administrator Scott Pruitt will soon end his agency's use of "secret science" to craft regulations.

"We need to make sure their data and methodology are published as part of the record," Pruitt said in an exclusive interview with The Daily Caller News Foundation. "Otherwise, it's not transparent. It's not objectively measured, and that's important."

Pruitt will reverse long-standing EPA policy allowing regulators to rely on non-public scientific data in crafting rules. Such studies have been used to justify tens of billions of dollars worth of regulations.

EPA regulators would only be allowed to consider scientific studies that make their data available for public scrutiny under Pruitt's new policy. Also, EPA-funded studies would need to make all their data public.

"When we do contract that science out, sometimes the findings are published; we make that part of our rule-making processes, but then we don't publish the methodology and data that went into those findings because the third party who did the study won't give it to us," Pruitt added.

“And we’ve said that’s fine — we’re changing that as well,” Pruitt told TheDCNF.

Conservatives have long criticized EPA for relying on scientific studies that published their findings but not the underlying data. However, Democrats and environmental activists have challenged past attempts to bring transparency to studies used in rule making.

Texas Republican Rep. Lamar Smith pushed legislation to end the use of what he calls “secret science” at EPA. Pruitt instituted another policy in 2017 backed by Smith against EPA-funded scientists serving on agency advisory boards.

“If we use a third party to engage in scientific review or inquiry, and that’s the basis of rulemaking, you and every American citizen across the country deserve to know what’s the data, what’s the methodology that was used to reach that conclusion that was the underpinning of what — rules that were adopted by this agency,” Pruitt explained.

Pruitt’s pending science transparency policy mirrors Smith’s HONEST Act, which passed the House in March 2017. Smith’s office was pleased to hear Pruitt was adopting another policy the House Committee on Science, Space and Technology chairman championed.

“The chairman has long worked toward a more open and transparent rule-making process at EPA, and he looks forward to any announcement from Administrator Pruitt that would achieve that goal,” committee spokeswoman Thea McDonald told TheDCNF.

Junk science crusader Steve Milloy also called on EPA to end its use of “secret science” in rule making, especially when it comes to studies on the toxicity of fine particulates in the air.

EPA has primarily relied on two 1990s studies linking fine particulate pollution to premature death. Neither studies have made their data public, but EPA used their findings to justify sweeping air quality regulations.

Reported benefits from EPA rules are “mostly attributable to the reduction in public exposure to fine particulate matter,” according to the White House Office of Management and Budget report. That’s equivalent to billions of dollars.

In fact, one of EPA’s most expensive regulation on the books, called MATS, derived most of its estimated benefits from reducing particulates not from reducing mercury, which the rule was ostensibly crafted to address.

EPA estimated MATS would cost \$8.2 billion but yield between \$28 billion to \$77 billion in public health benefits. It’s a similar story for the Clean Power Plan, which EPA estimated would cost \$8.4 billion and yield from \$14 billion to \$34 billion in health and climate benefits.

Democrats and environmentalists have largely opposed attempts to require EPA rely on transparent scientific data. Said data would restrict the amount of studies EPA can use, but a major objection is making data public would reveal confidential patient data, opponents argue.

“A lot of the data that EPA uses to protect public health and ensure that we have clean air and clean water relies on data that cannot be publicly released,” Union of Concerned Scientists representative Yogin Kothari told E&E News.

“It really hamstrings the ability of the EPA to do anything, to fulfill its mission,” Kothari said.

Milloy, however, countered and argued it’s a “red herring” to claim that forcing regulators to use public science data would harm patient privacy.

“The availability of such data sets is nothing new,” said Milloy, publisher of JunkScience.com and senior fellow at the Energy and Environmental Legal Institute.

“The state of California, for example, makes such data available under the moniker, ‘Public Use Death Files,’” Milloy said. “We used such data in the form of over two million anonymized death certificates in our recent California study on particulates and death.”

“Opponents of data transparency are just trying to hide the data from independent scrutiny,” Milloy added. “But the studies that use this data are taxpayer-financed, and they are used to regulate the public.”

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From: Morning Energy [morningenergy@politico.com]
Sent: 5/31/2018 2:07:39 PM
To: Feeley, Drew (Robert) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=abae82aa36da4d3383eae19a8efa683c-Feeley, Rob]
Subject: POLITICO's Morning Energy, presented by America's Pledge: First SAB meeting to eye EPA reg rollbacks — Cramer hits Trump's legislative director — DOE: U.S. generally 'well prepared' for grid hacks

By Kelsey Tamborrino | 05/31/2018 10:00 AM EDT

With help from Eric Wolff

PRUITT'S SAB STORY: EPA's independent Science Advisory Board will meet today and Friday for the first time since Administrator Scott Pruitt barred scientists on the committee from receiving EPA grants and boosted its ranks with industry representatives — and the group's agenda is packed. The SAB will look at Pruitt's "secret science" proposal to bar EPA from using studies that don't make public all their data, as well as the Clean Power Plan repeal, Pruitt's decision to relax 2022-25 auto emissions standards, changes to the 2016 methane rule for new oil and gas wells and effort to repeal a rule regulating emissions from "glider" trucks — and that's not all.

A lot to dive into: The heavy slate of issues is unusual for the advisory board, Pro's Alex Guillén reports. Several current and former SAB members say it's unprecedented for the board to consider reviewing so many regulatory actions. But like green groups and critics of Pruitt, the SAB scientists say EPA has declined to share information about its regulatory rollbacks. "The agency has not been forthcoming about how they're developing the relevant science work products," said Chris Frey, a professor of environmental engineering at North Carolina State University and a SAB member since 2012.

EPA keeps quiet: SAB has been conducting twice-yearly reviews of EPA's planned regulatory actions since 2012, members said. It's an effort designed to enable the advisory board to help guide EPA before its rules are finalized. But this time around, the SAB's working groups say EPA wasn't being forthcoming with information. "Basically they just didn't provide us with any answers," said Frey. "That kind of put us in a position where all we can really do is say EPA has not identified the science or any plan to review it, and clearly there are science issues that are in the proposed rule."

What to expect: It's not immediately clear whether the full SAB will vote today to advance the reviews. But Frey noted that some of the members appointed by Pruitt had been on the working groups, giving him hope that the full board will back the recommendations to look deeper into the regulatory rollbacks. Should SAB adopt them, Alex reports, it likely would mean setting up special subcommittees that include current members plus outside experts to question EPA further. Read more [here](#).

IT'S THURSDAY! I'm your host Kelsey Tamborrino, and Entergy's Rob Hall correctly identified former President William Howard Taft as the first to see a Major League Baseball game in his hometown of Cincinnati. For today: Name all the presidents who were married while in office. Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseyam](#), [@Morning_Energy](#) and [@POLITICOPro](#).

THE LONG AND SHORT OF IT: In an unusual attack on the White House's legislative affairs director, North Dakota Rep. [Kevin Cramer](#) blamed Marc Short explicitly for the party's legislative failures in the Senate, including ending the Obama rule on flaring and venting from oil and gas wells. After POLITICO published a story outlining the awkward dynamic between [Heidi Heitkamp](#), Cramer and the White House, Cramer told

North Dakota radio host Rob Port that he had done some digging and believes that there "are some people in the White House that think, you know, the president's too friendly too her," Burgess Everett [recaps](#).

Moreover, Cramer laid specific blame at Short's feet for failed GOP efforts in the Senate to roll back an Obama-era regulation limiting flaring and venting, as well as repealing Obamacare. Heitkamp voted against gutting that flaring rule, something Cramer has criticized her for, in particular. "If Marc Short was very good at his job, you know, we'd have a repeal and replacement of Obamacare, we'd have a replacement of the venting and flaring rule," Cramer said. Read that story [here](#).

PRUITT'S MEDIA BLITZ: The EPA administrator visited Rosslyn, Va., on Wednesday to sit for interviews with two conservative media outlets. One was conducted by Boris Epshteyn for his Sinclair Broadcasting segment, "Bottom Line with Boris." (Watch that [here](#).) The other was with the Washington Free Beacon, where Pruitt repeated familiar talking points in defense of the ongoing scandals and investigations that have surrounded him over the past few months. Pruitt said he still has President Donald Trump's backing, noting that Trump has "spoken very strongly and consistently" about their working relationship. "It's been intense the last couple of months, but he's been very encouraging, very empathetic and very supportive rather consistently," Pruitt said. The administrator also discusses the Paris climate agreement, "The Bachelorette" and, of course, baseball in the 13-minute segment, which you can listen to [here](#).

GRID AND BEAR IT: In response to an [executive order](#) signed last year, the Energy Department released a new [report](#) Wednesday that said senior government officials and electric sector executives don't know enough about how energy companies could recover from a disruptive cyberattack, and those companies aren't thinking about cyber threats enough when building out their supply chains. While the report mainly hammered home some long-known problems with the grid, DOE highlighted how grid resilience efforts suffer because of "gaps in incorporating cybersecurity concerns, including planning for long-term disruption events, into state emergency response and energy assurance planning." Generally, however, the report said the U.S. is "well prepared to manage most electricity disruptions." Read more from Pro's Eric Geller [here](#).

WHERE'S PERRY? Energy Secretary Rick Perry delivers remarks this morning on critical infrastructure at DOE's Texas-Israel Cyber Security Conference in Dallas. The department also announced that Perry would address the DOE's annual Cyber Conference in Austin on Monday. During both events Perry is expected to [discuss DOE's new](#) Cybersecurity, Energy Security and Emergency Response office, as well as efforts at DOE to address cyber vulnerabilities in the energy sector.

ABOUT THAT GLIDER RULE: The New York Times' Eric Lipton [tweeted](#) out new documents late Wednesday that give new details into the controversial Tennessee Technological University study on truck emissions that Pruitt used to consider rewriting part of the Phase 2 truck rules. "The letters obtained via open records request show that the principal investigator at Tenn Tech who conducted study funded by Fitzgerald, the company that makes the so-called glider trucks, disavowed the work, saying that it had been distorted in a fraudulent way," Lipton [tweeted](#).

BY THE NUMBERS: The federal government spent \$13.2 billion across 19 agencies during fiscal 2017 on programs related to climate change, [a report](#) from the Government Accountability Office says. That's an overall \$1.5 billion increase across the federal government over fiscal 2016, Pro's Anthony Adragna reports. And it's an increase of \$4.4 billion since fiscal 2010, according to the report, which was request by House Science Chairman [Lamar Smith](#). Read [more](#).

CALIFORNIA GETS CHARGED UP FOR EVs: The California Public Utilities Commission is expected to approve a \$589 million [program](#) for its four investor-owned utilities to build out their electric vehicle charging infrastructure. The plan is part of the implementation of California's aggressive greenhouse gas law passed in 2015. Most of the money — which will ultimately come from ratepayers — will go toward setting up electric

vehicle charging stations and related infrastructure. California leads the nation by far in electric vehicle sales and adoption.

NO MAJOR FLAWS IN FERC PROCESS: Auditors in the DOE inspector general's office said they found no major flaws in FERC's process for reviewing interstate natural gas pipelines, according to a new report. But they also flagged concerns about FERC's transparency and how it handles public comments. The auditors said that "nothing came to our attention to indicate that FERC had not performed its due diligence" in how it balanced public benefits of a proposed project with its adverse impacts. But the report also said regulators' "had not fully ensured" that the certification process was transparent to those who want to participate, and it hit the agency's eLibrary documentation system as difficult to use, Pro's Darius Dixon reports.

**** A message from America's Pledge:** America's Pledge is flipping the script on climate action. One year after the federal government announced it would pull out of the Paris Agreement, 2,700+ U.S. cities, states, and businesses are saying, "We Are Still In." See how far we've come: <https://politi.co/2koAHZb> **

FERC DENIES PENNEAST REHEARING: FERC on Wednesday denied a rehearing sought by the Delaware Riverkeeper Network and Surland Conservancy on the controversial PennEast pipeline. Commissioner Richard Glick issued a separate statement on the agency's use of tolling orders. "This proceeding, in particular, illustrates the need for prompt action on rehearing requests," Glick wrote. " ... I also have serious concerns regarding the Commission's practice of issuing conditional certificates — which, notwithstanding their name, vest the pipeline developer with full eminent domain authority — in cases where the record does not contain adequate evidence to conclude definitively that the pipeline is in the public interest."

GREENS ENDORSE DE LEON OVER FEINSTEIN: 350.org co-founder Bill McKibben and 350 Action said Wednesday it is backing Kevin de León in his bid to challenge California Sen. Dianne Feinstein. McKibben said de León, a current California state senator, "has been a strong champion of clean energy — and an effective one, using his power in Sacramento to make change happen against the strong opposition of the fossil fuel industry." Read De León's candidate questionnaire answers here.

SELC SUES OMB OVER REORG: The Southern Environmental Law Center sued the Office of Management and Budget Wednesday for its failure to release information under FOIA on the reorganization at federal agencies that manage public lands. SELC says OMB has not provided requested information under a November 2017 FOIA request, nor has it made a determination or otherwise responded to the request, and has subsequently stopped communicating with SELC. The center is seeking "all records in the custody or control of OMB submitted in connection with Executive Order 13781 by any agency responsible for the management of federal public lands," including the Forest Service, National Park Service, BLM and the Fish and Wildlife Service. The EO in question directed each agency head to submit a report to OMB outlining proposed changes to their agency. Read the lawsuit.

CRES BACKS McMASTER IN SOUTH CAROLINA: Citizens for Responsible Energy Solutions will announce a \$175,000 television and digital ad buy today highlighting South Carolina Gov. Henry McMaster's record on clean energy. "First as lieutenant governor and now as governor, his commitment to the development of advanced energy technologies like natural gas and solar power is helping the state's economy and job market thrive," CRES Chairman and Executive Director James Dozier said.

McCARTHY NAMED DIRECTOR OF HARVARD CENTER: Harvard T.H. Chan School of Public Health announced former EPA Administrator Gina McCarthy will lead its newly launched Center for Climate, Health, and the Global Environment. Under McCarthy, C-CHANGE announced a collaboration between Harvard University and Google to reduce the use of harmful chemicals in construction and renovation projects. "C-CHANGE will ensure that cutting-edge science produced by Harvard Chan School is actionable — that the

public understands it, and that it gets into the hands of decision-makers so that science drives decisions," McCarthy said in a statement.

MOVER, SHAKER: Mitch Schwartz started this week as communications director for Jason Crow's campaign in Colorado's 6th Congressional District. Schwartz previously worked for SKDKnickerbocker.

— **PUSH Buffalo, a sustainable housing group,** announced Rahwa Ghirmatzion as its new executive director as of August 2018. Ghirmatzion has served as the organization's deputy director since 2017.

QUICK HITS

- Exxon aims to boost production even with any climate rules, [Associated Press](#).
- Buffett utility to be first in U.S. to reach 100 percent renewables, [Reuters](#).
- Chevron shareholders reject climate change resolutions, [Washington Examiner](#).
- It's not every day you see a tropical depression over Indiana — but here it is, [The Washington Post](#).
- U.S. solar manufacturing poised to boom in wake of Trump tariffs, [Bloomberg](#).
- Oil prices steady after big drop on OPEC talks, [The Wall Street Journal](#).

THAT'S ALL FOR ME!

**** A message from America's Pledge:** One year after President Trump announced plans to withdraw from the Paris Agreement, America's Pledge is showing the world that U.S. cities, states, and businesses can lead us towards our goals - with or without Washington. <https://politi.co/2koAHZb> **

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Subject: POLITICO's Morning Energy: Spotlight on FERC at Pro summit — Hitching a ride on the 'minibus' — 'Secret science' out in the open

By Kelsey Tamborrino | 07/17/2018 10:00 AM EDT

With help from Emily Holden, Anthony Adragna, Colin Wilhelm and Darius Dixon

SEE YOU THERE: Today's the day — POLITICO Pro is hosting its second annual Pro summit, featuring one-on-one conversations with newsmakers across the policy landscape, including two sessions on energy.

FERC Commissioner Cheryl LaFleur will sit down this afternoon with our own Darius Dixon, before the regulatory body is deadlocked next month following the exit of GOP Commissioner Rob Powelson. LaFleur, a Democrat, has served under presidents from both parties and experienced the agency in almost every configuration — whether it has all five commissioners in place, or just one. There's no shortage of topics to chew over: the potential impact of an Energy Department coal and nuclear rescue plan, the heated rhetoric against states that stand in the way of pipelines, and whether FERC is "on the wrong side of history" when it comes to climate change. Darius' interview with LaFleur starts around 2 p.m.

Also on tap: California Air Resources Board Chairwoman Mary Nichols, Murray Energy CEO Bob Murray and the Council on Foreign Relations' Amy Myers Jaffe will participate in a panel this morning on America's "energy future." Nichols, for one, has been heavily involved in discussions with the Trump administration over car rules that the White House is considering rolling back. Expect questions related to the administration's efforts to pare back regulations and increase oil, gas and coal production — and an in-depth conversation on what that means for free market forces and renewables.

See the full agenda [here](#) and watch the livestream [here](#).

WELCOME TO TUESDAY! I'm your host, Kelsey Tamborrino. Citizens' Climate Lobby's Brett Cease was first to correctly identify the two presidents who threw out the first pitch at an All-Star game in D.C.: Franklin D. Roosevelt in 1937 and John F. Kennedy in 1962. For today: Which state or states have just one consonant in its spelling? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytm](#), [@Morning_Energy](#) and [@POLITICOPro](#).

JUST RELEASED: [View the latest POLITICO/AARP poll](#) to better understand Arizona voters over 50, a voting bloc poised to shape the midterm election outcome. Get up to speed on priority issues for Hispanic voters age 50+, who will help determine whether Arizona turns blue or stays red.

HITCHING A RIDE ON THE 'MINIBUS': The House Rules Committee late Monday made 70 amendments to the EPA and Interior title of the spending minibuss, [H.R. 6147 \(115\)](#). The amendments focus on blocking a host of Obama-era environmental regulations even as the Trump administration is in the process of rolling back many of those. Some of the amendments that caught ME's eye:

— **Diesel emissions grants:** Rep. [Gary Palmer's amendment](#) would eliminate the popular bipartisan Diesel Emissions Reduction Grant program used to retrofit diesel engines like those in school buses,

— **WOTUS:** Rep. Don Beyer's amendment would remove language blocking the Obama administration's Waters of the U.S. regulation,

— **Obama-era methane rule:** Rep. Markwayne Mullin's amendment would block enforcement of the Obama-era regulation aimed at curbing methane emissions from new oil and gas sources, which the Trump administration is already reconsidering,

— **Social cost of carbon:** Another amendment from conservatives would bar the use of the social cost of carbon in rulemakings,

— **Trailer efficiency:** Reps. Barry Loudermilk and Morgan Griffith's amendment would bar EPA from applying stricter fuel efficiency and greenhouse gas emissions standards to certain truck trailers,

— **Chesapeake Bay:** Rep. Bob Goodlatte's effort would limit EPA's ability to go after states that miss Chesapeake Bay cleanup milestones,

— **Ozone:** Rep. Glenn Grothman's amendment would block implementation of EPA's 2015 tightened ozone standard,

— **Coal ash:** A Democratic amendment would block the Trump EPA from revisiting an Obama-era coal ash regulation,

— **Endangered Species Act riders:** Several measures would bar the administration from issuing or enforcing Endangered Species Act rules relating to species like the lesser prairie chicken and Preble's meadow jumping mouse,

— **Attorney fees:** An amendment from Reps. Jason Smith and Greg Gianforte would block attorney fees from being awarded in any Clean Air Act, Clean Water Act or Endangered Species Act settlement, and,

— **Inspectors general:** Nothing related to former Administrator Scott Pruitt was made in order, but the House will consider an amendment from Rep. Raúl Grijalva that would increase the budget of the Interior Department's inspector general by \$2.5 million.

Read the full list of amendments made in order to the measure here.

'SECRET SCIENCE' OUT IN THE OPEN: EPA's controversial proposal to consider only research with publicly available data gets a public hearing at agency headquarters today starting at 8 a.m. Nearly 70 health, medical, academic and science groups — including the American Lung Association, American Heart Association, American Medical Association and American Academy of Pediatrics — oppose the plan, which they say could hamstring public health and environment protections.

EPA's Science Advisory Board voted unanimously to review the proposal, which Pruitt said was meant to bolster transparency. Paul Billings, national senior vice president of advocacy at the American Lung Association, called the rule a "coordinated effort to ignore the science that is inconvenient to the EPA's agenda," and compared it to lobbying efforts by the tobacco industry in the 1990s to exclude studies that showed secondhand smoke could kill.

What's at stake? The proposal could move forward quickly enough to allow EPA to roll back certain air quality standards currently under review. According to the Natural Resources Defense Council, the plan could undercut computer models meant to test chemicals under the new Toxic Substances Control Act and could toss

out landmark studies that relied on personal health records following extraordinary events, including when Hiroshima and Nagasaki victims were tested over time to find out the effects of radiation on humans.

The meeting will run until 8 p.m. or an hour after the last of more than 100 registered speakers has commented. Speakers, aside from many environment and public health groups, include the American Petroleum Institute, the U.S. Chamber of Commerce, the American Chemistry Council, FreedomWorks Foundation and climate science critic Steve Milloy. Dan Byers of the Chamber of Commerce's Global Energy Institute is expected to applaud the agency's efforts and commend EPA for going through the formal public comment and rulemaking process. "It is one thing to be cavalier about transparency principles when their application has little or no import to public policy, but federal rules that impact millions of people and billions of dollars should be held to a higher standard," he is expected to say. Also registered are Reps. Paul Tonko, Suzanne Bonamici and Dan Lipinski. Comments can be submitted until Aug. 16.

Related reading: Competitive Enterprise Institute senior fellow Angela Logomasini looks at the science transparency rule in analysis published today. "The rule is actually far more modest and flexible than depicted by its critics, and its goals are in fact achievable," Logomasini writes. Read it here.

FOR THE RECORD: The House Rules Committee meets at 3 p.m. this afternoon to formulate a rule on an anti-carbon tax resolution, H. Con. Res. 119 (115), that calls a tax on carbon released from fossil fuels "detrimental to the United States economy." The Rules panel will tee up a vote later this week on the resolution, which is led by Majority Whip Steve Scalise and would put a range of lawmakers — most notably the Climate Solutions Caucus — on the record on the issue.

WHERE'S ZINKE? Interior Secretary Ryan Zinke will deliver remarks this morning at the first meeting of the "Made in America" Outdoor Recreation Advisory Committee. The committee is tasked with advising the secretary on "public-private partnerships across all public lands, with the goal of expanding access to and improving infrastructure on public lands and waterways." See the meeting agenda.

AMERICA'S PLEDGE STILL WORKING ON PLEDGES: Michael Bloomberg and California Gov. Jerry Brown, the co-chairs of climate organization "America's Pledge," have unveiled a preview of the report they will release at the Global Climate Action Summit in San Francisco in September, detailing "bottom-up" opportunities for climate action sans federal leadership. The list is familiar: boosting renewables, accelerating coal retirements, retrofitting buildings for energy efficiency, electrifying building energy use, accelerating electric vehicle adoption, phasing out HFCs, preventing methane leaks at the wellhead, reducing methane leaks in cities, reducing emissions from land and starting carbon markets.

Vice Chairman Carl Pope said the group still plans to debut a quantitative analysis outlining what state and local governments are already doing, what they have committed to and what they are keying up. "We have every reason to believe the rest of the world is watching this very closely," Pope said, noting that the U.N.'s top climate official, Patricia Espinosa, mentioned the group and summit by name at the Vatican earlier this month. Read it here.

ESA GETS ITS DAY: Proposed tweaks to the Endangered Species Act will be front and center at a Senate Environment and Public Works hearing this morning. The hearing will feature testimony from Wyoming Gov. Matt Mead, Colorado Parks and Wildlife's Bob Broscheid and Virginia's Secretary of Natural Resources Matthew J. Strickler, and will focus on a discussion draft released by Chairman John Barrasso earlier this month aimed at changing the statute. **If you go:** The hearing kicks off at 9:45 a.m. in 406 Dirksen. Livestream here.

TAKEN BY STORMWATER: The House on Monday passed by voice vote H.R. 3906 (115), the Innovative Stormwater Infrastructure Act of 2017, which would "establish centers of excellence" for stormwater control infrastructure. The legislation, introduced last year by Democratic Rep. Denny Heck, directs EPA to create a

stormwater infrastructure funding task force to make recommendations on the availability of public and private funding for stormwater infrastructure.

DOE ISSUES FIRST TRIBAL LOAN GUARANTEE: The Energy Department will issue its first solicitation for the Tribal Energy Loan Guarantee Program today. The program provides up to \$2 billion in partial loan guarantees to support energy development in Native American and Alaska Native communities. According to DOE, today's solicitation marks more than \$40 billion in energy infrastructure loans and loan guarantees from DOE's Loan Programs Office in five areas.

HOUSE PANEL TO HOLD GRID HEARING: House Natural Resources will hold a hearing on July 25 on Puerto Rico's electric grid recovery and possible improvements to make it more efficient and resilient to future hurricanes. On top of the devastation caused by Hurricane Maria last year, Puerto Rico's electric utility owes bondholders \$9 billion, and most of its leadership departed last week after clashes with Gov. Ricardo Rosselló over executive compensation and political control of the utility, which is quasi-governmental.

MAKING THE GRADE: The Environment America Research & Policy Center is out today with its state-by-state report card, "Renewables on the Rise," which details increases in solar, wind, energy efficiency, electric vehicles and battery storage. The report says the U.S. now produces almost six times as much renewable electricity from wind and solar than it did in 2008. It also found that in March of last year, wind and solar produced 10 percent of the United States' electricity — marking a first. On the state level, the report said California, Arizona, North Carolina, Nevada and Texas saw the greatest total increases from 2008 until 2017 in solar energy generation. See the report [here](#) and a state-by-state interactive map [here](#).

YOU DOWN WITH TIP? A bipartisan group of four senators wrote to Energy Secretary Rick Perry on Monday in support of the Western Area Power Administration's Transmission Infrastructure Program, which was axed under the Trump administration's fiscal 2019 budget proposal. "TIP is one of the few federal programs that directly supports new and upgraded electric transmission," according to the letter, signed by Sens. Catherine Cortez Masto, Martin Heinrich, Dean Heller and Cory Gardner.

HOUSE PLANS FLOOD INSURANCE VOTE: The House is planning to vote next week to extend the National Flood Insurance Program, ahead of its July 31 expiration, sources familiar with the matter tell Pro Financial Services' Zachary Warmbrodt. There are already a few options on the table for the program: one from Financial Services Chairman Jeb Hensarling, who has been trying to put together an extension bill that includes reforms, and a new bill introduced by Scalise and Rep. Tom MacArthur that would reauthorize the program through Nov. 30. Read [more](#).

FOR YOUR RADAR: Republican Sen. Chuck Grassley introduced bipartisan legislation on Monday targeting price fixing by OPEC. The bill would amend the Sherman Act to make oil-producing and exporting cartels illegal, and was co-sponsored by Sens. Amy Klobuchar, Mike Lee and Patrick Leahy. "It's long past time to put an end to illegal price fixing by OPEC," Grassley said in a statement. Read the legislation [here](#).

MAIL CALL! National Rural Electric Cooperative Association CEO Jim Matheson sent a letter to the leadership of the Energy and Commerce Environment Subcommittee on Monday in support of legislation to reform the New Source Review permitting program.

— **More than 100 Democrats** signed onto a letter to members of both House and Senate Armed Services committees today to urge them to oppose any provisions to the National Defense Authorization Act that would "have widespread, negative consequences for the conservation of our imperiled wildlife and public lands." Read the letter [here](#).

— **Iowa's congressional delegation** invited acting EPA Administrator Andrew Wheeler to their state to discuss the Renewable Fuel Standard. Read it [here](#).

What role will Hispanic voters over 50 play in Arizona this Fall? Read POLITICO Magazine's new series "The Deciders" which focuses on this powerful voting bloc that could be the determining factor in turning Arizona blue.

QUICK HITS

- "Puerto Ricans return to power grid, but fear for long term," The Associated Press.
- "Oil boom in Southern New Mexico ignites groundwater feud with Texas," Water Deeply.
- "In N.Y., farmers think about what might have been," E&E News.
- "Same agenda, different style, acting EPA head pledges," Bloomberg Environment.

THAT'S ALL FOR ME!

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Subject: POLITICO's Morning Energy, presented by America's Pledge: Battle in the Bakken state? — Groups sue over EPA waiver exemptions — Deja vu on formaldehyde

By Kelsey Tamborrino | 05/30/2018 10:00 AM EDT

With help from Annie Snider and Ben Lefebvre

BATTLE IN THE BAKKEN STATE? As the election year kicks into high gear, President Donald Trump's friendly relationship with Democratic Sen. Heidi Heitkamp is worrying some within the Republican party, POLITICO's Alex Isenstadt and Burgess Everett report. Republicans have grown increasingly frustrated with Trump's ongoing flirtation with the freshman senator from the No. 2 oil-producing state, especially at a time when many in the GOP fear that the president's unpredictable style will undercut their midterm plans. Heitkamp, who is seeking reelection in a state where Trump won nearly two-thirds of the vote, has a friendly relationship with the president, even after Trump aggressively recruited Rep. Kevin Cramer — who advised his campaign on energy issues — to give up his House seat and enter that race, leaving some of Cramer's closest allies feeling snubbed.

In an interview, Cramer said there would soon be "clarity" on who Trump supports in the race. But the congressman declined to predict whether the president would go after Heitkamp aggressively, as Trump has done with other Democratic incumbents. Cramer seemed aware of the warmth between the president and the senator, Alex and Burgess report. Trump has asked Cramer if he likes Heitkamp, and when the congressman responds yes, the president seems to be "relieved," Cramer said. "Politically, North Dakota's a pretty nice state. So I don't know that turning it on her is necessarily politically helpful to me," Cramer said. "They may just be concerned that she's a woman and maybe that has an impact. I just don't know."

For her part, Heitkamp said she's proud of her ability to work with the president. "I have a friendly relationship, I have a very important working relationship," she said in an interview, "not just with him but other members of the administration." Read the story here.

WELCOME TO WEDNESDAY! I'm your host Kelsey Tamborrino, and Peter Robertson of the Pebble Partnership was the first to correctly identify California and Ohio as the two states that don't have an avenue named after them in D.C. Instead, there's a California Street and Ohio Drive. For today: Which president was the first to see a major league baseball game in his hometown, and which town was it? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter @kelseytam, @Morning_Energy and @POLITICOPro.

GROUPS SUE ON WAIVER EXEMPTIONS: Ethanol and farm groups say they've filed a lawsuit against EPA over some of the waivers granted to small refineries allowing them to shed their Renewable Fuel Standard requirements on blending biofuels, Pro's Eric Wolff reports. The Renewable Fuels Association, National Corn Growers Association, American Coalition for Ethanol and National Farmers Union are challenging the waivers granted to CVR Refining's Wynnewood, Okla., refinery and the HollyFrontier refineries at Cheyenne, Wyo. and Woods Cross, Utah. Those refineries have collectively saved \$170 million in compliance costs, the coalition said.

Those waivers, which ethanol backers say violate the volume mandates under the RFS, are also the subject of some horse-trading in the discussions between EPA Administrator Scott Pruitt and USDA Secretary Sonny Perdue. The two are trying to put the final touches on a compromise deal over EPA's rules for biofuels. Read [more](#).

CHEVRON SHAREHOLDERS VOTE: Shareholders at Chevron's annual meeting today will vote on a pair of climate change-related provisions. First up is a proposal that the oil giant report to investors how it will change its business model to account for any decreased demand for oil and gas resulting from greater development of renewable energy sources. Another proposal is that Chevron start providing reports on steps it is taking to minimize methane emissions from its fracking operations. Chevron's board of directors have advised against both proposals, saying the company is already making sufficient efforts on both matters.

Exxon, which also holds its annual meeting today, is getting a break this year from the sort of environmental proposals its shareholders considered in 2017.

**** A message from America's Pledge:** America's Pledge is flipping the script on climate action. One year after the federal government announced it would pull out of the Paris Agreement, 2,700+ U.S. cities, states, and businesses are saying, "We Are Still In." See how far we've come: <https://politi.co/2koAHZb> **

DEJA VU? Already under fire for their handling of a controversial assessment of nonstick chemicals in drinking water, a newly uncovered EPA email suggests that public relations strategy was also front-of-mind for EPA staffers as the agency contemplated reevaluating the risks of formaldehyde. Reuters reported last week that EPA delayed release of a new assessment of the chemical that is expected to for the first time link formaldehyde with leukemia after meeting with the American Chemistry Council in January.

"They reiterated the concern you have raised about information leaking before it's been vetted and asked that the Agency have appropriate communication materials ready to use if needed," Jennifer Orme-Zavaleta, who heads EPA's Office of Research and Development, wrote in a Jan. 24 email to EPA chief of staff Ryan Jackson and Richard Yamada, deputy assistant administrator for research and development. The email was released to the Union of Concerned Scientists under the Freedom of Information Act.

Yogin Kothari, a lobbyist of UCS, said the email "sounds eerily similar" to concerns that EPA and White House officials expressed about a HHS assessment of the chemicals PFOA and PFOS. "It's not surprising that the ACC is attempting to wield its influence over EPA when its former staff are basically running the place," Kothari said by email.

WE'RE CLOSED: The Environmental Council of the States' upcoming fall meeting will close to the public certain sessions attended by EPA officials, according to the group's draft agenda for the August meeting. The draft shows ECOS will hold closed sessions on several issues, including a state-EPA roundtable on "cooperative federalism" and joint PFAS activities. (h/t E&E News' Sean Reilly)

NAFTA TALKS STILL STALLED: Recent NAFTA talks between the U.S., Mexico and Canada have not resulted in progress on the thorniest issues because the U.S. remains unwilling to offer important concessions, two sources close to the talks told Pro's Sabrina Rodriguez. Negotiators from the Office of the U.S. Trade Representative continue to demand that "they want everything, and there's no possible way they'll get everything they want," one of the sources said. "Conversations have stalled entirely." Read [more](#).

WE'LL ALWAYS HAVE PARIS: This week marks the one-year anniversary of Trump's decision to pull the U.S. out of the Paris climate agreement. The United States still technically remains in the 2015 pact for the next two-and-a-half years, but the action to implement it is playing out in the rest of the world. To mark the occasion, the World Resources Institute will host a discussion today on whether other nations have moved on since Trump's decision to exit the agreement. Among those participating is Todd Stern, the former State

Department special envoy for climate change who helped seal the deal. In the lead-up to the event, WRI's Eliza Northrop laid out the seven signs of progress since Trump's announcement [here](#), including a timeline of events over the last year. If you go: The discussion kicks off at 2:30 p.m at 10 G Street NW. Watch the livestream [here](#).

— **And the National League of Cities**, as well as mayors from across the country, will release today their latest "State of the Cities" report that will look into the trend of cities taking on clean energy goals, despite the federal government.

OFFSHORE DRILLER FINED \$4M: Oil and gas company Energy Resource Technology was fined \$4 million Tuesday by the U.S. Attorney's Office for the Eastern District of Louisiana for fabricating data about the readiness of a key piece equipment used to prevent oil spills, Interior said. The fine comes as a result of an [investigation](#) by Interior's Office of Inspector General that found that ERT management directed an employee on its rig in the Gulf of Mexico to create a fake blowout preventer pressure test chart to conceal a failed test result, Pro's Ben Lefebvre reports. Read [more](#).

EPA, KILDEE SPAR OVER SUMMIT: EPA defended its move to only allow federal agency and state representatives on the second day of last week's summit on toxic chemicals in drinking water, dismissing Democratic Rep. [Dan Kildee's](#) complaint that members of his staff had been barred from attending as a mischaracterization. EPA Associate Administrator Troy Lyons wrote in a letter Tuesday to Kildee and obtained by POLITICO that the agency worked with Kildee's office ahead of time to allow a staffer to attend the first day of the summit.

"**I trust you understand our disappointment** when we discovered that no one from your office attended the summit on May 22, particularly in light of the subsequent events on May 23," Lyons wrote. In a statement, Mitchell Rivard, Kildee's chief of staff, said that "it is hard to mischaracterize the EPA's actions — it had been widely reported that the EPA blocked both journalists and a congressional office from the taxpayer-funded PFAS summit." Read the letter [here](#).

MAIL CALL! 45Q AND YOU: Rep. Cramer shared [a letter](#) Tuesday from the Treasury Department in response to [his request](#) for direction on the expanded 45Q tax credit for capturing and storing carbon dioxide. In the letter, Assistant Secretary for Legislative Affairs Drew Maloney said Treasury is developing published guidance to provide clarity to taxpayers for the purpose of using the credit.

— **A coalition of 12 state and city attorneys general** and attorneys sent a letter to National Academy of Sciences President Marcia McNutt saying EPA's so-called secret science proposal to ban the use of studies that don't publicly disclose all data is "too vague and rushed to allow for meaningful public review." And they pressed for the group to weigh in, saying "the National Academy's input on this extremely consequential proposal." Read it [here](#).

API WRITES TO TRUMP ON SECTION 232: The American Petroleum Institute [sent a letter](#) to Trump last week requesting that the list of countries currently exempt from Section 232 tariffs on steel and aluminum be expanded "without imposing alternative measures such as quotas," and that the president remove any associated import quotas that have already been imposed. In his letter, API President and CEO Jack Gerard writes that additional import restrictions "will have a negative effect on our industry just as we have achieved the highest level of domestic hydrocarbon (oil and natural gas and natural gas liquids, or NGLs) production since 1949," according to EIA.

TRUDEAU COMMENTS ON PIPELINE: Canadian Prime Minister Justin Trudeau defended the Canadian government's plan to buy and complete the expansion of Kinder Morgan's Trans Mountain pipeline. "The project became too risky for a commercial entity to go forward with it; that's what Kinder Morgan told us," Trudeau said during a Bloomberg Businessweek event. "We are going to ensure that it gets built so that we can get our resources to new markets." More [here](#).

WHITE HOUSE TALKS PUERTO RICO: Aboard an Air Force One flight, press secretary Sarah Huckabee Sanders was asked whether the president — despite his previous comments — now thinks Puerto Rico constitutes a "real catastrophe" following the release of a Harvard University study that found at least 4,645 people died from the September 2017 storm rather than the 64 deaths federal authorities counted. The White House continues to be supportive of the governor of Puerto Rico, Sanders said according to pool reports, and of "transparency and accountability." The people of Puerto Rico "deserve nothing less than that, and were going to continue to be focused on helping in every way we can," she said. "FEMA has already done the largest response ever in history to any natural disaster. They're in Puerto Rico, and we're going to continue to give as much assistance as possible."

RBS COMMITS TO NEW ENERGY FINANCING: Ahead of its shareholder meeting today, the Royal Bank of Scotland announced Tuesday new energy financing policies to support a transition to low carbon. The bank said it would no longer provide "project-specific finance" to new coal-fired power plants, thermal coal mines or oil sands projects, among other projects. Additionally, RBS said it is tightening restrictions on general lending to mining and power companies generating more than 40 percent of their revenues from thermal coal and of electricity from coal, respectively. In response, Rainforest Action Network Executive Director Lindsey Allen said the announcement "comes as a result of groups like us pressuring banks to defund fossil fuels and deforestation," but said the "policy is only half a step forward because it leaves loopholes in place."

REPORT: COOK TAPPED FOR SUPERFUND JOB: EPA has named Steven Cook — a former senior counsel at chemical giant LyondellBasell — to the agency's Superfund Task Force in the position left vacant by Albert "Kell" Kelly, Bloomberg BNA reported. Cook has been serving as deputy assistant administrator for the agency's land and waste office, prior to his move to the Superfund spot.

ZINKE DEFENDS 'KONICHIWA' GREETING: In a wide-ranging radio interview with Breitbart Radio, Interior Secretary Ryan Zinke defended his use of the greeting "konichiwa" in response to a question from Rep. Colleen Hanabusa on preserving internment sites during a March Natural Resources hearing. "I grew up in a little logging, timber town, railroad town in Montana and a lot of my family lived through the years of the internment camps. I've long since had friends that were Japanese families that went through that," Zinke said, calling it an "appropriate salute." Listen to the full interview here.

AD WARS: Club for Growth Action said Tuesday that it would spend \$250,000 on new ads attacking Russ Fagg, a former judge and Republican candidate for Senate in Montana. Campaign Pro's James Arkin reports the new ad campaign attacks Fagg over his record during his two decades as a district judge, including the time he called a judge who "undercut" Trump's rollback of environmental rules a "thoughtful moderate." Watch the TV ad here.

MOVER, SHAKER: Stuart Siffring joined the Western Energy Alliance as a regulatory analyst, the trade group announced Tuesday. Siffring previously worked as a permit engineer at EPA and the Colorado Department of Public Health and Environment.

QUICK HITS

- EPA used disavowed research to justify putting dirtier trucks on the road, Los Angeles Times.
- Antarctica has enormous mountain ranges and valleys deep beneath its ice, The Washington Post.
- Former Perry adviser is FirstEnergy's secret weapon in U.S. bailout, Bloomberg.
- McConnell's plan for a packed summer Senate agenda, CQ Roll Call.
- Lowe's drops paint strippers blamed in dozens of deaths, The New York Times.

— No offsets, no problem as Army Corps OKs wetland projects, [E&E News](#).

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**** A message from America's Pledge:** One year after President Trump announced plans to withdraw from the Paris Agreement, America's Pledge is showing the world that U.S. cities, states, and businesses can lead us towards our goals - with or without Washington. <https://politi.co/2koAHZb> **

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Subject: The EPA Cleans Up Its Science

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THE WALL STREET JOURNAL

The EPA Cleans Up Its Science

Now Congress Should Act To Lock In Place Data Transparency

Steve Milloy

March 26, 2018

<https://on.wsj.com/2IV9LeH>

The Environmental Protection Agency will no longer rely on “secret” scientific data to justify regulations, Administrator Scott Pruitt announced last week. EPA regulators and agency-funded researchers have become accustomed to producing unaccountable, dodgy science to advance a political agenda.

The saga began in the early 1990s, when the EPA sought to regulate fine particulate matter known as PM2.5—dust and soot smaller than 2.5 microns in diameter. PM2.5 was not known to cause death, but by 1994 EPA-supported scientists had developed two lines of research purporting to show that it did. When the studies were run past the EPA’s Clean Air Science Advisory Committee, it balked. It believed the studies relied on dubious statistical analysis and asked for the underlying data. The EPA ignored the request.

As the EPA prepared to issue its proposal for PM2.5 regulation in 1996, Congress stepped in. Rep. Thomas Bliley, chairman of the House Commerce Committee, sent a sharply written letter to Administrator Carol Browner asking for the data underlying studies. Ms. Browner delegated the response to a subordinate, who told Mr. Bliley the EPA saw “no useful purpose” in obtaining the data. Congress responded by inserting a provision in a 1998 bill requiring that data used to support federal regulation must be made available to the public via the Freedom of Information Act. But it was hastily written, and a federal appellate court held the law unenforceable in 2003.

The controversy went dormant until 2011, when a newly Republican Congress took exception to the Obama EPA's antioil rules, which relied on the same PM2.5 studies. Again the EPA was defiant. Administrator Gina McCarthy refused requests for the data sets and defied a congressional subpoena.

Bills to resolve the problem died in the Senate. Democrats argued that requiring data for study replication is a threat to intellectual property and an invasion of medical privacy. In fact, the legislation would protect property by requiring a confidentiality agreement, and no personal medical data or information would have been released.

This sort of data is already routinely made public for research use. In 2012 I was desperate for a way around the Obama EPA's secrecy on the PM2.5 issue, I found out in 2012 that I could get California death-certificate data in electronic form. The state's Health Department calls this sort of data "Death Public Use Files." They are scrubbed of all personal identifying and private medical information. Some of my colleagues used this data to prepare a 2017 study, which found PM2.5 was not associated with death.

The best part is that if you don't believe the result, you can get the same data for yourself from California and run your own analysis. Then we'll compare, contrast and debate. That's how science is supposed to work.

It would be better if Congress would pass a law requiring data transparency. A future administrator may backslide on the steps Mr. Pruitt is taking. In the meantime, we have science in the sunshine.

[To Read The Full Article Click Here](#)

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Censored Science

Udall Q17:

The recently proposed “Strengthening Transparency in Regulatory Science” rule has been on the wish-list of industry for a long time as it could lead to weaker, less-scientifically based regulations to the detriment of public health. In the EPA Press Release announcing the Proposed Rule, EPA implies this proposal is consistent with recommendations on data transparency from major scientific journals including *Science*, *Nature*, the *Proceedings of the National Academy of Sciences*. However, a joint statement signed by the Editors-in-Chief of these publications in response to the Proposed Rule said: “It does not strengthen policies based on scientific evidence to limit the scientific evidence that can inform them; rather, it is paramount that the full suite of relevant science vetted through peer review, which includes ever more rigorous features, inform the landscape of decision making. Excluding relevant studies simply because they do not meet rigid transparency standards will adversely affect decision-making processes.”

- a) Did you consult with the leaders of the journals you cited in your press release prior to release of the Proposed Rule?

Answer:

- b) Please provide a list of all scientists, science-based organizations and associations, lobbyists, industry trade associations, and industry representatives you consulted in developing the Proposed Rule.

Answer:

It has been reported that EPA staff analysis of a similar policy (HONEST Act) that governs which scientific analyses can be used by the Agency in regulatory proceedings found the costs to EPA of implementing such policy would be enormous – “\$250 million a year for the next few years.” This seems to undermine your goal of making EPA “lean.”

- c) Why did EPA opt to not release this staff analysis of implementing a policy like the HONEST Act? Or why did EPA fail to complete a new analysis of the costs of implementing the Proposed Rule?

Answer:

- d) Will you commit to providing a quantitative assessment of the estimated costs to EPA of implementing the Proposed Rule?

Answer:

Numerous organizations and scientific experts have been highlighting consequential human health studies that could be excluded from consideration by EPA under the Proposed Rule. A study that looked at the high level of neurotoxic mercury found in newborns in the Great Lakes area, for example, would be excluded if the Proposed Rule is finalized.

- e) Given the sensitivity of the unborn to pollution, in particular, will EPA commit to allowing all peer-reviewed, scientific studies that show harmful impacts to the unborn from various forms of pollution to continue to be used in regulatory decision-making, as appropriate, regardless of whether they meet the so-called “transparency” guidelines you are trying to establish under the Proposed Rule? Why or why not?

Answer:

- f) Have you prepared a list of all scientific analyses that EPA has used in regulatory decision making that would be excluded under the requirements of the Proposed Rule? Will you commit to release that for public review?

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on behalf of EPA Press Office [press@epa.gov]
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Subject: Ban On "Secret Science" In EPA Regulation Makes Sense

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THE OKLAHOMAN

Ban On "Secret Science" In EPA Regulation Makes Sense

Editorial

March 26, 2018

<http://newsok.com/article/5588210/ban-on-secret-science-in-epa-regulation-makes-sense>

The Environmental Protection Agency has announced it will now base new regulations only on the findings of scientific studies whose data and methodology are made public so they can be subjected to independent review. That's a sound move in line with basic scientific transparency and professionalism.

Yet it's being treated as a sign of impending apocalypse by some on the left, which says much about the questionable validity of that group's policy prescriptions.

In an interview with The Daily Caller News Foundation, Administrator Scott Pruitt said the EPA will end its use of studies that do not publish underlying data, only conclusions. "Otherwise, it's not transparent. It's not objectively measured, and that's important," Pruitt said.

In the past, the EPA has advanced air-quality regulations that imposed massive costs based primarily on the findings of two studies done in the 1990s that linked fine particulate pollution to premature death. Neither study made associated data public.

U.S. Rep. Lamar Smith, R-Texas and chairman of the House Committee on Science,

Space and Technology, has long criticized the use of “secret science” and authored legislation to curtail its use by regulators. Last year, Smith said the EPA had “routinely relied on questionable science based on nonpublic information that could not be reproduced, a basic requirement of the scientific method.”

“Americans deserve to see the science for themselves,” Smith said. “If the EPA has nothing to hide, why not make the scientific data it uses for its regulations publicly available? What was the EPA hiding?”

That will strike most people as a fair question. But to some activists, the idea that science should involve review and scrutiny is apparently anathema. In response to a prior effort to ban “secret science” at the EPA, Andrew Rosenberg, director of the Union of Concerned Scientists’ Center for Science and Democracy, said transparency would “gut the EPA at the expense of public health and safety.”

That same group has claimed release of data would require publicizing the confidential patient data of individuals. But Steve Milloy, publisher of JunkScience.com and a senior fellow at the Energy and Environmental Legal Institute, notes that California already makes similar data available in its “Public Use Death Files,” and that has been accomplished without violating patient privacy.

Other critics object that there are costs involved in scrubbing data sets so patient privacy is protected. Perhaps, but that doesn’t mean the public should be kept in the dark about the data and methods used to justify literally billions in new regulatory burden.

Scientific studies are as susceptible to human error and even outright fraud as any other endeavor — particularly when such studies are used in the political realm. Facilitating transparency and independent review will reduce the chances of bad science harming Americans with half-baked regulations, and should enhance the case for regulations when the underlying science has withstood independent scrutiny.

Given the stakes for public health and the national economy, Americans must be assured government regulations are based on sound science, not someone’s “trust me” assurances.

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Subject: POLITICO's Morning Energy, presented by ExxonMobil: Democrats try to make GOP pay at the pump — Nukes out at PJM even as capacity prices double — Senate Appropriations marks up Energy-Water

By Kelsey Tamborrino | 05/24/2018 10:00 AM EDT

With help from Anthony Adragna and Eric Wolff

PUMP UP THE VOLUME: Days away from the Memorial Day weekend, gas prices are on the rise — and Democrats didn't have to look far for someone to blame. During a press conference in front of a notably pricey Exxon gas station, Democratic leaders blamed President Donald Trump's foreign policy decisions — including his move to reimpose sanctions on Iran — for the 50-cent-per-gallon surge in prices since he took office. "There's a straight line between Trump's policies and the price of gasoline," Sen. [Brian Schatz](#) told Pro's Ben Lefebvre and Anthony Adragna.

A page out of the Trump playbook: In pushing the blame onto Republicans, Democrats aren't breaking new ground. Trump himself called for former President Barack Obama's firing when in October 2012 gas prices hit "crazy levels." Republicans weren't surprised by the Democratic talking point, either. "Everyone's going to look for whatever political leverage they have going into an election," Sen. [Lisa Murkowski](#) said. "[But do] you think that Republicans created the high prices? No."

Roadblocks ahead: The Democratic message faces a big obstacle: Short of an energy crisis like the one President Jimmy Carter faced in his 1980 reelection campaign, it's tough to convince voters the president is to blame for expensive gas. Especially because the White House has little control over gas prices, which largely track the movement in global crude oil market prices. Energy market watchers say the price rally is largely due to moves by OPEC and Russia, in addition to the collapse of Venezuela's oil industry. Read [more](#).

RELATED DOC: Trump has staffed his administration with oil and auto industry insiders, according to a new report from ethics watchdog group Public Citizen. The report breaks down industry influence by the numbers and finds 52 administration staff members have oil and gas ties, 15 with auto industry ties and 10 who have ties to both. Those industry ties are most concentrated at EPA, Interior and the White House. Read [the report](#).

GOOD THURSDAY MORNING! I'm your host Kelsey Tamborrino. Congrats to the American Petroleum Institute's Khary Cauthen, who was the first to identify Franklin D. Roosevelt as the first president to have a state car custom built to Secret Service standards. For today: In what year did someone first attempt to jump the White House fence? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](#), [@Morning_Energy](#) and [@POLITICOPro](#).

POLITICO and the South China Morning Post are partnering to expand coverage of U.S.-China relations. Read our note from POLITICO Editor-in-Chief John Harris and Editor Carrie Budoff Brown to [learn more](#).

COMMENT PERIOD EXTENDED: EPA [extended](#) the comment period for its controversial "secret science" proposal that was set to end on May 30. The public will now have until Aug 16 to make their voices heard on the proposal to ban the use of studies that don't publicly disclose all data. EPA also said it would hold a public hearing July 17 in Washington on the proposal rule, heeding public requests to do so.

NUKES OUT OF PJM EVEN AS CAPACITY PRICES DOUBLE: PJM Interconnection, which manages the nation's largest power market, shed almost a third of its nuclear capacity in capacity auction results released yesterday for the 2021-22 delivery year. The auction, which provides extra payments to generators in return for staying available to run at any time, saw prices nearly double to \$140 per megawatt-day, and it will generate \$9.3 billion in revenue for companies with plants that cleared. Stu Bressler, PJM's senior vice president for Operations and Markets said prices rose because companies were trying to make up revenue lost to lower energy prices. "The offers from supply resources into the capacity auction take into account the actual as well as the anticipated energy revenues when they construct those offers in order to meet their required revenues," he told reporters Wednesday.

More megawatts cleared the auction for every other fuel type. Solar capacity quadrupled and wind added 529 MW, making up for ground lost in last year's auction. Coal added 500 MW compared to the previous auction, something that may catch the attention of the Department of Energy, which is trying to save coal plants. "The results of this auction should reassure everyone that the electricity markets are working and maintaining a reliable system," said Susan Buehler, a spokeswoman for the grid operator. "PJM has always said we don't believe there is any need for intervention."

Plenty of power: PJM continues to have far more power than it needs to meet reserve requirements. In 2021-22, it will have a 21.5 percent reserve, well above the 15.8 percent target. That reserve is actually down 2 points from the auction to supply power for 2020-21.

EVERY BILL GETS ITS DAY: The Senate Appropriations Committee will mark up its fiscal 2019 Energy-Water appropriation bill, which puts discretionary funding at \$43.8 billion — \$566 million more than this year's appropriation and \$7.2 billion more than the administration requested. The bill provides \$6.65 billion for the Office of Science — a \$390 million boost — and would increase funds for ARPA-E, which the White House has sought to eliminate. The committee will also consider so-called 302(b) allocations.

How it'll play out: Lamar Alexander is already eyeing how the Senate might move on the title in the coming weeks. "My guess would be two or three bills would come over from the House, Sen. [Mitch] McConnell could put those bills together, put them on the floor at once and allow amendments to them all," Alexander, who chairs the Energy and Water Subcommittee, told reporters. He added that 83 senators had provided input into his bill and that his subcommittee was able to address those suggestions "to some degree in almost every case."

If you go: The markup kicks off at 10:30 a.m. in 106 Dirksen.

BRIDENSTINE'S CLIMATE EVOLUTION COMPLETE: NASA Administrator Jim Bridenstine endorsed a major federal report that echoed the scientific consensus that human activity is the primary driver of climate change. Under questioning Wednesday from Sen. Brian Schatz, the former Oklahoma lawmaker said the National Climate Assessment "has clearly stated that it is extremely likely ... that human activity is the dominate cause of global warming and I have no reason to doubt the science that comes from that." Bridenstine agreed that his new position on the science constituted an evolution of his views and vowed to protect climate science work at the space agency. Keep in mind: The climate report in question is the same assessment Administrator Scott Pruitt sought to rebuff in his proposed "red team-blue team" debate. Watch the Bridenstine clip here.

WHEN WE LAST LEFT OUR HEROES: Top deputies across the Trump administration — including EPA Deputy Administrator Andrew Wheeler, Deputy Energy Secretary Dan Brouillette and USDA Deputy Secretary Stephen Censky — will meet today to try to resolve long-standing tensions over the Renewable Fuel Standard. The group will pick up where the president left off during his meeting on the topic last month, including the unfinished business of whether to allow biofuel exports to receive Renewable Identification Numbers, and whether to reallocate the gallons small refiners were exempted from blending under economic hardship waivers from EPA. A refining source previously told Pro's Eric Wolff the USDA is trying to capitalize on the controversies surrounding EPA and has been pressing the agency to move quickly on allowing year-round sales of 15 percent ethanol fuel.

And with small refinery exemptions on the table, ME will be looking to see how Wednesday's news that Marathon Petroleum asked EPA for an exemption plays out. Ahead of today's meeting, the ethanol and biofuel trade association Growth Energy released a statement that called out the "flood of illegitimate waivers" and their resulting "'demand destruction' for U.S. farmers at a time when rural communities can least afford it."

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BIODIESEL WANTS MORE: Biodiesel producers think EPA should crank up the biodiesel requirement, not leave it flat, as POLITICO reported yesterday. "These rumored numbers are disappointing," Kurt Kovarik, VO for federal affairs for the National Biodiesel Board said in a statement. "Holding biomass based diesel flat is a missed opportunity to signal growth, which is what the RFS is intended to do. ... The easiest way to fix this and turn around growing dissatisfaction among rural voters is to provide growth to the biodiesel industry and increase this number."

STILL WORKING: John Cornyn, the Senate's No. 2 Republican, said he continues to have discussions on his legislation to overhaul the Renewable Fuel Standard "almost daily, certainly at the staff level," but wasn't sure the talks would bear fruit this year. "We keep making progress but the goal line still seems some ways away," he told reporters. "I'd love to solve the problem this year, but I just don't know."

CARB AND EPA HAVE A MEET: EPA and the California Air Resources Board met Wednesday to open negotiations on a single unified standard for fuel economy, following a White House meeting with automakers earlier in the month. EPA and the National Highway Traffic Safety Administration are threatening to try and revoke California's waiver, risking a lengthy court battle that could balkanize the auto market. "Today's conversations between Administration Officials and the California Air Resources Board were productive," EPA and the Department of Transportation said in a joint statement following the meeting. "We are fully supportive of an open dialogue that proceeds in an expedited manner. EPA and USDOT look forward to moving ahead on a joint proposed rule and receiving practical and productive feedback from all stakeholders."

MOVING QUICKLY: Senate EPW Chairman John Barrasso said Wednesday he's working to reach a time agreement with Democrats to speed floor consideration of a broad water infrastructure package S. 2800 (115) that cleared his panel unanimously earlier this week. Barrasso said it would "be great" to get the bill passed before the Fourth of July recess. His Democratic counterpart on the panel, Sen. Tom Carper, agreed it wouldn't take long for the Senate to complete its work on the bill: "I don't think we're going to need a week. We might need a day," he said.

N.J. GOV DEFENDS EXXON SETTLEMENT USE: New Jersey Gov. Phil Murphy defended using money from a \$225 million settlement with Exxon Mobil to help balance his state's budget. The Democratic governor told reporters he wasn't happy about the decision, but said the state had "been dealt a lousy hand." Environmental groups are appealing the settlement in the hopes of negotiating a new deal, Pro New Jersey's Danielle Muoio reports.

MAIL CALL! FINISH UP, FERC: A new letter from 16 Democratic senators calls on FERC to finish up its rule to allow distributed energy resources to connect to the grid. The letter, led by Sheldon Whitehouse and Ed Markey, concerns the integration of DERs and renewable aggregators into capacity and energy markets. "This will enable consumers to play a central role in strengthening reliability and avoiding unnecessary costs by supplying localized energy services," the senators write. Read the letter.

REPORT: TRIBAL COMMUNITIES AT RISK: The Clean Air Task Force published a new brief Wednesday on the adverse health effects from oil and gas pollution on tribal lands. The report, which looked at lands in New Mexico, North Dakota and Utah, found that Native Americans face disproportionate health risks from living near sources of pollutants, such as VOCs, NOx and resultant smog.

WHAT'S HAPPENING IN COLORADO? The Colorado Association of Commerce and Industry and the National Association of Manufacturers will host an event today with former Interior Secretary and Colorado Attorney General Gale Norton, focusing on the Boulder, Colo., climate lawsuit against energy manufacturers over their role in contributing to climate change. Ahead of the event, Independent Petroleum Association of America's Energy in Depth is launching a digital ad buy in the state on the opposition against the lawsuit. Watch the video.

THANKS, CHARLIE: Citizens for Responsible Energy Solutions will announce a \$185,000 television and digital ad buy today, thanking Massachusetts Gov. Charlie Baker for his actions addressing climate change and on clean energy solutions. The ads will run across the state and encourage residents to thank Baker for his leadership.

MOVER, SHAKER: Van Ness Feldman announced Wednesday that Jason Larrabee, former Interior principal deputy assistant secretary for fish and wildlife and parks, has joined the firm as a senior policy adviser.

QUICK HITS

- Critics: EPA can't keep prior fuel economy data in its blind spot, Bloomberg BNA.
- Coal company claims bank did not allow it to make loan payments, S&P Global.
- Zinke, Burgum tout innovation over regulation at oil conference, Bismarck Tribune.
- How more carbon dioxide can make food less nutritious, The New York Times.
- New documents show why Pruitt wanted a "campaign-style" media operation, Mother Jones.

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U.S. ENVIRONMENTAL PROTECTION AGENCY
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EPA'S WEEKLY REPORT

This week Environmental Protection Agency (EPA) Administrator Scott Pruitt sat down with more than a dozen reporters across all mediums to discuss the important work the Agency is doing to ensure regulatory certainty for America's farmers, ranchers, and businesses during National Agriculture Week. Pruitt also advanced the Trump Administration's infrastructure agenda with a push to eradicate lead from drinking water and convene a [national leadership summit](#) on PFAS to update America's crumbling water infrastructure.

NATIONAL NEWS ...

In an exclusive interview with the [Daily Caller](#), EPA Administrator Scott Pruitt laid out his plans to end the use of "secret science" to craft Agency regulations. "Pruitt will reverse long-standing EPA policy allowing regulators to rely on non-public scientific data in crafting rules. Such studies have been used to justify tens of billions of dollars worth of regulations. EPA regulators would only be allowed to consider scientific studies that make their data available for public scrutiny under Pruitt's new policy. Also, EPA-funded studies would need to make all their data public."

EPA Administrator Pruitt sat down with [AgDay](#) to talk about issues impacting farmers and ranchers including EPA's efforts to provide certainty by redefining "Waters of the U.S." According to Pruitt, a substitute or replacement definition will be issued sometime this year, a definition that will recognize private property ownership and the roles of states, and will answer the question of what exactly is a water of the United

States. 'We're going to get that right going forward, and the definition is going to provide clarity, objective measurements by which we know where federal jurisdiction begins and ends,' he said."

OP-ED ...

In the Washington Times, EPA Administrator Pruitt outlined the Agency's efforts to overhaul the permitting process to "rebuild and revitalize our nation's crumbling infrastructure." "The president's ambitious proposal calls for the U.S. Environmental Protection Agency to play a leading role in the administration's efforts ... America's infrastructure was once the envy of the world. The president's proposal will restore our roads, bridges and waterways to greatness and create a safer, stronger America. Through regulatory reforms and targeted investments, EPA will spearhead the much-needed repairs to infrastructure in a way that provides tangible environmental benefits to all Americans."

REGIONAL NEWS ...

The Detroit News reported that eradicating lead from drinking water is one of EPA Administrator Pruitt's top priorities. "I do think that what happened in Flint is something that could happen elsewhere. We just simply need to take steps to do all that we can to address it prospectively and proactively,' Pruitt said. Pruitt said President Donald Trump's \$1.5 trillion plan to bolster the nation's infrastructure over the next decade would include investments in aging water infrastructure."

While speaking with the New York Post, Pruitt called for a local, state, and federal response to the lead crisis in New York City and across the country. "EPA Administrator Scott Pruitt called for a 'coordinated' response between New York State and City officials to address the ongoing lead crisis."

In an interview with Newark Star-Ledger, Pruitt discussed efforts to make cleaning up Superfund sites a priority to advance the Agency's core mission. "The Environmental Protection Agency plans to step up efforts to get companies who dumped toxic waste at New Jersey's Superfund sites to pay to clean them up, Administrator Scott Pruitt said. Pruitt on Monday blamed a lack of urgency... New Jersey has 114 designated Superfund sites, the most in the nation, included three of Pruitt's 21 highest-priority locations."

Pruitt reiterated his commitment to prioritizing the Superfund program to clean up America's most contaminated sites, including Tar Creek, in an interview with the Tulsa World. "Administrator Scott Pruitt of the U.S. Environmental Protection Agency said his new push on the nation's Superfund program finally can provide clarity and accountability to the Tar Creek area, for decades one of the oldest, largest and most complex toxic sites in the nation. 'It is really unacceptable,' Pruitt said as he

recalled the history of the Tar Creek area in far northeastern Oklahoma, whose Superfund legacy dates back to 1983, as well as the amount of money and time deployed there."

At this week's regional roundtable, the [Albuquerque Journal](#) reported on progress the Trump Administration is making on claim stemming from the 2015 Gold King Mine spill. "Environmental Protection Agency Administrator Scott Pruitt said Monday that the federal government is close to finishing its assessment of roughly 400 claims for financial damages stemming from the 2015 Gold King Mine spill, which dumped toxic chemicals into waters in New Mexico, Colorado and Utah, and final recommendations could be ready by the end of the month."

RADIO ...

This week, Administrator Pruitt joined [WZFG 1100 AM The Flag - North Dakota](#) to talk about his first year accomplishments, including repeal and replacement of both "Waters of the U.S." rule and Clean Power Plan.



Administrator Pruitt also joined the [Lars Larson Show](#), based in Portland, Ore., and discussed how he's working to get the EPA back to basics and provide regulatory certainty for all Americans.

On the St. Louis, Missouri's own [Mark Reardon Show](#), Administrator Pruitt talked a little about baseball and a lot about the good work the Agency is doing to improve environmental outcomes across the country.

Scott Voorhees on [1110 KFAF-Omaha](#) had Administrator Pruitt on his show Wednesday to talk about what's to come at the EPA this year, including a continued focused on Superfund clean-up and regulatory transparency.



EPA Administrator Scott Pruitt

March 21, 2018 • 9 min

Interesting insight from the former OK AG on his work this past year, the road ahead, how he sees his responsibilities compared with the past administration, and working with President Trump.

TWEETS ...



Administrator Pruitt @EPAScottPruitt · Mar 21

What a beautiful surprise. snow on the second day of spring!





Administrator Pruitt ● @EPAScottPruitt · Mar 21

Spent the morning with friendly folks from @GaFarmBureau. We had a great discussion about ongoing work at the Agency to rewrite the #WOTUS rule and provide regulatory certainty for our farmers and ranchers across #America. #NationalAgWeek



Administrator Pruitt ● @EPAScottPruitt · Mar 19

Wrapped up our regional roundtable discussing important environmental issues like air, lead, Superfunds & infrastructure.



Albuquerque Journal, Pittsburgh Post-Gazette, New York Post and 2 others



Administrator Pruitt ● @EPAScottPruitt · Mar 20



Had a great visit with hardworking farmers and ranchers from Wisconsin and Kentucky on #NationalAgDay! @EPA will continue to work with our agriculture partners across the country. #AgDay
#EPAInAction



WI Farm Bureau



Administrator Pruitt @EPAScottPruitt · 15h

#ICYMI. @EPA announced \$463K in funding for 31 Phase 1 student teams through the People, Prosperity, and the Planet grants program. Find out more

epa.gov/newsreleases/g...

CONTACT: press@epa.gov

EPA Awards Grants to 31 College Teams for Innovative Technology Projects

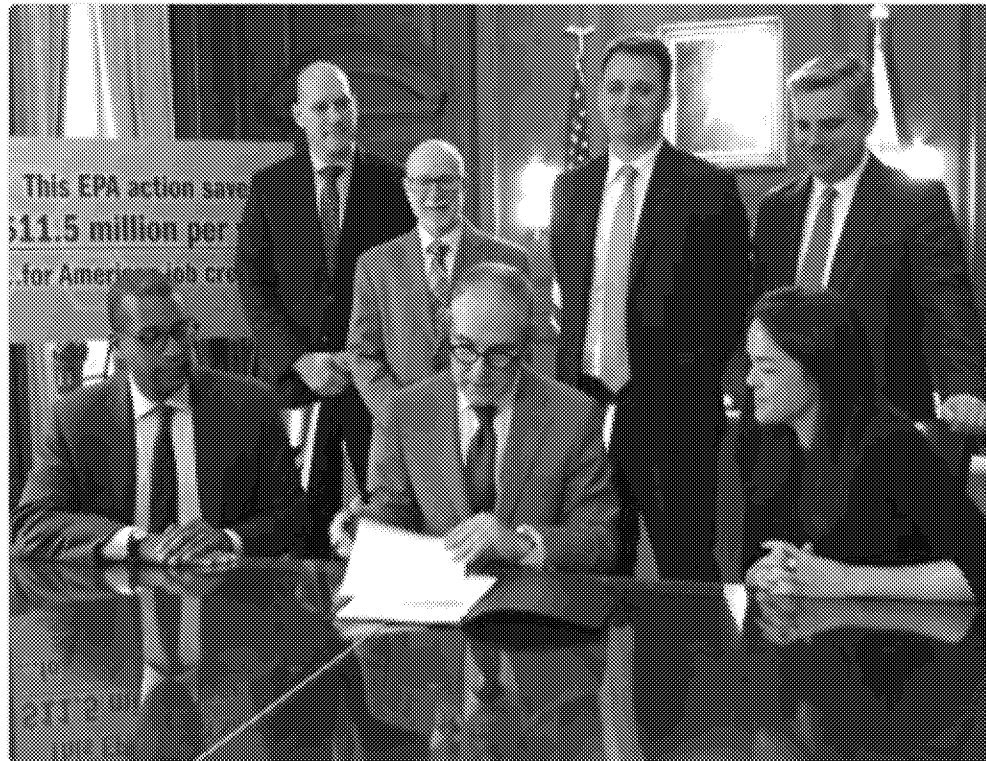
WASHINGTON (March 22, 2018) — Today, the U.S. Environmental Protection Agency (EPA) announced over \$463,000 in funding for 31 Phase I student teams through the People, Prosperity, and the Planet (P3) grants program. These teams, made up of college students from across the country, are developing sustainable technologies to solve current environmental and public health challenges.

“This year’s P3 teams are applying their classroom learning to create innovative and practical technologies,” said **EPA Administrator Scott Pruitt**. “This next generation of scientists has



Administrator Pruitt ● @EPAScottPruitt · Mar 20

Every bit of certainty matters. I just signed proposed amendments that will simplify compliance with national standards, generate significant cost-savings while protecting human health and the environment. #EPAInAction



FRONT PAGES ...

GLoucester Twp.

Cut down on the way home



Megan Piri holds a wedding photo of her and her husband, Joseph Piri, on Monday. Joe Piri, 32, died approximately a week after suffering injuries in a road-rage assault in Deepford Township on March 7. Lori M. Siskind, for South Jersey Times

Victim of deadly road rage, a devoted father 'came face-to-face with evil' during storm

Max Kury for South Jersey Times

Sitting on a couch in the living room of her Blackwood home, Megan Piri carefully recalled the last conversation she had with her husband.

Joe Piri was preparing to head home from work and wanted his wife to know he might be a little later than usual. It was March 7 and a nor'easter was dumping rain on the region, making for a drive fraught with peril.

"Just take your time and be careful," she told him. They ended their conversation with their traditional "I love you."

Joe Piri never made it home that night. Piri, 32, was killed in the face during a road-rage assault in Deepford Township that afternoon. He died of his injuries a week later.

"He just wanted to come home and he didn't make it home," his wife said, her voice cracking with grief.

Piri was able to speak to emergency responders and gave them his wife's phone number. By the time his family arrived at the hospital, they couldn't speak with him, explained Megan Piri's mother, Betty Jean Hampton.

"He was confused," she said. "He never spoke to."

His injury was covered by the time they saw him. "It went from one side of his nose to the other side of his face," Hampton said. "We don't know what happened. No one knew a very good man was taken from all of us."

He remained on life support until Thursday.

Piri was on oxygen during and "he coughed some blood," she said, pointing the doctors and nurses who cared for him at

SEE PHOTO, A5

PHOTOGRAPH BY

4 who trafficked dogs for pit fights are sent to prison

Thomas Moravitz for South Jersey Times

Three South Jersey men were using four sentenced this month to years in federal prison for their roles in a criminal network person who sold trafficked dogs across state lines for bloody pit fights.

In the course of a sprawling multi-state investigation, the U.S. attorney's office said in a statement, federal agents discovered the basement of a defendant's home called in blood, evidence it had been used as a fighting pit. One man admitted his dog died on the way home after losing a fight.

Of the four defendants, Vladimir Vladimirovich "Manny" Gattuso and David Harris received sentences of 42 months and

37 months, respectively, for charges that included conspiracy and possessing a dog with the intent to use it in a dog fight.

Frank Nichols, of Millville, was sentenced to 37 months on charges that included being a felon in possession of a firearm. The fourth defendant, Pedro Carlos of Willow Springs, Illinois, received a year in prison after pleading guilty to a conspiracy charge.

All four of the men previously had pleaded guilty before U.S. District Judge Mary L. Casper in Trenton.

Prosecutors said their agents stumbled upon the operation in Camden Township, a court-ordered report suggesting dog fighting across multiple federal districts.

Court records show agents seized six pit

bulls when they served a search warrant at Gattuso's home in November 2015, and federal authorities have said a total of 44 dogs were recovered in New Jersey as part of the investigation. Investigators said they also seized thousands of dollars' worth of breeding stands — meant to restrain female dogs — as they built their case against the men.

Prosecutors said a fifth defendant, 42-year-old Asbury Park resident Andre Atkinson, has also pleaded guilty and is scheduled to be sentenced on April 18. Other defendants remain awaiting trial.

Thomas Moravitz, NJ Attorney Media, tom.moravitz@njattorneymedia.com

STATEHOUSE

AG orders random drug tests for police

S.F. Sullivan for South Jersey Times

All police officers in New Jersey are now subject to random drug testing under a directive from the state's new attorney general.

Police departments are also required to implement "early warning systems" triggered by problem behaviors such as misconduct, excessive use of force, domestic abuse and excessive driving, under a separate directive announced by Attorney General Gurbir Grewal's office.

Grewal, who was appointed by Gov. Phil Murphy in January, said Tuesday that most police departments and county prosecutors already have such policies in place. The two new directives would mandate those statewide.

"We support our officers in their difficult jobs, and at times that means intervening with a troubled officer to protect the public, the individual officer, and his or her fellow officers," he said in a statement announcing the move.

HOW IT WORKS

Under the new rules, every state, county and local law enforcement agency is required to conduct random drug screening in 2018 and perform such tests twice a year going forward.

Departments are required to report any failed tests — or officers who refuse a test — as well as any resulting discipline to the county prosecutor or other supervising agency.

The early warning system requirement spells out 15 "performance indicators" that

SEE TEXTING, A5

WASHINGTON

EPA to make polluters clean Superfund sites in N.J.

Jonathan D. Salant for South Jersey Times

The Environmental Protection Agency plans to step up efforts to get the companies that dumped toxic waste at New Jersey's Superfund sites to pay to clean them up, administration officials said.

Prior to Monday's decision, a lack of urgency, not a lack of funding, for the slow progress to cleaning up the sites, New Jersey has 14 designated Superfund sites, the most in the nation, including three of the nation's highest priority locations.

"I'm going to get accountability with whomever it is on these Superfund sites and we will see every instance of accountability to do so," Pruitt said. "I don't think we've done it as well as we should have historically and we're going to do better going forward."

While President Donald Trump has proposed cutting the EPA's budget, Pruitt said the agency will have the money it needs by ensuring that the companies responsible for the contamination clean it up.

"Most of our sites across the country have a responsible party," Pruitt said. "We have very few orphan sites."

SEE EPA, A5





A law gun owners brought their AP-10 rifles to the Las Cruces City Council meeting and spoke out against a resolution to ask the governor and state legislators to restrict semiautomatic weapon sales and ownership in New Mexico.

Cruces council tables gun restriction measure

Resolution intended to urge action against semiautomatic weapons

By ANGELA RODRIGUEZ
Journal Staff Writer

LAS CRUCES — A standing-room-only crowd packed the Las Cruces City Council meeting

Monday where supporters wanted to table a resolution asking the governor and state legislators to restrict semiautomatic weapons. Representatives of the Las Cruces gun community were also present.

"We're not here to restrict the public's right to own guns," said Councilman Greg Smith, who introduced the resolution.

Smith said the "legislation to focus on the safety of the

community is to restrict the sale of semiautomatic weapons," he said. "We're not here to restrict the public's right to own guns."

Smith said the "legislation to focus on the safety of the

community is to restrict the sale of semiautomatic weapons," he said. "We're not here to restrict the public's right to own guns."



Jacqueline Arellano and her fiancé, Daniel Crespo, talk in the Manzana Mesa Multigenerational Center on Monday about their escape from a fire at their apartment building on Sunday. With them are their children, from left, Francisco Arellano Crespo, 5, Daniel Crespo Jr., 6, and 4-year-old Daniel Crespo.

Union urges teachers to skip survey

APF leader calls APF budget questionnaire problematic, divisive and inappropriate

By DOREEN NEWMAN
Journal Staff Writer

Former Albuquerque Public Schools teacher Julia Peralta says she left a PS after two years because she felt the school was too toxic to work in.

She often tried to share her story in classroom and community settings with administrators, saying she was often told that she was "too emotional."

But Peralta, now a second-grade teacher at Mission Academy, said she was often told that she was "too emotional."

She often tried to share her story in classroom and community settings with administrators, saying she was often told that she was "too emotional."



Julia Peralta, former Albuquerque Public Schools teacher, says she left a PS after two years because she felt the school was too toxic to work in.

Residents smelled gas before fire

30 stay in shelter after fire destroys, damages SE Albuquerque apartments

By KYLE S. COLEMAN
Journal Staff Writer

Residents say a fire that destroyed or damaged a number of units at a Southeast Albuquerque apartment complex Sunday was caused by the same leaky gas meter that they

later to have responsibility reported to the apartment manager for more than a year.

The apartment manager Tuesday denied making the report, saying about 20 people who lived in the apartment building in the 400 block of Georgia St. were temporarily relocated to the Mountain Mesa Multigenerational Center, where they were housed overnight, and given assistance by the city of Albuquerque and the Red Cross.

The city's Office of Senior Affairs, which is located in the public building, said the building would be open for normal activities and services today.

A statement by the city said the fire provided vouchers for some displaced families, which include people under age 18, and if they are a local resident, the city will

See RESIDENTS >> A2

ABQ TIES IN FACEBOOK DATA MINING SCANDAL



A powerful coalition of tech and business leaders in Albuquerque and the Mountain Mesa Multigenerational Center, where they were housed overnight, and given assistance by the city of Albuquerque and the Red Cross.

METRO & NM >> A6

EPA close to settling claims on mine spill



\$1.2 billion in damages sought after toxic waste polluted rivers

WASHINGTON — Environmental Protection Agency Administrator Scott Pruitt

said Monday that the federal government is close to settling its lawsuit with the state of Idaho and claims for financial damages from the 1983 Gold King Mine spill, which dumped toxic chemicals into waters in New Mexico, Colorado, Utah, and West Virginia.

Scott Pruitt said the federal government is close to settling its lawsuit with the state of Idaho and claims for financial damages from the 1983 Gold King Mine spill, which dumped toxic chemicals into waters in New Mexico, Colorado, Utah, and West Virginia.

See EPA >> A6

INSIDE: COUNTESS >> B2 | GONOR >> B4 | EDITORIALS >> A2 | HEALTH >> B5 | CRIMINALS >> A6 | PUZZLES >> B1-B3 | TV >> A9 | WEATHER >> A9



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Message

From: Lovell, Will (William) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3B150BB6ADE640F68D744FADCB83A73E-LOVELL, WIL]
Sent: 6/8/2018 4:03:52 PM
To: Feeley, Drew (Robert) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=abae82aa36da4d3383eae19a8efa683c-Feeley, Rob]
Subject: Fwd: question

See below. **Deliberative Process / Ex. 5**

Sent from my iPhone

Begin forwarded message:

From: "Lovell, Will (William)" <lovell.william@epa.gov>
Date: June 7, 2018 at 3:02:07 PM EDT
To: "Greaves, Holly" <greaves.holly@epa.gov>
Cc: "Bolen, Brittany" <bolen.brittany@epa.gov>
Subject: RE: question

Good afternoon, Holly,

We suggest the following response:

Deliberative Process / Ex. 5

Thank you,
Will

From: Greaves, Holly
Sent: Thursday, June 7, 2018 10:42 AM
To: Bolen, Brittany <bolen.brittany@epa.gov>
Subject: RE: question

Hi Brittany, just a reminder that we would still like your input on this response. Thank you!

From: Bolen, Brittany
Sent: Sunday, June 3, 2018 11:02 PM

To: Greaves, Holly <greaves.holly@epa.gov>

Subject: Re: question

Deliberative Process / Ex. 5

Sent from my iPhone

On Jun 3, 2018, at 8:53 PM, Greaves, Holly <greaves.holly@epa.gov> wrote:

Brittany, please see attached. RJ asked that you please look at Q9 and provide a better response. In addition, he did not feel the # used was accurate.

Thank you,

Holly

<MCC-008-009.docx>

Congress of the United States

Washington, DC 20515

June 7, 2018

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20004

Dear Administrator Pruitt:

We write to express grave concerns about the Environmental Protection Agency's (EPA) proposed rule, published on April 30, 2018, titled Strengthening Transparency in Regulatory Science (Docket No. EPA-HQ-OA-2018-0259). Contrary to its name, the proposed rule would implement an opaque process allowing EPA to selectively suppress scientific evidence without accountability and in the process undermine bedrock environmental laws. We join nearly a thousand scientists^[1] and many leading scientific organizations^[2] in opposing this policy and urge you to withdraw the proposed rule.

The proposed rule suffers from significant procedural flaws including lack of supporting evidence, insufficient detail in the proposal itself, and conflicts with EPA's statutory obligations. The substance of the rule is also concerning. It appears to be targeted at excluding important public health studies while privileging industry-sponsored research. It also fails to adequately consider the costs of implementation and the potential privacy implications. Finally, the discretion it grants the Administrator to grant case-by-case exemptions completely undermines the stated goal of transparency.

Without any significant evidence supporting it, the proposed rule is a solution in search of a problem. The proposed rule fails to identify specific weaknesses in EPA's current scientific approach, which is grounded in peer review. Wendy Wagner, author of two of the studies EPA cites to rationalize the rule, said in response to the proposed rule: "They don't adopt any of our recommendations, and they go in a direction that's completely opposite, completely different."^[3] The proposed rule also invokes policies from *Nature*, *Science*, and the *Proceedings of the National Academies of Science*, but each of these organizations has argued against the rule.^[4] Additionally, EPA fails to cite any specific language providing authority for the rule and asks commenters where the authority may be found. Key issues including how data would be made available to the public and how private information would be protected are not addressed. This is a serious deficiency in a rule meant to increase access to data for the public.

^[1] <https://s3.amazonaws.com/ucs-documents/science-and-democracy/secret-science-letter-4-23-2018.pdf>

^[2] <https://blog.ucsusa.org/michael-halpern/a-list-of-scientific-organizations-that-have-supported-and-opposed-limiting-what-research-epa-can-use-to-make-decisions>

^[3] <https://www.theatlantic.com/science/archive/2018/04/how-the-epas-new-secret-science-rule/558878/>

^[4] <https://www.aaas.org/news/scientific-leaders-speak-out-epa-s-proposed-transparency-rule>

The proposed rule is inconsistent with EPA's statutory obligations to ground its actions on scientific evidence. The Toxic Substances Control Act (TSCA) and the Safe Drinking Water Act (SDWA) require that EPA use the "best available science." Courts have found this language to require that agencies "seek out and consider all existing scientific evidence" and not ignore existing data.^[5] This standard would be impossible to meet under the proposed rule.

The proposed rule requires that data underlying EPA's regulatory actions be made publicly available to allow for independent validation. Such a standard could exclude studies that utilize confidential industry and health data that are vital to understanding the nature of chemical pollutants, the impacts of pollution, and the most effective ways to protect the environment and public health. One such piece of health research is the "Six Cities" study,^[6] which followed more than 8,000 participants for nearly twenty years and was key in establishing a link between chronic air pollution exposure and increased mortality. The results of this study have stood up to extensive subsequent analysis, highlighting the strength of such research.^[7] This is just one example of an entire class of studies that the rule would remove from consideration. Excluding such health studies would hobble EPA's ability to implement laws like the Clean Air Act, SDWA, and TSCA and to fulfill its mission to protect public health and the environment.

Attempting to comply with the publication requirement and health privacy laws would place enormous burdens on EPA and researchers. According to an internal EPA analysis of the HONEST Act, which had a similar data-publishing requirement, the EPA would have to spend more than \$250 million annually to redact private health information before releasing study data to the public.^[8] EPA failed to provide a cost-benefit analysis of the proposed rule, only stating that EPA shall implement the provisions "in a manner that minimizes cost." Even with careful redaction, there is still a possibility of study participants being identified due to the amount of information that would have to be revealed under the proposed rule for the purposes of reproducibility. The rule is costly and a threat to the privacy of Americans.

Concerns with the proposed rule are not limited to the public health community. Dr. Nancy Beck, Deputy Assistant Administrator of the Office of Chemical Safety and Pollution Prevention, has expressed reservations about the publishing requirements of the proposed rule for industry as well.^[9] Industry representatives have expressed concerns about requiring public disclosure of data, such as Confidential Business Information, citing the potential for improper use of such data by competitors.^[10]

In addition, the proposal to allow the EPA Administrator to grant exemptions on a case-by-case basis would enable the Administrator to interfere in the rulemaking process in an arbitrary and capricious manner. The Administrator is not required to present the reasoning behind such

^[5] *Ecology Ctr., Inc. v U.S. Forest Serv.*, 451 F.3d 1183, 1194 n.4 (10th Cir. 2006)

^[6] *Dockery et al.* 1993. *An association between air pollution and mortality in six U.S. cities.* *New England J. Med.* 329:1753-1759. doi: 10.1056/NEJM199312093292401.

^[7] <https://www.healtheffects.org/system/files/Reanalysis-ExecSumm.pdf>

^[8] <https://www.ucsusa.org/center-science-and-democracy/attacks-on-science/administrator-pruitt-ignores-epa-staff-analysis#.WujH-KQvxaR>

^[9] <http://www.sciencemag.org/news/2018/04/trump-s-epa-wants-stamp-out-secret-science-internal-emails-show-it-harder-expected>

^[10] <https://www.bna.com/pesticide-makers-back-n57982091585/>

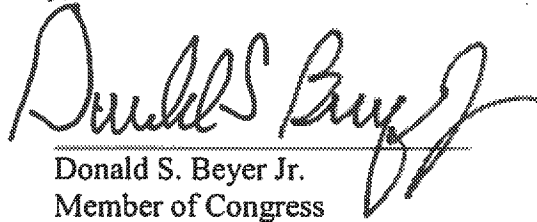
decisions. This waiver provision establishes an opaque process, completely at odds with the stated purpose of the rule, that would bring additional uncertainty to the regulatory process.

We support transparency and scientific integrity. However, the proposed rule will limit transparency and undermine the scientific integrity of EPA's rulemaking process. Given its numerous flaws and the lack of an underlying rationale, we urge you to withdraw the proposed rule.

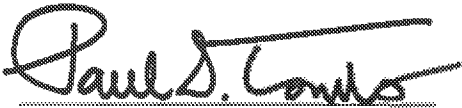
Sincerely,



Diana DeGette
Member of Congress



Donald S. Beyer Jr.
Member of Congress



Paul Tonko
Member of Congress




Daniel W. Lipinski
Member of Congress



Mark DeSaulnier
Member of Congress



Debbie Dingell
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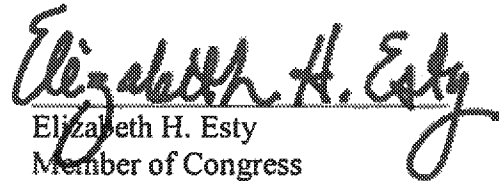
Alan Lowenthal
Member of Congress



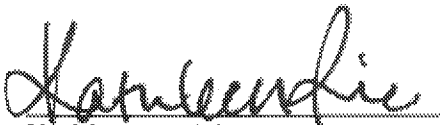
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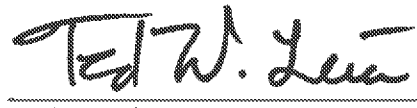
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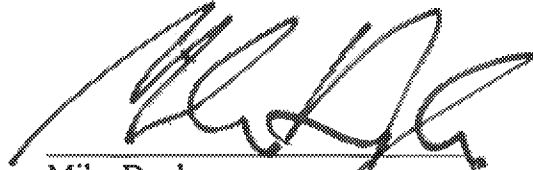
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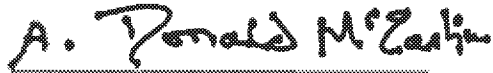
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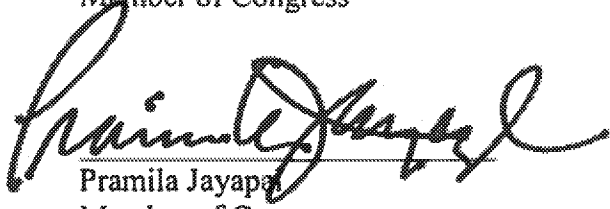
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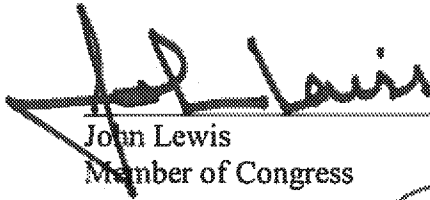
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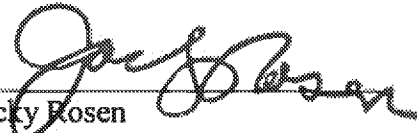
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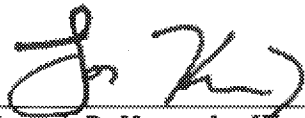
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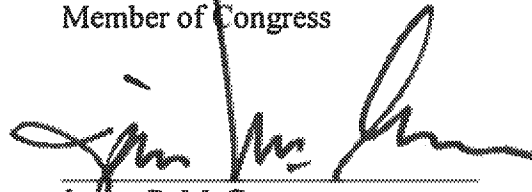
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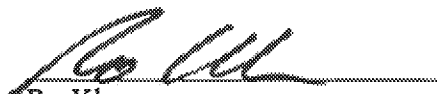
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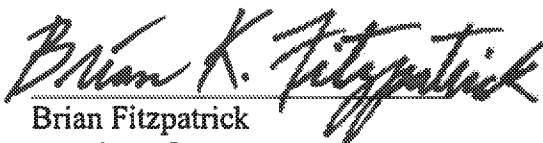
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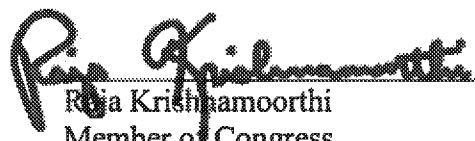
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Member of Congress



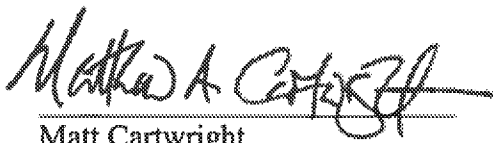
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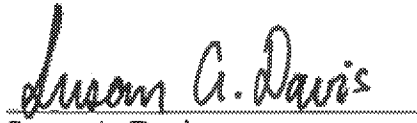
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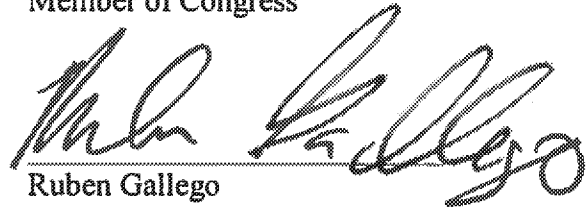
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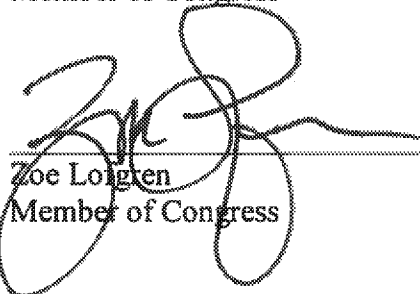
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Raul Ruiz
Member of Congress



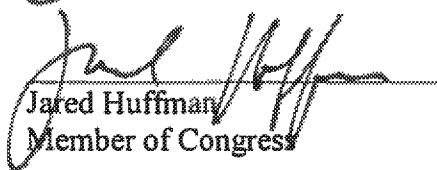
Nanette Diaz Barragán
Member of Congress



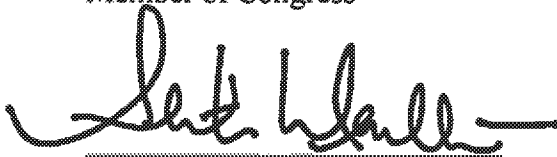
Zoe Lofgren
Member of Congress



Carlos Curbelo
Member of Congress



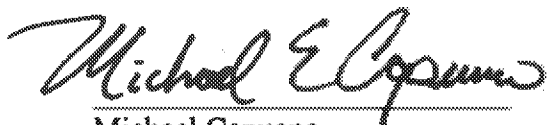
Jared Huffman
Member of Congress



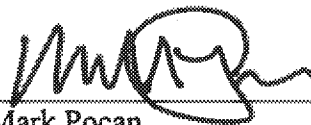
Seth Moulton
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Ed Perlmutter
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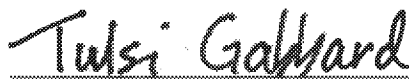
Michael Capuano
Member of Congress



Mark Pocan
Member of Congress



Darren Soto
Member of Congress




Tulsi Gabbard
Member of Congress



Anthony Brown
Member of Congress



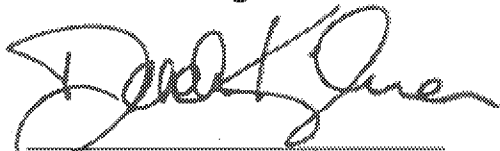
Mark Takano
Member of Congress



Tony Cárdenas
Member of Congress



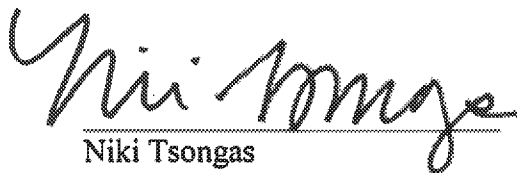
Raul M. Grijalva
Member of Congress



Derek Kilmer
Member of Congress



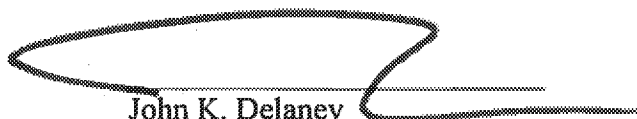
Carol Shea-Porter
Member of Congress



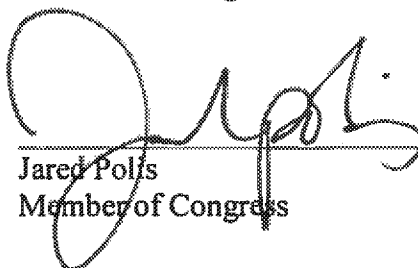
Niki Tsongas
Member of Congress



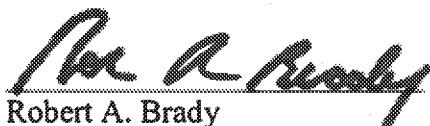
Adriano Espaillat
Member of Congress



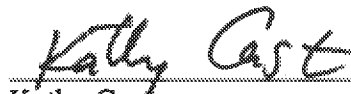
John K. Delaney
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Jared Polis
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Robert A. Brady
Member of Congress



Kathy Castor
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Yvette D. Clarke
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G.K. Butterfield
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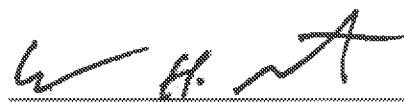

Lucille Roybal-Allard
Member of Congress

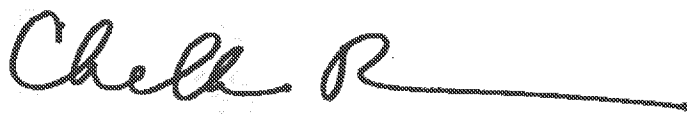

David E. Price
Member of Congress


Terrold Nadler
Member of Congress

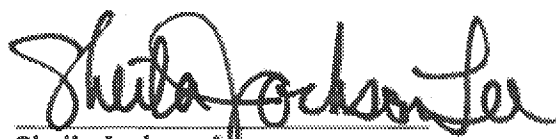

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Peter A. DeFazio
Member of Congress


Eleanor Holmes Norton
Member of Congress


Chellie Pingree
Member of Congress



Marcy Kaptur
Member of Congress



Sheila Jackson Lee
Member of Congress

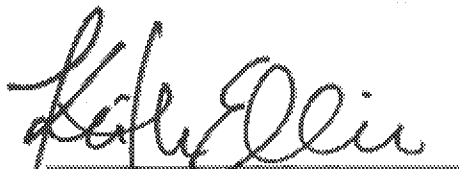

Bobby L. Rush
Member of Congress


Ileana Ros-Lehtinen
Member of Congress


Gerald E. Connolly
Member of Congress


Henry C. "Hank" Johnson, Jr.
Member of Congress

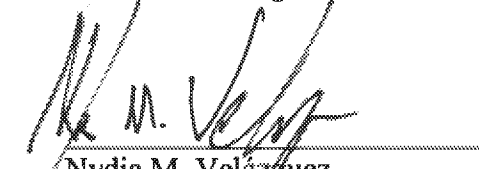

Karen Bass
Member of Congress

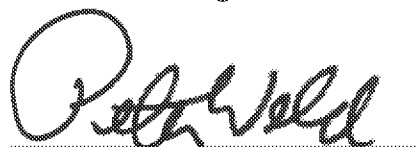

Keith Ellison
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Betty McCollum
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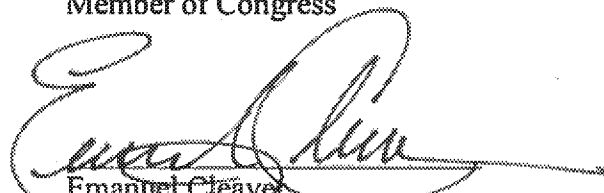

Jerry McMorney
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Barbara Lee
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Nydia M. Velázquez
Member of Congress

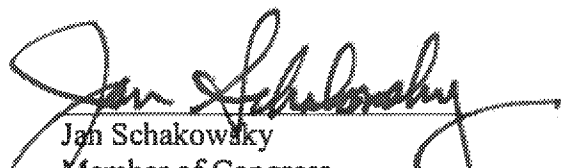

Peter Welch
Member of Congress

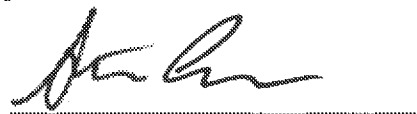

Doris Matsui
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Emanuel Cleaver
Member of Congress



William R. Keating
Member of Congress

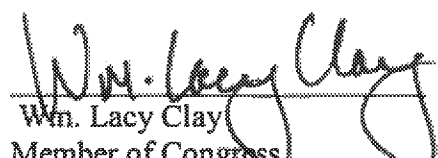

Jose E. Serrano
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Jan Schakowsky
Member of Congress

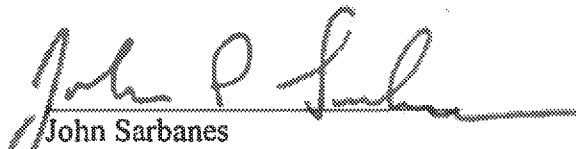

Steve Cohen
Member of Congress

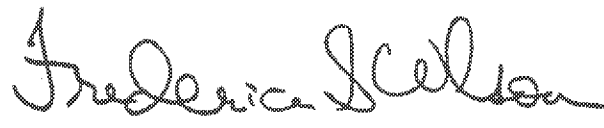

Adam B. Schiff
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Rosa DeLauro
Member of Congress


Wm. Lacy Clay
Member of Congress


John Garamendi
Member of Congress


John Sarbanes
Member of Congress

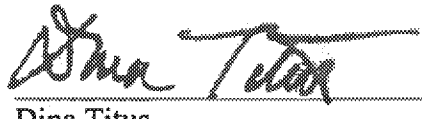

Frederica S. Wilson
Member of Congress



Ben Ray Luján
Member of Congress



Mike Quigley
Member of Congress

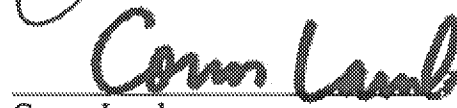

Brian Higgins
Member of Congress

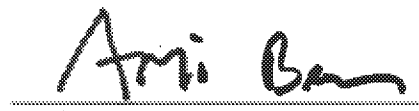

Eliot L. Engel
Member of Congress


Dina Titus
Member of Congress


Jackie Speier
Member of Congress


Gene Green
Member of Congress


Conor Lamb
Member of Congress


Ami Bera, M.D.
Member of Congress

From: Morning Energy [morningenergy@politico.com]
Sent: 6/7/2018 2:05:37 PM
To: Feeley, Drew (Robert) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=abae82aa36da4d3383eae19a8efa683c-Feeley, Rob]
Subject: POLITICO's Morning Energy: Another mess for Pruitt — Virgin Islands party boss: Zinke ties improved hurricane response — Coal magnate delivered draft orders to Trump

By Kelsey Tamborrino | 06/07/2018 10:00 AM EDT

With help from Darius Dixon, Anthony Adragna and Annie Snider

ANOTHER MESS FOR PRUITT: Scott Pruitt has an appetite for food from the White House mess — a U.S. Navy-run restaurant for use only by White House officials, Cabinet members and other dignitaries. In fact, he loves eating there so much, the White House asked him to stop coming by so often, POLITICO's Emily Holden, Andrew Restuccia and Anthony Adragna report.

The message was clear, according to one person close to Pruitt: "We love having Mr. Pruitt, but it's not meant for everyday use." A member of the White House's Cabinet affairs team told agency chiefs of staff last year that their bosses shouldn't treat the mess like their personal dining hall — a comment that came in response to Pruitt's recurring use of the restaurant, sources said.

Pruitt's allies privately disputed that the warning about overuse of the mess was aimed squarely at him, but nobody contests that he's a frequent presence at the establishment in the basement of the West Wing. The White House did not respond when asked about his lunch habits, and EPA declined to comment.

A billing statement from July 2017 offered a glimpse into Pruitt's trips to the mess, racking up a bill of \$400 over nine trips that month — a relative bargain in downtown Washington considering the menu. A cheeseburger at the White House runs just \$6.35, according to Pruitt's bill. Compare that to the \$17 you'd pay for a burger from another favorite Pruitt spot, French bistro Le Diplomate. Read [more](#).

Support for Pruitt is also falling on Capitol Hill, Anthony and Emily report, in the wake of this week's news that Pruitt sought to buy a used mattress from the Trump Hotel and inquired about securing a Chick-fil-A franchise for his wife. Two more top aides to Pruitt — scheduler Millan Hupp and counsel Sarah Greenwalt — also are leaving the agency. "I'm not going to come down here, just because he happens to be a nominee of a president I support or a nominee from my party, and try to defend the indefensible," Sen. [John Neely Kennedy](#) said. More [here](#).

On the other hand, [Cory Gardner](#), who heads the Senate GOP campaign arm, told reporters he doesn't think Pruitt's ongoing ethics woes will harm his party in the midterms. "The states like Missouri, Indiana, North Dakota have benefited from a regulatory approach this administration has taken," Gardner said.

Environmentalists' "Boot Pruitt" campaign will gather a "group of cows" outside the Capitol South Metro station today from 8 a.m. to 9:15 a.m. to hand out fake Chick-fil-A coupons for a free chicken sandwich with a donation to Pruitt's legal defense fund. They'll hold signs reading: "Breeth Mor Carhun" and "What the Cluck, Pruitt?"

VIRGIN ISLANDS BOSS PLAYS UP ZINKE RELATIONSHIP: The head of the Virgin Islands Republican Party suggested his fundraising group's longstanding relationship with Interior Secretary Ryan Zinke helped improve the department's response to last year's hurricanes that struck the island territory, Pro's

Ben Lefebvre reports. John Canegata said he had direct access to Interior officials after the storm thanks to money his group raised for Zinke when he was a member of Congress.

Calling Zinke a "close friend," Canegata boasted of his connections in a televised appearance that aired in the Virgin Islands last month but has not received widespread attention outside of the territory. While numerous officials played a role in helping the islands recover from hurricanes Maria and Irma, "behind the scenes, trust me, a lot of telephone calls, a lot of maneuvering was going on because, I think, some of the relationships we built," Canegata said of Zinke.

Interior acknowledged that officials contacted Canegata after the hurricanes but said they did so as part of a wider effort to contact business leaders based in the territory and Zinke did not call him personally. Canegata works for Cruzan Rum, but a company representative told Ben he was not involved in coordinating its relief efforts. Interior expedited the reimbursement of taxes on Virgin Islands rum following the storms, but it was unclear whether Canegata influenced that decision; he did not respond to a request for comment.

For his part, Zinke has known Canegata since at least 2015, Ben reports. The secretary previously came under fire for a fundraiser for the VIGOP, as the group is known, during an official trip to the islands in his first month in President Donald Trump's Cabinet. Read more.

IT'S THURSDAY! I'm your host Kelsey Tamborrino. NRECA's Dan Riedinger correctly identified John Tyler as the only president to have not been a resident of the U.S. when he died. Tyler resided in Virginia at the time, which was part of the Confederate States of America. Today's question: Which Congress had the largest number of veterans in office? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](https://twitter.com/kelseytam), [@Morning_Energy](https://twitter.com/Morning_Energy) and [@POLITICOPro](https://twitter.com/POLITICOPro).

POLITICO convened leading thinkers and policymakers to look closely at the financial well-being of future American retirees. Explore the latest issue of The Agenda to dig more into this important topic and download the Working Group Report to see what potential solutions are being proposed to solve the country's retirement puzzle. *Presented by Prudential*

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MURRAY DELIVERED EXECUTIVE ORDERS TO TRUMP: Coal magnate Bob Murray handed off drafts of six executive orders that would roll back Obama-era environmental regulations to Trump during the beginning of his administration, according to documents from DOE released under FOIA. The documents include a letter to Energy Secretary Rick Perry from Murray praising Trump's March 2017 energy independence executive order, and included a note where Murray wrote, "we have developed the enclosed materials for your review and consideration, consisting of: six (6) Executive Orders further rescinding anti-coal regulations of the Obama administration; and one (1) memorandum outlining the legal rationale for each of these action, and others."

While Trump did not sign those exact orders, the administration has moved to enact similar policies, Pro's Darius Dixon reports. The documents, which were sent to DOE the day Trump signed his energy independence order and one day before Murray met with Perry and DOE chief of staff Brian McCormack, also included concepts about grid security and "resiliency" that Perry later touted as part of his push to stop coal power plants from closing. Read more.

BAILOUT ON HIS MIND: In private remarks given during his visit to FEMA headquarters Wednesday, Trump mentioned a slew of topics that had nothing to do with hurricanes, The Washington Post reports, while only briefly mentioning Puerto Rico. Trump instead encouraged Perry to make an announcement about rescuing economically struggling coal and nuclear power plants, the Post reports. "I'd love to put it out — 'clean coal, nuclear,' it's a very important message," he said, telling Perry he needed to hold a news conference.

WRDA MOVES AHEAD: The House passed the Water Resources Development Act of 2018 (H.R. 8 (115)) last night, marking the first major piece of infrastructure legislation to move under the Trump administration, Pro's Annie Snider reports. Lawmakers signed off on the measure on a broadly bipartisan vote of 408-2. The bill — markedly narrower than the Senate's measure — would authorize six new Army Corps of Engineers projects and enact a suite of policy reforms at the red tape-laden agency.

What about the Senate? For those wondering, EPW Chairman John Barrasso told ME he'd not yet locked down a time for the Senate to consider its broader version of the water resources infrastructure legislation. Separately, Sen. Tammy Baldwin sent this letter to Trump, calling on him to urge Congress to include a permanent Buy America provision in the legislation.

MUM'S THE WORD: Barrasso, whose state produces a lot of coal and uranium, told ME he isn't ready to back Trump's proposed bailout for coal and nuclear power plants. "I've read the article but I want to actually see what the proposal is," he said. DOE is still formulating the details of how it would intervene to save the struggling plants.

RESCISSIONS VOTE TODAY: The House is set to vote today on Trump's \$15 billion rescissions bill, Pro's Sarah Ferris reports. The House Rules Committee teed up the bill, H.R. 3 (115), on Wednesday, a quick turnaround that surprised even some GOP lawmakers.

ALL ABOARD: After the rescissions package, the House is ready to start debate on its "minibus" appropriations package, which includes energy and water, legislative branch and military construction-VA spending bills, Pro's Kaitlyn Burton reports. The Rules Committee has set up floor votes on 50 amendments to the energy and water title. A final vote on the overall bill is expected Friday.

SHIMKUS SPEAKS: Rep. John Shimkus, one of the most ardent Yucca Mountain champions in Congress, said his loud floor dispute with Paul Ryan on Tuesday was simply a dispute over "strategy going forward." Other members suggested it had to do with the timing of the Energy-Water bill, since Shimkus thinks delaying until after the midterms might allow Yucca language to make it into the title. The Senate has avoided tackling Yucca due to Sen. Dean Heller's close reelection contest.

POWER OF THE PEN: The House Appropriations Committee agreed to bar EPA from spending more than \$50 on a fountain pen. The amendment — an apparent reference to the \$1,560 Pruitt spent on a dozen fancy writing implements — passed on a voice vote at Wednesday's markup. The panel cleared its version of the fiscal 2019 EPA-Interior bill, on a vote of 25-20. Committee Republicans blocked an effort from Democrats to boost EPA's Office of Inspector General by \$12 million, but approved an amendment that would change revenue sharing for drilling in the Arctic National Wildlife Refuge. And while the pen amendment passed, the committee shot down another amendment from Democratic Rep. Mike Quigley related to Pruitt's travel.

MEETING WITH A FULL DECK: The last time the leadership of FERC and the Nuclear Regulatory Commission got together, there were just enough commissioners between the two agencies to fill one five-member board. Fast-forward to today, and it's a full house for the first time in years thanks to confirmation of two new NRC leaders last month. The get-together is slated to run for just over two hours. An agenda hasn't been released but the meetings usually involve staff presentations on grid reliability — and how it might be impacted by the retirement of nuclear plants — and cybersecurity regulations. Finding the areas where an

economic regulator overlaps with a safety watchdog isn't always obvious. The meeting is slated to run from 9 a.m. to 11:15 a.m. at FERC headquarters, and will be [webcast](#).

ROYALTY RUMPUS: Interior's Royalty Policy Committee approved recommendations Wednesday aimed at expanding energy lease sales and lowering royalty rates, Ben recaps. But during the advisory committee's meeting, two members questioned whether it had the power to suggest changes to federal environmental review. "NEPA is not referred to in the [committee] charter," Rod Eggert, a professor at the Colorado School of Mines, said during the meeting. "The text in the charter refers to royalties and collections of royalties." Read more [here](#).

Later Wednesday, BLM sent out a [memo](#) instructing field offices to look for ways to speed up permit processing, including by using categorical exclusions, Ben [reports](#).

— **Meanwhile, the Central Arizona Project will meet today** on proposals for sourcing cheaper power to run the Navajo Generating Station. The Bureau of Land Reclamation last week sought to delay the coal-fired power plant's closure, arguing that a 1968 law gives Zinke the authority to require the Arizona water project buy energy from the power plant. Reuters has the rundown [here](#).

GROUPS WARY OF INTERIOR DRAFT BILL: A coalition of sportsmen's groups is concerned about draft legislation that appeared before the House Natural Resources Energy Subcommittee on Wednesday. According to the [draft bill](#), it would enable Interior to recover the costs of administrative protests to oil and gas lease sales, drilling permits and other applications. The bill, [they say](#), would make it more difficult for sportsmen and women to comment on oil and gas lease sales on public land.

BLANKENSHIP IS BACK: Former coal baron Don Blankenship hasn't given up hope to take on the establishment and earn himself a spot in the Senate. After losing a primary bid to West Virginia Attorney General Patrick Morrisey, Blankenship's campaign [announced](#) Wednesday it is petitioning to gain ballot access for the general election as the nominee for the Constitution Party.

BIPARTISAN LETTER ASKS PRUITT TO DROP 'SECRET SCIENCE': More than 100 lawmakers — including Republican Reps. [Brian Fitzpatrick](#), [Carlos Curbelo](#), [Ryan Costello](#) and [Ileana Ros-Lehtinen](#) — signed onto a letter to Pruitt today, asking him to withdraw EPA's so-called secret science proposal to bar EPA from using studies that don't make public all their data. Read the letter [here](#).

DEMS WARN AGAINST E15: Democratic Sens. [Tom Udall](#) and [Peter Welch](#) are calling on EPA to abide "by all legal and regulatory requirements" as the Trump administration weighs the year-round sale of 15 percent ethanol blends of gasoline. "We are very concerned that career EPA officials may be being directed to reverse over 25 years of the agency's position to manufacture legal and scientific justifications for a politically-directed decision on E15," they write. Read the [letter](#).

MAIL CALL! RELEASE THE STUDY: A coalition of environmental groups will send [this letter](#) today to HHS Secretary Alex Azar, calling on him to release the controversial federal chemical pollution study [blocked](#) by EPA officials.

— **Nineteen environmental groups filed a letter** to the House in opposition of [H.R. 5895 \(115\)](#), the so-called minibus, which they say sets up an improper use of water and natural resources, and undermines safe nuclear waste disposal. Read it [here](#).

FOR YOUR RADAR: The International Wildlife Conservation Council, which came [under fire](#) for the big-game trophy hunters added to its ranks, will hold its next meeting June 19 in Atlanta, according to the [Federal Register](#).

ON THE WEB: The Center for American Progress is launching a new website today that is dedicated to tracking legal challenges to the Trump administration's conservation agenda. See it [here](#).

QUICK HITS

- The heat is back on high: May smashes U.S. temperature records, [Associated Press](#).
- Man dies at Randolph County mine, [Charleston Gazette-Mail](#).
- Hurricanes are traveling more slowly — which makes them even more dangerous, [The Washington Post](#).
- Trump falsely claims "We're now exporting energy for the first time," [The New York Times](#).
- Trump's move to please farmers on biofuels reform draws refinery union ire, [Reuters](#).

THAT'S ALL FOR ME!

To view online:

<https://www.politico.com/newsletters/morning-energy/2018/06/07/another-mess-for-pruitt-244517>

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Subject: POLITICO's Morning Energy: How 'the swamp' could overtake West Virginia's primary — Groups react to EPA's proposed 'secret science' rule — API to tap Mike Summers

By Kelsey Tamborrino | 05/01/2018 10:00 AM EDT

With help from Garrett Ross

HOW 'THE SWAMP' COULD OVERTAKE WEST VIRGINIA'S PRIMARY: West Virginia Attorney General Patrick Morrisey may be touting himself in the GOP Senate primary as a Washington outsider who wants to "blow up" D.C., but his opponents are dragging him through the muddy swamp. "Morrisey got filthy rich in the swamp lobbying for special interests," says the narrator of one of his opponent Rep. Evan Jenkins' ads, Pro's Theodoric Meyer reports. And while Morrisey, who's hoping to take on Democratic Sen. Joe Manchin this fall, has so far weathered the attacks and continues to do well in public polling, the May 8 vote will ultimately test whether GOP voters are willing to send a former lobbyist to Washington.

"Morrisey's self-described 'outsider' rhetoric cloaks an insider record: Before he was elected attorney general, Morrisey spent eight years as a Washington lobbyist, and the influence industry has fueled his campaign with hundreds of thousands of dollars in contributions," Theo writes. "It's going to be challenging, because the word 'lobbyist' has such negative connotations," said Cam Savage, a Republican operative who helped run Sen. Todd Young's successful 2016 campaign against former Democratic Sen. Evan Bayh, whose work for a Washington law and lobbying firm hindered his campaign. Read more.

IN THE OTHER CORNER of the Republican primary sits coal baron Don Blankenship, who spent a year in prison following the 2010 explosion at his Upper Big Branch Mine that killed 29 workers and who continues to escalate his attacks against Senate Majority Leader Mitch McConnell, POLITICO's Alex Isenstadt reports. The Senate hopeful is out with a new ad that dubs McConnell "Cocaine Mitch" as polls show Blankenship falling behind his more mainstream opponents. "One of my goals as U.S. senator will be to ditch Cocaine Mitch," Blankenship says toward the end of the new ad, possibly referring to a 2014 report in the liberal Nation magazine that drugs were once found aboard a shipping vessel owned by the family of McConnell's wife, Transportation Secretary Elaine Chao, Alex reports.

WELCOME TO TUESDAY! I'm your host Kelsey Tamborrino. BP America's Bob Stout was the first to correctly guess that former President Calvin Coolidge was the first president to attend the White House Correspondents' Dinner. For today: Which president brought the first professional baseball team to the White House to visit? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter @kelseytam, @Morning_Energy and @POLITICOPro.

POLITICO's Ben White is bringing Morning Money to the Milken Institute Global Conference to provide coverage of the day's events and evening happenings. The newsletter will run April 29 - May 2. Sign up to keep up with your daily conference coverage.

WHILE CONGRESS IS AWAY, THE CONFERENCES WILL PLAY: The National Hydropower Association continues its Waterpower Week in Washington today with remarks from FERC Chairman Kevin McIntyre and Thomas Smith, chief of operations and regulatory division for the U.S. Army Corps of Engineers. McIntyre will discuss the "global frontiers of waterpower," providing an update on FERC's

hydropower activities and his perspective on the industry's future. Smith will deliver remarks during the presidential luncheon this afternoon, alongside Herbie Johnson, hydro general manager at the Southern Company. The annual conference is tied to three co-located conferences, including the NHA conference, the International Marine Renewable Energy Conference and the Marine Energy Technology Symposium.

- **The Solar Summit 2018 also kicks off today in San Diego**, where Abigail Ross Hopper, president and CEO of the Solar Energy Industries Association, will discuss solar in the Trump era, with a focus on the corporate tax reform, Section 201 and other macro-level risks. Hopper will be joined on stage by Avangrid Renewables' Laura Beane and Charlie Gray, director of the Solar Energy Technologies Office at DOE's Office of Energy Efficiency & Renewable Energy.

A LOAN IN THE SUN: Coinciding with the solar conference, GTM Research is out with a new report this morning on U.S. residential solar financing. The report found that last year was the first year since 2011 when more systems have been purchased with cash and loans (59 percent) than with leases and power purchase agreements (41 percent). That's in part due to the availability of loan products, as well as a shortage of third-party ownership suppliers, and Tesla and Vivint's move away from third-party ownership, the GTM report found.

The report also said that competition has intensified in solar loans, with various solar-specific loan providers, traditional banks and credit unions entering the realm. The increased competition has led to "uber-competitive rates and therefore compressed margins, leaving questions about the financial health and long-term viability of many of these loan providers," a summary of the report said.

RULE REACTIONS: EPA is moving full-speed ahead in its controversial scientific policy that would exclude the use of studies that don't publicly disclose all data. The agency published the proposed rule in the Federal Register on Monday, kicking into gear a 30-day comment period. And already, several groups have come forward to oppose the policy, laying out what they see as the policy's adverse effects - and calling for more consideration before any formal change.

- **The Union of Concerned Scientists** - which sent a letter signed by more than 1,000 scientists to EPA Administrator Scott Pruitt last week asking him to reverse course prior to the rule's announcement - plans to send another urging for the comment period to be extended a minimum of 60 days and calling for the agency to hold three public hearings across the U.S. to receive additional input. "The current timeframe and lack of opportunities for engagement are wholly inadequate and will not allow for thorough public input of this proposed rule and its impact on science-based health and environmental safeguards." Read the letter here.

- **A group of scientific journals** released a joint statement saying that the proposal "does not strengthen policies based on scientific evidence to limit the scientific evidence that can inform them; rather, it is paramount that the full suite of relevant science vetted through peer review, which includes ever more rigorous features, inform the landscape of decision making. Excluding relevant studies simply because they do not meet rigid transparency standards will adversely affect decision-making processes."

A SOMMERS DAY: The American Petroleum Institute is expected to tap Mike Summers to replace Jack Gerard to lead the oil and gas industry lobbying group, two sources tell POLITICO's Emily Holden and Eric Wolff. Summers was former House Speaker John Boehner's chief of staff and has since spent two years leading the American Investment Council, a private equity trade group. Gerard announced earlier this year that he would step down in August. Read more.

TRUMP GRANTS TARIFF EXTENSION FOR SOME: The president extended a temporary exemption by one month for Canada, Mexico and the European Union from heavily watched steel and aluminum tariffs, the White House announced Monday. The move gives the key U.S. allies until June 1 to reach a deal with the administration to avoid the tariffs of 25 percent on steel and 10 percent on aluminum exports sent to the United

States. The tariffs were slated to take effect at 12:01 a.m. today if President Donald Trump had not moved to extend the deadline, POLITICO's Megan Cassella [reports](#).

WHISTLEBLOWER SAYS PRUITT LIED: Kevin Chmielewski, the former deputy chief of staff for operations at EPA, told ABC News Pruitt was telling a "bold-faced" lie last week when he testified to lawmakers that none of his employees were retaliated against for raising concerns about his spending decisions. Chmielewski, who was dismissed and is now acting as a whistleblower, told ABC that chief of staff Ryan Jackson called him into his office and said: "Hey - Administrator Pruitt either wants me to fire you or put you in an office so that he doesn't have to see you again." Chmielewski added: "And in addition to that, he wants to put Millan (Hupp) in your spot, as your title and your pay grade."

EPA declined to comment to ABC in response to Chmielewski's allegations, but the outlet said it obtained a personnel form filled out by EPA human resources officials that said Chmielewski resigned on March 17. "The form is not signed by Chmielewski, who says he was actually forced to leave a month before that date," ABC writes. [Read more.](#)

DEMOCRATS PRESS PRUITT ON TESTIMONY: Separately, Democratic Reps. [Doris Matsui](#) and [Paul Tonko](#) sent a letter Monday calling out a different aspect of Pruitt's testimony last week before Congress. The pair point to a contradiction between Pruitt's remarks and reports that the administration has [drafted](#) a proposed rulemaking to block California's waiver authority to set stricter standards for light-duty vehicles. "If true, these reports directly contradict your testimony last week. As you were reminded at the start of that hearing, it is a violation of the law to knowingly make false statements to a Congressional committee," Matsui and Tonko write in a letter to Pruitt. Asked last week about whether he would revoke California's special Clean Air Act waiver, Pruitt [told lawmakers](#) "not at present." The lawmakers requested Monday that Pruitt provide all documentation related to the development of the notice of proposed rulemaking by Friday. [Read the letter here.](#)

SAGE SUIT: Conservation groups are suing the Trump administration over policies that they say would "adversely impact essential habitats and populations" for the greater sage grouse. The lawsuit, filed in the U.S. District Court in Boise, concerns Interior Department's oil and gas lease auctions in Nevada, Utah, Montana, Wyoming and Idaho - and calls on the court to reverse the sales. "There's no scientific or legal support behind these policies, and no public support for them either," said Michael Saul, a senior attorney at the Center for Biological Diversity. "They're clearly intended to make fossil fuel development the dominant use of public land, and that's illegal." [Read the complaint.](#)

DOE 'ENCOURAGED' BY PJM MOVE: The Energy Department said it was "encouraged" by news Monday that PJM Interconnection [will perform](#) "stress tests" on different parts of the grid to identify fuel supply vulnerabilities. "PJM's concerns are consistent with what DOE, NERC, and others have been saying for years: premature retirements of fuel-secure resources are putting the future of our nation's electric grid at risk, and that undermines our national security," DOE press secretary Shaylyn Hynes said in a statement. DOE urges the regulatory agency "to take immediate action to stop the loss of fuel-secure capacity," Hynes said, adding that DOE continues to review all of its options within its authority to ensure a resilient grid. Recently, Energy Secretary Rick Perry [has considered](#) invoking the 1950 Defense Production Act to keep money-losing power plants running by designating them as crucial for national security.

BY PROXY: A new report from the American Council for Capital Formation out today found that proxy advisory firms - which advise shareholders on how to assess and vote on company plans - are operating with minimal oversight and are moving toward an increasingly activist stance on issues relating to the environment, as well as social and political issues. The report, titled "The Conflicted Role of Proxy Advisors," examines the impact such proxy firms have on major policies at most publicly traded companies. [Read it here.](#)

FIRST OFFICIAL DAY ON THE JOB: Today is Secretary of State Mike Pompeo's first full day in Foggy Bottom, where he will deliver a speech to introduce himself to the department. POLITICO's Nahal Toosi breaks

down the differences between Pompeo and his predecessor and former Exxon Mobil CEO Rex Tillerson [here](#). But keep an ear out for any climate mentions, as diplomats and environmentalists [gather](#) today in Bonn, Germany, to work out the kinks of the Paris climate agreement. Greens have hit Pompeo as a climate science doubter, while others like Competitive Enterprise Institute's Myron Ebell have said the Kansas Republican will be a "forceful advocate" of Trump's decision to exit the Paris accord.

A PENNY FOR YOUR FREETHOUGHT CAUCUS: Democratic Reps. [Jared Huffman](#), [Jamie Raskin](#), [Jerry McNerney](#) and [Dan Kildee](#) launched the Congressional Freethought Caucus on Monday "to promote sound public policy based on reason, science, and moral values, protect the secular character of our government, and champion the value of freedom of thought worldwide." In a [statement](#), Huffman said the caucus "will help spark an open dialogue about science and reason-based policy solutions."

PAY THE PRICE: The New York Independent System Operator and state policymakers released [a draft plan](#) on Monday to price carbon as part of the electric system, [Pro New York's Marie French](#) reports. The move comes as an early step toward addressing the impact of state subsidies for renewables and nuclear power on the competitive market. "Under the proposal, a social cost of carbon set by state regulators would be added on to regional energy prices," Marie writes. Read [more](#).

MAIL CALL! A coalition of more than 160 groups sent a letter to Interior Secretary Ryan Zinke on Monday in opposition to the department's [proposal](#) to rescind the "blanket rule" the U.S. Fish and Wildlife Service used to extend protections for endangered species. Read the [letter](#).

- **Oregon Sens. [Ron Wyden](#) and [Jeff Merkley](#)** and Reps. [Earl Blumenauer](#), [Peter DeFazio](#), [Suzanne Bonamici](#) and [Kurt Schrader](#) sent a letter Monday to Office of Management and Budget Director Mick Mulvaney and Assistant Army Secretary R.D. James., requesting federal officials support a flood protection feasibility study for Portland. Read it [here](#).

MOVER, SHAKER: The White House is expected to tap California agriculture attorney Michael Stoker to lead EPA's San Francisco-based Region 9 office, [sources tell E&E News](#). The regional office is the only one to which Trump has not appointed a leader.

A NEW LOOK: Trade association the American Exploration & Production Council is launching today a [new website](#) and [Twitter](#) and [Facebook](#) accounts. The new website will include videos, fact sheets, info-graphics and issue pages.

QUICK HITS

- Utilities, oil interests clash over EV policy at conservative policy summit, [Utility Dive](#).
- Contura, Alpha to merge, creating largest U.S. met coal producer, [Reuters](#).
- Blankenship's mine took this man's son, brother and nephew. Now Blankenship wants his vote, [Huffington Post](#).
- In cities v. fossil fuels, Exxon's allies want the accusers investigated, [InsideClimate News](#).
- Australia investing \$377 million to protect Great Barrier Reef, [NPR](#).

THAT'S ALL FOR ME!

To view online:

<https://www.politico.com/newsletters/morning-energy/2018/05/01/how-the-swamp-could-overtake-west-virginias-primary-197520>

To change your alert settings, please go to <https://secure.politico.com/settings>

POLITICO

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Please click [here](#) and follow the steps to unsubscribe.

Message

From: Klasen, Matthew [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9D5BA7959EBD4929AB5AB57FBA80B21D-MKLASEN]
Sent: 7/3/2018 6:22:36 PM
To: Feeley, Drew (Robert) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=abae82aa36da4d3383eae19a8efa683c-Feeley, Rob]; Linkins, Samantha [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b7a94aa2975d4933981a8a9bf12aaa40-Linkins, Samantha]
CC: Moody, Christina [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=813eb7f985c845eaa91edc10c6e9a914-CMoody]; Williams, Thea [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=32cca14ddb6940e4b04683ace9e899a5-TWilli01]; Aarons, Kyle [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ef85c3c00a2244779c4b26ff6bc6ccc9-Aarons, Kyl]; Knapp, Kristien [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8d4ab10c47264bca8b12174cdb981942-KKnapp]
Subject: Help needed re: ORD or OP help on HEC-minority letter re: sci transparency rule & PFAS
Attachments: 18-000-8464.pdf; 2018-07-03 Template for McNerney Tonko Pallone PFAS-Science rulemaking.docx

Drew and Sam,

Hope your muggy pre-4th Tuesday is going well.

Deliberative Process / Ex. 5

Thanks,
Matt

Matt Klasen
U.S Environmental Protection Agency
Office of Congressional Affairs
WJC North 3443P
202-566-0780
cell (202) 505-0787

Congress of the United States
Washington, DC 20515

June 6, 2018

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20004

Dear Administrator Pruitt:

We write to request additional information regarding actions by the U.S. Environmental Protection Agency (EPA) on per- and polyfluoroalkyl substances (PFAS). PFAS are a chemical class used in firefighting and by industry in the production of products including Teflon and Scotchguard.¹ Associated human health risks include cancer, immune effects, birth defects, and liver effects.² According to the Environmental Working Group, PFAS may be present in drinking water systems across the country that serve up to 110 million Americans.³

EPA continues to withhold critical public health information on PFAS from Congress and the public. Last month, members of the Committee wrote to you regarding EPA political appointees engaging with staff at the White House to impede plans by the Agency for Toxic Substances and Disease Registry (ATSDR) to release an assessment of PFAS. To date, the study has still not been released. Last month's National Leadership Summit on PFAS excluded members of the public, the press, and others. At one point, a reporter was physically removed from the building. Taken together, these actions serve to undermine public awareness and continue the troubling pattern of secrecy by the Trump EPA.

We are deeply concerned that these ongoing EPA regulatory and policy failures will undermine the ability of the Agency to effectively address human health risks, including those related to PFAS and other toxic chemicals. EPA recently proposed a rule to severely restrict the use of certain public health data and related research findings, while also giving the Administrator discretion to exempt some studies from the proposal's requirements on a case-by-

¹ U.S. Environmental Protection Agency, *Understanding PFAS in the Environment* (Feb. 26, 2018) (www.epa.gov/sciencematters/understanding-pfas-environment).

² U.S. Environmental Protection Agency, *FACT SHEET: PFOA & PFOS Drinking Water Health Advisories* (Nov. 2016) (www.epa.gov/sites/production/files/2016-06/documents/drinkingwaterhealthadvisories_pfoa_pfos_updated_5.31.16.pdf).

³ Environmental Working Group, *Report: Up to 110 Million Americans Could Have PFAS-Contaminated Drinking Water* (May 22, 2018).

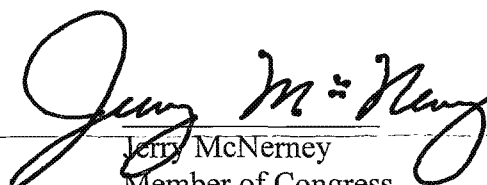
case basis.⁴ If finalized, this proposal could limit the type of information used to develop toxicity values for PFAS by preventing EPA from considering studies that include confidential medical records. Furthermore, we are troubled that, in a recent interview, a senior EPA official was unable to explain how this proposal could impact the Agency's efforts to protect the public from PFAS.⁵


In order to more fully understand how the EPA proposal to restrict the Agency's use of certain public health data will impact its ability to address human health risks associated with PFAS, we request that you respond to the following no later than June 20, 2018:


1. Please provide a list of all members of the Action Development Workgroup for the proposed "Strengthening Transparency in Regulatory Science" rulemaking, including name, title, and EPA office.
2. Provide copies of all comments or feedback provided by EPA staff, including but not limited to members of the Action Development Workgroup and staff of the Office of Ground and Drinking Water, on the proposed "Strengthening Transparency in Regulatory Science" rulemaking.
3. Provide a list of all upcoming EPA plans to visit communities impacted by PFAS including the event date, location, list of invitees, and whether the event is open to the press.

Thank you for your immediate attention to this matter. Should you have any questions, please contact Teresa Frison in Rep. Jerry McNerney's office at 202-225-1947.

Sincerely,


Jerry McNerney
Member of Congress


Paul Tonko
Member of Congress


Frank Pallone Jr.
Member of Congress

⁴ U.S. Environmental Protection Agency, *Strengthening Transparency in Regulatory Science*, 83 Fed. Reg. 18768 (Apr. 30, 2018) (proposed rule).

⁵ *Science Proposal Muddies Reviews of Toxic Nonstick Chemicals*, E&E News (May 24, 2018).

Message

From: Yamada, Richard (Yujiro) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4C34A1E0345E4D26B361B5031430639D-YAMADA, YUJ]
Sent: 1/24/2018 10:59:58 PM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]; Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]; Feeley, Drew (Robert) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=abae82aa36da4d3383eae19a8efa683c-Feeley, Rob]
CC: Baptist, Erik [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=10fc1b085ee14c6cb61db378356a1eb9-Baptist, Er]; Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]; Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]
Subject: RE: draft memo
Attachments: data_access_memo V2.docx

Deliberative Process / Ex. 5

From: Woods, Clint
Sent: Tuesday, January 23, 2018 2:28 PM
To: Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Feeley, Drew (Robert) <Feeley.Drew@epa.gov>
Cc: Baptist, Erik <Baptist.Erik@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>
Subject: RE: draft memo

Richard,

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Clint Woods
Deputy Assistant Administrator
Office of Air and Radiation, U.S. EPA
202.564.6562

From: Yamada, Richard (Yujiro)
Sent: Monday, January 22, 2018 5:25 PM
To: Bolen, Brittany <bolen.brittany@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Feeley, Drew (Robert) <Feeley.Drew@epa.gov>
Cc: Baptist, Erik <Baptist.Erik@epa.gov>
Subject: draft memo

(This email contains pre-decisional and deliberative material)

Hey Brittany and team,

Deliberative Process / Ex. 5

Richard

Richard Yamada
Deputy Assistant Administrator
Office of Research and Development
U.S. Environmental Protection Agency

Phone: 202-564-1727
yamada.richard@epa.gov

Message

From: Bolen, Brittany [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31E872A691114372B5A6A88482A66E48-BOLEN, BRIT]
Sent: 1/18/2018 12:27:58 AM
To: Feeley, Drew (Robert) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=abae82aa36da4d3383eae19a8efa683c-Feeley, Rob]
Subject: RE: BRIEFING REQUEST: HONEST ACT-HSST : EPA PRE-PLANNING CALL

Thanks, Drew.

From: Feeley, Drew (Robert)
Sent: Wednesday, January 17, 2018 4:44 PM
To: Bolen, Brittany <bolen.brittany@epa.gov>
Subject: FW: BRIEFING REQUEST: HONEST ACT-HSST : EPA PRE-PLANNING CALL

FYI – I can tell Laura to include you.

From: Gomez, Laura
Sent: Wednesday, January 17, 2018 4:39 PM
To: Feeley, Drew (Robert) <Feeley.Drew@epa.gov>; Linkins, Samantha <Linkins.Samantha@epa.gov>; Albores, Richard <Albores.Richard@epa.gov>; Kuhn, Kevin <Kuhn.Kevin@epa.gov>
Cc: Moody, Christina <Moody.Christina@epa.gov>; Haman, Patricia <Haman.Patricia@epa.gov>
Subject: BRIEFING REQUEST: HONEST ACT-HSST : EPA PRE-PLANNING CALL

Hi Everyone,

Chairman Smith of the House Science, Space and Technology Committee (HSST) recently met with the Administrator regarding the subject area of HONEST Act implementation. Resulting from that meeting OCIR will be coordinating a follow-up meeting with HSST committee staff.

In effort to plan for that follow up meeting, OCIR would like coordinate an internal EPA meeting together with your offices to discuss and plan for the Agency's follow up meeting with HSST committee staff. We'd like to set up two meetings- preferably via-phone to ease in the flexibility of everyone's schedules.

I'd like to set-up our first call for **FRIDAY-1/19**, with our second meeting for next week. This first initial call will be to give you more background on what we in OCIR know, and understand what you know from your AA-ship perspective. From there we will also decide on possible meeting dates with the HSST committee and draft up a potential delegate list who will attend.

To make things easier, I'd like coordinate schedules via-outlook, and set up an invitation with agenda and details. As I do this, please let me know whom else to include.

Happy to answer any questions or concerns.

Best,

Laura
Laura E. Gómez Rodríguez
Congressional Liaison Specialist
US Environmental Protection Agency (EPA)

Office of Congressional and Intergovernmental Relations (OCIR)
1200 Pennsylvania Ave., N.W. MC-2650R
Washington DC, 20004
gomez.laura@epa.gov

Message

From: EPA Press Office [press=epa.gov@cmail20.com]
on behalf of EPA Press Office [press@epa.gov]
Sent: 5/24/2018 12:00:19 PM
To: Feeley, Drew (Robert) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=abae82aa36da4d3383eae19a8efa683c-Feeley, Rob]
Subject: EPA Announces Extended Comment Period and Public Hearing on Proposed Rule to Strengthen Science Transparency in EPA Regulations

EPA Announces Extended Comment Period and Public Hearing on Proposed Rule to Strengthen Science Transparency in EPA Regulations

WASHINGTON (May 24, 2018) - Today, the U.S. Environmental Protection Agency (EPA) announced an extension of the comment period on the proposed rule, "Strengthening Transparency in Regulatory Science." EPA is also announcing a public hearing for the proposed rule, which will be held on July 17, 2018, in Washington, D.C.

"EPA is committed to public participation and transparency in the rulemaking process," said EPA Administrator Scott Pruitt. **"By extending the comment period for this rule and holding a public hearing, we are giving stakeholders the opportunity to provide valuable input about how EPA can improve the science underlying its rules."**

On April 30, 2018, EPA announced the proposed rule with a 30-day comment period that was scheduled to close on May 30. With today's extension, the comment period will now close on August 17. EPA is soliciting comments on all aspects of the proposal and specifically on the issues identified in Section III. The public hearing will provide a forum for interested parties to present data, views, and arguments regarding EPA's proposed rule.

The proposed rule will strengthen the science used in regulations issued by EPA. It will require that underlying scientific information be publicly available. Also, this rule is consistent with data access requirements for major scientific journals and builds upon Executive Orders 13777 and 13783.

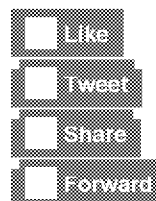
Comments should be identified by Docket ID No. is EPA-HQ-OA-2018-0259 and submitted through the Federal eRulemaking Portal: <http://www.regulations.gov>.

The public hearing will be held at the U.S. Environmental Protection Agency Headquarters, William Jefferson Clinton East Building, Main Floor Room 1153, 1201 Constitution Avenue NW, in Washington, D.C. 20460. The public hearing will convene at 8:00 a.m. EST and continue until 8:00 p.m. EST. Parties interested in presenting oral testimony at the public hearing should register online by July 15, 2018, at <https://www.epa.gov/osa/strengthening-transparency-regulatory-science>.

While we have taken steps to ensure the accuracy of this [Internet version of the rule](#), it is not the official version of the rule for purposes of public comment. Please refer to the official version in a forthcoming *Federal Register* publication.

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1200 Pennsylvania Avenue Northwest
Washington, D.C. 20004



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Message

From: Linkins, Samantha [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B7A94AA2975D4933981A8A9BF12AAA40-LINKINS, SAMANTHA]
Sent: 1/17/2018 10:25:48 PM
To: Gomez, Laura [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=575ba24fc19d429c8302a05102353238-lgomez]; Feeley, Drew (Robert) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=abae82aa36da4d3383eae19a8efa683c-Feeley, Rob]; Albores, Richard [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ce14f8709a5e4ac383af9d0b767fd8af-Ralbor02]; Kuhn, Kevin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=be20941b4c1144b8b3635e4df015924a-Kuhn, Kevin]
CC: Moody, Christina [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=813eb7f985c845eaa91edc10c6e9a914-CMoody]; Haman, Patricia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0ebb27cd881d41b19a30a491dc3f3f57-phaman]
Subject: RE: BRIEFING REQUEST: HONEST ACT-HSST : EPA PRE-PLANNING CALL

I'll get you a list of ORDers to include asap. When this came up last spring, OCSPP was very involved in this, so it might be worth having someone from their shop on the call. OLEM, SAB, and OEI were involved as well, but not as extensively.

Samantha Linkins
Science Communication Specialist and Congressional Lead
Office of Research and Development, US EPA
Washington, DC
Office: 202-564-1834
Cell: 202-604-5742

From: Gomez, Laura
Sent: Wednesday, January 17, 2018 4:39 PM
To: Feeley, Drew (Robert) <Feeley.Drew@epa.gov>; Linkins, Samantha <Linkins.Samantha@epa.gov>; Albores, Richard <Albores.Richard@epa.gov>; Kuhn, Kevin <Kuhn.Kevin@epa.gov>
Cc: Moody, Christina <Moody.Christina@epa.gov>; Haman, Patricia <Haman.Patricia@epa.gov>
Subject: BRIEFING REQUEST: HONEST ACT-HSST : EPA PRE-PLANNING CALL

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Laura

Laura E. Gómez Rodríguez

Congressional Liaison Specialist

US Environmental Protection Agency (EPA)

Office of Congressional and Intergovernmental Relations (OCIR)

1200 Pennsylvania Ave., N.W. MC-2650R

Washington DC, 20004

gomez.laura@epa.gov

Message

From: Gomez, Laura [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=575BA24FC19D429C8302A05102353238-LGOMEZ]
Sent: 1/17/2018 10:21:57 PM
To: Feeley, Drew (Robert) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=abae82aa36da4d3383eae19a8efa683c-Feeley, Rob]
Subject: RE: BRIEFING REQUEST: HONEST ACT-HSST : EPA PRE-PLANNING CALL

Will do! Thanks Drew.

From: Feeley, Drew (Robert)
Sent: Wednesday, January 17, 2018 4:55 PM
To: Gomez, Laura <Gomez.Laura@epa.gov>
Subject: RE: BRIEFING REQUEST: HONEST ACT-HSST : EPA PRE-PLANNING CALL

Thanks Laura. Please also add Brittany Bolen, since she has some background on this issue.

From: Gomez, Laura
Sent: Wednesday, January 17, 2018 4:39 PM
To: Feeley, Drew (Robert) <Feeley.Drew@epa.gov>; Linkins, Samantha <Linkins.Samantha@epa.gov>; Albores, Richard <Albores.Richard@epa.gov>; Kuhn, Kevin <Kuhn.Kevin@epa.gov>
Cc: Moody, Christina <Moody.Christina@epa.gov>; Haman, Patricia <Haman.Patricia@epa.gov>
Subject: BRIEFING REQUEST: HONEST ACT-HSST : EPA PRE-PLANNING CALL

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Laura
Laura E. Gómez Rodríguez
Congressional Liaison Specialist
US Environmental Protection Agency (EPA)

Office of Congressional and Intergovernmental Relations (OCIR)
1200 Pennsylvania Ave., N.W. MC-2650R
Washington DC, 20004
gomez.laura@epa.gov



E. SCOTT PRUITT
ADMINISTRATOR

TO: Assistant Administrators
Regional Administrators
Office of General Counsel

FROM: E. Scott Pruitt
Administrator

DATE: October 31, 2017

SUBJECT: Strengthening and Improving Membership on EPA Federal Advisory Committees

Federal Advisory Committees (FACs) serve important and influential roles for federal agencies – particularly the U.S. Environmental Protection Agency (EPA).¹ EPA's FACs presently provide advice on a broad array of subjects, including pesticides,² drinking water quality,³ air quality,⁴ rural community welfare,⁵ and children's health.⁶ FACs can be established by statutory requirement, at the discretion of federal agencies, or through presidential directive.⁷ Currently, EPA manages 22 FACs that provide valuable expertise, insight and recommendations that guide the Agency's decision-making in fulfilling its core mission of protecting human health and the environment.⁸

¹ "Advisory committees have played an important role in shaping programs and policies of the federal government from the earliest days of the Republic. Since President George Washington sought the advice of such a committee during the Whiskey Rebellion of 1794, the contributions made by these groups have been impressive and diverse." FACA 101, <https://www.gsa.gov/policy-regulations/policy/federal-advisory-committee-management/finding-information-on-faca-committees/faca-101>.

² Pesticide Program Dialogue Committee (PPDC), <https://www.epa.gov/pesticide-advisory-committees-and-regulatory-partners/pesticide-program-dialogue-committee-ppdc>.

³ National Drinking Water Advisory Council (NDWAC), <https://www.epa.gov/ndwac>.

⁴ Clean Air Scientific Advisory Committee (CASAC), <https://yosemite.epa.gov/sab/sabpeople.nsf/WebCommittees/CASAC>.

⁵ Farm, Ranch, and Rural Communities Advisory Committee (FRRCC), <https://www.epa.gov/faca/frrcc>.

⁶ Children's Health Protection Advisory Committee (CHPAC), <https://www.epa.gov/children>.

⁷ The Clean Air Scientific Advisory Committee (CASAC) was established under the Clean Air Act. The Board of Scientific Counselors (BOSC) was established by EPA. The Good Neighbor Environmental Board (GNEB) was established by presidential authority.

⁸ All Federal Advisory Committees at EPA, <https://www.epa.gov/faca/all-federal-advisory-committees-epa>.



E. SCOTT PRUITT
ADMINISTRATOR

The Federal Advisory Committee Act (FACA)⁹ generally requires that FACs operate in an independent, orderly, balanced, and transparent manner.¹⁰ Critical to the integrity of FACs is the selection of qualified and knowledgeable candidates. Since each FAC serves a unique purpose, FACs differ in specific composition requirements,¹¹ but all FACs must be “fairly balanced in terms of the points of view represented and functions to be performed by the committee.”¹² The EPA Administrator should choose qualified candidates to serve on the EPA’s FACs.¹³ In addition to knowledge and expertise, other qualifications should also factor strongly into selecting FAC members. Candidates should be independent from the Agency, must avoid any conflicts of interest within the scope of their review, and should be fully committed to objectively serving the Agency and public.

In the spirit of cooperative federalism and recognition of the unique experience of state, tribal and local government officials, committee balance should reflect prominent participation from state, tribal and local governments. Such participation should be appropriate for the committee’s purpose and function. Furthermore, FAC membership should be balanced with persons from different parts of the country to create geographic diversity. Finally, in order to ensure broader participation in FACs, and to ensure that advancements in scientific and technological thinking continually factor into committee reviews, regular rotation of members to assure fresh perspectives should also guide the Agency’s choice of FAC members.

This memorandum accompanies, and explains the principles underlying, a set of directives intended to strengthen and improve the composition of EPA’s FACs in ways that advance the Agency’s mission to protect public health and welfare, that are consistent with the principles of cooperative federalism, and that follow the rule of law and agency directives and guidance.

⁹ 5 U.S.C. app., <https://www.gsa.gov/cdnstatic/FACA-Statute-2013.pdf>.

¹⁰ FACA Essentials at EPA for Federal Advisory Committee Members, https://www.epa.gov/sites/production/files/2017-02/documents/faca_essentials_for_2016_pending.pdf.

¹¹ For example, the Clean Air Scientific Advisory Committee (CASAC) is comprised of seven members, including one physician, one state air pollution control agency representative, and one member of the National Academy of Sciences. See 42 U.S.C. § 7409(d)(2). However, not all FACs have statutory membership requirements.

¹² 5 U.S.C. app. § 5(b)(2).

¹³ 41 CFR 102-3.60(b)(3) (“Fairly balanced membership. A description of the agency’s plan to attain fairly balanced membership. The plan will ensure that, in the selection of members for the advisory committee, the agency will consider a cross-section of those directly affected, interested, and **qualified**, as appropriate to the nature and functions of the advisory committee.”) (emphasis added).



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A. Strengthen Member Independence

A vital part of ensuring integrity and confidence in EPA's FACs comes from guaranteeing that FAC members remain independent of the Agency during their service. EPA FAC members should avoid financial entanglements with EPA to the greatest extent possible.

Non-governmental and non-tribal members in direct receipt of EPA grants while serving on an EPA FAC can create the appearance or reality of potential interference with their ability to independently and objectively serve as a FAC member. FAC members should be motivated by service and committed to providing informed and independent expertise and judgment.

Ensuring FAC member independence strengthens the integrity, objectivity and reliability of EPA FACs. Accordingly, in addition to EPA's existing policies and legal requirements preventing conflicts of interest among the membership of the Agency's FACs, it shall be the policy of the Agency that no member of an EPA federal advisory committee currently receive EPA grants, either as principal investigator or co-investigator, or in a position that otherwise would reap substantial direct benefit from an EPA grant. This principle should not apply to state, tribal or local government agency recipients of EPA grants.

B. Increase State, Tribal and Local Government Participation

EPA alone cannot fully meet the environmental challenges this country faces. Under the principle of cooperative federalism, environmental protection is a duty shared between state, tribal, local and federal governments. EPA relies on states, tribes and local communities to assist in, and in some cases assume primary responsibility for, planning and overseeing environmental protection.¹⁴ Rather than solely rely on the opinions of federal officials in Washington, D.C., the Agency should seek the expertise and unique perspectives of public servants at all levels of government across the country. Cooperative federalism underlies many of the environmental statutes passed by Congress since states, tribes and local governments have a better understanding of, and are well-positioned to address, their environmental challenges.

Therefore, state, tribal and local government officials should figure prominently in FAC membership. Increasing state, tribal and local government participation on FACs strengthens EPA decision-making through enhanced public inclusion in EPA policy and programs choices, and joint accountability at all levels of government.

¹⁴ The Clean Air Act, Clean Water Act, and Safe Drinking Water Act contain provisions giving states and tribes primary responsibility for environmental protection.



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C. Enhance Geographic Diversity

EPA's FACs should be balanced to ensure the inclusion and consideration of different viewpoints, consistent with a fundamental goal of FACA.¹⁵ Participation of members from a broad range of geographic regions – especially areas that have historically been unrepresented or underrepresented – should prominently factor into creating balanced membership on FACs.¹⁶ The distinctive experiences, climates and environmental issues facing citizens spread across the United States naturally necessitates strong geographic diversity so that extensive regional perspectives are represented on FACs.¹⁷

Accordingly, with the exception of FACs established to specifically address regional/area specific issues, EPA shall seek to ensure that FAC membership is geographically diverse. Emphasis should be given to candidates from states or EPA regions that are unrepresented or underrepresented on EPA FACs.

D. Promote Fresh Perspectives

Experts serving on FACs should regularly rotate on and off committees to allow for new opinions and fresh ideas. Members who serve on FACs for an extended and continuous period of time risk minimizing viewpoints, lessening diversity, and preventing other qualified candidates from serving. EPA acknowledges the importance of fresh perspectives in its peer review handbook to “keep balance” and “avoid repeated use” of persons that could diminish original feedback.¹⁸

¹⁵ “(a) The Congress finds that there are numerous committees, boards, commissions, councils, and similar groups which have been established to advise officers and agencies in the executive branch of the Federal Government and that they are frequently a useful and beneficial means of furnishing expert advice, ideas, and **diverse opinions** to the Federal Government.” 5 U.S.C. app. § 2(a), <https://www.gsa.gov/cdnstatic/FACA-Statute-2013.pdf> (emphasis added).

¹⁶ “The composition of an advisory committee’s membership will depend upon several factors, including: (i) The advisory committee’s mission; (ii) The **geographic**, ethnic, social, economic, or scientific impact of the advisory committee’s recommendations. . .” 41 C.F.R. Part 102-3, App. A to Subpart B (emphasis added); https://www.gsa.gov/cdnstatic/FACAFinalRule_R2E-cNZ_0ZSRDZ-i34K-pR.pdf.

¹⁷ See CASAC Membership Balance Plan stating that “Geographic location may be considered” as an “important” factor in achieving a balanced FAC, <https://www.facadatabase.gov/committee/charters.aspx?cid=634&aid=51>; Board of Scientific Counselors stating that “Balances in disciplines, work sector (i.e., academia, government – federal/state/local, industry, environmental associations), diversity, and geographic distribution area are also considered.” <https://www.facadatabase.gov/committee/charters.aspx?cid=1577&aid=51>.

¹⁸ *Peer Review Handbook*, Science and Technology Policy Council, U.S. Env’tl. Prot. Agency, https://www.epa.gov/sites/production/files/2016-03/documents/epa_peer_review_handbook_4th_edition.pdf.



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ADMINISTRATOR

New members also help to ensure that FACs remain current with innovative and new scientific and technological expertise. Membership should therefore be dynamic and open to a broad, diverse array of experts who can potentially provide unique and informative new perspectives.¹⁹

Conclusion

EPA's FAC members provide essential and invaluable advice and support to the Agency. Strengthening FAC membership independence from EPA, increasing state, tribal and local government participation, and emphasizing geographic diversity and fresh perspectives, to the greatest extent practicable, serve to enhance the diversity of viewpoints and thereby provide robust and appropriately balanced advice to EPA. These changes also further help EPA meet its core mission of providing the American people with clean air, land, and water.

¹⁹ EPA's Peer-Review Handbook considers adding fresh perspectives through new peer reviewers an "important qualification" to add balance of views and avoid the repeated use of the same persons. See https://www.epa.gov/sites/production/files/2016-03/documents/epa_peer_review_handbook_4th_edition.pdf.

Congress of the United States

House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

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March 19, 2014

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Administrator McCarthy:

The Committee on Science, Space, and Technology has longstanding concerns with the Environmental Protection Agency's (EPA) scientific advisory processes. In particular, there has been a troubling lack of independence and transparency within EPA's Clean Air Scientific Advisory Committee (CASAC) Ozone Review Panel. In establishing CASAC, Congress gave clear direction that this committee is intended "to have complete independence."¹ The CASAC Ozone Review Panel appears to violate agency policies designed to ensure balance, independence, and impartiality. Additional transparency is necessary to assure Congress and the American people that EPA is basing its costly regulatory decisions on the best available science and not a predetermined regulatory agenda.

In a hearing before the Committee last November, you stated that CASAC "provides independent advice to the EPA Administrator on the science that supports the EPA's National Ambient Air Quality Standards."² However, recent testimony and the current makeup of the panel reveal a number of problems, including: panelists reviewing their own work; a lack of turnover among CASAC Ozone Review Panel members; and, existing financial relationships between panelists and the Agency. Dr. Robert Phalen, Professor of Medicine and Co-Director of the Air Pollution Health Effects Laboratory at University of California, Irvine, and a former member of the CASAC panel on fine particulate matter, stated in testimony that the "current [CASAC] process... is seriously flawed, it is narrowly focused, and it is even ethically questionable."³ Due to the substantial economic cost associated with finalizing a more stringent ozone standard, EPA should make every effort to ensure the transparency of the regulatory process.

¹ H.R. Rep. No. 95-294 at 182-83 (1977).

² Committee on Science, Space, and Technology, "Strengthening Transparent and Accountability within the Environmental Protection Agency," Testimony of EPA Administrator Gina McCarthy, 113th Cong., 1st sess., 14 November, 2013, <https://science.house.gov/sites/republicans.science.house.gov/files/documents/HHRG-113-SY-WState-GMccarthy-20131114.pdf>.

³ Committee on Science, Space, and Technology, "Quality Science for Quality Air," 112th Cong., 1st sess., 4 October 2011, <http://www.gpo.gov/fdsys/pkg/CHRG-112hhr70587/html/CHRG-112hhr70587.htm>.

Lowering the ozone National Ambient Air Quality Standards (NAAQS) to the range being discussed by CASAC could represent the most expensive regulation in history, with EPA's own cost estimates approaching nearly \$100 billion per year. An ozone NAAQS below the existing standards may place large swaths of the United States in non-attainment with the Clean Air Act and result in severe economic sanctions. Moreover, testimony before this Committee indicates that standards in the range EPA is considering are below naturally-occurring background levels in many parts of the country.⁴ Setting standards at these levels could therefore limit growth and impose penalties on communities whose means of compliance is beyond their control.

This Committee is not alone in its concerns about the independence and transparency of the CASAC process, and this Ozone Review panel in particular. As noted below, independent scientists who have been involved with CASAC have testified to our Committee with serious concerns.

Recusals and Reviewing One's Own Work

EPA's *Peer Review Handbook* states that "An independent peer reviewer is an expert who was not associated with the generation of the specific work product either directly... or indirectly...."⁵

Within the NAAQS process, EPA's CASAC Ozone Review panelists are asked to review three documents generated by EPA: the Integrated Science Assessment;⁶ the Health and Welfare Risk and Exposure Assessments;⁷ and the Policy Assessment.⁸ Among the current CASAC Ozone Review panel, **16 of the 20 panel members** are cited by EPA in the current versions of these key documents. Indeed, the Agency cites the work of these panel members **more than 700 times** in these regulatory science documents they are being asked to critically assess.

This does not appear to be an isolated incident, as Dr. Roger McClellan, a former Chair of CASAC, testified, "The [CASAC] membership has been excessively dominated by scientists that to a large extent have developed the scientific information contained in the documents."⁹ In addition, a 2013 review of CASAC's processes by the EPA Inspector General (IG) found multiple instances where recusals for concerns related to independence were not documented.

⁴ Committee on Science, Space, and Technology, "Background Check: Achievability of New Ozone Standards," 113th Cong., 1st sess., 12 June 2013, <https://science.house.gov/hearing/subcommittee-environment-background-check-achievability-new-ozone-standards>.

⁵ U. S. Environmental Protection Agency, *Peer Review Handbook*, 3rd Edition, Peer Review Advisory Group, Science Policy Council, http://www.epa.gov/peerreview/pdfs/peer_review_handbook_2006.pdf.

⁶ U. S. Environmental Protection Agency, Office of Research and Development, National Center for Environmental Assessment, *Integrated Science Assessment for Ozone and Related Photochemical Oxidants*, 2013. EPA 600/R-10/076F, http://oaspub.epa.gov/eims/eimscomm.getfile?p_download_id=511347.

⁷ U. S. Environmental Protection Agency, National Ambient Air Quality Standards, Ozone Standards, Documents from Current Review, Risk and Exposure Assessments, http://www.epa.gov/ttn/naaqs/standards/ozone/s_o3_2008_rea.html.

⁸ U. S. Environmental Protection Agency, National Ambient Air Quality Standards, Ozone Standards, Documents from Current Review, Policy Assessments, http://www.epa.gov/ttn/naaqs/standards/ozone/s_o3_2008_pa.html.

⁹ Committee on Science, Space, and Technology, "Quality Science for Quality Air," 112th Cong., 1st sess., 4 October 2011, <http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg70587/html/CHRG-112hhrg70587.htm>.

The IG also found those recusals often came after the fact, lacked detail or their resolution was not adequately documented.¹⁰ Independent reviewers should not be reviewing their work and the Agency needs to guarantee panelists recuse themselves for Agency documents that rely upon or cite their work.¹¹

Lack of Turnover and Financial Relationships with EPA

EPA's *Peer Review Handbook* states "that the agency [should] rotate membership among qualified scientists in order to obtain fresh perspectives and reinforce the reality and perception of independence from the agency."¹² Despite this requirement, half of the current CASAC Ozone Review Panel members (10 out of 20) also served on the Agency's panel for the reconsideration of the 2008 Ozone NAAQS and five of these members served on both the reconsideration panel and the CASAC Ozone Review Panel for the 2008 NAAQS. Moreover, these panels were highly critical of the Administrator's decision concerning the 2008 ozone standard, suggesting bias in the current panel makeup.

EPA's *Peer Review Handbook* also states that Federal grants or contracts may constitute a direct financial stake, and thus a conflict or lack of impartiality in a specific review for potential peer reviewers. And in 2013, EPA's Inspector General found that "[a] prospective or active member's research or grant is a potential area of concern if the [Federal Advisory Committee], panel, or subcommittee plans to address work performed under the research grant."¹³ Yet, since 2000, **70 percent or 14 of the 20 members** of the CASAC Ozone Review Panel have been principal or co-investigators for EPA grants totaling more than \$120 million.¹⁴ Many of these grants focus on ozone- and air pollution-related issues at the heart of these advisory activities.

The lack of turnover in a panel whose composition includes members with a direct financial relationship with the Agency related to the very issues under review suggests a critical lack of impartiality. As Dr. Michael Honeycutt, Director of Toxicology at the Texas Commission on Environmental Quality, stated before the Committee, "Having study authors, grant recipients, and panelists who have taken public stands on relevant topics who are handpicked by the Administrator gives the perception that the CASAC may not be truly independent."¹⁵

¹⁰ U. S. Environmental Protection Agency, Office of Inspector General, 2013. *EPA Can Better Document Resolution of Ethics and Partiality Concerns in Managing Clean Air Federal Advisory Committees*, Report no. 13-P-0387, <http://www.epa.gov/oig/reports/2013/20130911-13-P-0387.pdf>.

¹¹ Dr. Honeycutt testified that: "It is not appropriate for scientists to peer review their own work; it presents a clear conflict of interest. When a panel reviews a document in which a member's work is cited, that member should recuse himself from review of the document." Available from: <http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg70587/html/CHRG-112hhrg70587.htm>.

¹² U. S. Environmental Protection Agency, *Peer Review Handbook*, 3rd Edition, Peer Review Advisory Group, Science Policy Council, http://www.epa.gov/peerreview/pdfs/peer_review_handbook_2006.pdf.

¹³ U. S. Environmental Protection Agency, Office of Inspector General, 2013. *EPA Can Better Document Resolution of Ethics and Partiality Concerns in Managing Clean Air Federal Advisory Committees*, Report no. 13-P-0387, <http://www.epa.gov/oig/reports/2013/20130911-13-P-0387.pdf>.

¹⁴ These totals only include grants from the National Center for Environmental Research. Grant information available at: http://cfpub.epa.gov/ncer_abstracts/index.cfm/fuseaction/search.welcome.

¹⁵ Committee on Science, Space, and Technology, "Improving EPA's Scientific Advisory Process," 113th Cong., 1st sess., 20 March 2013, <http://www.gpo.gov/fdsys/pkg/CHRG-113hhrg80553/pdf/CHRG-113hhrg80553.pdf>.

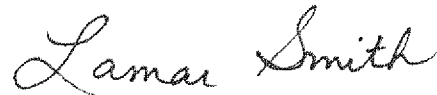
Need for Transparency

In testimony before the Committee last year, Dr. Roger McClellan stated that “[v]ery little of the CASAC panel work is done in public view. Most of the discussion takes place off-line and is only manifest in the written draft comments of the CASAC Panel Members in response to EPA staff written questions.”¹⁶ In light of these serious concerns, it is unacceptable for EPA to move forward with new rules without first addressing potential conflicts of interest and a lack of transparency within a panel intended to provide the Agency with independent scientific assessments.

Please provide all communications between EPA staff, CASAC staff, and the CASAC Ozone Review Panel related to potential revisions to the ozone NAAQS. This should include all e-mail correspondence and meeting records since the start of the panel formation process in 2008. Please provide these communications to the Committee by March 25, 2014.

Your staff has indicated that the upcoming CASAC Ozone Review Panel meeting to be held March 25-27, 2014 will be webcast live on the Agency’s website. Please ensure that an archived version of this webcast will be available online to the public following the meeting.

Sincerely,



Lamar Smith
Chairman
Committee on Science, Space, and
Technology

¹⁶ Committee on Science, Space, and Technology, “Improving EPA’s Scientific Advisory Process,” 113th Cong., 1st sess., 20 March 2013, <http://www.gpo.gov/fdsys/pkg/CHRG-113hhrg80553/pdf/CHRG-113hhrg80553.pdf>.

115TH CONGRESS
1ST SESSION

H. R. 1431

To amend the Environmental Research, Development, and Demonstration Authorization Act of 1978 to provide for Scientific Advisory Board member qualifications, public participation, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 8, 2017

Mr. LUCAS (for himself, Mr. PETERSON, Mr. SMITH of Texas, Mr. BIGGS, Mr. BANKS of Indiana, Mr. ROHRABACHER, Mr. POSEY, Mr. BROOKS of Alabama, Mr. WEBER of Texas, Mr. BABIN, Mr. HIGGINS of Louisiana, Mr. HULTGREN, Mr. BRIDENSTINE, Mr. ABRAHAM, Mr. LAHOOD, Mr. WEBSTER of Florida, Mr. MARSHALL, Mr. DUNN, Mr. SESSIONS, Mr. CHAFFETZ, Mr. SCHWEIKERT, Mr. PALAZZO, Mr. YOUNG of Alaska, Mr. BARTON, Mr. PEARCE, Mr. FARENTHOLD, Mr. GOSAR, Mr. TIPTON, and Mr. GOODLATTE) introduced the following bill; which was referred to the Committee on Science, Space, and Technology

A BILL

To amend the Environmental Research, Development, and Demonstration Authorization Act of 1978 to provide for Scientific Advisory Board member qualifications, public participation, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “EPA Science Advisory
5 Board Reform Act of 2017”.

1 **SEC. 2. SCIENCE ADVISORY BOARD.**

2 (a) INDEPENDENT ADVICE.—Section 8(a) of the En-
3 vironmental Research, Development, and Demonstration
4 Authorization Act of 1978 (42 U.S.C. 4365(a)) is amend-
5 ed by inserting “independently” after “Advisory Board
6 which shall”.

7 (b) MEMBERSHIP.—Section 8(b) of the Environ-
8 mental Research, Development, and Demonstration Au-
9 thorization Act of 1978 (42 U.S.C. 4365(b)) is amended
10 to read as follows:

11 “(b)(1) The Board shall be composed of at least nine
12 members, one of whom shall be designated Chairman, and
13 shall meet at such times and places as may be designated
14 by the Chairman.

15 “(2) Each member of the Board shall be qualified by
16 education, training, and experience to evaluate scientific
17 and technical information on matters referred to the
18 Board under this section. The Administrator shall ensure
19 that—

20 “(A) the scientific and technical points of view
21 represented on and the functions to be performed by
22 the Board are fairly balanced among the members of
23 the Board;

24 “(B) at least ten percent of the membership of
25 the Board are from State, local, or tribal govern-
26 ments;

1 “(C) persons with substantial and relevant ex-
2 pertise are not excluded from the Board due to af-
3 filiation with or representation of entities that may
4 have a potential interest in the Board’s advisory ac-
5 tivities, so long as that interest is fully disclosed to
6 the Administrator and the public and appointment
7 to the Board complies with section 208 of title 18,
8 United States Code;

9 “(D) in the case of a Board advisory activity on
10 a particular matter involving, or for which the Board
11 has evidence that it may involve, a specific party, no
12 Board member having an interest in the specific
13 party shall participate in that activity;

14 “(E) Board members may not participate in ad-
15 visory activities that directly or indirectly involve re-
16 view or evaluation of their own work, unless fully
17 disclosed to the public and the work has been exter-
18 nally peer-reviewed;

19 “(F) Board members shall be designated as
20 special Government employees;

21 “(G) no registered lobbyist is appointed to the
22 Board; and

23 “(H) a Board member shall have no current
24 grants or contracts from the Environmental Protec-
25 tion Agency and shall not apply for a grant or con-

1 tract for 3 years following the end of that member's
2 service on the Board.

3 “(3) The Administrator shall—

4 “(A) solicit public nominations for the Board by
5 publishing a notification in the Federal Register;

6 “(B) solicit nominations from relevant Federal
7 agencies, including the Departments of Agriculture,
8 Defense, Energy, the Interior, and Health and
9 Human Services;

10 “(C) solicit nominations from—

11 “(i) institutions of higher education (as de-
12 fined in section 101(a) of the Higher Education
13 Act of 1965 (20 U.S.C. 1001(a))); and

14 “(ii) scientific and research institutions
15 based in work relevant to that of the Board;

16 “(D) make public the list of nominees, includ-
17 ing the identity of the entities that nominated each,
18 and shall accept public comment on the nominees;

19 “(E) require that, upon their provisional nomi-
20 nation, nominees shall file a written report disclosing
21 financial relationships and interests, including Envi-
22 ronmental Protection Agency grants, contracts, co-
23 operative agreements, or other financial assistance,
24 that are relevant to the Board's advisory activities
25 for the three-year period prior to the date of their

1 nomination, and relevant professional activities and
2 public statements for the five-year period prior to
3 the date of their nomination; and

4 “(F) make such reports public, with the excep-
5 tion of specific dollar amounts, for each member of
6 the Board upon such member’s selection.

7 “(4) Disclosure of relevant professional activities
8 under paragraph (3)(E) shall include all representational
9 work, expert testimony, and contract work as well as iden-
10 tifying the party for which the work was done.

11 “(5) Except when specifically prohibited by law, the
12 Agency shall make all conflict of interest waivers granted
13 to members of the Board, member committees, or inves-
14 tigative panels publicly available.

15 “(6) Any recusal agreement made by a member of
16 the Board, a member committee, or an investigative panel,
17 or any recusal known to the Agency that occurs during
18 the course of a meeting or other work of the Board, mem-
19 ber committee, or investigative panel shall promptly be
20 made public by the Administrator.

21 “(7) The terms of the members of the Board shall
22 be three years and shall be staggered so that the terms
23 of no more than one-third of the total membership of the
24 Board shall expire within a single fiscal year. No member
25 shall serve more than two terms over a ten-year period.”.

1 (c) RECORD.—Section 8(c) of such Act (42 U.S.C.
2 4365(c)) is amended—

3 (1) in paragraph (1)—

4 (A) by inserting “or draft risk or hazard
5 assessment,” after “at the time any proposed”;

6 (B) by striking “formal”; and

7 (C) by inserting “or draft risk or hazard
8 assessment,” after “to the Board such pro-
9 posed”; and

10 (2) in paragraph (2)—

11 (A) by inserting “or draft risk or hazard
12 assessment,” after “the scientific and technical
13 basis of the proposed”; and

14 (B) by adding at the end the following:
15 “The Board’s advice and comments, including
16 dissenting views of Board members, and the re-
17 sponse of the Administrator shall be included in
18 the record with respect to any proposed risk or
19 hazard assessment, criteria document, standard,
20 limitation, or regulation and published in the
21 Federal Register.”.

22 (d) MEMBER COMMITTEES AND INVESTIGATIVE PAN-
23 ELS.—Section 8(e)(1)(A) of such Act (42 U.S.C.
24 4365(e)(1)(A)) is amended by adding at the end the fol-

1 lowing: “These member committees and investigative pan-
 2 els—

3 “(i) shall be constituted and operate
 4 in accordance with the provisions set forth
 5 in paragraphs (2) and (3) of subsection
 6 (b), in subsection (h), and in subsection
 7 (i);

8 “(ii) do not have authority to make
 9 decisions on behalf of the Board; and

10 “(iii) may not report directly to the
 11 Environmental Protection Agency.”.

12 (e) PUBLIC PARTICIPATION.—Section 8 of such Act
 13 (42 U.S.C. 4365) is amended by amending subsection (h)
 14 to read as follows:

15 “(h)(1) To facilitate public participation in the advi-
 16 sory activities of the Board, the Administrator and the
 17 Board shall make public all reports and relevant scientific
 18 information and shall provide materials to the public at
 19 the same time as received by members of the Board.

20 “(2) Prior to conducting major advisory activities, the
 21 Board shall hold a public information-gathering session to
 22 discuss the state of the science related to the advisory ac-
 23 tivity.

24 “(3) Prior to convening a member committee or in-
 25 vestigative panel under subsection (e) or requesting sci-

1 entific advice from the Board, the Administrator shall ac-
2 cept, consider, and address public comments on questions
3 to be asked of the Board. The Board, member committees,
4 and investigative panels shall accept, consider, and ad-
5 dress public comments on such questions and shall not ac-
6 cept a question that unduly narrows the scope of an advi-
7 sory activity.

8 “(4) The Administrator and the Board shall encour-
9 age public comments, including oral comments and discus-
10 sion during the proceedings, that shall not be limited by
11 an insufficient or arbitrary time restriction. Public com-
12 ments shall be provided to the Board when received, and
13 shall be published in the Federal Register grouped by com-
14 mon themes. If multiple repetitious comments are re-
15 ceived, only one such comment shall be published along
16 with the number of such repetitious comments received.
17 Any report made public by the Board shall include written
18 responses to significant comments, including those that
19 present an alternative hypothesis-based scientific point of
20 view, offered by members of the public to the Board.

21 “(5) Following Board meetings, the public shall be
22 given 15 calendar days to provide additional comments for
23 consideration by the Board.”.

1 (f) OPERATIONS.—Section 8 of such Act (42 U.S.C.
2 4365) is further amended by amending subsection (i) to
3 read as follows:

4 “(i)(1) In carrying out its advisory activities, the
5 Board shall strive to avoid making policy determinations
6 or recommendations, and, in the event the Board feels
7 compelled to offer policy advice, shall explicitly distinguish
8 between scientific determinations and policy advice.

9 “(2) The Board shall clearly communicate uncertain-
10 ties associated with the scientific advice provided to the
11 Administrator or Congress.

12 “(3) The Board shall ensure that advice and com-
13 ments reflect the views of the members and shall encour-
14 age dissenting members to make their views known to the
15 public, the Administrator, and Congress.

16 “(4) The Board shall conduct periodic reviews to en-
17 sure that its advisory activities are addressing the most
18 important scientific issues affecting the Environmental
19 Protection Agency.

20 “(5) The Board shall be fully and timely responsive
21 to Congress.”.

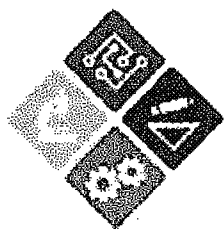
1 **SEC. 3. RELATION TO THE FEDERAL ADVISORY COM-**
2 **MITTEE ACT.**

3 Nothing in this Act or the amendments made by this
4 Act shall be construed as supplanting the requirements of
5 the Federal Advisory Committee Act (5 U.S.C. App.).

6 **SEC. 4. RELATION TO THE ETHICS IN GOVERNMENT ACT OF**
7 **1978.**

8 Nothing in this Act or the amendments made by this
9 Act shall be construed as supplanting the requirements of
10 the Ethics in Government Act of 1978 (5 U.S.C. App.).

○



COMMITTEE ON
SCIENCE, SPACE, & TECHNOLOGY (/)
Lamar Smith, Chairman



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Members Introduce Legislation to Reform EPA's Scientific Advisory Process

Apr 9, 2013 | Press Release

Subcommittee on Environment Chairman Chris Stewart (R-Utah) today introduced legislation to reform the Environmental Protection Agency's (EPA's) scientific advisory processes. The bill, H.R. 1422 (/sites/republicans.science.house.gov/files/documents/HR%201422_0.pdf), the *EPA Science Advisory Board Reform Act of 2013*, makes changes to the EPA's Science Advisory Board (SAB) to enhance public participation, improve the process for selecting expert advisors, expand transparency requirements and limit non-scientific policy advice. Original cosponsors of the bill include: Chairman Lamar Smith (R-Texas), Vice Chairman Dana Rohrabacher (R-Calif.), Chairman Emeritus Ralph Hall (R-Texas), Rep. Andy Harris (R-Md.) and Rep. Dan Benishek (R-Mich.).

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Environment Subcommittee Chairman Stewart: "Through the EPA, the Obama Administration is aggressively pursuing costly regulations that impact nearly every sector of the American economy. Most of these rules are based on controversial scientific assertions and conclusions, so it is critical they be reviewed by a balanced panel of experts in an open and transparent manner. This bill directs EPA to undertake reforms to do just that."

Chairman Smith: "Time and again, we see instances where American businesses are unnecessarily harmed by the EPA's regulatory and political agenda. The changes in this bill will help to ensure that multi-billion dollar rulemakings are based on good science and hard fact, rather than fiction. The bill also makes sure that EPA regulations are reviewed in a balanced and transparent manner."

The Members' SAB reform effort builds on similar legislation introduced in the 112th Congress. The Committee plans to mark up ([/markup/full-committee-markup-hr-875-hr](#)) the measure on Thursday, April 11 at 10:00 a.m.

At a March hearing on the legislation, Rep. Stewart emphasized ([/sites/republicans.science.house.gov/files/documents/HHRG-113-%20SY18-WState-S001192-20130320.pdf](#)) that these reforms will help instill confidence in EPA regulatory science, saying that the EPA's credibility suffers when the Agency's scientific process is viewed as being biased or one-sided.

Established by Congress in 1978, the SAB plays an important role in reviewing the scientific foundation of EPA regulatory decisions and advising the Agency broadly on science and technology-related matters.

Criticisms of the current advisory process include:

- According ([/crs-memo-re-epa-grants-members-selected-epa-advisory-committees](#)) to the Congressional Research Service, almost 60 percent of the members of EPA's standing scientific advisory panels directly received National Center for Environmental Research grants from the Agency since 2000. These advisors served as investigators for grants representing hundreds of millions of taxpayer dollars. And the research they are being asked to independently review is often directly related to the grants they received.
- Private sector industry expertise on panels is typically minimal, and in some cases is entirely excluded, despite existing statutory requirements

that membership "be fairly balanced in terms of the points of view represented."

- Many panel members state strong policy preferences in areas they are being asked to provide impartial scientific reviews, and in certain cases advisors review EPA products based on their own work.
- Public participation is limited during most SAB meetings, and virtually no ability exists for interested parties to comment on the scope of SAB reviews.

To address these shortcomings, H.R. 1422

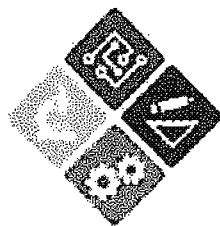
([/sites/republicans.science.house.gov/files/documents/HR%201422_0.pdf](https://sites/republicans.science.house.gov/files/documents/HR%201422_0.pdf)):

- Strengthens public participation and public comment opportunities.
- Improves the make-up of SAB and its sub-panels by reinforcing peer review requirements regarding balance and independence. The bill also reduces potential conflicts of interest by requiring enhanced disclosure of members' financial relationships relevant to board activities.
- Requires opportunities for dissenting panelists to make their views known.
- Requires communication of uncertainties in scientific findings and conclusions.
- Limits non-scientific policy advice and recommendations, while requiring explicit disclosure of such advice when SAB feels compelled to provide it.

These provisions draw upon recent recommendations from the Keystone Center's Research Integrity Roundtable

(<https://www.keystone.org/images/keystone-center/spp-documents/Health/Research%20Integrity%20Rountable%20Report.pdf>), the Bipartisan Policy Center (<https://bipartisanpolicy.org/library/report/science-policy-project-final-report>), and other stakeholders (<https://yosemite.epa.gov/sab/sabproduct.nsf/WebSABSO/June%201%202011%20Public%20involvement%20session?OpenDocument>), as well as relevant testimony ([/sab-bill-press-release-quotes](#)) received by the Committee on Science, Space, and Technology during the 112th and 113th Congresses.

113th Congress



COMMITTEE ON
SCIENCE, SPACE, & TECHNOLOGY (/)
Lamar Smith, Chairman



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Lucas, Peterson Introduce Bipartisan Bill to Strengthen EPA Independent Scientific Advice

Feb 24, 2015 | Press Release

Washington D.C. – House Science, Space, and Technology Committee Vice-Chairman Frank Lucas (R-Okla.) and Rep. Collin Peterson (D-Minn.) today introduced the bipartisan *EPA Science Advisory Board Reform Act* to bring fairness, transparency, and independence to the EPA's expert panel. Similar legislation passed the House in the 113th Congress with bipartisan support. Companion legislation was also introduced today in the Senate by Sens. John Boozman (R-Ark.) and Joe Manchin (D-W.Va.).

Vice-Chairman Lucas: "The Science Advisory Board (SAB) informs the EPA on regulations that impact the lives of millions of Americans. Some members on this board have received grant money from the EPA, and several of the members have openly expressed policy preferences in the same areas they are asked to independently study. The heavy costs of EPA's regulations

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warrant some degree of public oversight to ensure SAB's findings are free from bias or conflicts of interest and not simply provided by a set of handpicked advisors. The *EPA Science Advisory Board Reform Act* addresses these issues by ensuring the science guiding EPA's regulatory policy is open to review by the public and requiring members who serve on this board to disclose their professional backgrounds."

Rep. Peterson: "The Science Advisory Board's work is important to making sure the EPA considers all scientific information when writing regulations that will impact American farmers, families and small businesses. This legislation builds on the work done in the 2014 Farm Bill and is necessary to ensure the EPA takes into account the best information possible, with input from the public and independent stakeholders. A balanced and independent Science Advisory Board will help alleviate some of the unintended consequences surrounding EPA regulations."

The SAB was created to provide independent expert advice to the EPA and Congress on scientific and technical information that may be used to justify federal regulations. Over the past decades, shortcomings with the current process have arisen, including limited public participation, EPA interference with expert advice, and potential conflicts of interest. As a result, the law should be updated to restore scientific integrity to the process and independence to the Board. The *EPA Science Advisory Board Reform Act* addresses these shortcomings guaranteeing a well-balanced expert panel, increasing transparency, and encouraging public participation to empower the SAB to provide meaningful and unbiased scientific advice.

114th Congress

DAVID VITTER, LOUISIANA
JOHN BARRASSO, WYOMING
SHELLEY MOORE CAPITO, WEST VIRGINIA
MIKE CRAPO, IDAHO
JOHN BOUZMAN, ARKANSAS
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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

RYAN JACKSON, MAJORITY STAFF DIRECTOR
BETHINA FORKSH, DEMOCRATIC STAFF DIRECTOR

July 20, 2016

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Administrator McCarthy:

I write to comment on the list of candidates nominated to serve on the U.S. Environmental Protection Agency's (EPA or Agency) chartered Clean Air Scientific Advisory Committee (CASAC). The CASAC is a seven-member member Federal Advisory Committee (FAC) tasked with providing the EPA independent scientific advice related to the national ambient air quality standards (NAAQS). As you know, I have long expressed concerns over the composition of previously appointed CASAC panels, but I am hopeful you will use this opportunity to appoint an expert that will bring much needed balance and integrity to CASAC.

Pursuant to Section 109(d)(2) of the Clean Air Act, the chartered CASAC must be composed of at least "one person representing State air pollution control agencies."¹ On April 6, 2016, EPA published a notice in the Federal Register requesting nominations for candidates to fill this statutorily required state-affiliated position.² Nominations were due by May 6, 2016. On June 20, 2016, EPA posted a list of seven candidates who were nominated on its website and announced the Agency would accept public comments on those candidates until July 20, 2016.³ Among the seven candidates, the EPA Science Advisory Board (SAB) staff office will make a recommendation to you, as the EPA Administrator, who will then appoint a member to the chartered CASAC for a three-year term beginning in October 2016.⁴

This is a critical position on CASAC that warrants robust review of the candidates' qualifications both individually and within the context of the other six members of CASAC to ensure balance of the panel. EPA should consider the historical composition of the chartered CASAC as well as those serving in this specific state-affiliated position on CASAC, and how one of the nominees may fill a void on the panel. With these factors in mind, I want to highlight several issues related to the lack of geographic diversity and fresh perspectives on the chartered CASAC that EPA

¹ 42 U.S.C. § 7409(d)(2).

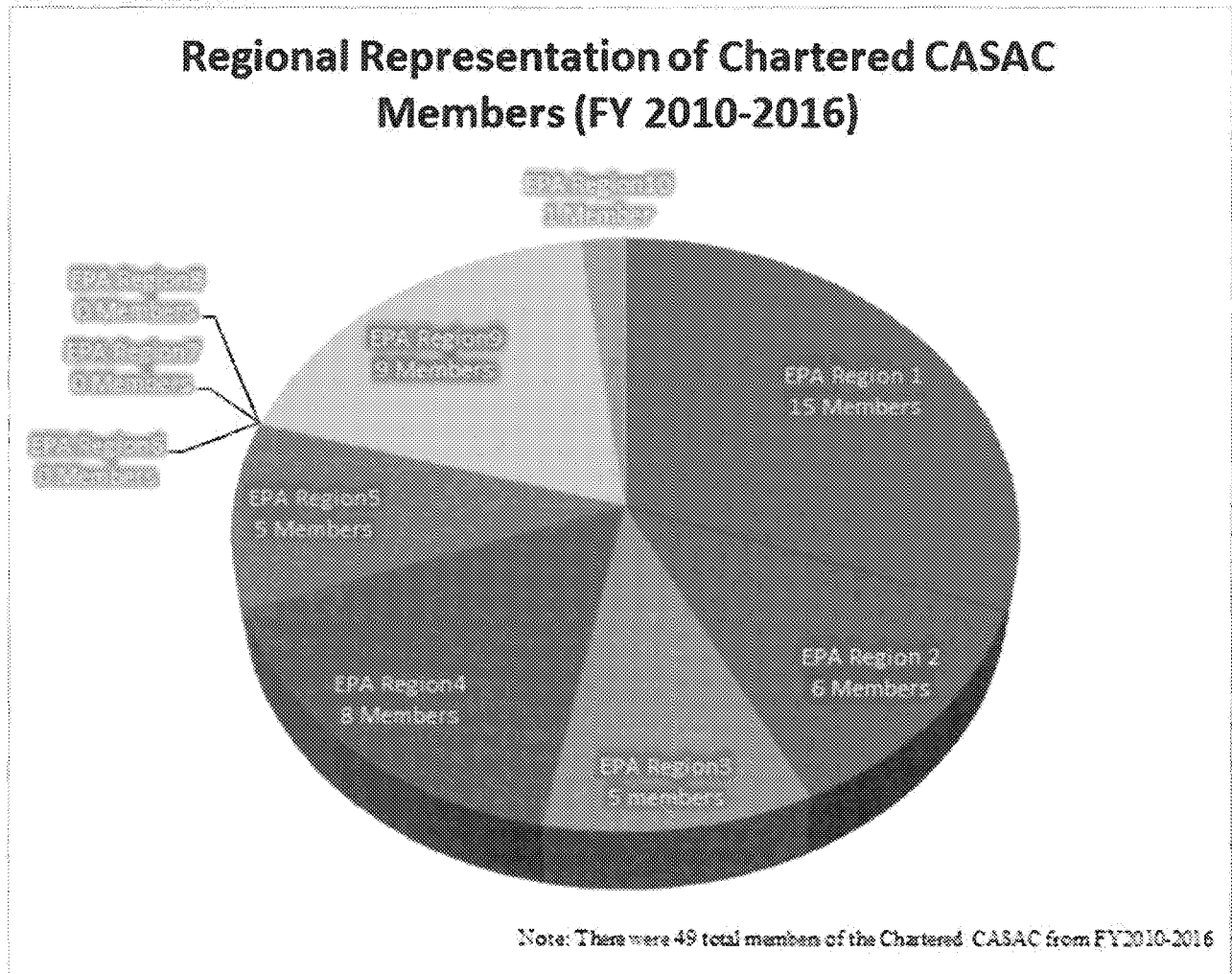
² U.S. Envtl. Prot. Agency, Notice, Request for Nominations of Candidates to the EPA's Clean Air Scientific Advisory Committee (CASAC) and the EPA Science Advisory Board (SAB), 81 Fed. Reg. 19967, Apr. 6, 2016, available at <https://www.gpo.gov/fdsys/pkg/FR-2016-04-06/pdf/2016-07918.pdf>.

³ [https://yosemite.epa.gov/sab/sabproduct.nsf/LookupWebProjectsCurrentCASAC/3CDA169D2187C6C885257F85006D3AF1/\\$File/List%20of%20Candidates-CASAC.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/LookupWebProjectsCurrentCASAC/3CDA169D2187C6C885257F85006D3AF1/$File/List%20of%20Candidates-CASAC.pdf)

⁴ "Appointments are anticipated to be filled by the start of Fiscal Year 2017 (October 2016). . . Members are appointed by the EPA Administrator for a three-year term and serve as Special Government Employees who provide independent expert advice to the agency." 81 Fed. Reg. 19967.

SAB staff office should take into account when evaluating the nominees. While not providing an endorsement of any of the candidates, I note in this letter my concerns with two of the nominees under consideration for the chartered CASAC.

In the first instance, EPA's record for ensuring geographic diversity on its advisory panels has been lacking under the Obama Administration. As for the current seven-member chartered CASAC; there are no members from EPA Regions 2, 4, 6, 7, or 8. In fact, over the course of this Administration, EPA has not appointed a single person from EPA Regions 6, 7, or 8 to serve on the chartered CASAC. These regions include 15 states, which represent 30 percent of the country; yet represent zero percent of the chartered CASAC during the last six years. As I have stated before, these regions cover vast parts of the country that are among the most impacted by the NAAQS, so qualified experts from these areas would have particularly unique experience with air quality issues that CASAC has not benefited from in recent years. Meanwhile, the coastal EPA Regions 1 and 9 have been overrepresented on the panel. The following chart illustrates the geographic representation of the members appointed to the chartered CASAC by this Administration:



Source: FACA Database, Clean Air Scientific Advisory Committee: http://facadatabase.gov/rpt/_message.asp

This seeming geographic bias on the chartered CASAC cannot be ignored. It is also important to note that with respect to this specific state-based position on CASAC, there has been no meaningful geographic diversity at all. In last 20 years, there have been only four individuals filling this position on the chartered CASAC, two of which were from EPA Region 1 and the others were from Regions 2 and 5. Indeed, the last time this position was vacant there were six candidates nominated, with many from the west coast and northeast.⁵ This was disappointing in light of the overrepresentation of those areas on the panel. This time there is a more diverse group of nominees from EPA Regions 4, 5, 6, and 8. As such, there is no reason for EPA to overlook well-qualified candidates from these areas that would clearly balance the panel with respect to geographic diversity.

As you are aware, the chartered CASAC is a federal advisory committee (FAC), subject to the Federal Advisory Committee Act (FACA) of 1972, which provides uniform procedures for the establishment, operation, administration, and duration of FACs.⁶ FACA regulations require membership on FACs be balanced and provide several factors for agencies to consider in reaching balance, including the geographic impact of the FAC's recommendations.⁷ EPA's FAC Management Handbook also states that the Designated Federal Office (DFO), who is charged with ensuring compliance with FACA and its implementing regulations, should compose FACs with a balance of views, which includes geographic considerations.⁸ EPA's CASAC Membership Balance Plan, updated in April 2015, specifically added "geographic location may be considered" as the only other factor to consider the balance of the chartered CASAC.⁹

These requirements must be considered when evaluating the nomination of Bart Croes of the California Air Resources Board (CARB), who would not provide geographic diversity to the panel. In fact, there has been one member from California on the chartered CASAC since the beginning of the Administration. For one of 50 states to constantly have a member on a seven-member panel does not suggest EPA has meaningfully considered geographic representation on CASAC. Even more, the current chartered CASAC already includes a member from California, Ron Wyzga, who was just reappointed in October 2015 to serve a term ending in 2018. Therefore, if EPA appointed Mr. Croes to CASAC, for the next two years, 30 percent of the

⁵U.S. Env't. Prot. Agency, Invitation for Public Comment on the List of Candidates for the Environmental Protection Agency's Clean Air Scientific Advisory Committee, May 21, 2013, *available at* [https://yosemite.epa.gov/sab/sabproduct.nsf/WebAll/CASACFY13AMD/\\$File/CASAC_Nominee_Biosketches_05-22-13_corrected.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/WebAll/CASACFY13AMD/$File/CASAC_Nominee_Biosketches_05-22-13_corrected.pdf).

⁶ 5 U.S.C. App. 2 § 2.

⁷ GSA Final Rule on Federal Advisory Committee Management, 41 CFR Parts 101-6 and 102-3.

⁸ ENVTL. PROT. AGENCY, EPA'S NEW FEDERAL ADVISORY COMM. MGMT HANDBOOK, Oct. 9, 2013, *available at* <http://nepis.epa.gov/Exe/ZyNET.exe/901W0000.TXT?ZyActionD=ZyDocument&Client=EPA&Index=2000+Thru+2005&Docs=&Query=&Time=&EndTime=&SearchMethod=1&TocRestrict=n&Toc=&TocEntry=&QField=&QFieldYear=&QFieldMonth=&QFieldDay=&IntQFieldOp=0&ExtQFieldOp=0&XmlQuery=&File=D%3A%5Czyfiles%5CIndex%20Data%5C00thru05%5CTxt%5C00000012%5C901W0000.txt&User=ANONYMOUS&Password=anonymous&SortMethod=h%7C-&MaximumDocuments=1&FuzzyDegree=0&ImageQuality=r75g8/r75g8/x150v150g16/i425&Display=p%7Cf&DefSeekPage=x&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results%20page&MaximumPages=1&ZyEntry=1&SeekPage=x&ZyPURL#> (hereinafter EPA FAC Handbook).

⁹ CASAC Membership Balance Plan, April 15, 2015, *available at* <http://facadatabase.gov/committee/charters.aspx?cid=634&aid=51>.

panel would be from one state, which is wholly unacceptable. Such an appointment would be counter to EPA policy and would suggest the Agency does not take geographic diversity seriously given the high caliber of other candidates from regions not currently represented, as well as regions that have not been represented on the chartered CASAC for many years.

In addition, EPA must take into account concerns over the lack of fresh perspectives on the chartered CASAC when assessing the balance of the panel. For instance, the current chartered CASAC includes four of seven members that previously served on the chartered CASAC. As you are aware, EPA's Peer Review Handbook advises the Agency to select new members "to obtain fresh perspectives and reinforce the reality and perception of independence from the Agency."¹⁰ EPA's FAC Handbook dictates that members of the chartered CASAC can serve only six years "in order to provide fresh perspectives to the committee."¹¹

I applaud EPA's commitment to this term limit on the chartered CASAC since 2010.¹² However, as a practical matter, the six-year tenure policy does not necessarily ensure a balanced panel with respect to fresh perspectives per FACA. Indeed, since the Clean Air Act requires CASAC to review the NAAQS every five years, there could be instances where CASAC members review and vote on the standard for the same criteria pollutant that they had previously reviewed, especially when members do not serve in consecutive three-year terms. EPA now has an opportunity to fill this opening in a manner that addresses this past concern and is consistent with EPA's Peer Review and FAC Handbooks.

Specifically, EPA must consider these factors when evaluating Dr. Donna Kenski of the Lake Michigan Air Directors Consortium, who was nominated to serve on CASAC. Dr. Kenski has already served on the chartered CASAC for a three-year term from 2008 to 2010. During this time, Dr. Kenski reviewed and provided advice on each of the six criteria pollutants. Critically, as a member of the chartered CASAC, she was a voting member authorized to make recommendations to the Administrator on the NAAQS, which is distinct from members of CASAC subcommittees who do not directly advise the Administrator. Accordingly, if she were appointed again to serve another three-year term, she would review and make recommendations on a number of the same criteria pollutants. This scenario is exactly what I cautioned against in 2011, when I requested a review of CASAC membership by the EPA Office of Inspector General (OIG).¹³ In addition to not providing a fresh perspective, when an individual is tasked with reviewing the same standard, it also calls into question the impartiality of the member as they would essentially be reviewing their past work in advising on the last standard. In the interest of

¹⁰ ENVTL. PROT. AGENCY, SCIENCE & TECH. POLICY COUNCIL, PEER REVIEW HANDBOOK, 4th Ed. (Oct. 2015), http://www2.epa.gov/sites/production/files/2015-09/documents/final_epa_peer_review_handbook-4th_ed_091415_dummy_link.pdf.

¹¹ EPA FAC Handbook, *supra* note 8.

¹² OFFICE OF INSPECTOR GEN., U.S. ENVTL. PROT. AGENCY, REPORT NO. 13-P-0387 EPA CAN BETTER DOCUMENT RESOLUTION OF ETHICS AND PARTIALITY CONCERNS IN MANAGING CLEAN AIR FEDERAL ADVISORY COMMITTEES (Sept. 11, 2013), at 21-22, *available at* <http://www2.epa.gov/sites/production/files/2015-09/documents/20130911-13-p-0387.pdf>.

¹³ Letter from Hon. James M. Inhofe, Ranking Member, S. Comm. on Env't & Public Works, to Hon. Arthur A. Elkins, Jr., Inspector Gen., U.S. Env't. Prot. Agency (Aug. 4, 2011), *available at* http://www.epw.senate.gov/public/?_cache/files/d55fa42f-7c41-456e-893f-2963eb26e07e/lettertoelkins080411.pdf.

Administrator McCarthy

July 20, 2016

Page 5 of 5

showing a good faith effort to ensure fresh perspectives and balance on the panel, I urge you to choose among the other expert candidates whom have not served on the chartered CASAC.

Moreover, during Dr. Kenski's previous term on the chartered CASAC, there was significant controversy generated by members of the committee, who did not act impartially and overstepped the statutory authority delegated to CASAC. Specifically, Dr. Kenski joined members of the chartered CASAC in a letter to then-EPA Administrator Stephen Johnson that challenged the ozone NAAQS in 2008, which did not conform to the range advised by CASAC.¹⁴ In the correspondence Dr. Kenski signed, CASAC members ridiculed then-Administrator Johnson and muddled the lines of science and policy decision-making that were clearly outside the bounds of CASAC's statutory charge. As you are aware, the Clean Air Act does not require the EPA Administrator to follow CASAC's recommendation. This interaction between CASAC and EPA was then subject to numerous Congressional investigations and oversight, which casts a shadow over Dr. Kenski's previous experience on CASAC. Given that there are other highly qualified individuals nominated to serve on the chartered CASAC that have not previously served and have not been subject to such controversy, I see no reason to appoint someone who has raised this significant concern.

Thank you for your attention to this matter. If you have any questions with this request, please contact the Committee on Environment and Public Works at (202) 224-6176.

Sincerely,



James M. Inhofe

Chairman

Committee on Environment and Public Works

cc: Aaron Yeow, Designated Federal Officer, Clean Air Scientific Advisory Committee

¹⁴ Letter from Dr. Rogene Henderson, Chair, Clean Air Scientific Advisory Comm. et al., to Hon. Stephen Johnson, Adm'r, U.S. Env'tl. Prot. Agency, Apr. 7, 2008, *available at* [https://yosemite.epa.gov/sab/sabproduct.nsf/4AF8764324331288852574250069E494/\\$File/EPA-CASAC-08-009-unsigned.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/4AF8764324331288852574250069E494/$File/EPA-CASAC-08-009-unsigned.pdf).

DAVID VITTER, LOUISIANA
JOHN BARRASSO, WYOMING
SHELLEY MOORE CAPITO, WEST VIRGINIA
MIKE CRAPO, IDAHO
JOHN BOOZEMAN, ARKANSAS
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DAN SULLIVAN, ALASKA

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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

RYAN JACKSON, MAJORITY STAFF DIRECTOR
BETTINA FORRELL, DEMOCRATIC STAFF DIRECTOR

April 29, 2016

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Administrator McCarthy:

On April 6, 2016, a notice requesting nominations to seven U.S. Environmental Protection Agency (EPA) scientific advisory panels was published in the Federal Register, with nominations due by May 6, 2016.¹ As you are aware, the Senate Committee on Environment and Public Works (EPW) has long conducted oversight of EPA advisory panels. These panels, including the Clean Air Scientific Advisory Committee (CASAC) and the Science Advisory Board (SAB), play a critical role in influencing the Agency's regulatory actions and have significant implications for the next administration. However, circumstances surrounding the recent nomination request and correspondence between EPA and the EPW Committee raise new concerns the Agency is not committed to a transparent or meaningful public input process for selecting CASAC and SAB members.

At the outset, the current 30-day request for nominations is not an adequate period of time to ensure an eligible collection of candidates has an opportunity to consider nomination to these vacant positions. Indeed, the notice requested nominations to CASAC, the chartered SAB, and five SAB standing committees, all of which require differing expertise and perspectives, as well as a significant time commitment. As prescribed by the Clean Air Act Amendments of 1977, CASAC makes recommendations to the EPA Administrator related to the National Ambient Air Quality Standards (NAAQS).² The statute also specifies that CASAC be "composed of seven members including . . . one person representing state air pollution control agencies."³ The April 6, 2016, notice requests nominations to fill this specific state-based role on CASAC.⁴ The Environmental, Research, Development and Demonstration Authorization Act of 1978 established the SAB to provide independent advice and recommendations regarding the science underlying EPA actions.⁵ The April 6, 2016, notice requests nominations to fill several SAB

¹ U.S. Env'tl. Prot. Agency, Notice, Request for Nominations of Candidates to the EPA's Clean Air Scientific Advisory Committee (CASAC) and the EPA Science Advisory Board (SAB), 81 Fed. Reg. 19967, Apr. 6, 2016, available at <https://www.gpo.gov/fdsys/pkg/FR-2016-04-06/pdf/2016-07918.pdf>.

² 42 U.S.C. § 7409(d)(2).

³ *Id.*

⁴ 81 Fed. Reg. 19967.

⁵ 42 U.S.C. § 4363.

positions with experts ranging in disciplines such as chemistry, to climate change, to social, behavioral and decision sciences, to name a few.⁶ Importantly, candidates appointed to any of these panels will serve for a three-year term.⁷

Moreover, in a February 2, 2016, letter⁸ I requested information about the Agency's last round of CASAC nominations,⁹ and I was troubled to learn in EPA's February 25, 2016, response that each of the five members selected to serve on CASAC beginning in fiscal year 2016 were nominated by an EPA employee or a Designated Federal Officer (DFO).¹⁰ DFOs oversee and manage the operations of federal advisory committees such as CASAC and SAB.¹¹ In other words, none of the potential members who were nominated by an individual or organization outside the EPA or those who self-nominated were selected. Notably, EPA's response did not provide the names or titles of those EPA employees and DFOs nominating such candidates. These findings only lend further credence to my concerns that these panels may not be fully independent of the Agency.

I am equally concerned by EPA's lack of transparency throughout the selection process. Based on EPA's February 25, 2016, letter, the Agency appointed five candidates to CASAC on August 3, 2015, yet the names of those selected were not posted on EPA website until October 5, 2015, and the Agency did not contact candidates who were not selected until October 6, 2015.¹² It is wholly inappropriate that more than two months had passed from the time EPA appointed CASAC members, to the time the public and those who were not selected were notified of the Agency's decision. The fact that the Agency, for seemingly no reason, kept those nominated but not selected in the dark is deeply inconsiderate to those candidates who may have otherwise been making personal and career plans in the event they were appointed. I have said time and again, greater transparency within the selection process would benefit all.

⁶ 81 Fed. Reg. 19967.

⁷ "Appointments are anticipated to be filled by the start of Fiscal Year 2017 (October 2016). . . Members are appointed by the EPA Administrator for a three-year term and serve as Special Government Employees who provide independent expert advice to the agency." 81 Fed. Reg. 19967.

⁸ Letter from Hon. James M. Inhofe, Chairman, S. Comm. on Env't & Public Works, to Hon. Gina McCarthy, Adm'r, U.S. Env'tl. Prot. Agency (Feb. 2, 2016), *available at* <http://www.epw.senate.gov/public/index.cfm/2016/2/inhofe-questions-epa-process-for-selecting-air-advisors>.

⁹ See Env'tl. Prot. Agency, Notice, Request for Nominations of Candidates to the EPA's Clean Air Scientific Advisory Committee (CASAC), 80 Fed. Reg. 17743 (Apr. 2, 2015), <http://www.gpo.gov/fdsys/pkg/FR-2015-04-02/pdf/2015-07634.pdf>; see also Members of the Clean Air Scientific Advisory Committee, Env'tl. Prot. Agency, <http://yosemite.epa.gov/sab/sabpeople.nsf/WebExternalCommitteeRosters?OpenView&committee=CASAC&secondname=Clean%20Air%20Scientific%20Advisory%20Committee>.

¹⁰ Letter from Christopher S. Zarbar, Dir., EPA Science Advisory Board Staff Office, U.S. Env'tl. Prot. Agency, to Hon. James M. Inhofe, Chairman, S. Comm. on Env't & Public Works (Feb. 25, 2016) (on file with Committee).

¹¹ 5 U.S.C. §10 (e)-(f). "(e) There shall be designated an officer or employee of the Federal Government to chair or attend each meeting of each advisory committee. The officer or employee so designated is authorized, whenever he determines it to be in the public interest, to adjourn any such meeting. No advisory committee shall conduct any meeting in the absence of that officer or employee.

(f) Advisory committees shall not hold any meetings except at the call of, or with the advance approval of, a designated officer or employee of the Federal Government, and in the case of advisory committees (other than Presidential advisory committees), with an agenda approved by such officer or employee."

¹² Letter from Christopher S. Zarbar, Dir., EPA Science Advisory Board Staff Office, U.S. Env'tl. Prot. Agency, to Hon. James M. Inhofe, Chairman, S. Comm. on Env't & Public Works (Feb. 25, 2016) (on file with Committee).

As you are aware, I am not the only one to raise concerns over EPA's lack of meaningful public input and transparency in the process for selecting members of the Agency's independent advisory panels.¹³ Yet, it appears EPA has taken no serious actions to ameliorate these concerns. Accordingly, I respectfully request the Agency commit to the following steps towards improving the integrity and transparency of EPA's scientific advisory nomination and selection process:

1. Please extend the deadline for submitting nominations by thirty days.
2. When providing a List of Candidates on EPA's website, please list who referred that candidate, including relevant title and organization/agency affiliation.
3. When soliciting public comments on the List of Candidates, please make all comments publicly available on the EPA webpage that provides the List of Candidates.
4. When the appointments have been made, all candidates, including those who were not selected, must be notified on the same day.
5. Within seven business days of notifying candidates of appointments, EPA must make the list of newly appointed candidates available on its website, including the date on which appointments were made.

Thank you for your prompt attention to this matter. If you have any questions with this request, please contact the Committee on Environment and Public Works at (202) 224-6176.

Sincerely,



James M. Inhofe
Chairman
Committee on Environment and Public Works

¹³ See OFFICE OF INSPECTOR GEN., ENVTL. PROT. AGENCY, REPORT NO. 13-P-0387 *EPA CAN BETTER DOCUMENT RESOLUTION OF ETHICS AND PARTIALITY CONCERNS IN MANAGING CLEAN AIR FEDERAL ADVISORY COMMITTEES* (Sept. 11, 2013), <http://www2.epa.gov/sites/production/files/2015-09/documents/20130911-13-p-0387.pdf>; see also Letter from Hon. Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov't Reform & Hon. Cynthia M. Lummis, Chairman, Subcomm. on the Interior, H. Comm. on Oversight & Gov't Reform, to Hon. Gina McCarthy, Adm'r, U.S. Env'tl. Prot. Agency (Apr. 11, 2016), available at <https://oversight.house.gov/wp-content/uploads/2016/04/2016-04-11-JEC-Lummis-to-McCarthy-EPA-SAB-CASAC-due-4-25.pdf>; see also Letter from Hon. Lamar Smith, Chairman, H. Sci., Space & Tech. Comm. to Hon. Gina McCarthy, Adm'r, U.S. Env'tl. Prot. Agency (Mar. 19, 2014), available at <http://science.house.gov/sites/republicans.science.house.gov/files/documents/03-19-2014%20Smith%20to%20Administrator%20McCarthy.pdf>.

MAX BAUGLIS, MONTANA
THOMAS R. CARPER, DELAWARE
BENJAMIN L. CARDIN, MARYLAND
BERNARD SANDERS, VERMONT
DHELOON WHITEHOUSE, RHODE ISLAND
TOM UDALL, NEW MEXICO
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KRISTEN GILLIBRAND, NEW YORK
DORY A. BOKER, NEW JERSEY

DAVID VITTER, LOUISIANA
JAMES M. INHOFE, OKLAHOMA
JOHN BARRASSÉ, WYOMING
JEFF SESSIONS, ALABAMA
MIKE CRAPO, IDAHO
ROBERT ROCKEFELLER, MISSISSIPPI
JOHN BOGZEMAN, ARKANSAS
DEN FISCHE, NEBRASKA

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

BETINA PORRER, MAJORITY STAFF DIRECTOR
JAK BARR, REPUBLICAN STAFF DIRECTOR

February 19, 2014

The Honorable Arthur A. Elkins, Jr.
Inspector General
U.S. Environmental Protection Agency
Office of Inspector General
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Mr. Elkins:

We have serious concerns over the manner in which you have conducted investigations and disseminated information in recent Environmental Protection Agency (EPA) Office of Inspector General (OIG) reports. These issues should be familiar to the OIG, as they have been the subject of several conversations and briefings between OIG and Senate Committee on Environment and Public Works (EPW) staff, including a meeting that you attended.¹ Recent OIG audits and investigations have called into question your office's commitment to upholding the mission of the OIG to conduct independent investigations. Our offices are dedicated to exposing waste, fraud, and abuse within the Federal Government, and in that light we are sharing our concerns over the OIG's report, "EPA Can Better Document Resolution of Ethics and Partiality Concerns in Managing Clean Air Federal Advisory Committees."²

This report was issued in response to requests by Senator Inhofe in 2011, while he was EPW Ranking Member.³ He asked the OIG to evaluate EPA's management of the Clean Air Scientific Advisory Committee (CASAC), the Advisory Council on Clean Air Compliance Analysis (Council), and the Agency's peer review process.⁴ Despite the OIG's taking nearly two years to complete the report, a thorough review of the OIG's methodology, findings, and recommendations reveals a complacent OIG that ignored key sources of information and questions from Congress in an apparent attempt to validate the Agency's practices.

At the outset, the OIG's report methodology reveals weaknesses in the narrow sample of CASAC and Council members chosen for review. The OIG reviewed case files on 47 of 126 members appointed to CASAC and Council from 1998-2012, and conducted an "in depth" review of only 27 members. In addition, the OIG interviewed only six of the most recent

¹ Meeting between Office of Inspector Gen., Env'tl. Prot. Agency, & Republican Staff, S. Comm. on Env't. & Pub. Works (Oct. 24, 2013, 10:00 AM EST).

² OFFICE OF INSPECTOR GEN., ENVTL. PROT. AGENCY, REPORT NO. 13-P-0387 *EPA Can Better Document Resolution of Ethics and Partiality Concerns in Managing Clean Air Federal Advisory Committees* (Sept. 11, 2013).

³ Press Release, Minority Office, S. Comm. On Env't & Pub. Works, *Inhofe Welcomes EPA Inspector General's Office Investigation into EPA's Scientific Process* (Mar. 26, 2012), available at http://www.epw.senate.gov/public/index.cfm?FuseAction=Minority.PressReleases&ContentRecord_id=503cd8ab-802a-23ad-45e8-1d8528fa6847.

⁴ *Id.*

CASAC members. However, the OIG has refused to disclose who was reviewed, making it impossible to assess whether the sample was adequate. Moreover, the OIG simply relied on member's financial disclosure forms to perform its audit instead of collecting information on members. OIG staff did not even attempt to utilize any search engines (Lexis, Google, etc.) to research potential impartiality concerns and "did not conduct searches to independently verify the information reported on the financial disclosure forms."⁵

Separate from the limited scope of review, the OIG's slight treatment of certain information reveals potentially flawed findings. The original inquiry requested OIG review members' receipt of EPA research grants, yet the report summarily stated that research grants did not present a conflict of interest. Accordingly, the OIG did not conduct further inquiry into members' receipt of research grants and instead treated it as an inconsequential factor in assessing impartiality concerns with members. This omission is concerning because 75% of CASAC and Council members combined from 2006 to the present have received EPA and related multi-agency research grants.⁶

In addition, the OIG narrowly interpreted the requirement that CASAC and Council have balanced membership instead of the comprehensive review that was requested. Such review would have considered individual members' independence or impartiality concerns, viewpoints, receipt of research grants, or membership tenure, in assessing membership balance. However, the OIG only examined membership balance in the context of meeting the statutorily mandated requirements under the Clean Air Act.⁷ This narrow review risks that, while the panel may have the prescribed expertise, it may nonetheless be imbalanced.

We are equally concerned by the OIG's improper finding regarding the 2007 ozone reanalysis. While the report identified EPA's failure to subject its 2007 ozone reanalysis to required peer review prior to dissemination, the report improperly concluded that subsequent peer review of the reanalysis was adequate. In this case, the OIG drew a conclusion based on a narrow review of the subsequent peer reviewers and failed to consider the original author's comments which directly contradict the results of the 2007 ozone reanalysis.

Aside from the potentially flawed findings, we identified several instances where the OIG revealed flaws, but inexplicably declined to recommend reforms at EPA. For example, rather than recommending specific actions for EPA to mitigate independence and impartiality concerns, the OIG merely recommended that EPA better document membership decisions, indicating that EPA's current documentation is inadequate. As such, the OIG essentially opined that so long as there is documentation, it is acceptable to select members with potential impartiality and independence concerns. While the report identified nine out of 27 members where impartiality concerns were not well-documented and additional steps were needed, the OIG failed to address

⁵ OFFICE OF INSPECTOR GEN., ENVTL. PROT. AGENCY, *Response to Senate EPW Minority Staff Questions (01/23/14) EPA OIG Report: "EPA Can Better Document Resolution of Ethics and Partiality Concerns in Managing Clean Air Federal Advisory Committees"* (on file with Committee).

⁶ See ENVTL. PROT. AGENCY, *Research Project Search*,

http://efpub.epa.gov/ncer_abstracts/index.cfm/fuseaction/search.welcome (last accessed Feb. 7, 2014).

⁷ See 42 U.S.C. §§ 7409(d)(2), 7612.

The Honorable Arthur Elkins

February 19, 2014

Page 3 of 3

the fact these members represent 33% of members selected for “in depth” review. As such, a more thorough analysis, including more than just 27 anonymous members, as well as a review of the literature through available search engines, is likely to reveal that the rate of members with impartiality concerns is much higher than 33%. It appears EPA’s current process is neither fully transparent nor provides assurance of neutrality.

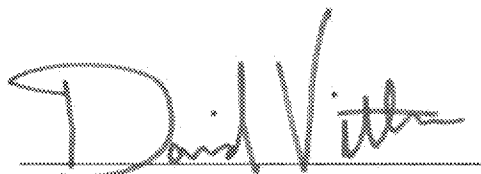
The OIG also missed an opportunity to make a recommendation on remedial action to ensure employees follow the procedures for financial disclosures and failed to recommend EPA alter the policy on updating financial disclosure forms. While the report identified an instance where procedures were blatantly violated, the OIG merely recommended EPA educate employees of the procedures – something employees should have already known – rather than provide specifics on the case from which further information could have been derived. The OIG did not conduct more than a cursory review of financial disclosures and there is no requirement or specific time frame members must update their forms, suggesting the accuracy of these forms is questionable.

The report indicated that EPA did not apply membership tenure policy to review panels and subcommittees, which led the OIG to conclude that “EPA may not be achieving the policy’s intent of providing fresh perspectives.” The lack of adherence to the membership tenure policy is significant: between 1998 and 2012, 36% of all CASAC members and consultants violated the six-year policy. Membership tenure has implications for membership balance; however, the OIG did not use tenure as a criterion for reviewing membership balance and failed to make any meaningful recommendation to ensure fresh perspectives.

Overall, the report buries a few significant findings that call into question the selection of CASAC and Council members. The report illustrates work product by the OIG that appears to be less than thorough, as evidenced by the limited number of members reviewed. The OIG refrained from making recommendations to address concerns found and instead took a narrow approach and permitted EPA policies to maintain the status quo.

These concerns require your immediate attention. It is our hope that this analysis will improve the OIG’s work moving forward, reinforce your responsibility as an “independent” watchdog of EPA, and ensure the Federal Government operates in the most effective and responsible manner in serving the American people.

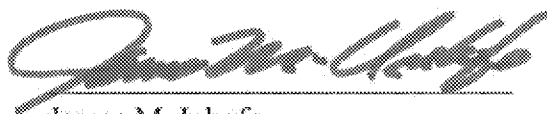
Sincerely,



David Vitter

Ranking Member

Committee on Environment and Public Works



James M. Inhofe

Ranking Member

Subcommittee on Oversight

Committee on Environment and

Public Works

DAVID VITTER, LOUISIANA
JOHN BARRASSO, WYOMING
SHELLEY MOORE CAPITO, WEST VIRGINIA
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THOMAS R. CARPER, DELAWARE
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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

RYAN JACKSON, MAJORITY STAFF DIRECTOR
BETTINA FORIER, DEMOCRATIC STAFF DIRECTOR

February 2, 2016

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Administrator McCarthy:

I write regarding the Environmental Protection Agency's (EPA) incessant lack of transparency and impartiality in its process for selecting members of the Clean Air Scientific Advisory Committee (CASAC). I have observed EPA, under the Obama Administration, cherry-picking the same allies to serve on this advisory committee and its subcommittees at the expense of having an open and robust process for selecting external advisors. In 2011, I requested the EPA's Office of Inspector General (OIG) review EPA's management of CASAC.¹ While the subsequent OIG report² affirmed concerns I had with respect to EPA's failure to recruit new members, address independence concerns, and comply with conflict of interest policies, the recommendations did not bring the much needed reforms to EPA's selection process.³ As evidenced by EPA's newly appointed CASAC members,⁴ this misguided and opaque process calls for renewed Congressional oversight.

As you are aware, the 1977 Clean Air Act Amendments established CASAC in order to provide independent expert advice to the EPA Administrator on the National Ambient Air Quality Standards (NAAQS).⁵ Section 109 of the Clean Air Act also delineates that CASAC shall be "composed of seven members including at least one member of the National Academy

¹ Letter from Hon. James Inhofe, Ranking Member, S. Comm. on Env't & Pub. Works, to Hon. Arthur Elkins, Inspector Gen., U.S. Env'tl. Prot. Agency (Aug. 4, 2011). *See also* <http://www.epw.senate.gov/public/index.cfm/press-releases-all?ID=503cd8ab-802a-23ad-45e8-1d8528fa6847>.

² OFFICE OF INSPECTOR GEN., ENVTL. PROT. AGENCY, REPORT NO. 13-P-0387 EPA CAN BETTER DOCUMENT RESOLUTION OF ETHICS AND PARTIALITY CONCERNS IN MANAGING CLEAN AIR FEDERAL ADVISORY COMMITTEES (Sept. 11, 2013), <http://www2.epa.gov/sites/production/files/2015-09/documents/20130911-13-p-0387.pdf>.

³ Letter from Hon. James Inhofe & Hon. David Vitter, S. Comm. on Env't & Pub. Works, to Hon. Arthur Elkins, Inspector Gen., U.S. Env'tl. Prot. Agency (Feb. 19, 2014), <http://www.epw.senate.gov/public/index.cfm/press-releases-republican?ID=F340F63C-9449-09CD-AB55-9DC53A56C689>.

⁴ *See* Members of the Clean Air Scientific Advisory Committee, Env'tl. Prot. Agency, <http://yosemite.epa.gov/sab/sabpeople.nsf/WebExternalCommitteeRosters?OpenView&committee=CASAC&secondname=Clean%20Air%20Scientific%20Advisory%20Committee> (last accessed Dec. 9, 2015). It is not clear when EPA made the appointments; however, the online list of members was updated in early October 2015.

⁵ 42 U.S.C. § 7409(d)(2).

of Sciences (NAS), one physician, and one person representing state air pollution control agencies.”⁶ CASAC’s composition is further governed by EPA policies on financial conflicts of interest and peer review as well as the Federal Advisory Committee Act of 1972⁷ and corresponding guidance.⁸ Aside from these mandates, given CASAC’s role in shaping the NAAQS, it is critical EPA use a clear and unbiased process for selecting CASAC members to keep the public fully informed and involved in the NAAQS program. Moreover, since members are appointed to serve a three-year term on CASAC, the new appointments are particularly important as they will be responsible for advising the next administration, including the highly anticipated review of NAAQS for fine particulate matter (PM 2.5) by 2017.

While EPA issued a public notice in the Federal Register on April 2, 2015, soliciting nominations of candidates to CASAC by May 4, 2015,⁹ the steps EPA has taken since then have essentially occurred in a black box. Instead of posting the list of nominees to the Federal Register and accepting public comments through the well-established form on regulations.gov, EPA buried the list of 27 nominees and biosketches on its website.¹⁰ On a document dated May 20, 2015, EPA invited public comments on the nominees by June 10, 2015, but that too was limited to a hidden post on its website and conducted via email rather than the open regulations.gov format.¹¹ EPA made no public announcement of its new CASAC member appointments. Indeed, there is no way for the public to know the extent to which EPA received comments on the nominees or how EPA fully reached its decision to select certain nominees over others.

In addition to EPA’s opaque process for making CASAC appointments, the composition of the panel outright violates the Clean Air Act requirements for CASAC. Per Section 109 of the Clean Air Act, the Administrator must select at least one member from the NAS.¹² However, for no apparent reason, the EPA has violated this very prescriptive requirement with the new panel—none of the seven members are listed in NAS’s online directory or mention the NAS in their biosketches. Alarming, there has not been a member of the NAS on CASAC since 2009.

The new CASAC panel further illustrates EPA’s disregard for policies requiring EPA shift membership on CASAC. Specifically, EPA’s Peer Review Handbook advises membership rotation on standing committees, such as CASAC, “to obtain fresh perspectives and reinforce the

⁶ Section 109(d)(2); 42 U.S.C. 7409(d)(2).

⁷ Pub. L. 92-463.

⁸ GSA Final Rule on Federal Advisory Committee Management, 41 CFR Parts 101-6 and 102-3; EPA Federal Advisory Committee Handbook, March 2012.

⁹ Env’tl. Prot. Agency, Notice, Request for Nominations of Candidates to the EPA’s Clean Air Scientific Advisory Committee (CASAC), 80 Fed. Reg. 17743 (Apr. 2, 2015), <http://www.epo.gov/fdsys/pkg/FR-2015-04-02/pdf/2015-07634.pdf>

¹⁰ Env’tl. Prot. Agency, Nominate Candidates for the CASAC, the Chartered SAB, and SAB Standing Committees, <http://yosemite.epa.gov/sab/sabproduct.nsf/WebAll/nominationcommittee?OpenDocument> (last accessed Dec. 9, 2015).

¹¹ Env’tl. Prot. Agency, Invitation for Public Comment on the List of Candidates For the Environmental Protection Agency’s Clean Air Scientific Advisory Committee (May 20, 2015), [http://yosemite.epa.gov/sab/sabproduct.nsf/WebProjectsRequestsforCommentsCASAC/7E3873008970553085257E1A004FE862/\\$File/List%20of%20Candidates-CASAC-052015.pdf](http://yosemite.epa.gov/sab/sabproduct.nsf/WebProjectsRequestsforCommentsCASAC/7E3873008970553085257E1A004FE862/$File/List%20of%20Candidates-CASAC-052015.pdf).

¹² Section 109(d)(2); 42 U.S.C. 7409(d)(2).

reality and perception of independence from the Agency.”¹³ However, the chartered CASAC includes four of seven members that have already served on CASAC.¹⁴ Among the three who have not served on the chartered CASAC, two have served on CASAC subcommittees¹⁵ while the other one has served on EPA’s Advisory Council on Clean Air Compliance Analysis (Council)¹⁶ which is also designed to advise the Administrator on the impacts of the Clean Air Act on the public health, economy, and environment of the U.S.¹⁷ Given the number of well-qualified nominees and thousands of scientific experts across the country, it is deeply concerning EPA continues to select the same people. This practice runs counter to EPA policy and unnecessarily blocks other experts from serving as advisors.

The majority of CASAC members have also received considerable financial support from EPA, which calls into question their independence and therefore the integrity of the overall panel. While EPA has taken the position that receipt of grants do not constitute a financial conflict of interest, the NAS and EPA’s own Peer-Review Handbook state that grants can constitute a conflict or lack of impartiality.¹⁸ For the newly appointed panel this conflict is on full display—six of the seven members have received a total of \$119,217,008 in EPA research grants.¹⁹ Much to my dismay, three of the seven members have received in excess of \$25 million each.²⁰ This is not limited to the chartered CASAC as 22 of the 26 newly appointed members to the CASAC subcommittee on particulate matter²¹ have received more than \$330 million in EPA grants.²² These vast sums of money certainly constitute a conflict of interest and at a minimum give the appearance of a lack of impartiality.

Moreover, the newly appointed CASAC does not conform to EPA’s commitment to select members with geographic diversity. In EPA’s Federal Register notice request for nominations of candidates to CASAC, the Agency specifically states one of the selection criteria for CASAC includes “background and experiences that would help members contribute to the

¹³ ENVTL. PROT. AGENCY, SCIENCE & TECH. POLICY COUNCIL, PEER REVIEW HANDBOOK, 4th Ed. (Oct. 2015), http://www2.epa.gov/sites/production/files/2015-09/documents/final_epa_peer_review_handbook-4th_ed_091415_dummy_link.pdf.

¹⁴ See Appendix I.

¹⁵ Judith Chow has served on the Air Monitoring and Methods Subcommittee (AMMS) of CASAC since 2004, *see* <http://yosemite.epa.gov/sab/sabpeople.nsf/WebPeople/ChowJudith?OpenDocument>. Elizabeth Sheppard has served on “several CASAC special panels,” *see*

[http://yosemite.epa.gov/sab/sabpeople.nsf/WebPeople/SheppardElizabeth%20A.%20\(Lianne\)?OpenDocument](http://yosemite.epa.gov/sab/sabpeople.nsf/WebPeople/SheppardElizabeth%20A.%20(Lianne)?OpenDocument).

¹⁶ Ivan Fernandez has served on the Council from 2010-2013, *see* <http://umaine.edu/pse/files/2010/08/Web-VitalJFAug2010.pdf>.

¹⁷ 42 U.S.C. §7612.

¹⁸ See National Academy of Sciences, “Policy and Procedures on Committee Composition and Balance and Conflicts of Interest for Committees Used in the Development of Reports” (May 2003), <http://www.nationalacademies.org/col/index.html>; *See also* http://www2.epa.gov/sites/production/files/2015-09/documents/peer_review_handbook_2006_3rd_edition.pdf.

¹⁹ See Appendix I.

²⁰ See Appendix I.

²¹ Env’tl. Prot. Agency, CASAC Particulate Matter Review Panel (2015-2018), [http://yosemite.epa.gov/sab/sabpeople.nsf/WebCommitteesSubcommittees/CASAC%20Particulate%20Matter%20Review%20Panel%20\(2015-2018\)](http://yosemite.epa.gov/sab/sabpeople.nsf/WebCommitteesSubcommittees/CASAC%20Particulate%20Matter%20Review%20Panel%20(2015-2018)). Note that member appointments were posted online on November 20, 2015.

²² See Appendix II.

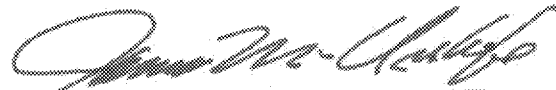
diversity of perspectives on the committee, e.g., geographic[.]”²³ Yet, among the seven members, three are from the northeast and two are from the west coast—not a single member is from a state within EPA’s region four, six, seven or eight, which represent vast parts of the country impacted by the NAAQS.²⁴

In light of these findings, Congressional oversight of EPA’s process for appointing members to CASAC is absolutely necessary. Accordingly, I request you thoroughly respond to the following requests by no later than February 23, 2016:

1. Please provide a copy of all public comments submitted in response to EPA’s Federal Register notice soliciting nominations for candidates to CASAC.
2. Please provide a copy of all public comments submitted to EPA in response to the Agency’s call for comments on the list of candidates nominated and biosketches.
3. Please explain EPA’s process for soliciting nominations and comments on candidates, including its decision to call for comments on candidates via website post and email rather than the Federal Register. Why did the Federal Register notice for solicitation of nominations fail to state the specific number of member appointments available?
4. Why has the Agency violated Section 109 of the Clean Air Act’s requirement to appoint at least one member of the NAS to CASAC? How does the Agency weigh the geographic diversity of candidates? What steps does the Agency take to ensure CASAC has fresh and diverse perspectives?
5. When did the Agency make its determination of which candidates to appoint? When did the Agency post the new panel on its website? Why didn’t the Agency make a formal announcement of the new panel via press release or Federal Register notice?
6. How and when did the Agency notify candidates that were not selected to serve on the panel? How and when did the Agency notify candidates that were selected?
7. Did the Agency conduct any additional external outreach or consultation (e.g. those submitting public comments or non-governmental organizations) on the candidates prior to making its decision? If so, please explain this process and who was consulted.

Thank you for your prompt attention to this matter. If you have any questions with this request, please contact the Committee on Environment and Public Works at (202) 224-6176.

Sincerely,



James M. Inhofe
Chairman
Committee on Environment and Public Works

²³Envtl. Prot. Agency, Notice, Request for Nominations of Candidates to the EPA’s Clean Air Scientific Advisory Committee (CASAC), 80 Fed. Reg. 17743 (Apr. 2, 2015), <http://www.gpo.gov/fdsys/pkg/FR-2015-04-02/pdf/2015-07634.pdf>.

²⁴ See Appendix L.

APPENDIX I.

Member	Section 109	Years on Chartered CASAC	Grant 1	Grant 2	Grant 3	Grant 4	Grant 5	Grant 6	Total	State	EPA Region
Ana V. Diez Roux	Physician	2011-Present	\$ 576,091.00	\$ 32,999,090.00	\$ 768,990.00	\$ 556,144.00			\$ 34,900,315.00	PA	3
George A. Allen	State Regulator	2011-Present	\$ 3,000,000.00	\$ 380,111.00	\$ 527,000.00				\$ 3,907,111.00	MA	1
Judith Chow		2015-Present	\$ 449,456.00						\$ 449,456.00	NV	9
Ivan J. Fernandez		2015-Present	\$ 894,361.00	\$ 623,395.00					\$ 1,517,756.00	ME	1
Jack Harkema		2013-Present	\$ 600,000.00	\$ 7,999,875.00	\$ 7,999,994.00	\$ 747,960.00	\$ 854,702.00	\$ 8,715,583.00	\$ 26,918,114.00	MI	5
Elizabeth A. Sheppard		2015-Present	\$ 8,000,000.00	\$ 1,199,217.00	\$ 32,999,090.00	\$ 1,036,972.00	\$ 8,288,977.00		\$ 51,524,256.00	WA	10
Ronald Wyzga		2013-Present							\$ -	CA	9
Casac Total									\$ 119,217,008.00		

Administrator McCarthy
February 2, 2016
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APPENDIX II.

Member	Grant 1	Grant 2	Grant 3	Grant 4	Grant 5	Grant 6	Grant 7	Grant 8	Grant 9	Grant 10	Grant 11	Grant 12	Grant 13	Total
Diez Roux, Ana V.	\$ 576,091.00	\$ 32,999,090.00	\$ 768,990.00	\$ 556,144.00										\$ 34,900,315.00
Adams, Peter	\$ 900,000.00	\$ 483,827.00	\$ 600,000.00	\$ 896,596.00	\$ 450,000.00	\$ 449,994.00	\$ 900,000.00							\$ 4,580,417.00
Adgate, John	\$ 999,899.00	\$ 510,012.00	\$ 633,044.00	\$ 899,264.00										\$ 3,042,219.00
Allen, George A.	\$ 3,000,000.00	\$ 380,111.00	\$ 527,000.00											\$ 3,907,111.00
Balmes, John R.	\$ 1,091,783.00	\$ 4,765,843.00												\$ 5,857,626.00
Boyle, Kevin	\$ 194,374.00	\$ 126,804.00												\$ 321,178.00
Chow, Judith	\$ 449,456.00													\$ 449,456.00
Dockery, Douglas	\$ 300,000.00	\$ 7,999,609.00	\$ 7,747,040.00											\$ 16,046,649.00
Felton, Henry (Dirk)	\$													\$
Frampton, Mark	\$ 8,000,000.00	\$ 408,859.00	\$ 8,302,447.00	\$ 736,260.00										\$ 17,447,566.00
Frey, H. Christopher	\$ 500,000.00	\$ 899,439.00	\$ 680,000.00	\$ 553,298.00	\$ 329,425.00	\$ 180,000.00								\$ 3,136,162.00
Gordon, Terry	\$ 1,199,927.00	\$ 399,827.00	\$ 375,000.00	\$ 749,175.00	\$ 8,076,438.00	\$ 600,799.00								\$ 11,401,366.00
Harkema, Jack	\$ 600,000.00	\$ 7,999,875.00	\$ 7,999,994.00	\$ 747,960.00	\$ 854,702.00	\$ 8,715,583.00								\$ 26,918,114.00
Kaufman, Joel	\$ 900,000.00	\$ 1,199,217.00	\$ 32,999,090.00	\$ 1,036,972.00	\$ 8,288,977.00									\$ 44,424,256.00
Kirney, Patrick	\$ 32,999,090.00	\$ 4,435,198.00	\$ 744,866.00	\$ 1,496,418.00	\$ 378,458.00									\$ 40,054,030.00
Kleinman, Michael T.	\$ 7,999,994.00													\$ 7,999,994.00
McConnell, Rob	\$ 3,802,622.00	\$ 8,715,583.00	\$ 4,146,875.00											\$ 16,665,080.00
Peden, David	\$													\$
Poirot, Richard L.	\$													\$
Polasky, Stephen	\$ 809,993.00	\$ 131,089.00	\$ 1,228,521.00	\$ 271,463.00										\$ 2,441,066.00
Samat, Jeremy	\$ 1,000,000.00	\$ 7,999,779.00	\$ 899,956.00	\$ 499,512.00	\$ 1,238,940.00	\$ 7,747,040.00	\$ 1,883,248.00							\$ 21,268,475.00
Schauer, James Jay	\$ 1,489,361.00	\$ 899,600.00	\$ 499,777.00	\$ 399,406.00	\$ 1,120,641.00	\$ 699,543.00	\$ 900,000.00	\$ 899,731.00	\$ 492,354.00	\$ 7,999,994.00	\$ 450,000.00	\$ 449,687.00	\$ 898,388.00	\$ 17,198,482.00
Sheppard, Elizabeth A. (Lianne)	\$ 8,000,000.00	\$ 1,199,217.00	\$ 32,999,090.00	\$ 1,036,972.00	\$ 8,288,977.00									\$ 51,524,256.00
Turpin, Barbara	\$ 399,928.00	\$ 598,544.00	\$ 446,061.00											\$ 1,444,533.00
Vedal, Sverre	\$ 800,000.00													\$ 800,000.00
Wyzga, Ronald	\$													\$
														\$ 331,928,151.00

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-8074
MINORITY (202) 225-3031

<http://oversight.house.gov>

April 11, 2016

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Dear Administrator McCarthy:

The Environmental Protection Agency's Science Advisory Board (SAB) is comprised of non-EPA experts who broadly advise the agency on scientific and technical matters and conduct peer review of EPA science and regulations.¹ The Clean Air Scientific Advisory Committee (CASAC) consists of non-EPA experts who provide technical advice and consultation regarding EPA's national ambient air quality standards program.² Under the law, all members who serve on the SAB and CASAC must be strictly and independently objective.³ For vetting purposes, all prospective members must disclose to EPA all activities that "would present a conflict of interest or might raise an appearance of a lack of impartiality."⁴

To help the Committee understand the reliability of EPA's conflicts assessment for SAB and CASAC appointees, please provide all forms entitled "Confidential Financial Disclosure Form for Environmental Protection Agency Special Government Employees (EPA Form 3110-48)" submitted to EPA from current SAB and CASAC members. EPA's "Confidential Financial Disclosure Form for Environmental Protection Agency Special Government Employees (EPA Form 3110-48)" expressly provides that this information may be provided to the Committee.⁵

Please provide this information as soon as possible, but no later than 5:00 p.m. on April 25, 2016. When producing documents to the Committee, please deliver production sets to the

¹ EPA website, "EPA Science Advisory Board Staff," *available at* <https://yosemite.epa.gov/sab/sabproduct.nsf/WebSABSO/index> (last visited Mar. 29, 2016).

² *Id.*

³ 18 U.S.C. §208.

⁴ EPA website, "Serving on the EPA Science Advisory Board," *available at* [https://yosemite.epa.gov/sab/sabproduct.nsf/Web/Serving%20on%20the%20EPA%20Science%20Advisory%20Board:%20A%20Handbook%20for%20Members%20and%20Consultants/\\$File/Serving%20on%20the%20EPA%20Science%20Advisory%20Board%20SABSO-12-001.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/Web/Serving%20on%20the%20EPA%20Science%20Advisory%20Board:%20A%20Handbook%20for%20Members%20and%20Consultants/$File/Serving%20on%20the%20EPA%20Science%20Advisory%20Board%20SABSO-12-001.pdf) (last visited Mar. 29, 2016).

⁵ EPA website, "Confidential Financial Disclosure form for Environmental Protection Agency Special Government Employees (EPA Form 3110-48)," *available at* [https://yosemite.epa.gov/sab/sabproduct.nsf/Web/Form3110-48exp2018/\\$File/EPA3110-48exp2018.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/Web/Form3110-48exp2018/$File/EPA3110-48exp2018.pdf) (last visited Mar. 29, 2016).

The Honorable Gina McCarthy

April 11, 2016

Page 2

Majority staff in Room 2157 of the Rayburn House Office Building. An attachment to this letter provides additional information about responding to the Committee's request.

The Committee on Oversight and Government Reform is the principal investigative committee in the U.S. House of Representatives. Pursuant to House Rule X, the Committee has authority to investigate "any matter" at "any time."

Thank you for your cooperation in this matter. If you have any questions regarding this request, please contact Bill McGrath of the Committee staff at (202) 225-5074.

Sincerely,



Jason Chaffetz
Chairman



Cynthia M. Lummis
Chairman
Subcommittee on the Interior

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Member

The Honorable Brenda L. Lawrence, Ranking Member
Subcommittee on the Interior

Responding to Committee Document Requests

1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - (d) All electronic documents produced to the Committee should include the following fields of metadata specific to each document:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH,
PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE,
SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM,
CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE,
DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,
INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,
BEGATTACH.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.

7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.
17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.

19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.

5. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term “employee” means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.

Congress of the United States
Washington, DC 20515

July 15, 2016

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Dear Administrator McCarthy:

On April 6, 2016, EPA published a notice in the Federal Register seeking nominations to fill an open seat on the seven-member Clean Air Scientific Advisory Committee (CASAC).¹ CASAC is a Federal Advisory Committee made up of non-EPA experts who advise the Administrator on various aspects regarding national ambient air quality standards (NAAQS).² EPA's notice specifically seeks a representative of a state air pollution control agency with knowledge of "air quality relating to criteria pollutants."³

On June 20, 2016, EPA announced the nominations of seven candidates to fill this key position.⁴ These experts come from multiple EPA Regions, including areas in the Southeast and Western United States that remain unrepresented on the Committee.⁵

When considering nominees, it is vitally important that different EPA Regions are represented to ensure a fair balance of experts and experience. EPA specifically acknowledges in the notice that geographic diversity is an important selection criteria.⁶ Currently, no CASAC members come from Region 8 (MT, WY, ND, SD, UT, CO), Region 6 (NM, TX, OK, AR, LA), Region 7 (NE, KS, IA, MO), or Region 4 (KY, TN, MS, AL, FL, GA, SC, NC).⁷ Additionally, not a single CASAC member has come from Regions 6, 7 or 8 since 2010.⁸ Accordingly, in order for balance, fairness and geographic diversity on CASAC, we request that EPA fill the open position with someone from an area not represented on the Committee.

Sincerely,



Bruce Westerman
Member of Congress



Jason Chaffetz
Member of Congress

¹ <https://www.gpo.gov/fdsys/pkg/FR-2016-04-06/pdf/2016-07918.pdf>

² Id.

³ Id.

⁴ [https://yosemite.epa.gov/sab/sabproduct.nsf/LookupWebProjectsCurrentCASAC/3CDA169D2187C6C885257F85006D3AF1/\\$File/List%20of%20Candidates-CASAC.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/LookupWebProjectsCurrentCASAC/3CDA169D2187C6C885257F85006D3AF1/$File/List%20of%20Candidates-CASAC.pdf)

⁵ Id.

⁶ <https://www.gpo.gov/fdsys/pkg/FR-2016-04-06/pdf/2016-07918.pdf>

⁷ <https://yosemite.epa.gov/sab/sabpeople.nsf/WebExternalCommitteeRosters?OpenView&committee=CASAC&secondname=Clean%20Air%20Scientific%20Advisory%20Committee%20>

⁸ CSG Letter to Rounds and Markey 5-19-2015



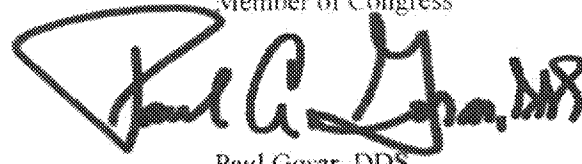
Steve Pearce
Member of Congress



Chris Stewart
Member of Congress



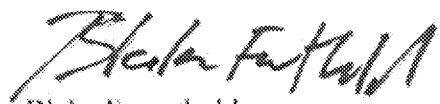
Kevin Cramer
Member of Congress



Paul Gosar, DDS
Member of Congress



Cynthia Lummis
Member of Congress

A handwritten signature in black ink, appearing to read "Blake Farenthold". The signature is stylized with a large, sweeping initial 'B' and a trailing flourish.

Blake Farenthold
Member of Congress

ANNE HARRIS, M.D.
FIRST DISTRICT, MARYLAND

COMMITTEE ON TRANSPORTATION AND
INFRASTRUCTURE

SUBCOMMITTEES

COAST GUARD AND
MARITIME TRANSPORTATION

HIGHWAYS AND TRANSIT

WATER RESOURCES AND ENVIRONMENT



Congress of the United States

House of Representatives

Washington, DC 20515

April 12, 2012

COMMITTEE ON SCIENCE, SPACE AND
TECHNOLOGY

SUBCOMMITTEES

ENERGY AND ENVIRONMENT, CHAIRMAN

RESEARCH AND SCIENCE EDUCATION

COMMITTEE ON NATURAL RESOURCES

SUBCOMMITTEE

FISHERIES, WILDLIFE, OCEANS
AND INSULAR AFFAIRS

The Honorable Lisa P. Jackson
Administrator, U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Jackson:

On March 16, 2012, Elizabeth Grossman, the Environmental Protection Agency's (EPA) Acting Assistant Inspector General for Program Evaluation, notified EPA staff that the Agency's Office of Inspector General (OIG) plans to begin an evaluation of EPA's management of the Clean Air Scientific Advisory Committee (CASAC) and the Advisory Council on Clean Air Compliance Analysis (ACCACA). The investigation will focus on whether EPA has managed these committees in accordance with applicable laws, regulations, and guidance pertaining to "appearances of impartiality, balance of committee viewpoints and perspectives, rotation of members, potential conflicts of interest, and peer review."

The OIG's announcement is a significant development. It reflects the gravity of the mounting evidence and the seriousness of the issues raised by Senator Inhofe and this Committee that suggest that EPA has not managed its scientific advisory committees in accordance with applicable laws, regulations and guidance to assure that they provide the necessary impartial critique of EPA science. These are grave concerns and we applaud the OIG's decision to undertake this warranted investigation.

The OIG's announcement also caps a growing list of concerns regarding EPA's general handling of scientific issues that were addressed most notably in the National Academy of Sciences' (NAS) recent report, *Review of the Environmental Protection Agency's Draft IRIS Assessment of Formaldehyde*. This report identified significant errors in EPA's review of the scientific evidence with regard to formaldehyde and proposed programmatic changes to the way EPA assesses risk from individual pollutants. Many of the concerns raised by the NAS have direct parallels with the way EPA conducts its scientific review of the National Ambient Air Quality Standards (NAAQS).

WASHINGTON, D.C.
506 CANNON HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515
PHONE 202.225.5311
FAX 202.225.0254

KENT ISLAND DISTRICT OFFICE
100 OLDE POINT VILLAGE, SUITE 101
CHESTER, MARYLAND 21619
PHONE 410.843.5425
FAX 410.843.5426

BEL AIR DISTRICT OFFICE
15 CHURCHVILLE ROAD, SUITE 102B
BEL AIR, MARYLAND 21014
PHONE 410.588.8670
FAX 410.588.5673

SALISBURY DISTRICT OFFICE
THE GALLERY BUILDING
212 WEST MAIN STREET, SUITE 204B
SALISBURY, MARYLAND 21801
PHONE 443.844.8824
FAX 443.844.8825

www.harris.house.gov

00051

ED_002389_00011925-00051

Given the OIG's announcement and the resulting cloud of controversy surrounding the CASAC review of the PM_{2.5} NAAQS and its ongoing review of the ozone NAAQS we request that EPA wait until the OIG has released its findings before proposing or promulgating revisions to the PM_{2.5} or ozone standard. Proceeding with either of these standards without waiting for the OIG to complete its investigation could invite unnecessary litigation, create regulatory uncertainty for states and industry, and undermine public support for this critically important program.

Thank you for your attention to this important issue. I look forward to your timely response.

Sincerely,

A handwritten signature in black ink, appearing to read "Andy Harris", written in a cursive style.

Andy Harris, M.D.
Member of Congress



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 20 2012

OFFICE OF
AIR AND RADIATION

The Honorable Andy Harris
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Harris:

Thank you for your letter of April 12, 2012, to U. S. Environmental Protection Agency (EPA) Administrator Lisa Jackson, regarding plans by the agency's Office of Inspector General (OIG) to begin an evaluation of the EPA's management of scientific advisory committees, specifically the Clean Air Scientific Advisory Committee (CASAC) and the Advisory Council on Clean Air Compliance Analysis (ACCACA). This review is in response to a request from Senator Inhofe on August 4, 2011. The Administrator asked me to respond to your letter on her behalf.

It is important to note that the OIG is an independent office within EPA. A decision by the OIG to conduct an investigation does not indicate in any way its view of the expected outcome of the investigation. The existence of an investigation should not be interpreted as making any statement regarding any problem with the EPA's scientific advisory committee process. Rather, the investigation will evaluate whether or not any problems exist.

We believe the agency has complied with all peer-review requirements in working with CASAC and ACCACA. Our meetings with these scientific advisory committees are always open to the public, providing transparency for the rigorous external review of the science and technical analyses that inform the agency's decisions.

Additionally, the IRIS process referenced in your letter and the NAAQS standard-setting process are quite different, but both are fundamentally sound and science-based. Moreover, the National Academy of Sciences' (NAS) formaldehyde review report praised the NAAQS review process as an example for a revised IRIS process.

Given these circumstances, the EPA believes it would be inappropriate to delay action on the health-based PM_{2.5} and ozone national ambient air quality standards (NAAQS) pending an OIG evaluation. Accordingly, the agency plans to move forward with its ongoing review of these standards.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Cheryl Mackay in the EPA's Office of Congressional and Intergovernmental Relations at (202) 564-2023.

Sincerely,

A handwritten signature in black ink, appearing to read "Gina McCarthy", with a large, sweeping flourish at the end.

Gina McCarthy
Assistant Administrator

JAMES M. INHOFE, OKLAHOMA
SHELLEY MOORE CAPITO, WEST VIRGINIA
JOHN BOOZMAN, ARKANSAS
ROGER WICKER, MISSISSIPPI
DEB FISCHER, NEBRASKA
JERRY MOHRAN, KANSAS
MIKE BOUNDS, SOUTH DAKOTA
JOHN EHRNST, KYIA
DAN SULLIVAN, ALASKA
RICHARD SHELLEY, ALABAMA

THOMAS R. CARPER, DELAWARE
BENJAMIN L. CARDIN, MARYLAND
BERNARD SANDERS, VERMONT
SHILDON WHITEHOUSE, RHODE ISLAND
JEFF MERLEY, OREGON
KRISTEN GALLIBRAND, NEW YORK
CORY A. BOOKER, NEW JERSEY
EDWARD J. MARKEY, MASSACHUSETTS
TAMMY DUCKWORTH, ILLINOIS
SAMMA HARRIS, CALIFORNIA

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510-8175

RICHARD M. RUSSELL, MAJORITY STAFF DIRECTOR
GABRIELLE BATUMI, MINORITY STAFF DIRECTOR

July 27, 2017

The Honorable Scott Pruitt
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington D.C. 20460

Dear Administrator Pruitt:

You have begun a proceeding to solicit nominations for the Clean Air Scientific Advisory Committee (CASAC).¹ As you review nominations, we request that you also revisit past CASAC practices to make them compliant with the statute.

Established by Section 109(d)(2) of the Clean Air Act, CASAC is to provide independent scientific advice to the Administrator regarding the development of National Ambient Air Quality Standards (NAAQS). The independent, seven-member body is to include diverse perspectives, notably one member of the National Academy of Sciences, one physician, and a representative of State air pollution control agencies. CASAC is statutorily required to provide information to the Administrator regarding:

- (i) Areas in which additional knowledge is required to appraise the adequacy and basis of existing, new, or revised NAAQS;
- (ii) Research efforts necessary to provide the required information;
- (iii) The relative contribution to air pollution concentrations of natural as well as anthropogenic activity; and
- (iv) Any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of NAAQS.

In the past, CASAC has failed to address these required statutory obligations. With regard to item (iv) above, a 2015 Government Accountability Office report² concluded that "CASAC has never provided advice on adverse social, economic, or energy effects related to NAAQS because EPA has never asked CASAC to do so." Additionally, in comments on the 2015 ozone NAAQS proposal,³ the States of Alabama, Indiana, Mississippi, North Dakota, West Virginia, and

¹ Environmental Protection Agency (EPA), Request for Nominations of Candidates to the EPA's Clean Air Scientific Advisory Committee (CASAC) and the EPA Science Advisory Board (SAB); 82 Fed. Reg. 29077 (June 27, 2017), available at: <https://www.gpo.gov/fdsys/pkg/FR-2017-06-27/pdf/2017-13332.pdf>.

² Government Accountability Office, "EPA's Science Advisory Board: Improved Procedures Needed to Process Congressional Requests for Scientific Advice" (June 2015), available at: <http://www.gao.gov/assets/680/670647.pdf>.

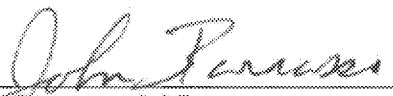
³ States of Alabama, Indiana, Mississippi, North Dakota, West Virginia and Wyoming on 79 Fed. Reg. 75234 (December 17, 2015), Docket ID No. EPA-HQ-OAR-2008-0699 (March 17, 2015), available at <https://www.regulations.gov/document?D=EPA-HQ-OAR-2008-0699-2570>.

Wyoming identified failures of CASAC to address both item (iv) and issues concerning background ozone, required by item (iii). The comments highlighted unique background ozone issues faced by Western states.


As you review 2017 nominations for CASAC members, we request that you put measures in place to ensure that moving forward, CASAC complies with these statutory obligations. CASAC must be constituted of experts who can provide independent counsel to you in all of the above areas.

Please direct further communication on these issues to Elizabeth Horner of the Committee's staff at 202-224-6176.


Sincerely,



John Barrasso, M.D.
Chairman



Shelley Moore Capito
Chairman
Subcommittee on Clean Air &
Nuclear Safety



M. Michael Rounds
Chairman
Subcommittee on Superfund, Waste
Management and Regulatory Oversight

114TH CONGRESS
1ST SESSION

S. 543

To amend the Environmental Research, Development, and Demonstration Authorization Act of 1978 to provide for Scientific Advisory Board member qualifications, public participation, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 24, 2015

Mr. BOOZMAN (for himself, Mr. MANCHIN, and Mr. INHOFE) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the Environmental Research, Development, and Demonstration Authorization Act of 1978 to provide for Scientific Advisory Board member qualifications, public participation, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “EPA Science Advisory
5 Board Reform Act of 2015”.

6 **SEC. 2. SCIENCE ADVISORY BOARD.**

7 (a) INDEPENDENT ADVICE.—Section 8(a) of the En-
8 vironmental Research, Development, and Demonstration

1 Authorization Act of 1978 (42 U.S.C. 4365(a)) is amend-
2 ed by inserting “independently” after “Advisory Board
3 which shall”.

4 (b) MEMBERSHIP.—Section 8(b) of the Environ-
5 mental Research, Development, and Demonstration Au-
6 thorization Act of 1978 (42 U.S.C. 4365(b)) is amended
7 to read as follows:

8 “(b)(1) The Board shall be composed of at least nine
9 members, one of whom shall be designated Chairman, and
10 shall meet at such times and places as may be designated
11 by the Chairman.

12 “(2) Each member of the Board shall be qualified by
13 education, training, and experience to evaluate scientific
14 and technical information on matters referred to the
15 Board under this section. The Administrator shall ensure
16 that—

17 “(A) the scientific and technical points of view
18 represented on and the functions to be performed by
19 the Board are fairly balanced among the members of
20 the Board;

21 “(B) at least ten percent of the membership of
22 the Board are from State, local, or tribal govern-
23 ments;

24 “(C) persons with substantial and relevant ex-
25 pertise are not excluded from the Board due to af-

1 filiation with or representation of entities that may
2 have a potential interest in the Board’s advisory ac-
3 tivities, so long as that interest is fully disclosed to
4 the Administrator and the public and appointment
5 to the Board complies with section 208 of title 18,
6 United States Code;

7 “(D) in the case of a Board advisory activity on
8 a particular matter involving a specific party, no
9 Board member having an interest in the specific
10 party shall participate in that activity;

11 “(E) Board members may not participate in ad-
12 visory activities that directly or indirectly involve re-
13 view or evaluation of their own work, unless fully
14 disclosed to the public and the work has been exter-
15 nally peer-reviewed;

16 “(F) Board members shall be designated as
17 special Government employees; and

18 “(G) no federally registered lobbyist is ap-
19 pointed to the Board.

20 “(3) The Administrator shall—

21 “(A) solicit public nominations for the Board by
22 publishing a notification in the Federal Register;

23 “(B) solicit nominations from relevant Federal
24 agencies, including the Departments of Agriculture,

1 Defense, Energy, the Interior, and Health and
2 Human Services;

3 “(C) make public the list of nominees, including
4 the identity of the entities that nominated each, and
5 shall accept public comment on the nominees;

6 “(D) require that, upon their provisional nomi-
7 nation, nominees shall file a written report disclosing
8 financial relationships and interests, including Envi-
9 ronmental Protection Agency grants, contracts, co-
10 operative agreements, or other financial assistance,
11 that are relevant to the Board’s advisory activities
12 for the three-year period prior to the date of their
13 nomination, and relevant professional activities and
14 public statements for the five-year period prior to
15 the date of their nomination; and

16 “(E) make such reports public, with the excep-
17 tion of specific dollar amounts, for each member of
18 the Board upon such member’s selection.

19 “(4) Disclosure of relevant professional activities
20 under paragraph (3)(D) shall include all representational
21 work, expert testimony, and contract work as well as iden-
22 tifying the party for which the work was done.

23 “(5) Except when specifically prohibited by law, the
24 Agency shall make all conflict of interest waivers granted

1 to members of the Board, member committees, or inves-
 2 tigative panels publicly available.

3 “(6) Any recusal agreement made by a member of
 4 the Board, a member committee, or an investigative panel,
 5 or any recusal known to the Agency that occurs during
 6 the course of a meeting or other work of the Board, mem-
 7 ber committee, or investigative panel shall promptly be
 8 made public by the Administrator.

9 “(7) The terms of the members of the Board shall
 10 be three years and shall be staggered so that the terms
 11 of no more than one-third of the total membership of the
 12 Board shall expire within a single fiscal year. No member
 13 shall serve more than two terms over a ten-year period.”.

14 (c) RECORD.—Section 8(c) of such Act (42 U.S.C.
 15 4365(c)) is amended—

16 (1) in paragraph (1)—

17 (A) by inserting “or draft risk or hazard
 18 assessment,” after “at the time any proposed”;

19 (B) by striking “formal”; and

20 (C) by inserting “or draft risk or hazard
 21 assessment,” after “to the Board such pro-
 22 posed”; and

23 (2) in paragraph (2)—

(A) by inserting “or draft risk or hazard assessment,” after “the scientific and technical basis of the proposed”; and

(B) by adding at the end the following:
 “The Board’s advice and comments, including dissenting views of Board members, and the response of the Administrator shall be included in the record with respect to any proposed risk or hazard assessment, criteria document, standard, limitation, or regulation and published in the Federal Register.”.

(d) MEMBER COMMITTEES AND INVESTIGATIVE PANELS.—Section 8(e)(1)(A) of such Act (42 U.S.C. 4365(e)(1)(A)) is amended by adding at the end the following: “These member committees and investigative panels—

“(i) shall be constituted and operate in accordance with the provisions set forth in paragraphs (2) and (3) of subsection (b), in subsection (h), and in subsection (i);

“(ii) do not have authority to make decisions on behalf of the Board; and

“(iii) may not report directly to the Environmental Protection Agency.”.

1 (e) PUBLIC PARTICIPATION.—Section 8 of such Act
2 (42 U.S.C. 4365) is amended by amending subsection (h)
3 to read as follows:

4 “(h)(1) To facilitate public participation in the advi-
5 sory activities of the Board, the Administrator and the
6 Board shall make public all reports and relevant scientific
7 information and shall provide materials to the public at
8 the same time as received by members of the Board.

9 “(2) Prior to conducting major advisory activities, the
10 Board shall hold a public information-gathering session to
11 discuss the state of the science related to the advisory ac-
12 tivity.

13 “(3) Prior to convening a member committee or in-
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18 and investigative panels shall accept, consider, and ad-
19 dress public comments on such questions and shall not ac-
20 cept a question that unduly narrows the scope of an advi-
21 sory activity.

22 “(4) The Administrator and the Board shall encour-
23 age public comments, including oral comments and discus-
24 sion during the proceedings, that shall not be limited by
25 an insufficient or arbitrary time restriction. Public com-

1 ments shall be provided to the Board when received. The
2 Board's reports shall include written responses to signifi-
3 cant comments offered by members of the public to the
4 Board.

5 “(5) Following Board meetings, the public shall be
6 given 15 calendar days to provide additional comments for
7 consideration by the Board.”.

8 (f) OPERATIONS.—Section 8 of such Act (42 U.S.C.
9 4365) is further amended by amending subsection (i) to
10 read as follows:

11 “(i)(1) In carrying out its advisory activities, the
12 Board shall strive to avoid making policy determinations
13 or recommendations, and, in the event the Board feels
14 compelled to offer policy advice, shall explicitly distinguish
15 between scientific determinations and policy advice.

16 “(2) The Board shall clearly communicate uncertain-
17 ties associated with the scientific advice provided to the
18 Administrator or Congress.

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20 ments reflect the views of the members and shall encour-
21 age dissenting members to make their views known to the
22 public, the Administrator, and Congress.

23 “(4) The Board shall conduct periodic reviews to en-
24 sure that its advisory activities are addressing the most

1 important scientific issues affecting the Environmental
2 Protection Agency.

3 “(5) The Board shall be fully and timely responsive
4 to Congress.”.

5 **SEC. 3. RELATION TO THE FEDERAL ADVISORY COM-**
6 **MITTEE ACT.**

7 Nothing in this Act or the amendments made by this
8 Act shall be construed as supplanting the requirements of
9 the Federal Advisory Committee Act (5 U.S.C. App.).

10 **SEC. 4. RELATION TO THE ETHICS IN GOVERNMENT ACT OF**
11 **1978.**

12 Nothing in this Act or the amendments made by this
13 Act shall be construed as supplanting the requirements of
14 the Ethics in Government Act of 1978 (5 U.S.C. App.).

○

114TH CONGRESS
1ST SESSION

H. R. 1029

IN THE SENATE OF THE UNITED STATES

MARCH 18, 2015

Received; read twice and referred to the Committee on Environment and
Public Works

AN ACT

To amend the Environmental Research, Development, and
Demonstration Authorization Act of 1978 to provide for
Scientific Advisory Board member qualifications, public
participation, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
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17 by the Chairman.

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19 education, training, and experience to evaluate scientific
20 and technical information on matters referred to the
21 Board under this section. The Administrator shall ensure
22 that—

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24 represented on and the functions to be performed by
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14 has evidence that it may involve, a specific party, no
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18 visory activities that directly or indirectly involve re-
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20 disclosed to the public and the work has been exter-
21 nally peer-reviewed;

22 “(F) Board members shall be designated as
23 special Government employees;

24 “(G) no registered lobbyist is appointed to the
25 Board; and

1 “(H) a Board member shall have no current
2 grants or contracts from the Environmental Protec-
3 tion Agency and shall not apply for a grant or con-
4 tract for 3 years following the end of that member’s
5 service on the Board.

6 “(3) The Administrator shall—

7 “(A) solicit public nominations for the Board by
8 publishing a notification in the Federal Register;

9 “(B) solicit nominations from relevant Federal
10 agencies, including the Departments of Agriculture,
11 Defense, Energy, the Interior, and Health and
12 Human Services;

13 “(C) solicit nominations from—

14 “(i) institutions of higher education (as de-
15 fined in section 101(a) of the Higher Education
16 Act of 1965 (20 U.S.C. 1001(a))); and

17 “(ii) scientific and research institutions
18 based in work relevant to that of the Board;

19 “(D) make public the list of nominees, includ-
20 ing the identity of the entities that nominated each,
21 and shall accept public comment on the nominees;

22 “(E) require that, upon their provisional nomi-
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24 financial relationships and interests, including Envi-
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3 Nothing in this Act or the amendments made by this
4 Act shall be construed as supplanting the requirements of
5 the Ethics in Government Act of 1978 (5 U.S.C. App.).

 Passed the House of Representatives March 17,
2015.

Attest:

KAREN L. HAAS,

Clerk.



United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 114th CONGRESS, FIRST SESSION

Vol. 161

WASHINGTON, THURSDAY, DECEMBER 17, 2015

No. 184—Book III

House of Representatives

EXPLANATORY STATEMENT SUBMITTED
BY MR. ROGERS OF KENTUCKY, CHAIRMAN
OF THE HOUSE COMMITTEE ON
APPROPRIATIONS REGARDING HOUSE
AMENDMENT NO. 1 TO THE SENATE
AMENDMENT ON H.R. 2029—Continued
CONSOLIDATED APPROPRIATIONS ACT,
2016

DIVISION F—DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2016

Funding provided in this Act not only sustains existing programs that protect the nation from all manner of threats, it ensures the ability of the Department of Homeland Security (DHS) to address evolving chal-

lenges like those witnessed in recent events around the world. To that end, additional resources have been identified to improve preparedness at the state and local levels, to prevent and respond to terrorist attacks, and to hire, train, and equip DHS frontline forces protecting the homeland.

The following is an explanation of the effects of Division F, which makes appropriations for DHS for fiscal year 2016. Unless otherwise noted, references to the House and Senate reports are to House Report 114-215 and Senate Report 114-68, respectively. The language and allocations contained in the House and Senate reports warrant full compliance and carry the same weight as language included in this explanatory statement, unless specifically addressed to the

contrary in the bill or this explanatory statement. While repeating some language from the House or Senate report for emphasis, this explanatory statement does not intend to negate the language referred to above unless expressly provided herein. When this explanatory statement refers to the Committees or the Committees on Appropriations, this reference is to the House Appropriations Subcommittee on Homeland Security and the Senate Appropriations Subcommittee on the Department of Homeland Security. It is assumed that any cost of living adjustment for federal employees directed by the President for fiscal year 2016 will be funded from within the amounts provided in this Act.

NOTICE

If the 114th Congress, 1st Session, adjourns sine die on or before December 24, 2015, a final issue of the *Congressional Record* for the 114th Congress, 1st Session, will be published on Thursday, December 31, 2015, to permit Members to insert statements.

All material for insertion must be signed by the Member and delivered to the respective offices of the Official Reporters of Debates (Room HT-59 or S-123 of the Capitol), Monday through Friday, between the hours of 10:00 a.m. and 3:00 p.m. through Wednesday, December 30. The final issue will be dated Thursday, December 31, 2015, and will be delivered on Monday, January 4, 2016.

None of the material printed in the final issue of the *Congressional Record* may contain subject matter, or relate to any event, that occurred after the sine die date.

Senators' statements should also be formatted according to the instructions at http://webster.senate.gov/secretary/Departments/Reporters_Debates/resources/cong_record.pdf, and submitted electronically, either on a disk to accompany the signed statement, or by e-mail to the Official Reporters of Debates at "Record@Sec.Senate.gov".

Members of the House of Representatives' statements may also be submitted electronically by e-mail, to accompany the signed statement, and formatted according to the instructions for the Extensions of Remarks template at <https://housenet.house.gov/legislative/research-and-reference/transcripts-and-records/electronic-congressional-record-inserts>. The Official Reporters will transmit to GPO the template formatted electronic file only after receipt of, and authentication with, the hard copy, and signed manuscript. Deliver statements to the Official Reporters in Room HT-59.

Members of Congress desiring to purchase reprints of material submitted for inclusion in the *Congressional Record* may do so by contacting the Office of Congressional Publishing Services, at the Government Publishing Office, on 512-0224, between the hours of 8:00 a.m. and 4:00 p.m. daily.

By order of the Joint Committee on Printing.

GREGG HARPER, *Chairman*.

☐ This symbol represents the time of day during the House proceedings, e.g., ☐ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.



Printed on recycled paper.

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DIVISION G—DEPARTMENT OF THE INTERIOR, ENVIRONMENT, AND RELATED AGENCIES APPROPRIATIONS ACT, 2016

The following statement is an explanation of the effects of Division G, which makes appropriations for the Department of the Interior, the Environmental Protection Agency (EPA), the Forest Service, the Indian Health Service, and related agencies for fiscal year 2016. Report language contained in House Report 114-170 and Senate Report 114-70 providing specific guidance to agencies regarding the administration of appropriated funds and any corresponding reporting requirements carries the same emphasis as the language included in this explanatory statement and should be complied with unless specifically addressed to the contrary herein. This explanatory statement, while repeating some language for emphasis, is not intended to negate the language referred to above unless expressly provided herein.

In cases where the House report, Senate report, or this explanatory statement directs the submission of a report, such report is to be submitted to both the House and Senate Committees on Appropriations. Where this explanatory statement refers to the Committees or the Committees on Appropriations, unless otherwise noted, this reference is to the House Subcommittee on Interior, Environment, and Related Agencies and the Senate Subcommittee on Interior, Environment, and Related Agencies.

The Committees direct each department and agency funded in this Act to follow the directions set forth in this Act and the accompanying statement, and not reallocate resources or reorganize activities except as provided herein or otherwise approved by the Committees through the reprogramming process as described in this explanatory statement. This explanatory statement addresses only those agencies and accounts for which there is a need for greater explanation than provided in the Act itself. Funding levels for appropriations by account, program, and activity, with comparisons to the fiscal year 2015 enacted level and the fiscal year 2016 budget request, can be found in the table at the end of this division.

Unless expressly stated otherwise, any reference to “this Act” or “at the end of this statement” shall be treated as referring only to the provisions of this division.

Drought, Forests and Wildfires.—Severe and prolonged drought can increase the rate at which trees die and devastating wildfires occur. In light of the number of dead and downed trees on public lands in the West, the Forest Service, National Park Service and Bureau of Land Management are directed to work with State and local governments in drought-stricken regions to facilitate the prompt removal of dead and downed trees on these lands and to prioritize funding to reduce the threat of devastating wildfire threats to communities, drinking water supplies, utilities, and groves of ancient trees.

Making Litigation Costs Transparent.—The Department of the Interior, EPA, and the Forest Service are directed to provide to the House and Senate Committees on Appropriations, and to make publicly available no later than 60 days after enactment of this Act, detailed Equal Access to Justice Act (EAJA) fee information as specified in the Consolidated and Further Continuing Appropriations Act, 2015.

State Wildlife Data.—The Department of the Interior and the Forest Service are expected to prioritize continued coordination with other Federal agencies and State fish and wildlife agencies to recognize and fully utilize State fish and wildlife data and analyses as a primary source to inform land use, planning, and related natural resource decisions. Federal agencies should not unnecessarily duplicate raw data, and when appropriate, should evaluate existing analysis of data prepared by the States, and reciprocally share data with State wildlife managers, to ensure that the most complete data set is available for decision support systems.

Land Grants, Acequias and Community Ditches.—The Secretaries of the Interior and Agriculture are urged to recognize the traditional use of State-recognized community land grants, acequias, and community ditches in the American Southwest during the land use planning process.

Multi-Agency Transparency.—In order to increase transparency, the Department of the Interior, Forest Service, and Environmental Protection Agency are encouraged to disclose costs associated with analyses required by the National Environmental Policy Act.

Greater Sage-Grouse.—The agreement provides a total of \$63,250,000 for sage-grouse conservation, including \$60,000,000 for the Bureau of Land Management and \$3,250,000 for the Fish and Wildlife Service. The agencies are directed to focus this funding toward on-the-ground conservation measures to improve and preserve sage-grouse habitat and the sagebrush ecosystem. The Bureau is reminded of the concerns outlined in the House and Senate reports as Congress continues to hear complaints about the effect of the sage-grouse land use plan amendments, which are not limited to activities within Bureau controlled sage-grouse habitat. In order for the sage-grouse, communities, and States to thrive, all partners must work in good faith. As such, the Bureau and the Forest Service are directed to closely work with each of the 11 States and the affected communities to address the issues unique to each State and seek to collaboratively resolve all issues. The Bureau is directed to provide guidance to its State offices and partners on how it will update sage-grouse habitat maps, adopt new scientific information, as appropriate, and engage State, local, nongovernmental, and private partners.

Land and Water Conservation Fund.—The agreement includes \$450,000,000 derived from the Land and Water Conservation Fund for programs consistent with chapter 2003 of title 54 of the United States Code, as identified in the table below. This one-time increase of \$143,859,000 above the fiscal year 2015 enacted level is intended for worthy projects at the local, State, and Federal levels. The Department of the Interior and the Forest Service are directed to include a table in future budget requests, separating State and local programs from Federal land acquisition, as displayed below.

	FY 2015 Enacted	Budget Request (Discretionary)	This Bill
Land and Water Conservation Fund	\$306,141,000	\$400,000,000	\$450,000,000
State and Local Programs	87,503,000	112,147,000	160,800,000
National Park Service State Assistance	48,117,000	53,161,000	110,000,000
Coop. Endangered Species Conservation Fund	27,400,000	50,000,000	30,200,000
American Battlefield Protection Act	8,986,000	8,986,000	10,000,000
Highlands Conservation Act	3,000,000	0	10,000,000
Forest Legacy Program	53,000,000	61,000,000	62,347,000
Federal Land Acquisition	165,638,000	226,853,000	226,853,000
Forest Service	47,500,000	63,000,000	63,435,000
Fish and Wildlife Service	44,535,000	58,500,000	58,500,000
National Park Service	41,857,000	55,353,000	53,670,000
Bureau of Land Management	19,746,000	38,000,000	38,630,000
Department of the Interior Valuation Services	12,000,000	12,000,000	12,618,000

Federal projects are funded in priority order by agency according to the budget request, with amounts adjusted downward as necessary due to updated project information and support. Many of the requested projects lacked sufficient information for the Committees to determine with a high degree of confidence that funds appropriated could be obligated in this fiscal year. Ideally, requested projects should have: identified properties, willing sellers, updated appraisals or market information, and the support of Federal, State, and local officials. Agencies should include the feasibility of phasing projects as well as a description of which parcels are being considered for conservation easements or fee simple acquisition in any supplemental information sent to the Committees. The agencies are also urged to increase the transparency of the project selection and prioritization processes in annual

budget requests, particularly in regard to collaborative landscape projects.

The Department of the Interior did not consult the Committees on a decision to reprogram \$995,000 from one project to acquire a property in another project identified in the fiscal year 2016 budget request. Therefore, the agreement includes a new reprogramming limitation of not to exceed \$1,000,000 or 10 percent from any project, whichever amount is less, as detailed under the Reprogramming Guidelines heading later in this statement.

The Committees believe increasing access to public lands for hunting, fishing, and other recreational activities is important. This agreement includes new funding for these activities for the National Park Service and Fish and Wildlife Service while increasing funds for the Bureau of Land Management and Forest Service. The Commit-

tees expect the agencies to report within 30 days of enactment of this Act on how this funding will be spent, and the agencies should include a description and explanation of the use of funds in future budget requests. The agencies are also directed to include in future budget requests a description and explanation on the use of funds within their inholdings line items.

Paper Reduction Efforts.—The Committees urge each agency funded by this Act to work with the Office of Management and Budget (OMB) to reduce printing and reproduction costs and direct each agency to report to the Committees within 60 days of enactment of this Act on what steps have been taken to achieve this goal. The report should specifically identify how much money each agency expects to save by implementing these measures.

OFFICE OF THE SOLICITOR
SALARIES AND EXPENSES

The agreement provides \$65,800,000 for the Office of the Solicitor. The detailed allocation of funding is included in the table at the end of this explanatory statement.

OFFICE OF INSPECTOR GENERAL
SALARIES AND EXPENSES

The agreement provides \$50,047,000 for the Office of Inspector General. The detailed allocation of funding is included in the table at the end of this explanatory statement.

OFFICE OF THE SPECIAL TRUSTEE FOR
AMERICAN INDIANS
FEDERAL TRUST PROGRAMS
(INCLUDING TRANSFER OF FUNDS)

The agreement provides \$139,029,000 for the Office of the Special Trustee for American Indians. The detailed allocation of funding by activity is included in the table at the end of this explanatory statement.

DEPARTMENT-WIDE PROGRAMS
WILDLAND FIRE MANAGEMENT
(INCLUDING TRANSFERS OF FUNDS)

The agreement provides \$816,745,000 for Department of the Interior Wildland Fire Management, which is \$11,966,000 above the fiscal year 2015 enacted level. Of the funds provided, \$291,673,000 is for suppression operations, which combined with \$177,000,000 in the FLAME Wildfire Suppression Reserve Fund, provides a total of \$468,673,000 for Department of the Interior fire suppression activities. This amount exceeds the ten-year average for suppression by \$85,000,000 to provide additional resources, as requested, based upon up-to-date forecasting models. The detailed allocation of funding for these accounts is included in the table at the end of this explanatory statement.

Hazardous Fuels Management.—The agreement provides \$170,000,000 for hazardous fuels management activities, which is \$6,000,000 above the fiscal year 2015 enacted level.

FLAME WILDFIRE SUPPRESSION RESERVE FUND
(INCLUDING TRANSFER OF FUNDS)

The agreement provides \$177,000,000 for the FLAME Wildfire Suppression Reserve Fund.

CENTRAL HAZARDOUS MATERIALS FUND

The agreement provides \$10,010,000 for the Central Hazardous Materials Fund.

NATURAL RESOURCE DAMAGE ASSESSMENT AND
RESTORATION

NATURAL RESOURCE DAMAGE ASSESSMENT FUND
The agreement provides \$7,767,000 for the Natural Resource Damage Assessment Fund. The detailed allocation of funding by activity is included in the table at the end of this explanatory statement.

WORKING CAPITAL FUND

The agreement provides \$67,100,000 for the Department of the Interior, Working Capital Fund. The increase above the fiscal year 2015 enacted level is to improve cybersecurity throughout the Department and its bureaus.

GENERAL PROVISIONS, DEPARTMENT OF THE
INTERIOR
(INCLUDING TRANSFERS OF FUNDS)

The agreement includes various legislative provisions affecting the Department in Title I of the bill, "General Provisions, Department of the Interior." The provisions are:

Section 101 provides Secretarial authority for the intra-bureau transfer of program funds for expenditures in cases of emergencies when all other emergency funds are exhausted.

Section 102 provides for the Department-wide expenditure or transfer of funds by the Secretary in the event of actual or potential emergencies including forest fires, range

fires, earthquakes, floods, volcanic eruptions, storms, oil spills, grasshopper and Mormon cricket outbreaks, and surface mine reclamation emergencies.

Section 103 provides for the use of appropriated funds by the Secretary for contracts, rental cars and aircraft, telephone expenses, and other certain services.

Section 104 provides for the transfer of funds from the Bureau of Indian Affairs and Bureau of Indian Education, and Office of the Special Trustee for American Indians.

Section 105 permits the redistribution of tribal priority allocation and tribal base funds to alleviate funding inequities.

Section 106 authorizes the acquisition of lands for the purpose of operating and maintaining facilities that support visitors to Ellis, Governors, and Liberty Islands.

Section 107 continues Outer Continental Shelf inspection fees to be collected by the Secretary of the Interior.

Section 108 authorizes the Secretary of the Interior to continue the reorganization of the Bureau of Ocean Energy Management, Regulation, and Enforcement in conformance with Committee reprogramming guidelines.

Section 109 provides the Secretary of the Interior with authority to enter into multi-year cooperative agreements with non-profit organizations for long-term care of wild horses and burros.

Section 110 addresses the U.S. Fish and Wildlife Service's responsibilities for mass marking of salmonid stocks.

Section 111 modifies a provision addressing Bureau of Land Management actions regarding grazing on public lands.

Section 112 continues a provision prohibiting funds to implement, administer, or enforce Secretarial Order 3310 issued by the Secretary of the Interior on December 22, 2010.

Section 113 extends a provision allowing the Bureau of Indian Education authority to rent or lease land and facilities and retain the receipts.

Section 114 addresses the National Park Service's ability to implement the Volunteers in Parks program in anticipation of increased volunteer activity related to the Service's Centennial in 2016.

Section 115 allows the Bureau of Indian Affairs and Bureau of Indian Education to more efficiently and effectively perform reimbursable work.

Section 116 addresses National Heritage Areas.

Section 117 addresses the issuance of rules for sage-grouse.

Section 118 continues a provision providing the Secretary of the Interior certain onshore pay authority.

Section 119 extends authorization for certain payments to the Republic of Palau for fiscal year 2016.

Section 120 allows certain funds to be used for waterfowl conservation.

Section 121 continues a provision which directs the Secretary of the Interior to make certain certifications with respect to existing rights of way. The section also retains a provision limiting funding for a proposal to approve specified rights-of-way on the Mojave National Preserve or lands managed by the Needles Field Office of the Bureau of Land Management.

TITLE II—ENVIRONMENTAL
PROTECTION AGENCY

The bill provides \$3,139,887,000 for the Environmental Protection Agency (EPA).

Congressional Budget Justification.—The Agency is directed to continue to include the information requested in House Report 112–331 and any proposals to change State allocation formulas that affect the distribution of

appropriated funds in future budget justifications.

Reprogramming.—The Agency is held to the reprogramming limitation of \$1,000,000 and should continue to follow the reprogramming directives as provided in the front of this explanatory statement. Further, the Agency may not use any amount of deobligated funds to initiate a new program, office, or initiative, without the prior approval of the Committees.

Within 30 days of enactment of this Act, the Agency is directed to submit to the House and Senate Committees on Appropriations its annual operating plan for fiscal year 2016, which shall detail how the Agency plans to allocate funds at the program project level.

SCIENCE AND TECHNOLOGY

The bill provides \$734,648,000 for Science and Technology programs and transfers \$18,850,000 from the Hazardous Substance Superfund account to this account. The bill provides the following specific funding levels and direction:

Homeland Security.—The agreement includes \$37,122,000 and the Agency shall allocate funds to programs under this heading consistent with fiscal year 2015 levels.

Indoor Air and Radiation.—The agreement includes \$5,997,000 and the proposed elimination of radon activities has been rejected.

Research: National Priorities.—The bill provides \$1,100,000 which shall be used for extramural research grants, independent of the Science to Achieve Results (STAR) grant program, to fund high-priority water quality and availability research by not-for-profit organizations who often partner with the Agency. Because these grants are independent of the STAR grant program, the Agency should strive to award grants in as large an amount as is possible to achieve the most scientifically significant research. Funds shall be awarded competitively with priority given to partners proposing research of national scope and who provide a 25 percent match. The Agency is directed to allocate funds to grantees within 180 days of enactment of this Act. Further, the bill provides \$3,000,000 as directed in House Report 114–170. In addition, the bill provides \$7,000,000 for certification and compliance activities related to vehicle and engine emissions, of which the Agency is directed to provide at least \$5,000,000 in extramural resources.

Research: Safe and Sustainable Water Resources.—The agreement includes \$107,434,000 and the Agency shall follow the direction under this heading in Senate Report 114–70.

Additional Guidance.—The agreement includes the following additional guidance:

Validation of Scientifically Significant Studies.—The Agency shall follow the direction under this heading in Senate Report 114–70.

ENVIRONMENTAL PROGRAMS AND MANAGEMENT

The bill provides \$2,613,679,000 for Environmental Programs and Management and includes the following specific funding levels and direction:

Clean Air and Climate.—The Agency shall allocate funds consistent with fiscal year 2015.

Environmental Protection: National Priorities.—The bill provides \$12,700,000 for a competitive grant program to provide technical assistance for improved water quality or safe drinking water to rural and urban communities or individual private well owners. The Agency is directed to provide \$11,000,000 for grants to qualified not-for-profit organizations, on a national or multi-State regional basis, for the sole purpose of providing on-site training and technical assistance for water systems in rural or urban communities. The Agency is also directed to provide

\$1,700,000 for grants to qualified not-for-profit organizations for technical assistance for individual private well owners, with priority given to organizations that currently provide technical and educational assistance to individual private well owners. The Agency shall require each grantee to provide a minimum 10 percent match, including in-kind contributions. The Agency is directed to allocate funds to grantees within 180 days of enactment of this Act.

Geographic Programs.—The bill provides \$427,737,000, as distributed in the table at the end of this division, and includes the following direction:

Great Lakes Restoration Initiative (GLRI).—The bill provides \$300,000,000 and the Agency shall continue to follow the direction as provided in House Report 112-589.

Chesapeake Bay.—The bill provides \$73,000,000 and the Agency shall allocate funds consistent with the direction under this heading in Senate Report 114-70.

Indoor Air and Radiation.—The agreement includes \$27,637,000. The Agency shall follow the rulemaking direction under this heading in Senate Report 114-70. The proposed elimination of the radon program has been rejected and the Agency shall allocate funds consistent with fiscal year 2015.

Toxics Risk Review and Prevention.—The agreement includes \$92,521,000 and the Agency shall maintain funding for the Office of Pollution Prevention and Toxics and for the endocrine disruptor program at not less than the fiscal year 2015 level.

Water: Ecosystems.—The agreement includes \$47,788,000 and the Agency shall allocate funds consistent with fiscal year 2015. In addition, the Committees direct EPA to use the funds provided to accelerate the processing of mining permits with the Corps of Engineers. Further, the Committees direct EPA, in consultation with the Corps of Engineers, to continue to report monthly on the number of Section 404 permits under EPA's review, consistent with the direction under this heading in House Report 114-170. Additionally, the Agency is directed to provide \$600,000 to each National Estuary Program (NEP) funded under Section 320 of the Clean Water Act.

Water: Human Health Protection.—The agreement includes \$98,507,000. The proposed elimination of the beach program has been rejected and funding is maintained at the fiscal year 2015 level.

Water Quality Protection.—The agreement includes \$210,417,000 and the Agency shall allocate funds consistent with fiscal year 2015.

Additional Guidance.—The agreement includes the following additional guidance:

Combined Sewer Overflows.—The agreement includes bill language related to sewage discharges into the Great Lakes and no further directives. The Committees urge the Agency to expeditiously complete the study required by P.L. 113-235.

Conflicts of Interest.—The Agency has not yet resolved long-standing questions regarding conflicts of interest that have spanned multiple Administrations. For fiscal year 2016, the Administrator shall develop a policy statement on science quality and integrity that shall be adhered to by the Science Advisory Board (SAB) and all Board members. Such policy statement shall be consistent with the Federal Advisory Committee Act, the Ethics in Government Act, and all other applicable Federal laws and regulations. EPA's policy statement should include goals on increasing membership from States and tribes who are often underrepresented, as noted in the May 2014 National Academy of Sciences review of EPA's IRIS program. Should the Administrator decide that financial-related metrics are appropriate to identify conflicts-of-interest or

bias, then EPA's policy shall also include an evaluation of potential bias based on a variety of factors including receipt of former and current Federal grants or public statements or positions as well as other appropriate safeguards to ensure balance amongst SAB and other advisory board experts. In addition, the policy statement shall include direction on the treatment of public comments and responses to such comments.

When complete, the Committees direct EPA to submit the draft policy statement to the U.S. Government Accountability Office (GAO) for review of the updated conflict of interest policy, policy for committee composition and balance, and eligibility requirements for service on the SAB that will ensure fairness and objectivity. GAO shall determine if the updated policies meet the intent of the directives above and, if so, shall certify to the Committees on Appropriations that EPA's conflict of interest policies offer a balanced framework. The Agency is directed to submit these required documents to GAO for review no later than 90 days from the date of enactment of this Act.

Gold King Mine.—The Committees are concerned about the impacts following the Gold King Mine Spill on August 5, 2015 and believe long-term monitoring efforts are an important need following this event. Further, the Committees are concerned that EPA's monitoring plan does not have the full support from impacted States and tribes. Therefore, EPA is directed to coordinate with impacted States and tribes on development of a robust, long-term plan for independent monitoring. With existing funds, the Agency is directed to continue to seek ways to provide States and tribes with support for their contribution to monitoring efforts.

HAZARDOUS WASTE ELECTRONIC MANIFEST SYSTEM FUND

The bill provides \$3,674,000 for the Hazardous Waste Electronic Manifest System Fund. The Committees continue to support the expeditious development of a system that would allow for the electronic tracking of hazardous waste shipments pursuant to P.L. 112-195. As anticipated costs continue to exceed authorized levels, the Committees direct EPA to work with appropriate Committees to extend the authorization for appropriations beyond fiscal year 2015 and provide estimates of costs to operate the system once built.

OFFICE OF INSPECTOR GENERAL

The bill provides \$41,489,000 for the Office of Inspector General.

BUILDINGS AND FACILITIES

The bill provides \$42,317,000 for Buildings and Facilities.

HAZARDOUS SUBSTANCE SUPERFUND (INCLUDING TRANSFERS OF FUNDS)

The bill provides \$1,088,769,000 for the Hazardous Substance Superfund account and includes bill language to transfer \$9,939,000 to the Office of Inspector General account and \$18,850,000 to the Science and Technology account. The bill provides the following additional direction:

Superfund Cleanup.—The Committees understand the funding is insufficient to eliminate the backlog of unfunded new starts but the Committees expect the Agency will use funds provided to initiate remediation at highly contaminated, orphan sites and support remedial pipeline activities that are critical prior to construction.

Financial Assurance.—Prior to proposing any rule pursuant to section 108(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9608(b)), the Administrator is directed to collect and analyze information from the

commercial insurance and financial industries regarding the use and availability of necessary instruments (including surety bonds, letters of credit and insurance) for meeting any new financial responsibility requirements and to make that analysis available to the House and Senate Committees on Appropriations and to the general public on the Agency website 90 days prior to a proposed rulemaking. In addition, the analysis shall include the Agency's plan to avoid requiring financial assurances that are duplicative of those already required by other Federal agencies.

Lead at Superfund Sites.—The agreement includes the directive in the House and Senate Reports that the Agency contract with the National Academy of Sciences to conduct a study of lead at Superfund sites. The agreement narrows the scope of the study to Superfund sites within, adjacent or proximal to the nation's largest lead mining districts. The Agency's authority shall not be impacted during the pendency of the study.

LEAKING UNDERGROUND STORAGE TANK TRUST FUND PROGRAM

The bill provides \$91,941,000 for the Leaking Underground Storage Tank Trust Fund Program.

INLAND OIL SPILL PROGRAMS

The bill provides \$18,209,000 for Inland Oil Spill Programs.

STATE AND TRIBAL ASSISTANCE GRANTS

The bill provides \$3,518,161,000 for the State and Tribal Assistance Grants (STAG) program and includes the following specific funding levels and direction:

Diesel Emissions Reductions Grants (DERA).—The bill provides \$50,000,000 for DERA grants. The Agency shall continue to make at least 70 percent of DERA grants available to improve air quality in non-attainment areas. The Committees encourage EPA to provide a third report to Congress prior to January 1, 2016, that includes the analysis requested in Public Law 111-364.

Targeted Airshed Grants.—The bill provides \$20,000,000 for targeted airshed grants to reduce air pollution in non-attainment areas. These grants shall be distributed on a competitive basis to non-attainment areas that EPA determines are ranked as the top five most polluted areas relative to annual ozone or particulate matter 2.5 standards as well as the top five areas based on the 24-hour particulate matter 2.5 standard where the design values exceed the 35 µg/m³ standard. To determine these areas, the Agency shall use the most recent design values calculated from validated air quality data. The Committees note that these funds are available for emission reduction activities deemed necessary for compliance with national ambient air quality standards and included in a State Implementation Plan submitted to EPA. Not later than the end of fiscal year 2016, EPA should provide a report to the Committees on Appropriations that includes a table showing how fiscal year 2015 and 2016 funds were allocated. The table should also include grant recipients and metrics for anticipated or actual results.

Categorical Grants.—The bill provides \$1,081,041,000 for Categorical Grants and funding levels are specified in the table at the end of this division. The Agency shall allocate radon grants in fiscal year 2016 following the direction in House Report 114-170. The amount also includes \$228,219,000 for the State and Local Air Quality Management grant program, and the Agency is directed to allocate funds following the direction for this program in Senate Report 114-70.

Multipurpose Grants to States and Tribes.—The bill provides \$21,000,000 for grants to States and tribes to assist with the implementation of environmental programs.



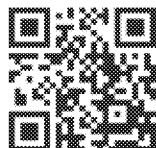
U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

EPA Can Better Document Resolution of Ethics and Partiality Concerns in Managing Clean Air Federal Advisory Committees

Report No. 13-P-0387

September 11, 2013



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Abbreviations

CAA	Clean Air Act
CASAC	Clean Air Scientific Advisory Committee
CFR	Code of Federal Regulations
Council	Advisory Council on Clean Air Compliance Analysis
DAEO	Designated Agency Ethics Official
DEO	Deputy Ethics Official
DFO	Designated Federal Officer
EPA	U.S. Environmental Protection Agency
FAC	Federal Advisory Committee
FACA	Federal Advisory Committee Act
FY	Fiscal Year
GAO	U.S. Government Accountability Office
GSA	U.S. General Services Administration
ISA	Integrated Science Assessment
ISI	Influential Scientific Information
NAAQS	National Ambient Air Quality Standards
NCEA	National Center for Environmental Assessment
NO ₂	Nitrogen Dioxide
OAQPS	Office of Air Quality Planning and Standards
OFACMO	Office of Federal Advisory Committee Management and Outreach
OIG	Office of Inspector General
OMB	Office of Management and Budget
ORD	Office of Research and Development
PM	Particulate Matter
PPM	Parts Per Million
SAB	Science Advisory Board
SGE	Special Government Employee
SO ₂	Sulfur Dioxide

Hotline

To report fraud, waste, or abuse, contact us through one of the following methods:

email: OIG_Hotline@epa.gov
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fax: 202-566-2599
online: <http://www.epa.gov/oig/hotline.htm>

write: EPA Inspector General Hotline
1200 Pennsylvania Avenue, NW
Mailcode 2431T
Washington, DC 20460



At a Glance

Why We Did This Review

The U.S. Environmental Protection Agency Office of Inspector General conducted this review in response to a congressional request about the EPA's management of the Clean Air Scientific Advisory Committee and the Advisory Council on Clean Air Compliance Analysis. We sought to determine whether the EPA has managed the CASAC and Council in accordance with applicable laws, regulations and guidance pertaining to (1) potential conflicts of interest, (2) appearances of a lack of impartiality, (3) rotation of members (i.e., term limits), (4) balance of committee viewpoints and perspectives and (5) peer review. The EPA's Science Advisory Board Staff Office manages the CASAC and Council, which provide advice to the EPA on setting air quality standards and in developing cost-benefit analyses of the Clean Air Act.

This report addresses the following EPA Goals or Cross-Cutting Strategies:

- *Taking action on climate and improving air quality.*
- *Advancing science, research, and technological innovation.*

For further information, contact our Office of Congressional and Public Affairs at (202) 566-2391.

The full report is at:
www.epa.gov/oig/reports/2013/20130911-13-P-0387.pdf

EPA Can Better Document Resolution of Ethics and Partiality Concerns in Managing Clean Air Federal Advisory Committees

What We Found

In general, the EPA managed the CASAC and Council in accordance with applicable statutes and regulations. These regulations allow agencies discretion in choosing federal advisory committee members and achieving balance.

We reviewed 47 CASAC and Council member appointments, including all ozone panel appointments for the last two ozone standard reviews. We found that the EPA has adequate procedures for identifying potential ethics concerns, including financial conflicts of interest, independence issues and appearances of a lack of impartiality. However, the EPA can better document its decisions on selecting members with independence and partiality concerns. This would allow for better transparency, thus giving assurance that CASAC and the Council provide independent and objective advice to the Administrator on such important decisions as setting ambient air standards. We also identified one instance where agency procedures involving a potential conflict of interest were not followed.

We also reviewed the peer review process for three EPA-developed analyses included in scientific assessments peer reviewed by the CASAC. Peer review is one method for enhancing the quality and credibility of the government's scientific information. One of these analyses was not peer reviewed in accordance with Office of Management and Budget and agency guidance. The EPA's National Center for Environmental Assessment did not have a formal process for determining whether such analyses were subject to OMB requirements and the EPA's peer review guidance before public dissemination.

Recommendations and Planned Corrective Actions

We recommend that the EPA instruct staff on the proper process for addressing potential conflicts of interest, develop procedures to document decisions and mitigating actions regarding independence and partiality concerns, and implement a process to determine whether its scientific work products are influential scientific information that require peer review in accordance with OMB and the EPA's guidance. The agency completed corrective action for one recommendation and that recommendation is closed. The agency agreed with three other recommendations and provided corrective action plans that we accepted. The agency disagreed with one recommendation but proposed an alternative action that we accepted. Thus, four recommendations are resolved but open pending completion of the corrective actions.

Noteworthy Achievements

Although not required, the EPA applies many Federal Advisory Committee Act guidelines and procedures to managing subcommittees and panels.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE INSPECTOR GENERAL

September 11, 2013

MEMORANDUM

SUBJECT: EPA Can Better Document Resolution of Ethics and Partiality Concerns in
Managing Clean Air Federal Advisory Committees
Report No. 13-P-0387

FROM: Arthur A. Elkins Jr.

A handwritten signature in dark ink, appearing to read "Arthur A. Elkins Jr.", is placed next to the name in the "FROM:" field.

TO: Lek Kadeli, Principal Deputy Assistant Administrator
Office of Research and Development

Avi Garbow, General Counsel
Office of General Counsel

Christopher Zarba, Director
Science Advisory Board Staff Office

This is our final report on the management of Clean Air Act federal advisory committees conducted by the Office of Inspector General of the U.S. Environmental Protection Agency. This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. This report presents the opinion of the OIG and does not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

Action Required

The agency agreed with recommendation 1 and provided evidence of corrective action taken. This recommendation is closed and no further action is required. The agency agreed with recommendations 2, 3 and 5 and provided planned corrective actions and completion dates that meet the intent of these recommendations. The agency disagreed with recommendation 4 but provided an alternative action that we accepted. Therefore, the agency is not required to provide a written response for these four recommendations, which remain open with corrective actions ongoing. For these recommendations, please update the EPA's Management Audit Tracking System as you complete the planned corrective actions. Please notify my staff if there is a significant change in the agreed-to corrective actions. We will post this report to our website at <http://www.epa.gov/oig>.

If you or your staff have any questions regarding this report, please contact Assistant Inspector General for Program Evaluation Carolyn Copper at (202) 566-0829 or copper.carolyn@epa.gov, or Director for Air Evaluations Rick Beusse at (919) 541-5747 or beusse.rick@epa.gov.

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Chapter 1

Introduction

Purpose

In response to a congressional request, our objective was to determine whether the U.S. Environmental Protection Agency has managed the Clean Air Scientific Advisory Committee and the Advisory Council on Clean Air Compliance Analysis in accordance with applicable laws, regulations and guidance pertaining to:

- Potential conflicts of interest.
- The appearances of a lack of impartiality.
- The rotation (i.e., term limits) of members.
- A balance of committee viewpoints and perspectives.
- Peer review.

Background

Advisory committees have provided advice to the federal government since its inception. Congress enacted the Federal Advisory Committee Act in 1972 to address the use of federal advisory committees that had developed over the years. Congress had two major concerns with FACs before 1972. First was a public perception that many commissions were duplicative, inefficient, and lacked adequate controls or oversight. Second was a widespread belief that FACs did not adequately represent the public interest and that meetings were often closed to the public.

FACA addressed these concerns by creating a process for establishing, operating, overseeing and terminating FACs. FACA requires that no FAC can meet or take any action until a charter has been filed with the head of the agency to whom the FAC reports and with the appropriate standing committees of the Senate and House of Representatives. FAC members appointed as Special Government Employees are subject to federal financial conflict of interest laws with some exceptions. FACA requires each agency sponsoring a FAC to appoint a committee management officer to oversee the administration of FACA's requirements. Further, a designated federal officer must be assigned to each FAC to ensure compliance with FACA.

FACA also required the administrator of the U.S. General Services Administration to prescribe administrative guidelines and management controls for FACs. Each federal agency head must establish administrative guidelines and management controls for FACs formed by its agency, consistent with the directives issued by GSA.

Federal Advisory Committee Rule

GSA's rule¹ on FAC management provides administrative and interpretative guidelines and management controls for federal agencies to implement FACA. The rule provides requirements for many aspects of managing a FAC. For example, the rule establishes requirements for FAC charters, recordkeeping and public notification. However, the rule allows for agency discretion in managing certain aspects of a FAC. For example, unless otherwise provided by statute or presidential directive, the length of FAC memberships is at the sole discretion of the appointing authority.

The rule restates the FACA requirement that FACs be fairly balanced with respect to the points of view represented and function to be performed. However, the rule does not prescribe specific procedures for achieving balance. Instead, the rule provides factors for an agency to consider in developing a fairly balanced FAC.

GSA's rule does not prescribe procedures for addressing appearances of a lack of impartiality or peer review. However, the EPA has established procedures governing these and for balancing FAC member viewpoints, potential conflicts of interest, and rotation of members.

The EPA's FACA Management Process

The EPA's Office of Federal Advisory Committee Management and Outreach is the national program manager for the EPA's committee management program. OFACMO provides policy, coordination, oversight, consultation, advice and technical assistance to FAC managers and the EPA's senior officials. OFACMO has issued a handbook² which provides the EPA's administrative guidelines and management controls for FACs.

The EPA's key personnel for establishing and managing an FAC include the Administrator, the Deputy Administrator, the relevant program office's assistant administrator, the committee management officer, and the designated federal officer. Table 1 shows FAC responsibilities of key agency officials.

¹ GSA Final Rule on Federal Advisory Committee Management, 41 CFR Parts 101-6 and 102-3.

² EPA Federal Advisory Committee Handbook, March 2012. The previous EPA Handbook was issued in October 2003.

Table 1: FAC Responsibilities of key EPA officials

EPA official	Summary of FAC responsibilities
Administrator	Responsible for the establishment, management and termination of the EPA's FACs. The Administrator has delegated most of these responsibilities to other agency personnel but remains fully accountable for ensuring compliance with the statutory and regulatory requirements of the FACs. The Administrator also appoints FAC members and FAC subcommittee members.
Deputy Administrator	Approves membership packages for FACs (authority delegated to the Deputy Administrator by the Administrator). Approves establishment and renewal charters for FACs.
Assistant Administrator	Responsible for the request and justification of the establishment of proposed FACs. The assistant administrator ensures that the FAC is balanced by points of view for the function to be performed, appoints a DFO for each FAC, and ensures that the FAC's advice and recommendations are the result of the FAC's independent judgment.
Committee Management Officer	Provides oversight for the establishment and operation of the EPA's FACs. The committee management officer also serves as a resource for DFOs and ensures proper recordkeeping for FACs (appointed by the director of OFACMO).
Designated Federal Officer	Responsible for the day-to-day operations and management of the FAC. The DFO works closely with the committee management officer to ensure full compliance with FACA requirements.

Source: Office of Inspector General-developed based on information in the EPA's Federal Advisory Committee Handbook (2012).

Clean Air Scientific Advisory Committee Created to Provide Advice on Ambient Air Quality Standards

The Clean Air Act required the EPA to establish an independent scientific review committee to provide advice to the Administrator in developing criteria and standards for national ambient air quality. Thus, the EPA established the CASAC. The CASAC has seven members who provide advice on criteria and standards for six air pollutants. These pollutants are carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter and sulfur dioxide.

The CAA requires the EPA, with the assistance of CASAC, to review the criteria for the National Ambient Air Quality Standards every 5 years. The EPA augments CASAC with panels of expert consultants to help review the six pollutants. The review panels we examined generally included 16 consultants plus the seven CASAC members.

Each panel reviews and comments on the supporting documentation for its specific pollutant. Prior to 2007, the two primary documents the panels reviewed were the criteria document and the staff white paper. The EPA's Office of Research and Development prepared the criteria document. This document was a comprehensive and integrative assessment of relevant scientific studies related to the pollutant. The EPA's Office of Air Quality Planning and Standards prepared the staff white paper. The staff used the information in ORD's criteria document and the results of the EPA's OAQPS risk and exposure assessments to develop

and support their conclusions and recommendations for an air quality standard. The OAQPS staff paper also included various ranges of standards for the Administrator to consider.

The EPA revised its process for developing NAAQS in December 2006. The EPA replaced the criteria document and the staff white paper with an integrated science assessment, a risk/exposure assessment, and a policy assessment. The EPA also decided it would publish the policy assessment in the Federal Register as an Advanced Notice of Proposed Rulemaking. The revised process also called for CASAC to be more involved in the initial planning for conducting the NAAQS review. In May 2009, the EPA ended the requirement to publish the policy assessment in an Advanced Notice of Proposed Rulemaking. Instead, the EPA releases a draft of the policy assessment to CASAC and for public comment. This policy assessment includes the air quality staff's conclusions and recommendations for a range of standards for senior agency management to consider.

Advisory Council on Clean Air Compliance Analysis Created to Provide Advice on Cost-Benefit Analyses

The Advisory Council on Clean Air Compliance Analysis was established in 1991, pursuant to the CAA Amendments of 1990. The Council's purpose is to review the data, methodology and findings of a statutorily mandated agency report³ that assesses the costs and benefits of the CAA. The Council must include at least nine members. The Council is to include experts in the fields of the health and environmental effects of air pollution, economic analysis, and environmental sciences. Members can also be appointed from other fields that the Administrator determines to be appropriate.

As of July 2012, the Council included 15 members. The Council is supplemented with subcommittees and consultants as needed. The Council has commented on three CAA cost-benefit studies.⁴ In 2002, the agency requested the Council's assistance in planning a third study assessing the benefits and costs of the CAA for the period 1990 through 2020. From 2004 through 2011, the Council issued several reports providing advice to the agency with respect to the third study. This included advice on planning the study and selecting data, methods and models, and commenting on draft findings and conclusions. To review the study, the EPA augmented the Council with the Special Council Panel, the Air Quality Modeling Subcommittee, the Health Effects Subcommittee and the Ecological Effects Subcommittee.

³ This report was mandated by Section 812 of the CAA Amendments of 1990 but the requirement for the report to Congress was repealed by the Federal Reports Elimination and Sunset Act of 1995 (P.L. 104-66).

⁴ The Benefits and Costs of the Clean Air Act, 1970 to 1990, October 1997; The Benefits and Costs of the Clean Air Act, 1990 to 2010, November 1999, EPA-410-R99-001; and The Benefits and Costs of the Clean Air Act from 1990 to 2020, March 2011.

Science Advisory Board Staff Office Manages the CASAC and Council

The EPA's Science Advisory Board Staff Office manages the CASAC and the Council. The SAB Staff Office develops the required FAC documentation, including charters and membership packages. The SAB Staff Office also collects and reviews financial disclosure forms submitted by prospective SGEs. The SAB Staff Office director recommends members for the committees to the Administrator for approval. The SAB Staff Office director also has the authority to select expert consultants to assist the chartered FACs. These consultant appointments are not submitted to the Administrator for approval.

All CASAC and Council committee, subcommittee and panel members are appointed to serve as SGEs, or in rare cases as regular government employees. As government employees, they are covered by federal ethics and conflicts of interest statutes and regulations. The SAB Staff Office director is also the agency deputy ethics official for the office. The DEO is responsible for reviewing and resolving ethics and conflicts of interest concerns with respect to members of the CASAC, the Council, and their respective subcommittees and panels.

Prior Audit Reports

The OIG has not conducted any prior audits or evaluations of CASAC or Council activity, or of the EPA's management of FACs. We reported on the EPA's external peer review process in April 2009.⁵ Our 2009 report focused on contractor-developed peer review panels. In response to the report, the EPA developed an addendum to the Peer Review Handbook that provided additional guidance for identifying appearances of a lack of impartiality in any of the peer reviewers.

The U.S. Government Accountability Office reported on FAC independence and balance in 2004.⁶ GAO's report was based on a review of policies and practices at nine federal departments and agencies, including the EPA. According to the GAO report, GSA's guidance on FAC management did not address what types of information could be helpful to agencies in assessing the points of view of potential FAC members. Additionally, agency procedures did not identify the type of information that should be collected about potential members to make decisions about FAC balance. Thus, eight of the nine departments and agencies that GAO reviewed did not identify and systematically collect and evaluate information pertinent to determining the points of view of potential FAC members. Such information would include previous public positions or statements on matters being reviewed. The EPA was the only agency to routinely collect and evaluate this information.

⁵ EPA Can Improve Its Process for Establishing Peer Review Panels, EPA OIG Report No. 09-P-0147, April 29, 2009.

⁶ GAO-04-328, FEDERAL ADVISORY COMMITTEES: Additional Guidance Could Help Agencies Better Ensure Independence and Balance, April 2004.

Noteworthy Achievements

FACA regulations do not apply to subcommittees or working groups that provide advice to the parent FAC. Still, the EPA applies many of its FACA guidelines and procedures when assembling these subcommittees and panels. That includes:

- Requiring subcommittee and panel members designated as SGEs to complete financial disclosure forms.
- Reviewing and vetting these forms for financial conflicts of interest and appearances of a lack of impartiality.
- Preparing membership grids showing each proposed member's qualifications and background.

The EPA's revised Federal Advisory Committee Management Handbook incorporates new procedures and factors to consider in selecting FAC members. The Handbook now requires the EPA's DFOs to prepare an outreach plan. This plan describes how the DFO plans to publicize the proposed FAC and solicit members from various groups to achieve FAC diversity.

Scope and Methodology

Our evaluation assessed the EPA's management of the CASAC and Council during the period 2006 through 2011, although we did review older records as necessary. In particular, we focused on management of CASAC's ozone and PM panels, and the Council's Health Effects Subcommittee. We evaluated the procedures the EPA used to ensure compliance with FACA and applicable federal and agency guidance. We did not evaluate the quality of scientific advice the CASAC or Council provided to the EPA.

We performed our work at the EPA's OFACMO, SAB Staff Office, and Office of General Counsel in Washington, D.C. We also conducted work at the ORD's National Center for Environmental Assessment in Research Triangle Park, North Carolina. We interviewed the EPA staff and managers tasked with overseeing the EPA's compliance with FACA, and obtained data and documents as appropriate. We also interviewed staff and managers responsible for managing the CASAC and Council.

To assess the EPA's management of the CASAC and Council we selected a sample of FAC, subcommittee and panel member appointments for review. Our selection criteria were all members of the last two NAAQS ozone panels, any expert who served on both the 2006 and 2011 PM review panels, and any expert specifically cited in the requester's letters to the OIG. This represented 47 of 126 members appointed during the period of fiscal years 1998 through 2012. We reviewed the SAB Staff Office case files for these 47 members for evidence of independence, impartiality, or financial conflicts of interest concerns. Based on potential concerns we identified during our initial file review, we reviewed 27 of

these cases in depth. We also interviewed six CASAC members to obtain their views on membership balance.

We conducted our evaluation from April 2012 through May 2013. We conducted this evaluation in accordance with generally accepted government auditing standards. Those standards require that we obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our objectives.

Chapter 2

Financial Conflicts of Interest

The EPA has implemented a process to manage the CASAC and Council in accordance with applicable laws, regulations and guidance regarding financial conflicts of interest. The EPA requires prospective and active SGEs to complete financial disclosure forms. The SAB Staff Office reviews these forms for financial conflicts of interest. We identified one instance where agency procedures involving a potential conflict of interest were not followed.

SGEs Are Generally Subject to Federal Statutes and Regulations Governing Financial Interests

Rules governing conflicts of interest for federal employees can be found in the Code of Federal Regulations. Specifically, 5 CFR Part 2635 Subpart D provides in part that:

An employee is prohibited by criminal statute, 18 U.S.C. 208(a), from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he or any person whose interests are imputed to him under this statute has a financial interest, if the particular matter will have a direct and predictable effect on that interest.

SGEs are generally subject to financial conflict of interest provisions with some exceptions. In certain circumstances, SGEs who serve on FACs, within the meaning of the FACA, are uniquely eligible for a particular waiver of the prohibition of Section 208(a). Under 18 U.S.C. 208(b)(3), an SGE serving on a FAC may be eligible for a waiver where the official responsible for his or her appointment certifies in writing that the need for the SGE's services outweighs the potential for a conflict of interest posed by the otherwise disqualifying financial interest involved. EPA Order 1000.28A states that only the designated agency ethics official or the alternate agency ethics official may issue such waivers. According to the EPA's OGC, this should occur only upon consultation with the U.S. Office of Government Ethics.

SGEs serving on FACs are also covered by certain exemptions from Section 208 that have been promulgated by the U.S. Office of Government Ethics, pursuant to 18 U.S.C. 208(b). The most significant of these is 5 CFR 2640.203(g), which pertains to certain financial interests arising from the SGE's outside employment. This exemption permits SGEs serving on FACs to participate in matters of general applicability where the disqualifying interest arises from the SGE's non-federal employment or prospective employment. This exemption is subject to the following limitations:

- The matter cannot have a special or distinct effect on either the SGE or the SGE's non-federal employer, other than as part of a class.
- The exemption does not cover interests arising from the ownership of stock in the employer or prospective employer.

Further, according to the EPA's OGC the non-federal employment must involve an actual employee/employer relationship, as opposed to an independent contractor relationship.

The EPA's Process for Identifying Conflicts of Interest

The EPA requires prospective charter FAC, panel and subcommittee members to complete the EPA's Form 3110-48.⁷ Active members must also update their forms annually as well as before any particular matter is considered by a given member. The form includes sections for listing employment and consulting work, paid expert testimony, research or project funding for the past 2 years, and assets. The form also includes a section for describing prior activities or statements that could affect, or appear to affect, an expert's ability to provide impartial advice.

The SAB Staff Office's ethics officer (assistant to the SAB Staff Office DEO) and the SAB Staff Office DEO review each active or prospective member's financial disclosure form for potential ethical issues, including financial and other conflicts, and possible lack of impartiality. Both reviewers sign and date the first page of the form to document their review. The forms may include the reviewer's handwritten notes if issues are noted.

If the review identifies potential issues, the SAB Staff Office informs the prospective or active member and asks for an explanation. The SAB Staff Office may also discuss any concerns with the member and require that the member take action to mitigate the concern. The SAB Staff Office director's personal practice was to not grant financial conflict of interest waivers. We did not identify any waivers for financial conflicts of interest for the 47 CASAC and Council charter, subcommittee and panel members we reviewed from FYs 2002 through 2012.

Receipt of Federal Grant Is Not a Financial Conflict of Interest

The EPA does not consider a prospective or current member's receipt of an agency or other federal research grant to create the basis for a financial conflict of interest. This is consistent with other federal guidance in this area. For example, OMB's Final Bulletin on Peer Review states that:

When an agency awards grants through a competitive process that includes peer review, the agency's potential to influence the scientist's research is limited. As such, when a scientist is awarded

⁷ *Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency* (EPA Form 3110-48).

a government research grant through an investigator-initiated, peer-reviewed competition, there generally should be no question as to that scientist's ability to offer independent scientific advice to the agency on other projects.

The above guidance does not mean that a prospective or active member's work on a specific grant or research project could not potentially present an independence concern. A prospective or active member's research or grant is a potential area of concern if the FAC, panel, or subcommittee plans to address work performed under the research grant. Prospective and active EPA SGE members must report any research grants received during the past 2 years in Section 4 of the EPA's Form 3110-48. Our review of impartiality and independence is discussed in chapter 3.

Review of Financial Conflict of Interest Procedures

We reviewed 47 financial disclosure forms completed by prospective CASAC and Council committee, panel and subcommittee members from 2002 through 2012. We identified one instance where agency procedures regarding a potential conflict of interest were not followed.

Conclusions

The EPA has adequate procedures for identifying financial conflicts of interest. Nonetheless, we identified one instance where the agency's procedures for handling a potential conflict of interest were not followed. As such, we believe the agency should remind DEOs of the proper procedures for addressing potential conflicts of interest to prevent any future occurrences.

While receipt of grant funds from the EPA may not constitute a financial conflict of interest on the part of a FACA member, receipt of such funding could raise concerns of independence depending upon the nature of the research conducted under the grant and the issues addressed by the FAC.

Recommendation

We recommend that the EPA designated agency ethics official:

1. Instruct DEOs and assistant DEOs on the proper process for handling potential conflicts of interests for SGEs, including the process for implementing any applicable steps to remedy the conflicts of interest.

Agency Comments and OIG Evaluation

The agency agreed with our recommendation and responded that the DAEO will review already available reference material and guidance to determine whether

any additional guidance is warranted for SGEs. Further, the agency provided us with documentation that the DAEO has instructed DEOs on the proper process to follow in addressing conflicts of interest. Thus, this recommendation is closed and no further response is required from the agency.

Chapter 3

Independence and Impartiality

In general, the EPA has implemented an adequate process to identify independence and impartiality concerns. However, the EPA can improve its controls over this process by better documenting how it addressed concerns identified during the financial disclosure review process. We reviewed financial disclosure forms and associated SAB Staff Office files for 47 members from FYs 2002 through 2012. In nine instances, final determination on and steps taken to mitigate independence or partiality matters were either not adequately documented or, in our view, needed additional steps to sufficiently address potential independence or partiality concerns. Better documentation of ethics decisions will help ensure that the FAC process is transparent and that advice to the Administrator on important issues such as setting ambient air standards to protect public health and the environment is impartial and objective.

The EPA's Guidance Recommends Avoiding Experts Who Appear to Lack Impartiality

FACA requires that FACs provide independent advice free of inappropriate influence from the appointing authority or special interests. FACA does not establish requirements for reviewing the independence or impartiality of FAC members. However, SGEs are subject to federal ethics regulations and should avoid appearances of a lack of impartiality in performing their work. Title 5 CFR Part 2635.502(a) in large part addresses impartiality with respect to particular matters involving specific parties. Since the CASAC and Council address matters of general applicability this provision would not normally apply to CASAC and Council members. However, 5 CFR Part 2635.502(a)(2) addresses impartiality concerns that may arise under other circumstances. It states that:

An employee who is concerned that circumstances other than those specifically described in this section would raise a question regarding his impartiality should use the process described in this section to determine whether he should or should not participate in a particular matter.

Based on 5 CFR 2635.502 (c) and (d), EPA Order 1000.28A authorizes DEOs to make determinations as to whether a reasonable person would be likely to question the employee's impartiality in a particular matter under 5 CFR Part 2635, Subpart E. In instances where impartiality is likely to be questioned, but would not violate 18 USC 208(a), the Order further authorizes DEOs to determine whether the employee should be allowed to participate in the matter, and if so, authorize participation in writing.

The EPA's *Peer Review Handbook* provides guidance for how the EPA should address impartiality and independence concerns on peer review panels. The Handbook states that the EPA should make every effort to use reviewers who are independent and do not have an appearance of a lack of impartiality. The Handbook states, as a general rule, experts who have made public pronouncements on an issue or who have clearly "taken sides" may lack impartiality and should be avoided. The Handbook recognizes that these reviewers with appearances of a lack of impartiality may still serve on a panel to fill the need for experience or technical balance and representation. For example, if an SGE has an appearance of a lack of impartiality, it may still be possible to make a written determination that the SGE may serve on the FAC or to ensure that the SGE is recused from certain areas of a review. With respect to impartiality, the Handbook states:

... it is also important that any decision that is made concerning advisory committee members or peer reviewers be appropriately documented. ...

The *Peer Review Handbook* defines an independent reviewer as an expert who was not associated with developing the work product, either directly by substantial contribution to its development or indirectly by significant consultation during its development.

The EPA's Financial Disclosure Forms Include Questions to Identify Independence Concerns and Appearances of a Lack of Impartiality

As discussed in chapter 2, the EPA requires FAC committee, subcommittee and panel candidates who are designated as SGEs to complete EPA Form 3110-48. Once selected, members must also periodically update their form. The form includes a supplemental set of questions specifically designed to help the EPA identify any potential appearance of a lack of impartiality (table 2).

Table 2: Supplemental questions to identify concerns with independence and impartiality

No.	Questions asked
1	Do you know of any reason that you might be unable to provide impartial advice on the matter to come before the panel/committee/subcommittee or any reason that your impartiality in the matter might be questioned?
2	Have you had any previous involvement with the review document(s) under consideration including authorship, collaboration with the authors, or previous peer review functions? If so, please identify and describe that involvement.
3	Have you served on previous advisory panels, committees or subcommittees that have addressed the topic under consideration? If so, please identify those activities.
4	Have you made any public statements (written or oral) on the issue that would indicate to an observer that you have taken a position on the issue under consideration? If so, please identify those statements.

Source: OIG-developed table based on section 6 of EPA Form 3110-48.

The EPA Can Better Document Identification and Resolution of Independence and Impartiality Concerns

We reviewed the SAB Staff Office's files for 47 of the 126 SGE appointments to CASAC and the Council, including subcommittees and review panels, over the period of FYs 1998 through 2012. We reviewed 27 appointments in greater detail based on information in the case files that in our opinion indicated the SGE's appointment might raise ethical concerns with respect to the FAC's or panel's work. We also reviewed the meeting minutes for 14 Council meetings held between 2003 and 2010. We found:

- Four instances where recusals for independence concerns were not documented or came after the expert had participated in activities related to the concern.
- Three instances where, in our view, potential independence concerns were not identified or their resolution was not adequately documented.
- Two instances where, in our view, potential appearances of a lack of impartiality were not identified or adequately resolved.

The following sections discuss in more detail the results of our review.

Some Recusals Were Not Documented or Came After SGE Participation in Activities That Created an Independence Concern

The SAB Staff Office determined that four members of the chartered Council should recuse themselves from certain meetings where the charge questions were related to work these members had produced. SAB Staff Office procedures state that the DFO should start each meeting by stating for the record that all participating panel members are in compliance with ethics and conflict of interest rules. If not, the DFO should note any instances where a member will recuse him/herself from discussion on a particular aspect of the meeting. The EPA's FAC Handbook also recommends that meeting minutes document all recusals.

- In two instances, the EPA appointed experts as members to the chartered Council who had co-authored studies that the EPA used to support conclusions in the EPA's CAA Section 812 cost benefit analysis. These studies pertained to the monetized benefit of reducing ozone and PM mortality. The DFO told us they orally instructed members to recuse themselves from any meeting where charge questions related to the application of their work in the Section 812 study were discussed. However, the meeting minutes did not state whether these two members recused themselves from meetings where the charge questions related to their work.

- In one instance, a potential independence concern about a Council member was raised and discussed at a Council meeting. The concern was that the member was one of five experts selected to serve on a pilot expert elicitation study panel on PM mortality. The Council was asked to review the design of the pilot study. Because of the information discussed at this meeting, the DFO sent a written notice to the member instructing him to recuse himself from meetings where his prior work on the pilot elicitation study was to be discussed. Meeting minutes we reviewed indicate that this member recused himself from applicable meetings after receiving SAB's notice for a period of several years. The member later served as one of 12 participants in the full-scale expert elicitation study. According to the SAB Staff Office, when the Council met in 2008 to advise the agency on the potential use and presentation of expert elicitation study results, the member did not participate in the meeting. However, 6 years after the initial independence issue arose, this member attended a meeting as a member of the Council's Health Effects Subcommittee where the interpretation and presentation of the results of the elicitation study were discussed. Meeting minutes did not indicate whether this member recused himself from discussing the EPA's application of the results of the study he had worked on.
- In one instance, a Council member had contributed significantly to a product peer reviewed by the Council. Both the member and the SAB Staff Office identified this member's participation as an independence concern. The SAB Staff Office director noted that the member would be required to recuse himself from any discussion of that portion of the document. The meeting minutes for two Council subcommittee meetings did not indicate whether this member recused himself from any portion of the deliberations. A draft peer review report was prepared after these two meetings. Prior to a third meeting where this topic was discussed, the DFO sent the member a written recusal reminder notice. Meeting minutes we reviewed indicated the member recused himself from meetings after receiving the written recusal notice.

Some Potential Independence Concerns Were Not Identified

We identified three instances where the SAB Staff Office appointed experts to panels that reviewed work products that the experts had helped develop or incorporated extensive information from work products the experts had developed. In all three instances, the experts reported their involvement in these precursor work products on EPA Form 3110-48.

- In two instances, experts appointed to a CASAC review panel had participated substantially in preparing chapters included in ORD's ozone and PM criteria documents for the prior review period. These members were allowed to serve as reviewers for the next 5-year review's criteria

document. The SAB Staff Office director told us that these members were allowed to serve because they had not worked on producing the document under review by the CASAC. However, our review of the integrated science assessments (formerly known as criteria documents) found that these work products included conclusions and information from the chapters that had been written by the experts for the prior criteria documents. Further, the charge questions for the ISA reviews included commenting on the usefulness and completeness of the scientific information in chapters that included information from these experts' prior work. Thus, even though these experts did not develop the ISA documents, in our view, their service on the panels created a risk that they could potentially review their own work. Further, the agency should document in writing its determination that the expert's service will not create an independence concern and any steps needed to reduce the risk that this could occur.

- In one instance, an expert selected to serve on the Council's Health Effects Subcommittee was a member of the project team that developed the methodology for both the pilot and later full-scale expert elicitations. This member also interviewed experts for the elicitation study. This member's participation in the expert elicitation studies was noted at a Council meeting. Later, this member attended at least two meetings where the Health Effects Subcommittee charge included interpretation and presentation of the results of the pilot expert elicitation study for the section 812 cost-benefit analysis. The meeting minutes did not record any recusals from the member. We found no indication in the SAB case file that the SAB Staff Office identified this as a potential independence issue. In our view, this member indirectly participated in the work product being reviewed based on his significant consultation during its development. We concluded that such participation does not meet the definition of an independent reviewer as described in the EPA's *Peer Review Handbook*.

Appearances of a Lack of Impartiality Not Identified or Adequately Resolved

The *Peer Review Handbook* states that, as a general rule, "... experts who have made public pronouncements or have had a predominant influence on the position for a given organization on an issue, those who have clearly "taken sides," may have an appearance of a lack of impartiality." We reviewed two instances where experts had expressed public viewpoints on NAAQS standards but were appointed to serve on the CASAC or one of its panels.

- The requester questioned the appointment of a CASAC member who had co-authored an article⁸ in 2006 opposing the EPA's PM standard and was later appointed chair of the PM review panel. This member's case file

⁸ William N. Rom and Jonathan M. Samet, "Small Particles with Big Effects," 173 Am. J. Resp. & Crit. Care Med. 365, 366 (2006).

included a bibliography of publications that included the article in question. However, the member did not list this article in section 6 of the disclosure forms we reviewed, and the EPA's notes to the file did not include any discussion regarding this article. The article made the following conclusion about the PM standard:

In the face of the extensive evidence on PM and health and the strong mandate of the Clean Air Act for public health protection, the PM NAAQS proposed by Administrator Johnson appear lax. Based on the same evidence, the American Thoracic Society and other health organizations have recommended 12 and 25 $\mu\text{g}/\text{m}^3$ for the average annual and 24-h $\text{PM}_{2.5}$ standards, respectively. The proposed, less stringent standard does not protect the nation's health, as required by the Clean Air Act.

In our view, the above statement presents an appearance of a lack of impartiality based on guidance in the *Peer Review Handbook*. This guidance states that, generally, experts who have made a public pronouncement on an issue should be avoided. This expert served as a consultant on the PM review panel that advised the Administrator on the 2006 proposed and final PM standard. This expert was later appointed to the CASAC and the next 5-year PM review panel in 2007. While public statements expressing an opinion would not automatically disqualify a member, we believe that the SAB Staff Office, if aware of this article, should have prepared a written determination justifying the selection.

We noted that the case file did include documentation of the SAB Staff Office's resolution of potential concerns with respect to an article the expert had co-authored in 2004. According to notes in the case file, the SAB Staff Office intended to remind the expert to list such articles in section 6 of his disclosure form.

- In the remaining instance, a nitrogen oxide/sulfur oxide review panel member reported on his disclosure form that he had made statements at scientific meetings and in classrooms that the body of epidemiological evidence warranted consideration of a lower nitrogen oxide standard. The SAB Staff Office initially flagged this as a potential appearance of a lack of impartiality. However, the Staff Office later noted in the case file that there was not an appearance of a lack of impartiality since the member stated that he had not made these statements while serving on the panel during the past year. Guidance in the EPA's *Peer Review Handbook* does not limit statements that could create the appearance of a lack of impartiality to those only made while serving on a panel. In our view, refraining from making public statements on a topic while on the panel does not mitigate any appearances created by making public statements prior to an expert's appointment to the panel.

SAB Staff Office Does Not Treat Viewpoints Expressed as Part of Committee Functions as Appearance of a Lack of Impartiality

The requester raised concerns about two letters from CASAC members to the EPA Administrator. These letters encouraged the EPA Administrator to set the NAAQS at the levels CASAC had recommended following its review of the supporting technical documents and proposed standards. Many of the members who signed these letters were later re-appointed to the CASAC review panels that convened for the next 5-year NAAQS review cycle. The requestor expressed concerns that these members had an appearance of a lack of impartiality based on their publicly expressed viewpoints.

The SAB Staff Office director told us that her office distinguishes between viewpoints expressed outside of the FAC's activities and those expressed as part of the FAC's chartered function to provide advice to the Administrator. She considered these letters to be a normal part of the FAC's advice function and did not consider the viewpoints expressed to be appearances of a lack of impartiality that would affect the member's future service. However, she noted that if a panel member were to express a personal viewpoint outside of the FAC process, this could potentially present the appearance of a lack of impartiality. For opinions voiced outside of the member's FAC duties, the director told us that an expert must advocate a specific NAAQS level for the SAB Staff Office to consider it a viewpoint that would present the appearance of a lack of impartiality. According to the agency's alternate agency ethics official, she would instruct the CASAC after they have made their final communications to the Administrator to make any further communications through the DFO.

Procedures for Addressing and Documenting Resolution of Concerns Raised During Disclosure Form Reviews Could be Strengthened

The SAB Staff Office procedures include documenting any relevant correspondence between the file reviewer and the active or potential member regarding ethics questions. Further, these procedures state that the DFO should start each meeting by stating for the record that all participating panel members are in compliance with ethics and conflict of interest rules. If not, the DFO should note any instances where a member will recuse him/herself from discussion on a particular aspect of the meeting.

SAB Staff Office procedures do not address making written determinations when members with ethical concerns are allowed to serve. The EPA's *Peer Review Handbook* states that written determination should be made when SGEs with the appearance of a lack of impartiality are allowed to serve on FACs. Further, EPA Order 1000.28.A, *Duties of EPA Ethics Officials*, states that DEOs are authorized to:

When informed by an employee of an impartiality issue under 5 CFR Part 2635, Subpart E, or when requested by the employee's supervisor or other person responsible for the employee's assignment, make determinations as to whether a reasonable person would be likely to question the employee's impartiality in a particular matter. If impartiality is likely to be questioned, determine whether the employee should be allowed to participate in the matter, and if so, authorize participation in writing [5 CFR § 2635.502(c) and (d)].

In general, the files we reviewed contained handwritten notes, typed notes to the file, emails, or other documentation pertaining to concerns that arose during the review. However, in some cases the files did not contain the SAB Staff Office's final determination explaining how potential issues they identified were resolved. We needed additional oral explanation from SAB staff to ascertain how the Staff Office resolved these cases and the reasoning behind those determinations. Further, the meeting minutes we reviewed did not contain a record of the DFO's statements on recusals when the SAB Staff Office had recommended recusals.

Conclusions

The SAB Staff Office has adequate procedures for identifying independence and impartiality concerns. However, SAB's final determinations and evidence that mitigating measures were implemented were not always documented in the files we reviewed. Such documentation will better ensure that the FAC process is transparent and the advice from FACs is impartial. When experts with independence or impartiality concerns are allowed to serve on FACs without sufficient written justification it can potentially undermine the credibility of: (1) the FAC's advice, (2) the agency's scientific and technical documents, and (3) the corresponding regulations issued by the agency.

Recommendations

We recommend that the director, Science Advisory Board Staff Office:

2. Develop procedures to adequately document the resolution of ethical concerns. This should include:
 - a. Preparing written determinations as to why members with independence concerns or the appearance of a lack of impartiality are allowed to serve on FACs, subcommittees and panels, including any steps recommended for mitigating these concerns or appearances.
 - b. Documenting that all recommended steps for mitigating independence concerns, such as recusals from certain meetings, are implemented.

We recommend that the EPA designated agency ethics official:

3. Periodically review the SAB Staff Office's resolution of independence concerns and appearances of a lack of impartiality, including the sufficiency of recordkeeping documentation, and recommend corrective actions to the SAB Staff Office as appropriate.

We recommend that the director, Science Advisory Board Staff Office:

4. Develop a framework to guide decisions regarding public pronouncements made by current or prospective FAC members related to topics under consideration by the FAC.

Agency Comments and OIG Evaluation

The agency agreed with recommendations 2 and 3, and provided a corrective action plan and milestones that meet the intent of these recommendations. The agency did not agree with recommendation 4 and offered an alternative corrective action. The agency responded that public pronouncements did not fall under the purview of federal ethics regulations since they were not "covered relationships" and that the SAB typically deals with matters of general applicability, not "specific party" matters. We interpreted 5 CFR Part 2635.502(a)(2), which addresses impartiality concerns that may arise under other circumstances not described in that section, as potentially applying to particular matters of general applicability. However, we believe the SAB Staff Office's proposal to develop a framework to guide decisions regarding public pronouncements by current or prospective FAC members will be an appropriate management control. As such, the agency's proposed alternative action meets the intent of the draft report's recommendation. Thus, we revised our recommendation to reflect the agency's proposed alternative corrective action. All three recommendations are resolved and open pending the agency's completion of the agreed-to corrective actions.

Chapter 4

Membership Tenure

The EPA's policy on tenure generally limits FAC members to 6 years of service, with any service over 6 years based on written justification from the program office and approval by the Administrator or Deputy Administrator. The EPA generally followed this policy in its management of the CASAC and Council. In three instances prior to 2010, EPA approved FAC chairs to serve more than 6 years based on written justification submitted to the Administrator. Beginning in FY 2010 under former Administrator Jackson's term (2009-2013), the EPA has more strictly limited the granting of extensions for service more than 6 years.

The EPA's policy on tenure does not apply to review panel or subcommittee memberships. From FYs 1998 through 2012, 36 percent of all CASAC members/consultants served more than 6 years as a charter CASAC member or review panel consultant. During the same period, 12 percent of all Council members/consultants served more than 6 years as a Council charter member, or review panel or subcommittee consultant. By not applying its membership policy to review panels and subcommittees, the EPA may be not be achieving the policy's intent of providing fresh perspectives to its FACs.

The EPA's Policy Limits Committee Terms to 6 Years

Title 41 CFR Section 102-3.130(a), regarding policies that apply to the appointment and compensation or reimbursement of advisory committee members, staff, experts and consultants, states that:

Unless otherwise provided by statute, Presidential directive, or other establishment authority, advisory committee members serve at the pleasure of the appointing or inviting authority. Membership terms are at the sole discretion of the appointing or inviting authority.

As noted in the EPA's 2003 Federal Advisory Committee Handbook membership terms should be no longer than 6 years to provide fresh perspectives on the FAC. The Handbook notes the deputy administrator may grant appointments beyond the 6-year limit if the program office provides adequate justification as to why the office cannot find an appropriate replacement. In the case of the CASAC and Council, appointments are made by the Administrator, who may grant (and has granted) appointments beyond the 6-year limit if the SAB Staff Office provides adequate justification for the extension.

According to the former SAB Staff Office director and staff in the EPA's OFACMO, since 2010 former Administrator Jackson more strictly limited FAC

service to no longer than 6 years. OFACMO noted that Administrator Jackson granted some extensions but only in exceptional circumstances based on a detailed written justification. The EPA's 2012 revised Handbook reiterated the 6-year limit and clarified that members should be appointed for no longer than a total of 6 years (typically in 2- or 3-year terms), with an extension limited to 1-year upon approval of a detailed written justification.

The EPA applies its term policy only to FAC charter members and not to SGEs who serve on panels or subcommittees that supplement the charter FAC. The SAB Staff Office director noted that the consultants on the CASAC review panel are not voting members. Further, these panels often meet over a period of several years. Thus, the time spent in service on one NAAQS review panel could last approximately 6 years. The director also noted that the Staff Office's practice is to replace about two-thirds of the members on subsequent panels. In their view, subsequent panels benefit from the experience and working knowledge provided by having some of the previous panel members serve on the next panel.

The EPA Followed Its Policy on Tenure

The EPA generally applied its policy of limiting terms of service. We reviewed the length of service for all CASAC and Council members who served from FYs 1998 through 2012. Only three members served more than 6 years (one CASAC and two Council committee members). In all three instances written justifications were provided for the members' extended service. These three FAC members' length of service ranged from 7 to 10 years. Figure 1 (see next page) shows the percentage of CASAC and Council charter members who served more than 6 years from FYs 1998 through 2012.

Many Members Served More than 6 Years If Service on Review Panels Were Considered

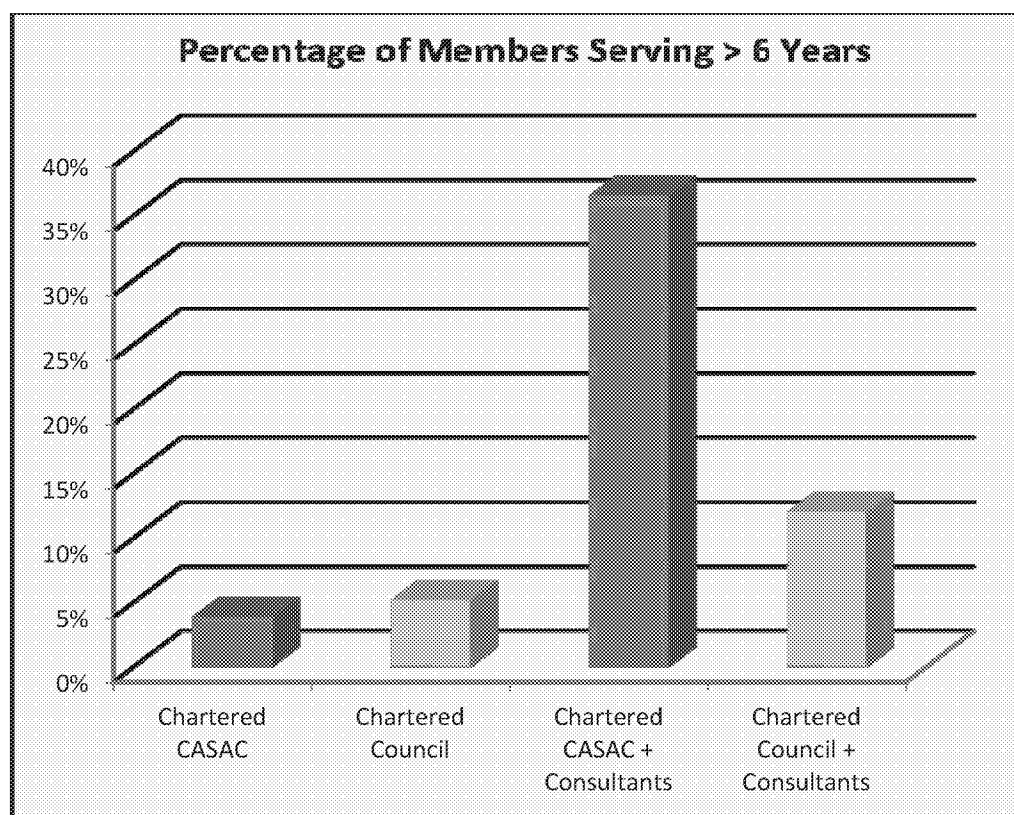
The EPA augmented both the CASAC and Council with review panels and subcommittees comprised of consultants that provided technical advice on important matters under consideration by the FAC. While not voting members of the FAC, these consultants could influence the FAC's advice with their input. Therefore, we applied the 6-year term limit to all types of FAC and consultant services starting in 1998, including service on chartered FACs, subcommittees and review panels. If time served as a charter FAC member and review panel consultant or subcommittee member were combined, the percentage of experts exceeding 6-year terms is greater than the percentage for charter members only.

During FYs 1998 through 2012, the CASAC had 74 members either serve as one of the seven chartered FAC members or as an expert consultant on a NAAQS review panel. When this combined service is considered, 27 of 74 members (or 36 percent of CASAC members) served more than 6 years. Of the 27 CASAC members/consultants who served more than 6 years, the years of service as a

member and/or consultant ranged from 7 years (12 members/consultants) to 15 years (one member/consultant).

During FYs 1998 through 2012, the Council had 67 members serving either directly on the FAC, on a related subcommittee, or as a consultant. When this combined service is considered, eight members (or 12 percent of Council members) served more than the 6 years. Of the eight members who served more than 6 years, the years of service ranged from 7 years (six members) to 10 years (one member). Figure 1 shows the percentage of all CASAC- and Council-related members with length of service of more than 6 years.

Figure 1: Percentage of CASAC and Council members serving more than 6 years, FY 1998-FY 2012.



Source: OIG analysis of CASAC and Council membership lists.

Conclusions

Neither the FACA nor its implementing regulations prescribe membership term limits for FAC members. However, the EPA has established a policy on membership terms to help provide fresh perspectives on FACs. The EPA's policy applies only to charter FAC members and not expert consultants who serve on review panels or members selected to serve on subcommittees. In particular, the CASAC review panelists provide significant input regarding the EPA's criteria

and standards for ambient air quality. Our analysis indicated the SAB Staff Office was achieving its goal of about two-thirds turnover on its NAAQS review panels. This turnover ratio is intended to balance the need for fresh perspectives versus maintaining continuity and experience.

Chapter 5

Committee Balance

In general, we found that the CASAC and Council were balanced with respect to the primary functions of the FACs and the required scientific “points of view.” The FACA and its implementing regulations require FACs to be fairly balanced but allow agencies discretion in how they achieve balance. The EPA’s guidance instructs DFOs to describe the agency’s plan to attain fairly balanced membership for their FACs and to prepare membership grids showing proposed members’ qualifications and background. The SAB Staff Office prepared membership grids for the CASAC and Council. The Staff Office also described the factors that it considered for selecting members in Federal Register notices announcing opportunities for the public to nominate members. SAB Staff Office management and staff told us that their primary concern in achieving balance for the CASAC and Council was ensuring that the members have the necessary range of technical expertise. With the EPA’s release of its updated FAC Handbook in March 2012, the EPA added steps to its FAC membership selection process to help achieve FAC balance. In our view, this new process will provide additional assurance that balance is achieved on these FACs.

FACs Should Be Fairly Balanced in Terms of Viewpoints Represented and Functions Performed

FACA requires that the membership of FACs be “fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee.” In the preamble to the 2001 FACA Final Rule, the GSA stated it believed FACA’s provisions were broad enough to allow agency discretion in achieving membership balance. However, the rule included a list of possible considerations for agencies in developing a plan for achieving balance. These include the:

- Committee’s mission.
- Geographic, ethnic, social, economic or scientific impact of the committee’s recommendations.
- Specific perspectives required, such as those of consumers, technical experts, the public at-large, academia, business or other sectors.
- Need to obtain divergent points of view on the issues before the committee.
- Relevance of state, local and tribal governments to the development of the advisory committee’s recommendations.

Title 41 CFR Part 102-3.60 requires agencies to describe their plans for achieving balance on discretionary FACs. These plans are not required for non-discretionary

FACs such as the CASAC and Council. However, GSA guidance⁹ issued in 2011 “strongly recommended” these plans for non-discretionary FACs as well.

The EPA’s FAC Handbook (prior and current versions) incorporates FACA requirements on balance and describes the EPA’s procedures for ensuring this requirement is met. The EPA’s Handbook requires that the justification statements that accompany a request to charter or renew a charter for both discretionary and non-discretionary FACs describe plans for achieving balance. The Handbook lists general guidelines to consider in achieving balance. The 2012 updated FAC Handbook incorporated an additional consideration for members with experience with issues of concern to low-income, rural, urban, medically underserved, sensitive/vulnerable, or disproportionately impacted community populations, and whether that experience would be useful.

The membership grid is a key tool prepared by the EPA as part of the annual membership process. The EPA uses the membership grid to review and ensure balance. For each FAC, the DFO must create a membership grid that provides a snapshot of the FAC makeup, including both current members and proposed candidates for membership. The membership grid is part of the overall membership package, which is submitted to the Administrator for approval.

Both the CASAC and Council are statutorily mandated FACs with specific membership requirements mandated by the CAA. The CASAC’s seven members must include at least one physician, one member of the National Academy of Sciences, and one person representing state air pollution control agencies. The Council must have at least nine members and include recognized experts in the fields of health and the environmental effects of air pollution, economic analysis, environmental sciences and such other fields the Administrator deems appropriate.

Preparation of Balance Plans Could Provide More Transparency to Efforts to Achieve Balanced CASAC and Council Committees

In general, we found the CASAC and Council were balanced with respect to the primary functions of the FACs and the required scientific “points of view.” We noted that prior to 2011, the justification packages for these FACs did not describe the plan for attaining balanced membership. However, in Federal Register notices announcing opportunities for the public to nominate members for service on the Council and CASAC, the SAB Staff Office described factors it considers when selecting FAC members. These factors included relevant scientific perspectives, which, among other factors can be influenced by work history and affiliation.¹⁰ As part of the annual membership process, the SAB Staff

⁹ FAC Membership Balance Plan, GSA Committee Management Secretariat, Office of Committee and Regulatory Management, January 2011.

¹⁰See e.g., 69 Fed. Reg. 33,900-01 (June 17, 2004).

Office prepared membership grids for the CASAC and Council which summarized the proposed FAC membership in terms of members' expertise, affiliation category (e.g., academic, state, private sector, nongovernmental organization), and geographic location (state). The SAB Staff Office used a similar process in forming panels that work under the auspices of the chartered FACs.

SAB Staff Office DFOs told us they address balance from the standpoint of scientific and technical expertise. If a potential or current member were to express a public opinion on matters before the FAC, this might create an appearance of a lack of impartiality. One DFO told us the SAB Staff Office would address such a concern specifically with that individual, not by balancing the panel with an opposing point of view.

New Agency Procedures Designed to Improve Diversity and Balance

In March 2012, the EPA updated its FAC Management Handbook and incorporated new procedures for achieving diversity and balance on the EPA's FACs. The updated Handbook:

- Added a consideration for whether members with experience with issues of concern to low-income, rural, urban, medically underserved, sensitive/vulnerable populations, or communities experiencing disproportionate environmental or public health burdens, could be useful on the FAC.
- Requires an outreach plan for obtaining a diverse pool of nominees. The plan must be submitted to the EPA's OFACMO for review and concurrence. The outreach plan should describe in detail how the DFO intends to solicit a diverse set of nominees, including women and minorities. For example, it should explain the specific forms of public solicitation the DFO plans to use and the organizations and academic institutions the DFO plans to contact.

The SAB Staff Office developed an outreach plan for the April 2012 CASAC charter renewal. Further, the SAB Staff Office developed a draft outreach plan for the April 2013 Council charter renewal. The balance plan for CASAC and the Council, prepared to support charter renewal, describes the plan for ensuring that the committees are balanced in terms of scientific points of view (including statutory requirements for membership). The Outreach Plan, developed to support the annual membership process, is designed to ensure that membership recommendations draw upon a "diverse set of nominees, including women and minorities." While there is overlap between the goals of diversity and balance, they are not synonymous.

Conclusions

Agencies have discretion in determining how balance is achieved on their FACs. In requiring descriptions of plans to achieve balance for non-discretionary FACs, the EPA has established procedures for balance that go beyond the minimum requirements established by the regulations. Preparing membership balance plans and implementing outreach plans as described in the EPA's updated FAC Handbook should make the selection process more transparent and help ensure that balance is achieved on the CASAC and Council.

Chapter 6

Peer Review

In addition to assessing the EPA's management of CASAC and the Council, we reviewed the EPA's conformity with OMB and the EPA's peer review policies and guidance with respect to three National Center for Environmental Assessment analyses supporting NAAQS revisions. All three analyses were conducted in conjunction with and included in larger assessment documents that synthesized numerous studies and analyses. These assessment documents underwent formal peer review by the CASAC. The requester questioned whether CASAC review of assessment documents sufficed for the rigor and specificity of a separate peer review of each individual analysis.

We determined that two of the three analyses were sufficiently peer reviewed before the EPA publicly disseminated them by placing them in the rulemaking docket. However, one of the NCEA analyses containing influential scientific information—a re-analysis of data from an ozone health effects study—was not peer-reviewed in accordance with OMB and the EPA's guidance. OMB and the EPA's guidance call for all ISI to be peer reviewed before public dissemination. However, NCEA did not have a formal process for determining whether individual analyses and work products met the definition of ISI. Thus, NCEA did not subject its ozone data re-analysis to peer review before disseminating it in support of the ozone NAAQS. The analysis was later peer reviewed and published in a journal article. This peer review did not alter the conclusions of the analysis as presented in the EPA documents. Thus, the lack of peer review prior to public dissemination did not appear to affect the ozone NAAQS rulemaking. Nonetheless, proper peer review of the EPA's internal analyses before dissemination to the public is an important tool for ensuring the quality and integrity of the agency's scientific information.

Federal and Agency Guidance Require Peer Review of Influential Scientific Information Before Public Dissemination

Peer review involves the review of a draft product for quality by specialists in the field who were not involved in producing the draft. OMB's *Final Information Quality Bulletin for Peer Review* establishes government-wide guidance for peer review of government science documents. The OMB bulletin requires each agency to subject ISI to peer review prior to dissemination. It defines ISI as "scientific information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions." The OMB bulletin provides agencies broad discretion in determining the type of peer review and the procedures used to select reviewers.

The EPA's *Peer Review Handbook* (3rd Edition) incorporates the provisions of the OMB bulletin and outlines the agency's policy, procedures and processes for peer review. Consistent with OMB guidelines, the EPA's *Peer Review Handbook* states that "[t]he principle underlying the Peer Review Policy is that all influential scientific and technical work products used in decision making will be peer reviewed" (underlining in original). However, it cites exceptions to this principle. One of these exceptions states that peer review is not necessary for ISI if an application of an adequately peer reviewed work product does not depart significantly from its scientific or technical approach.

The EPA's *Peer Review Handbook* states that, generally, determinations as to whether a work product is "influential" will occur on a case-by-case basis. The agency decision maker should determine whether a work product is ISI. The applicable assistant administrator or regional administrator is the ultimate agency decision maker and is accountable for the decisions regarding the identification of ISI, and the mechanisms of peer review used for these work products. The assistant administrator or regional administrator may designate office directors or division directors as the front-line decision maker.

NCEA's Review of One Analysis Did Not Adhere to OMB Requirements and EPA Peer Review Guidance for Influential Scientific Information

We reviewed NCEA's compliance with OMB and the EPA's peer review guidance for three work products NCEA produced in support of ambient air quality standards for ozone, sulfur dioxide and nitrogen dioxide. EPA included parts of these three analyses in larger assessment documents that the CASAC peer reviewed. These three NCEA work products were:

1. A reanalysis of data from a previously published clinical study on the effects of human exposure to ozone (ozone reanalysis).
2. An analysis of the results of earlier human clinical studies on the effects of human exposure to SO₂ (SO₂ analysis).
3. An update to a previously published meta-analysis on the effects of human exposure to NO₂ (updated NO₂ meta-analysis).

In our view, all three analyses fit the description of ISI. However, NCEA did not have its ozone reanalysis peer reviewed before it was disseminated to the public. As such, the EPA did not adhere to OMB and EPA peer review guidance for this particular analysis. The SO₂ analysis was sufficiently peer reviewed. The updated NO₂ meta-analysis primarily updated and re-presented previously peer reviewed information, and thus was not required to be peer reviewed again per the EPA's guidance. Details concerning the development, dissemination and peer review of each of the three analyses follow.

2007 Ozone Reanalysis

In response to a CASAC comment on the second draft of the 2006 ozone air quality criteria document, NCEA decided to include the results of a recent human exposure study (Adams study)¹¹ in the final air quality criteria document. According to NCEA staff, in reviewing the Adams study they observed certain traits in the study's data which caused them to question whether the data would show statistically significant effects of ozone exposure at less than 0.08 parts per million. In reviewing the final air quality criteria document, one CASAC member also questioned whether additional statistical analysis of the data would show statistically significant effects at ozone levels below 0.08 ppm. These observations led NCEA to re-analyze the Adams study data using a different statistical approach. NCEA concluded that there was a statistically significant effect of ozone at 0.06 ppm as compared to filtered clean air (0.00 ppm). NCEA placed the results of its reanalysis¹² in the ozone rulemaking docket in June 2007 without having it peer reviewed.

NCEA's 2007 ozone reanalysis met the definition of ISI. The Adams study was the first such study to present human exposure data at ozone levels below 0.08 ppm. At that time, the level of the ozone standard was 0.08 ppm averaged over 8 hours. NCEA's reanalysis concluded that ozone effects occurred at levels below 0.08 ppm. Thus, NCEA reasonably could determine that its reanalysis would have an impact on the 2008 NAAQS ozone rulemaking process.

At a technical conference in December 2006, NCEA made a presentation on the health effects of exposure to air pollutants. This presentation included NCEA's initial ozone analysis illustrating the distribution of effects for individuals and group mean estimates at levels below 0.08 ppm. In January 2007, NCEA staff discussed the ozone reanalysis with the EPA's OAQPS. OAQPS asked NCEA if it could include the ozone reanalysis in the OAQPS staff paper for the 2008 NAAQS ozone rulemaking. However, NCEA did not want to do so at that time because staff believed it might constitute new analysis that had not been peer reviewed. Thus, OAQPS only presented NCEA's general observations about the Adams study in the staff paper and not the detailed statistical analysis. NCEA had the reanalysis internally reviewed by EPA scientists and addressed public comments received at a March 2007 CASAC meeting. In NCEA's view, it was appropriate to include the reanalysis after these internal reviews. Thus, they entered the reanalysis into the rulemaking docket in June 2007.

¹¹ Dr. William Adams, *Comparison of Chamber 6.6-h Exposures to 0.04–0.08 PPM Ozone via Square-wave and Triangular Profiles on Pulmonary Responses*, Inhalation Toxicology, February 2006.

¹² Dr. James Brown, *The effects of ozone on lung function at 0.06 ppm in healthy adults*, EPA memorandum, June 14, 2007.

NCEA's 2007 ozone reanalysis was published in an August 2008 peer reviewed journal article.¹³ However, this peer review was after NCEA disseminated its reanalysis in the June 2007 memorandum.

2008 SO₂ Analysis

In 2007, in support of the SO₂ NAAQS review, NCEA began working on a draft analysis of SO₂ human exposure data from studies conducted in the 1980s and 1990s. This draft analysis was circulated to CASAC in December 2007, and CASAC encouraged NCEA to proceed with the analysis. NCEA's SO₂ analysis was included in the EPA's second draft integrated science assessment¹⁴ for sulfur oxides in 2008. NCEA concluded that human responses to SO₂ concentrations increased as exposures to SO₂ increased and that more pronounced effects were observed at lower concentrations among SO₂-sensitive asthmatics. As part of the normal NAAQS review process, CASAC peer reviewed the draft integrated science assessments. Prior to submitting the second draft ISA to CASAC for peer review, the EPA formally requested the CASAC to review its analyses of data from human clinical studies. We reviewed the CASAC comments on the SO₂ analysis and, in our view, this review fulfilled OMB and EPA peer review requirements.

After the SO₂ NAAQS final rule was issued, NCEA's SO₂ analysis was again peer reviewed and published in a December 2010 journal article.¹⁵

2008 NO₂ Meta-Analysis

During a May 1, 2008, CASAC meeting (one of several held for the 5-year review of the nitrogen dioxide NAAQS), NCEA and CASAC discussed a 1992 NO₂ meta-analysis¹⁶ of 19 studies of individuals with asthma included in the 1993 criteria document. CASAC recommended that NCEA present this data in the current NO₂ ISA. Before including the 1992 meta-analysis in the ISA, NCEA removed one study from the analysis¹⁷ and added a recent study that it considered to be of a similar nature to the other studies. NCEA also added a concentration range (i.e., 0.1 ppm) to its presentation that was not included in the original 1992 meta-analysis. NCEA's conclusions on the effects of NO₂ exposure were essentially the same in its 2008 update as those from the 1992 meta-analysis.

¹³ Dr. James Brown et al., *Effects of Exposure to 0.06 ppm Ozone on FEV in Humans: A Secondary Analysis of Existing Data*, Environmental Health Perspectives, August 2008.

¹⁴ *Integrated Science Assessment for Sulfur Oxides – Health Criteria (Second External Review Draft)*, Table 3-1 and related text, May 2008.

¹⁵ Dr. Douglas Johns et al., *Analysis of the concentration-respiratory response among asthmatics following controlled short-term exposures to sulfur dioxide*, Inhalation Toxicology, December 2010.

¹⁶ Dr. Lawrence J. Folinsbee, *Does Nitrogen Dioxide Exposure Increase Airways Responsiveness?*, Toxicology and Industrial Health, Vol. 8, No. 5, 1992.

¹⁷ According to NCEA, one study in the 1992 meta-analysis was based on a specific exposure while all the others were based on non-specific exposures. Thus, in NCEA's view, this one study should not be included in the 2008 analysis.

An NCEA branch chief told us that the updated NO₂ meta-analysis was not submitted for publication because the revisions made to the original NO₂ meta-analyses were not a new analysis that would merit publication in a journal. Further, she said all of the information about the revisions to the original meta-analysis was included in the ISA so a separate memorandum was not necessary. Both the original 1992 meta-analysis and NCEA's 2008 update of that meta-analysis were ISI. However, the 2008 updated meta-analysis did not require peer review. The EPA's *Peer Review Handbook* notes that peer review is not necessary for ISI if it is an application of an adequately peer reviewed work product that does not depart significantly from its scientific or technical approach. In our view, NCEA's 2008 update did not depart significantly from the original 1992 meta-analysis. Further, it was an acceptable application of an adequately peer reviewed work product. NCEA essentially re-presented the results of the original meta-analysis. Moreover, the conclusions about the health effects of NO₂ exposure did not change. On July 17, 2012, the U.S. Court of Appeals for the District of Columbia upheld the EPA's final NO₂ rule and reached a similar conclusion regarding the 2008 meta-analysis. The court noted that the EPA's meta-analysis "merely updated" the original Folinsbee meta-analysis.¹⁸

NCEA Did Not Have a Process for Determining Whether Internal Analyses Were Influential Scientific Information

According to an NCEA branch chief, NCEA does not have a process for determining whether internal NCEA analyses are "influential" and does not make "influential calls" on such documents. She said NCEA focuses on determining which internal analyses are most relevant to the larger assessment documents that are peer reviewed by CASAC. She said that it would be impossible to have every internal analysis peer reviewed due to time constraints. She also said that NCEA does not ask CASAC to peer review each individual analysis.

We reviewed NCEA emails and found no evidence of an NCEA process for determining whether a work product is influential. However, a January 2007 email showed that some NCEA staff were concerned about sending the ozone reanalysis to the docket without having the individual analysis peer reviewed. In the email, NCEA staff did not discuss whether the work product was ISI or whether peer review was required to meet OMB and EPA guidance. In our view, the lack of a process to assess whether internal analyses are ISI is a weakness in NCEA's management controls. This lack of control allowed the 2007 ozone reanalysis to be included without peer review and without clear accountability for the decision to proceed even though internally staff had some concerns.

¹⁸ *American Petroleum Inst. v. EPA*, 684 F.3d 1342, 1349 (D.C. Cir. 2012), *rehearing en banc denied* (D.C. Cir. Sept. 24, 2012), *cert. denied*, 133 S. Ct. 1724 (April 2013).

Subsequent Peer Review Did Not Alter Overall Conclusions of NCEA's Ozone Reanalysis

The ozone reanalysis was published in a peer reviewed journal article after the EPA publicly disseminated it. However, the peer review did not result in significant changes to the journal manuscript. Many of the peer review comments for the ozone reanalysis were editorial and required only small revisions to the text. One peer reviewer commented that the authors (including two NCEA staff members) could have more clearly described their analysis and suggested that the authors include a more rigorous defense of their analytical strategy. The authors cited text that described and defended the analysis, and did not significantly change the manuscript. The external peer reviewers' comments did not materially alter NCEA's original results or conclusions as they were presented in the EPA's documents supporting the revised NAAQS for ozone.

Conclusions

NCEA did not have a process to determine whether internal analyses were ISI and to document its decision regarding the need for peer review. Such a process would provide accountability for decisions about the need for peer review and help assure that NCEA complies with OMB and EPA peer review guidance. In the absence of a formal process to determine whether a work product is influential, NCEA is at risk of including ISI in broader assessment documents for public dissemination without the requisite peer review.

Recommendation

We recommend that the assistant administrator for the Office of Research and Development:

5. Direct NCEA to implement a process to review NCEA scientific analyses that support the EPA's rulemakings and determine the appropriate type of peer review for these work products. This process should:
 - a. Determine and document whether such analyses are influential scientific information.
 - b. Document the rationale for the type of peer review chosen for ISI, including any decision not to have such analyses externally peer reviewed before they are publicly disseminated.

Agency Comments and OIG Evaluation

The agency agreed with our recommendation and provided a corrective action plan that meets the intent of the recommendation. The recommendation is resolved and open pending the agency's completion of the agreed-to corrective action.

Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS						POTENTIAL MONETARY BENEFITS (in \$000s)	
Rec. No.	Page No.	Subject	Status ¹	Action Official	Planned Completion Date	Claimed Amount	Agreed-To Amount
1	10	Instruct DEOs and assistant DEOs on the proper process for handling potential conflicts of interests for SGEs, including the process for implementing any applicable steps to remedy the conflicts of interest.	C	Designated Agency Ethics Official	8/14/13		
2	19	Develop procedures to adequately document the resolution of ethical concerns. This should include: <ul style="list-style-type: none"> a. Preparing written determinations as to why members with independence concerns or the appearance of a lack of impartiality are allowed to serve on FACs, subcommittees and panels, including any steps recommended for mitigating these concerns or appearances. b. Documenting that all recommended steps for mitigating independence concerns, such as recusals from certain meetings, are implemented. 	O	Director, Science Advisory Board Staff Office	9/30/13		
3	20	Periodically review the SAB Staff Office's resolution of independence concerns and appearances of a lack of impartiality, including the sufficiency of recordkeeping documentation, and recommend corrective actions to the SAB Staff Office as appropriate.	O	Designated Agency Ethics Official	9/30/13		
4	20	Develop a framework to guide decisions regarding public pronouncements made by current or prospective FAC members related to topics under consideration by the FAC.	O	Director, Science Advisory Board Staff Office	12/31/14		
5	34	Direct NCEA to implement a process to review NCEA scientific analyses that support the EPA's rulemakings and determine the appropriate type of peer review for these work products. This process should: <ul style="list-style-type: none"> a. Determine and document whether such analyses are influential scientific information. b. Document the rationale for the type of peer review chosen for ISI, including any decision not to have such analyses externally peer reviewed before they are publicly disseminated. 	O	Assistant Administrator, Office of Research and Development	9/30/13		

¹ O = recommendation is open with agreed-to corrective actions pending
 C = recommendation is closed with all agreed-to actions completed
 U = recommendation is unresolved with resolution efforts in progress

EPA Response to Draft Report

July 22, 2013

MEMORANDUM

SUBJECT: Response to Office of Inspector General Draft Report No. OPE-FY12-0001
*Response to Congressional Request on the EPA's Management of Clean Air
Federal Advisory Committees*, dated June 17, 2013

FROM: Lek G. Kadeli, Principal Deputy Assistant Administrator
Office of Research and Development (ORD)

Brenda Mallory, Acting General Counsel
Office of General Counsel (OGC)

Christopher Zarba, Acting Director
Science Advisory Board (SAB) Staff Office

TO: Arthur A. Elkins, Jr., Inspector General
Office of Inspector General (OIG)

Thank you for the opportunity to respond to the OIG draft report titled, *Response to Congressional Request on the EPA's Management of Clean Air Federal Advisory Committees*. We have provided a summary of the agency's overall position and our response to the OIG's recommendations. For the one recommendation with which the agency does not agree, we have provided the legal basis and a proposed alternative to the given recommendation. For your consideration, we have included our technical comments as attachments to supplement this response.

AGENCY'S OVERALL POSITION

The EPA appreciates the opportunity to comment on this report and in general agrees with the OIG's recommendations. For findings and recommendations related to the Office of General Counsel, we have provided clarifying information about the identity and parameters of the position that oversees the agency's ethics program.

Agreements

¹⁹ Subsequent to this action plan, the Senior Counsel for Ethics and Alternate Agency Ethics Official clarified the response to Recommendation 1 to note that she had already advised the SAB Director and selected staff about the proper process for handling conflicts of interest, and would instruct ethics officials across the Agency in her monthly meetings on August 13 and 14, 2013.

No.	Recommendation	High-Level Intended Corrective Action(s)	Estimated Completion by- Quarter and FY
		requirements and note any recusals for the record. The SAB Staff Office will ensure that meeting minutes accurately reflect these opening statements.	
3	Designated Agency Ethics Official (see endnote) to periodically review the SAB Staff Office's resolution of independence concerns and appearances of a lack of impartiality, including the sufficiency of recordkeeping documentation, and recommend corrective actions to the SAB Staff Office as appropriate.	<p>Pursuant to 5 CFR § 2638.203, the DAEO is responsible for managing EPA's ethics program, including ensuring that financial disclosure reports are consistently reviewed and that records are kept, when appropriate, on advice rendered.</p> <p>OGC/Ethics has been working in closer coordination with the new SAB Acting Director and staff on an as-needed basis to ensure proper resolution of concerns, including additional consultation and instruction. The DAEO will ascertain whether any additional review beyond what is already occurring is warranted.</p>	4 th Quarter FY 2013
5	<p>Direct NCEA to implement a process for reviewing NCEA scientific analyses that support the EPA's rulemakings to determine the appropriate type of peer review for these work products. This process should:</p> <p>a) Determine and document whether such analyses are influential scientific information.</p> <p>b) Document the rationale for the type of peer review chosen for ISI, including any decision not to have such analyses externally peer reviewed before they are publicly disseminated.</p>	<p>The Agency is in the process of revising the Peer Review Handbook. The new edition of the Handbook will emphasize the planning process and include procedures for creating a record-of-decision for the classification of a work product and the type of peer review planned for a work product. The National Center for Environmental Assessment (NCEA), within the Office of Research and Development, is in the process of addressing this recommendation by establishing a policy that includes the following steps.</p> <p>a) NCEA work products will be evaluated to determine whether they are ISI, in accordance with EPA's Peer Review Handbook, and the Division Director will document his or her</p>	4 th Quarter FY 2013

No.	Recommendation	High-Level Intended Corrective Action(s)	Estimated Completion by- Quarter and FY
		determination. b) NCEA will conduct a peer review for any work product that is determined to be ISI, in accordance with EPA's Peer Review Handbook, and NCEA will document the rationale for the type of peer review conducted.	

Disagreement

OIG Recommendation No. 4:

Designated Agency Ethics Official (see Endnote 1) to provide clarification or instruction to Deputy Ethics Officials for assessing whether public statements create an appearance of a lack of impartiality with respect to when the statements were made and the expert's role at the time of the statement.

Agency's Response:

Pursuant to 5 CFR § 2638.203, the DAEO is responsible for managing the Agency's ethics program, including ensuring that EPA employees adhere to the conflict of interest statutes set forth in Title 18 of the United States Code and to the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR Part 2635. The Standards of Ethical Conduct include, at 5 CFR Part 2635, Subpart E, specific provisions for "Impartiality in Performing Official Duties."

The OIG recommendation falls outside the purview of federal ethics. These regulations set forth the standard that an employee is responsible, in the first instance, for identifying whether any of his "covered relationships" will cause a reasonable person with knowledge of the relevant facts to question his ability to carry out his official duties with respect to a specific party matter impartially. Typically, the SAB does not deal with "specific party" matters but rather with matters of general applicability. Further, a public statement does not fall within the "covered relationships" set forth at 5 CFR 2635.502, and therefore OGC ethics is not the responsible party overseeing these decisions.

From a policy perspective, however, when an individual has made public statements about a matter that will be considered by the advisory panel that may raise a concern about whether the individual has an open mind. The agency's current Peer Review Handbook recommends that staff avoid selecting people for a peer review if they have publicly expressed an opinion on the matter to be considered by the peer review. The Handbook also acknowledges the challenge of selecting advisory committee members who have the requisite experience or technical expertise and who have not made public statements. For this reason, the Handbook allows EPA the discretion to decide to include members who have made public statements.

Alternative to Given Recommendation:

The SAB Staff Office will develop a framework to guide decisions regarding public statements.

Estimated Completion by Quarter and FY:

1st Quarter FY 2014

CONTACT INFORMATION

If you have any questions for OGC, please contact Justina Fugh, Senior Counsel for Ethics and Alternate Designated Agency Ethics Official at (202) 564-1786, or Daniel Fort, Ethics Officer, at (202) 202-564-2200. For questions regarding the SAB Staff Office component of this response, please contact Christopher Zarba, Acting Director at (202) 564-0760 or Angela Nugent, Special Assistant, Science Advisory Board Staff Office at (202) 564-2218. Finally, for questions to the EPA's Office of Research and Development, please contact Deborah Heckman at (202) 564-7274 or John Vandenberg at (919) 541-4527.

Attachments

- A. Technical Comments from the Office of Federal Advisory Committee Management and Outreach
- B. Technical Comments from the SAB Staff Office
- C. Technical Comments from the ORD

ENDNOTE

¹ Please note that the General Counsel, a Presidentially appointed/Senate confirmed position, has neither a statutory nor regulatory role in EPA's ethics program. OGC/Ethics therefore assumes that the OIG intended to identify the Designated Agency Ethics Official as the correct action official. Brenda Mallory was designated by the Administrator pursuant to 5 CFR 2638.202(b) and (c) when she became the Principal Deputy General Counsel. Although Ms. Mallory is also currently acting as the General Counsel, the acting position does not imbue her with her authority to oversee EPA's ethics program. Rather, that authority derives from her appointment as the Designated Agency Ethics Official (DAEO).

Distribution

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June 2015

EPA'S SCIENCE ADVISORY BOARD

Improved Procedures Needed to Process Congressional Requests for Scientific Advice

GAO Highlights

Highlights of GAO-15-500, a report to congressional requesters

Why GAO Did This Study

EPA formulates rules to protect the environment and public health. To enhance the quality and credibility of such rules, EPA obtains advice and recommendations from the SAB and CASAC—two federal advisory committees that review the scientific and technical basis for EPA decision-making. ERDDAA requires the SAB to provide both the EPA Administrator and designated congressional committees with scientific advice as requested. Amendments to the Clean Air Act established CASAC to, among other things, provide advice to the Administrator on NAAQS.

GAO was asked to look into how the SAB and CASAC are fulfilling their statutory obligations in providing such advice. This report examines (1) the extent to which EPA procedures for processing congressional requests to the SAB ensure compliance with ERDDAA; (2) the extent to which CASAC has provided advice related to NAAQS; and (3) policies EPA has to ensure that the SAB and CASAC maintain their independence when performing their work. GAO reviewed relevant federal regulations and agency documents, and interviewed EPA, SAB, and other relevant officials.

What GAO Recommends

GAO recommends that to better ensure compliance with ERDDAA, EPA take steps to improve its procedures for processing congressional committee requests to the SAB for advice. EPA agreed with GAO's recommendations.

View GAO-15-500. For more information, contact J. Alfredo Gómez at (202) 512-3841 or gomezj@gao.gov.

June 2015

EPA'S SCIENCE ADVISORY BOARD

Improved Procedures Needed to Process Congressional Requests for Scientific Advice

What GAO Found

The Environmental Protection Agency's (EPA) procedures for processing congressional requests for scientific advice from the Science Advisory Board (SAB) do not ensure compliance with the Environmental Research, Development, and Demonstration Authorization Act of 1978 (ERDDAA) because these procedures are incomplete. For example, they do not clearly outline how the EPA Administrator, the SAB staff office, and others are to handle a congressional committee's request. While the procedures reflect EPA's responsibility to exercise general management controls over the SAB and all its federal advisory committees under the Federal Advisory Committee Act (FACA), including keeping such committees free from outside influence, they do not fully account for the specific access that designated congressional committees have to the SAB under ERDDAA. For example, EPA's policy documents do not establish how EPA will determine which questions would be taken up by the SAB. EPA officials told GAO that in responding to congressional requests, EPA follows the same process that it would apply to internal requests for questions to the SAB, including considering whether the questions are science or policy driven or are important to science and the agency. However, under ERDDAA, the SAB is required to provide requested scientific advice to select committees, regardless of EPA's judgment. By clearly documenting how to handle congressional requests received under ERDDAA consistent with federal standards of internal control, EPA can provide reasonable assurance that its staff process responses consistently and in accordance with the law.

The Clean Air Scientific Advisory Committee (CASAC) has provided certain types of advice related to the review of national ambient air quality standards (NAAQS), but has not provided others. Under the Clean Air Act, CASAC is to review air quality criteria and existing NAAQS every 5 years and advise EPA of any adverse public health, welfare, social, economic, or energy effects that may result from various strategies for attainment and maintenance of NAAQS. An EPA official stated that CASAC has carried out its role in reviewing the air quality criteria and the NAAQS, but CASAC has never provided advice on adverse social, economic, or energy effects related to NAAQS because EPA has never asked CASAC to do so. In a June 2014 letter to the EPA Administrator, CASAC indicated it would review such effects at the agency's request.

EPA has policies and guidance to help ensure that its federal advisory committees—including the SAB and CASAC—maintain their independence from the agency when the advisory committees perform their work. Under General Services Administration regulations for implementing FACA, an agency must develop procedures to ensure that its federal advisory committees are independent from the agency when rendering judgments. EPA policies and guidance to help ensure the independence of its federal advisory committees include guidance specifically for the SAB and general requirements that apply to all of EPA's federal advisory committees, including the SAB and CASAC. For example, EPA's Scientific Integrity Policy states that EPA prohibits managers and other agency leadership from intimidating or coercing scientists to alter scientific data, findings or professional opinions, or inappropriately influencing scientific advisory boards.

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Abbreviations

CASAC	Clean Air Scientific Advisory Committee
DFO	Designated Federal Officer
EPA	Environmental Protection Agency
ERDDAA	Environmental Research, Development, and Demonstration Authorization Act of 1978
FACA	Federal Advisory Committee Act
NAAQS	National Ambient Air Quality Standards
OCIR	Office of Congressional and Intergovernmental Relations
SAB	Science Advisory Board

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June 4, 2015

The Honorable James M. Inhofe
Chairman
Committee on Environment and Public Works
United States Senate

The Honorable Lamar Smith
Chairman
Committee on Science, Space, and Technology
House of Representatives

The Environmental Protection Agency (EPA) uses scientific studies and methodologies when formulating rules to protect the environment and public health. EPA seeks to enhance the quality and credibility of such rules by obtaining reviews from experts of the underlying studies and methodologies. For example, EPA requests and obtains advice and recommendations from the Science Advisory Board (SAB) and the Clean Air Scientific Advisory Committee (CASAC). The Environmental Research, Development, and Demonstration Authorization Act of 1978 (ERDDAA) mandated that EPA establish the SAB and required the SAB to provide the EPA Administrator with scientific advice as requested. In 1980, Congress amended ERDDAA by adding a provision requiring the SAB to also provide scientific advice to designated congressional committees when requested.¹ CASAC was established pursuant to amendments to the Clean Air Act in 1977 to, among other things, provide advice to the Administrator with regard to EPA's National Ambient Air Quality Standards (NAAQS). The Clean Air Act requires EPA to set and periodically review and revise NAAQS for certain air pollutants, the emission of which cause or contribute to air pollution that may endanger public health or welfare.

The SAB and CASAC are both federal advisory committees and therefore must comply with the Federal Advisory Committee Act (FACA) and its

¹These designated committees currently include the Senate Committee on Environment and Public Works; the House Committee on Science, Space, and Technology; the House Committee on Energy and Commerce; and the House Committee on Transportation and Infrastructure.

implementing regulations.² For example, the SAB and CASAC are required to operate in accordance with charters.³ In addition, EPA must have procedures to ensure that the advice or recommendations of its federal advisory committees, including the SAB and CASAC, are products of their independent judgment and not “inappropriately” influenced by EPA.⁴ The SAB consists of the Board, standing and ad hoc committees, panels, and workgroups. CASAC also has subcommittees and panels. The EPA Administrator appoints members to the SAB (and its standing committees) and CASAC, and the SAB staff director appoints consultants to the SAB ad hoc committees, panels, and workgroups and CASAC subcommittees and panels.⁵ The SAB staff office, among other things, oversees the selection and formation of SAB and CASAC panels and work groups and processes EPA requests for scientific and technical advice.⁶ The SAB, its staff office, and CASAC report directly to the EPA Administrator.

Recent interactions between the House Committee on Science, Space, and Technology and the SAB related to specific SAB reviews on hydraulic fracturing and water body connectivity have raised questions with the Committee regarding whether the SAB is fulfilling its statutory obligations

²FACA governs the establishment, operation, and termination of advisory committees within the executive branch of the federal government. The General Services Administration (GSA) prepares regulations on federal advisory committees to be prescribed by the GSA Administrator and issues other administrative guidelines and management controls for advisory committees.

³Charters must be filed with EPA and the congressional committees with legislative jurisdiction over the agency. The purpose of the advisory committee charter is to specify the committee's mission or charge and general operational characteristics.

⁴41 C.F.R. § 102-3.105(g) (2014).

⁵SAB ad hoc committees, panels, and workgroups and CASAC subcommittees and panels include both members and consultants and are established for limited periods to provide advice on specific matters where the Board or standing committee members do not have all the requisite expertise.

⁶The SAB staff office is staffed by EPA employees and is responsible for two of EPA's 20 FACA committees—the SAB and CASAC. The SAB staff office publishes a Federal Register Notice announcing opportunities for the public to nominate candidate experts to serve on the SAB, certain SAB standing committees, and CASAC.

to provide scientific advice to the designated congressional committees.⁷ In addition, recent testimony received by the Committee has raised questions regarding whether CASAC is carrying out its statutory obligations to advise EPA of any adverse public health, welfare, social, economic, or energy effects that may result from various strategies for attainment and maintenance of NAAQS.

You asked us to review how the SAB and CASAC are fulfilling their statutory obligations in providing scientific advice. This report examines (1) the extent to which EPA procedures for processing congressional committees' requests for scientific advice from the SAB ensure compliance with ERDDAA; (2) the extent to which CASAC has provided advice related to NAAQS; and (3) policies, if any, EPA has to ensure the SAB and CASAC maintain their independence from the agency when performing their work.

To examine the extent to which EPA procedures for processing congressional committees' requests for scientific advice from the SAB ensure compliance with ERDDAA, we reviewed ERDDAA and its legislative history, the SAB's charters, legal cases involving the SAB, and EPA documents to determine how requests to the SAB from congressional committees were addressed. We also interviewed officials from the SAB staff office, EPA's Office of General Counsel, and EPA's Office of Congressional and Intergovernmental Relations (OCIR). To examine the extent to which CASAC has provided advice related to NAAQS, we reviewed the Clean Air Act, its legislative history, and legal cases involving the act. We also interviewed SAB staff office and EPA Office of General Counsel officials. To examine what policies, if any, EPA has to ensure the SAB and CASAC maintain their independence from the agency when performing their work, we reviewed and analyzed FACA, the General Services Administration's (GSA) regulations for implementing FACA, and EPA documents. We interviewed officials from the SAB staff office about written policies concerning FACA's requirements about independence. We also interviewed officials from GSA to discuss the

⁷Hydraulic fracturing is a process used in natural gas wells where millions of gallons of water, sand, and chemicals are pumped underground to break apart the rock and release the gas. Water body connectivity is the biological, chemical, and hydrologic connectivity of waters and the effects that small streams, wetlands, and open waters have on larger downstream waters such as rivers, lakes, estuaries, and oceans.

agency's regulations requiring federal agencies to develop procedures to ensure the independence of their federal advisory committees.

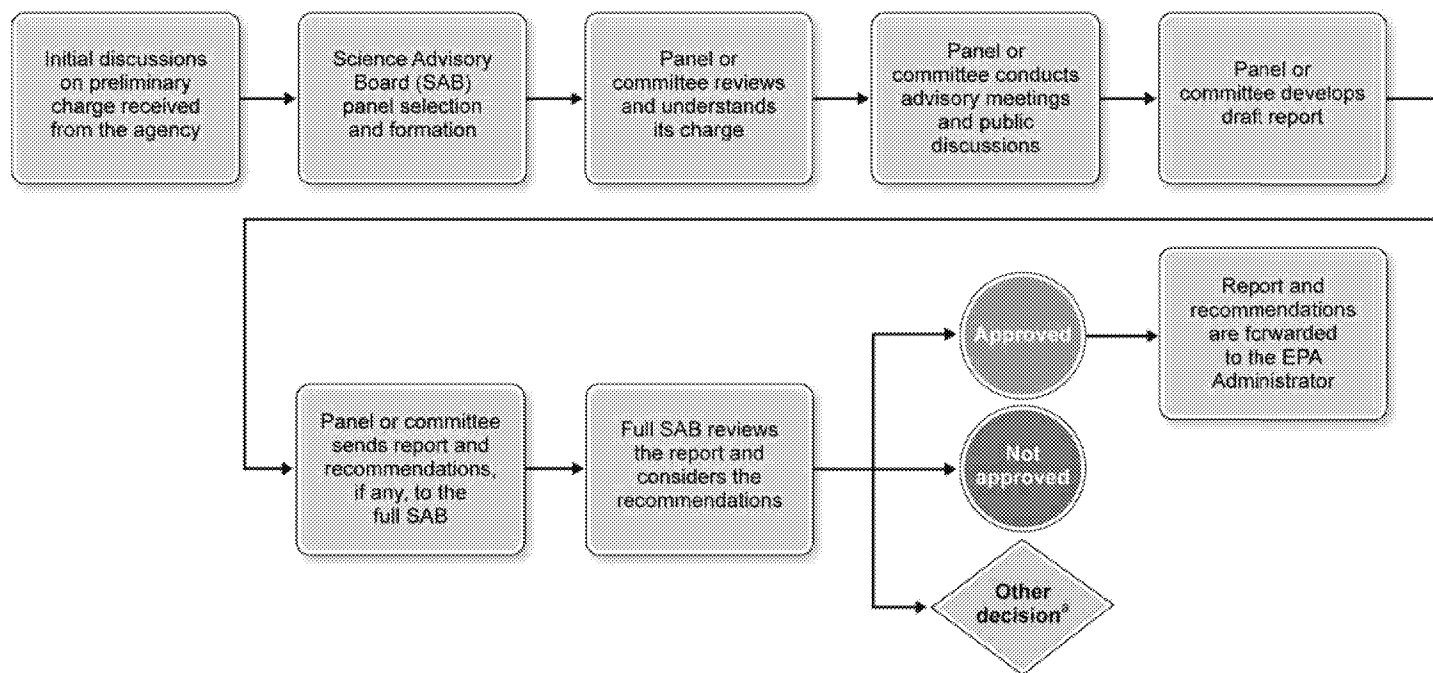
We conducted this performance audit from June 2014 to June 2015, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

The SAB provides a mechanism for EPA to receive peer review and other advice in the use of science at EPA. The SAB is authorized to, among other things, review the adequacy of the scientific and technical basis of EPA's proposed regulations. The SAB and its subcommittees or panels focus on a formal set of charge questions on environmental science received from the agency.⁸ Depending on the nature of the agency's request, the entire advisory process generally takes 4 to 12 months from the initial discussion on charge questions with EPA offices and regions to the delivery of the final SAB report. Figure 1 depicts the stages of the SAB advisory process.

⁸The charge guides, but need not limit, the deliberations of the committee or panel.

Figure 1: The SAB Advisory Process



Source: GAO analysis of EPA documents. | GAO-15-500

^aIn addition to approving or not approving a report and recommendations, the full SAB has other options it can take, such as making revisions to the draft report or sending the draft report back to the authoring panel or committee for further work.

CASAC provides independent advice to EPA on “air quality criteria.”⁹ Under the Clean Air Act as amended, CASAC is to review the criteria and the existing NAAQS every 5 years and make recommendations to EPA for new standards and revisions of existing standards, as appropriate. In addition, CASAC is directed to advise EPA of the areas in which additional knowledge is required to appraise the adequacy and basis of the NAAQS and describe the research efforts necessary to provide the required information. CASAC also is directed to advise EPA of the relative contribution to air pollution of concentrations of natural as well as human

⁹Under the Clean Air Act, air quality criteria must accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare, which may be expected from the presence of certain air pollutants in the ambient air.

activity, and any adverse public health, welfare, social, economic, or energy effects that may result from various strategies for attainment and maintenance of the NAAQS. CASAC's advisory process is similar to the SAB's process, including the option of establishing subcommittees and panels that send their reports and recommendations to CASAC.

As federal advisory committees, the SAB and CASAC are subject to FACA, which broadly requires balance, independence, and transparency. FACA was enacted, in part, out of concern that certain special interests had too much influence over federal agency decision makers. The head of each agency that uses federal advisory committees is responsible for exercising certain controls over those advisory committees. For example, the agency head is responsible for establishing administrative guidelines and management controls that apply to all of the agency's advisory committees, and for appointing a Designated Federal Officer (DFO) for each advisory committee. Advisory committee meetings may not occur in the absence of the DFO, who is also responsible for calling meetings, approving meeting agendas, and adjourning meetings.¹⁰ As required by FACA, the SAB and CASAC operate under charters that include information on their objectives, scope of activities, and the officials to whom they report. Federal advisory committee charters must be renewed every 2 years, but they can be revised before they are due for renewal in consultation with GSA.

In addition to being subject to FACA, the SAB is subject to ERDDAA, which requires the SAB not only to provide advice to its host agency but also to designated congressional committees. (There is no similar statutory provision that allows congressional committees to request or receive scientific advice from CASAC). Specifically, in 1980, Congress amended ERDDAA by adding a provision requiring the SAB to provide scientific advice to designated congressional committees when requested.¹¹ According to SAB staff office officials, since that time, the SAB has responded to general congressional questions and concerns. However, in 2013, representatives of a congressional committee formally

¹⁰A DFO is required by FACA to chair or sit in attendance of each advisory committee meeting and is authorized to adjourn any such meeting whenever he/she determines it to be in the public interest. FACA also requires that no advisory committee shall conduct any meeting in the absence of that officer or employee.

¹¹An analysis of changes in the SAB's charter regarding to whom the SAB is to provide advice is included in appendix I.

requested advice from the SAB regarding two reviews the SAB was conducting. According to EPA officials, this was the first time representatives of a congressional committee formally requested advice from the SAB. Both requests were addressed and submitted directly to the SAB Chair and the Chair of the relevant SAB panel and sent concurrently to the SAB staff office and EPA Administrator.¹² While ERDDAA does not outline a role for EPA in mediating responses from the SAB to the designated congressional committees, EPA identifies such a role for itself under FACA. Specifically, EPA points to the DFO's responsibility to manage the agenda of an advisory committee. Also under FACA, EPA is responsible for issuing and implementing controls applicable to its advisory committees. Responses to the committee's requests for scientific advice were handled by the SAB staff office and EPA's Office of Congressional and Intergovernmental Relations (OCIR). The SAB staff office and, later, OCIR responded to the committee's first request for advice, and OCIR responded to the committee's second request for advice. See table 1 for more information on these requests.

¹²The first request was copied to EPA's Acting Administrator.

Table 1: Congressional Committee’s Formal Requests for Advice from the Scientific Advisory Board (SAB) and the Environmental Protection Agency’s (EPA) Acknowledgments since 1980

Congressional committee request letter	Nature of request	Agency acknowledgment
May 2, 2013, by Representative Chris Stewart, Subcommittee on Environment, Committee on Science, Space and Technology	The Committee requested that the SAB and its Hydraulic Fracturing Research Advisory Panel consider additional areas for inquiry as it began its examination of EPA’s study of the potential impacts of hydraulic fracturing on drinking water resources. The Committee submitted 14 questions that it wanted the SAB and the panel to answer.	<p>May 31, 2013—The SAB staff office acknowledged the Committee’s letter.</p> <p>The SAB staff office responded to the Committee’s request for advice and provided responses to 3 of the 14 questions outlined in the Committee’s request. The SAB staff office also explained that the SAB would have an opportunity to independently consider the remaining 11 questions. The Committee’s letter was provided to the SAB panel at its meeting on May 7– 8, 2013, and posted on the SAB website.</p> <p>December 11, 2013—EPA’s Office of Congressional and Intergovernmental Relations (OCIR) acknowledged the Committee’s letter.</p> <p>OCIR’s Associate Administrator stated that an Aug. 4, 2011, SAB advisory report on EPA’s draft <i>Plan to Study the Potential Impacts of Hydraulic Fracturing on Drinking Water Resources</i> addressed many of the themes embodied in the remaining 11 questions contained in the House Committee’s request. The Associate Administrator also stated that the Committee’s questions not addressed in the 2011 report would require new research or would be considered once EPA has completed its <i>Draft Hydraulic Fracturing Drinking Water Assessment Report</i>.</p>
November 6, 2013, by Representatives Lamar Smith, Chairman, Committee on Science, Space, and Technology and Chris Stewart, Subcommittee on Environment, Committee on Science, Space and Technology	The Committee requested that the SAB and the SAB panel for the review of EPA’s Water Body Connectivity Report address additional charge questions as part of their review.	<p>December 16, 2013—EPA’s OCIR acknowledged the Committee’s letter.</p> <p>OCIR stated that EPA had begun an initial review of the questions, but that many of the questions were already being addressed under the existing charge questions being reviewed by the SAB panel or “went beyond the scientific review that is the expert technical panel’s statutory focus.”</p>

Source: GAO analysis of EPA documents. | GAO-15-500

EPA's Procedures for Processing Congressional Requests to the SAB Do Not Ensure Compliance with ERDDAA

EPA's procedures for processing congressional requests for scientific advice from the SAB do not ensure compliance with ERDDAA because the procedures are incomplete and do not fully account for the statutory access designated congressional committees have to the SAB. Specifically, EPA policy documents do not clearly outline how the EPA Administrator, the SAB staff office, and members of the SAB panel are to handle a congressional committee's request for advice from the SAB. In addition, EPA policy documents do not acknowledge that the SAB must provide scientific advice when requested by select congressional committees.

EPA's written procedures for processing congressional committee requests to the SAB are found in the SAB charter and in the following two documents that establish general policies for how EPA's federal advisory committees are to interact with outside parties:

- *EPA Policy Regarding Communication Between Members of Federal Advisory Committee Act Committees and Parties Outside of the EPA* (the April 2014 policy), and
- *Clarifying EPA Policy Regarding Communications Between Members of Scientific and Technical Federal Advisory Committees and Outside Parties* (the November 2014 policy clarification).

Collectively, the SAB's charter, EPA's April 2014 policy, and EPA's November 2014 policy clarification provide direction for how EPA and the SAB are to process requests from congressional committees. However, these documents do not clearly outline procedures for the EPA Administrator, the SAB staff office, and members of the SAB panel to use in processing such requests.

At the time of the House committee's two requests to the SAB in 2013, the SAB charter was the only EPA document that contained written policy relating to congressional committee requests under ERDDAA. The SAB charter briefly noted how congressional committees may access SAB advice, stating; "While the SAB reports to the EPA Administrator, congressional committees specified in ERDDAA may ask the *EPA Administrator to have SAB provide advice* on a particular issue." (GAO italics) Beyond what the charter states, however, no EPA policy specified a process the Administrator should use to have the SAB provide advice and review a congressional request.

In response to a request from the SAB staff office that EPA clarify the procedures for handling congressional committee requests, EPA, through an April 4, 2014, memorandum informed the SAB that committee members themselves and the federal advisory committees as a whole should refrain from directly responding to these external requests. Attached to the memorandum was the April 2014 policy that stated: “if a FACA committee member receives a request relating to the committee’s work from members of Congress or their staff, or congressional committees, the member should notify the DFO, who will refer the request to the EPA OCIR. OCIR will determine the agency’s response to the inquiry, after consulting with the relevant program office and the DFO.” This policy, however, did not provide more specific details on processing requests from congressional committees under ERDDAA.

In November 2014, EPA issued a clarification to the April 2014 policy, specifying that SAB members who receive congressional requests pursuant to ERDDAA should acknowledge receipt of the request and indicate that EPA will provide a response. The November 2014 policy clarification does not identify the SAB as having to provide the response. The November 2014 policy clarification also stated that the request should be forwarded to the appropriate DFO and that decisions on who and how best to respond to the requests would be made by EPA on a case-by-case basis. While the November 2014 policy clarification provides greater specificity about processing requests, it is not consistent with the SAB charter because the policy indicates that congressional committee requests should be handled through the DFO, whereas the charter indicates that they should be handled through the EPA Administrator and provides no further information. A senior-level EPA official stated that the agency considered that the charter and the November 2014 policy clarification differed in the level of detail, but not in the broad principle that the agency is the point of contact for congressional requests to the SAB (and SAB responses to those requests). However, under the federal standards of internal control,¹³ agencies are to clearly document internal controls, and the documentation is to appear in management directives, administrative policies, or operating manuals. While EPA has documented its policies, they are not clear, because the charter and the November 2014 policy

¹³GAO, *Standards for Internal Control in the Federal Government*, GAO/AIMD-00-21.3.1 (Washington, D.C.: November 1999).

clarification are not consistent about which office should process congressional requests. Agency officials said that the SAB charter is up for renewal in 2015. By modifying the charter when it is renewed to reflect the language in the November 2014 policy clarification—that congressional requests should be forwarded to the appropriate DFO—EPA can better ensure that its staff process congressional committee requests consistently when the agency receives such a request.

Moreover, neither the April 2014 policy nor the November 2014 policy clarification clearly documents EPA's procedures for reviewing congressional committee requests to determine which questions would be taken up by the SAB consistent with the federal standards of internal control. Because EPA's procedures for reviewing congressional committee requests are not documented, it will be difficult for EPA to provide reasonable assurance that its staff are appropriately applying criteria when determining which questions the SAB will address. EPA officials told us that internal deliberations in response to a congressional request follow those that the agency would apply to internal requests for charges to the SAB. Specifically, officials told us that EPA considers whether the questions are science or policy driven, whether they are important to science and the agency, and whether the SAB has already undertaken a similar review. In addition, under ERDDAA, the SAB is required to provide requested scientific advice to select committees, regardless of EPA's judgment. As EPA has not fully responded to the committee's two 2013 requests to the SAB, by clearly documenting its procedures for reviewing congressional requests to determine which questions should be taken up by the SAB and criteria for evaluating requests, the agency can provide reasonable assurance that its staff process these and other congressional committee requests consistently and in accordance with both FACA and ERDDAA.

Furthermore, the charter states that when scientific advice is requested by one of the committees specified in ERDDAA, the Administrator will, when appropriate, forward the SAB's advice to the requesting congressional committee. Neither the charter nor the April 2014 policy and November 2014 policy clarification specify when it would be "appropriate" for the EPA Administrator to forward the SAB's advice to the requesting committee. Such specificity would be consistent with federal standards of internal control that call for clearly documenting internal controls. Without such specification, the perception could be created that EPA is withholding information from Congress that the SAB is required to provide under ERDDAA. EPA officials stated that the EPA Administrator does not attempt to determine whether advice of the SAB contained in

written reports should be forwarded to the requesting committee and that all written reports are publically available on the SAB website at the same time the report is sent to the EPA Administrator. By modifying the charter or other policy documents to reflect when it is and when it is not appropriate for the EPA Administrator to forward the advice to the requesting committee, EPA can better ensure transparency in its process.

In general, under FACA, as a federal advisory committee, the SAB's agenda is controlled by its host agency, EPA.¹⁴ As such, the SAB generally responds only to charge questions put to it by EPA although, under ERDDAA, the SAB is specifically charged with providing advice to its host agency as well as to designated congressional committees. In addition, it is EPA's responsibility under GSA regulations for implementing FACA to ensure that advisory committee members and staff understand agency-specific statutes and regulations that may affect them,¹⁵ but nothing in the SAB charter, the April 2014 policy, or the November 2014 policy clarification communicates that, ultimately, SAB must provide scientific advice when requested by congressional committees. For example, we found no mechanism in EPA policy for the SAB to respond on its own initiative to a congressional committee request for scientific advice unrelated to an existing EPA charge question. A written policy for how the SAB should respond to a congressional committee request that does not overlap with charge questions from EPA would be consistent with federal internal control standards. Moreover, such a policy would better position the SAB to provide the advice it is obligated to provide under ERDDAA and for EPA to provide direction consistent with GSA regulations for implementing FACA.

¹⁴An advisory committee under FACA is a committee "established or utilized by" a federal agency for the purpose of obtaining advice or recommendations. 5 U.S.C. App. 2 § 3(2) (2015). The term "utilized" means "under the actual management or control of the agency." See, e.g. *Town of Marshfield v. F.A.A.* 552 F.3d 1, 6 (1st Cir. 2008).

¹⁵41 C.F.R. § 102-3.125(c) (2014).

CASAC Has Provided Certain Types of Advice Related to Air Quality Standards

CASAC has provided certain types of advice related to the review of NAAQS. The Clean Air Act requires CASAC to review air quality criteria and existing NAAQS every 5 years and advise EPA of any adverse public health, welfare, social, economic, or energy effects that may result from various strategies for attainment and maintenance of NAAQS.¹⁶

According to a senior-level EPA official, CASAC has carried out its role in reviewing the air quality criteria and the NAAQS, but has never provided advice on adverse social, economic, or energy effects related to NAAQS because to date EPA has not asked CASAC to do so. This is in part because NAAQS are to be based on public health and welfare criteria, so information on the social, economic, or energy effects of NAAQS are not specifically relevant to setting NAAQS.

In a June 2014 letter to the EPA Administrator, CASAC indicated that, at the agency's request, it would review the impacts (e.g., the economic or energy impacts) of strategies for attaining or maintaining the NAAQS but stressed that such a review would be separate from reviews of the scientific bases of NAAQS.¹⁷ In response to such a request, the letter stated that an ad hoc CASAC panel would be formed to obtain the full expertise necessary to conduct such a review.

¹⁶42 U.S.C. §§ 7409(d)(2)(B), (d)(2)(C)(iv) (2015).

¹⁷A senior-level EPA official stated that EPA continues to examine this issue and is considering how to proceed. Information from EPA-requested reviews could be useful for the states, which implement the strategies necessary to achieve the NAAQS. EPA is required to provide states, after consultation with appropriate advisory committees, with information on air pollution control techniques, including the cost to implement such techniques. 42 U.S.C. § 7408(b)(1) (2015). According to a senior-level EPA official, EPA collects this information from other federal advisory committees, the National Academy of Sciences, and state air agencies, among others, and EPA fulfills its statutory obligation by issuing Control Techniques Guidelines and other implementation guidance.

EPA Has Policies and Guidance to Ensure That the SAB and CASAC Maintain Their Independence from the Agency

EPA has policies and guidance to help ensure that its federal advisory committees maintain their independence from the agency when performing their work.¹⁸ Under GSA regulations for implementing FACA, agencies must develop procedures to ensure that the federal advisory committees are independent from the agency when rendering judgments.¹⁹ EPA policies and guidance to help ensure the independence of its federal advisory committees include general discussions of FACA requirements that apply to all of EPA's federal advisory committees as well as those specifically for the SAB.²⁰ For example, the April 2014 Policy refers to the agency's responsibilities under FACA to maintain its separation from its federal advisory committees. In addition, EPA's Scientific Integrity Policy sets out the expectation that all agency employees, including scientists, managers and political appointees, will ensure, among other things, that the agency's scientific work is of the highest quality and free from political interference or personal motivations.²¹ This policy states that EPA prohibits managers and other agency leadership from intimidating or coercing scientists to alter scientific data, findings, or professional opinions or to inappropriately influence scientific advisory boards. The agency has also developed the *EPA Peer Review Handbook* to provide guidance to EPA staff and managers who are planning to conduct peer reviews.²² The handbook

¹⁸Independence is defined here as freedom from institutional or ideological bias regarding the issues under review. U.S. Environmental Protection Agency, *Peer Review Handbook*, 3rd Edition.

¹⁹41 C.F.R. §102-3.105(g) (2014). The form that these procedures should take (e.g., whether as guidance or policies and amount of detail) is not defined in the regulations and, according to GSA officials, it is up to the discretion of each agency.

²⁰We did not review the adequacy of these policies and procedures or those currently in place to ensure the independence and balance of specific SAB members or panelists. We have previously reported issues with the policies and procedures associated with the independence of individual SAB members. In June 2001, we recommended to EPA that the SAB develop policies and procedures that better identify and mitigate potential conflicts of interest and support the development of balanced panels. See GAO, *EPA's Science Advisory Board Panels: Improved Policies and Procedures Needed to Ensure Independence and Balance*, GAO 01-536 (Washington, D.C.: June 12, 2001). The agency implemented a number of new procedures in response to this report's recommendations.

²¹The U.S. EPA Scientific Integrity Policy provides a framework intended to ensure scientific integrity throughout EPA and promote, among other things, scientific and ethical standards and the use of peer review and advisory committees.

²²The goal of peer review is to obtain an independent, third party review of a product from experts who have not substantially contributed to its development as a product.

includes information on planning and conducting a peer review as well as the types of peer reviews performed by external peer reviewers, such as federal advisory committees. Specifically, the handbook provides information on the independence aspects of a peer review, such as how closely EPA officials should interact with peer reviewers when a review is being conducted to maintain independence.

The SAB staff office has also developed documents that contain some references to how the SAB and CASAC can maintain their independence from EPA. Specifically, the SAB Office developed a handbook for SAB members that includes a section on how SAB members should expect to maintain their independence.²³ For example, the handbook states that SAB committee and panel members are expected to avoid interaction with anyone—including agency representatives or members of the interested public—who might create a perception of conflict of interest. The SAB handbook also has a section on the role of the agency during the SAB's report preparation phase. This section states that the agency should not in any way approve or attempt to influence the content of draft panel or committee reports. In addition, EPA officials explained that the agency does not review or comment on drafts of SAB or CASAC products, so that it cannot influence them in their final form. Finally, the SAB office, as part of a fiscal year 2012 list of initiatives to enhance public involvement in SAB and CASAC activities included a statement that the SAB office and federal advisory committees would not accept a charge from EPA that unduly narrows the scope of an advisory activity.

Conclusions

EPA's SAB plays an important role assisting the agency in using high-quality science by providing EPA with scientific advice on a wide range of matters and reviewing scientific research the agency uses when developing environmental regulations. Under ERDDAA, the SAB is also required to provide scientific advice to designated congressional committees when requested. In November 2014, EPA issued a clarification revising its policy for how it processes congressional

²³According to EPA officials, the SAB staff office supports both the SAB and CASAC, so the same processes and procedures are applied to both. The handbook notes in the introduction that although the handbook refers to the chartered SAB and its committees and panels, many of the processes and procedures also are relevant to the CASAC. New members of CASAC and its panels are provided a copy of the handbook.

committees' requests for scientific advice from the SAB. However, shortcomings exist with EPA's policy documents.

First, the November 2014 policy clarification differs from the SAB's charter regarding which offices should receive and process congressional requests. As a result, EPA staff may not process congressional committee requests consistently, since the treatment will vary depending on whether staff follow the policy clarification or the charter. Agency officials said that the SAB charter is up for renewal in 2015. By modifying the charter when it is renewed to reflect the language in the November 2014 policy clarification, that congressional requests should be forwarded to the appropriate DFO, EPA can better ensure that its staff process congressional committee requests consistently when the agency receives them.

Additionally, EPA has not documented its procedures for reviewing congressional committee requests to determine which questions should be taken up by the SAB or criteria for evaluating those requests. By documenting the agency's procedures and criteria, EPA can provide reasonable assurance that its staff handle congressional requests consistently and in accordance with both FACA and ERDDAA.

Furthermore, the SAB's charter states that the Administrator will forward the SAB's response to a committee's request when appropriate, but EPA has not specified in policy documents when it would be appropriate for the Administrator to forward the SAB's advice to the requesting committee. Without such specification, the perception could be created that EPA is withholding information from Congress that the SAB is required to provide under ERDDAA. By clarifying procedures to reflect when it is and when it may not be appropriate for the Administrator to forward the advice to the requesting committee, EPA can better ensure transparency in its process and consistency with ERDDAA.

Finally, it is EPA's responsibility to ensure that advisory committee members and staff understand agency-specific statutes and regulations that may affect them under regulations for implementing FACA. However, EPA policy documents do not specify how the SAB would respond on its own initiative to a congressional committee's request for scientific advice unrelated to an existing EPA charge question, as it must do under ERDDAA. By documenting procedures on how the SAB should respond to a congressional committee request that does not overlap with charge questions from EPA, the agency would better position the SAB to provide

the advice it is obligated to provide under ERDDAA and EPA itself to provide direction consistent with regulations for implementing FACA.

Recommendations for Executive Action

To better ensure compliance with ERDDAA when handling congressional requests for scientific advice from EPA's SAB, we recommend that the EPA Administrator take the following four actions:

- Clarify in the charter when it is renewed which offices should receive and process congressional requests.
- Document procedures for reviewing congressional committee requests to determine which questions should be taken up by the SAB and criteria for evaluating such requests.
- Clarify in policy documents when it is and when it is not appropriate for the EPA Administrator to forward advice to the requesting committee.
- Specify in policy documents how the SAB should respond to a congressional committee's request for scientific advice unrelated to an existing EPA charge question.

Agency Comments

We provided EPA with a draft of this report for review and comment. In written comments, reproduced in appendix II, EPA stated that it concurred with the recommendations in the report and provided information on planned actions to address each recommendation. EPA also provided technical comments, which we incorporated as appropriate.

We are sending copies of this report to the appropriate congressional committees, the EPA Administrator, and other interested parties. In addition, this report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff members have any questions about this report, please contact me at (202) 512-3841 or gomezj@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made contributions to this report are listed in appendix III.

A handwritten signature in black ink, reading "Alfredo Gómez". The signature is written in a cursive style with a large, stylized "G" for Gómez.

J. Alfredo Gómez
Director, Natural Resources and Environment

Appendix I: Changes to the Science Advisory Board Charter

The Environmental Research, Development, and Demonstration Authorization Act of 1978 (ERDDAA) mandated that EPA establish the SAB and required the SAB to provide the EPA Administrator with scientific advice as requested. Congress amended ERDDAA in 1980 to require EPA's SAB to provide scientific advice to designated congressional committees when requested. Below is our analysis of the changes to the charter regarding to whom the SAB is to provide advice.

In 1978, the Charter Objectives and Responsibilities stated that: "The objective of the Board is to provide advice to EPA's Administrator on the scientific and technical aspects of environmental problems and issues. The Board reports to the Administrator. It will review issues, provide independent advice on EPA's major programs, and will perform special assignments as requested by the Agency and as required by the ERDDAA of 1978 and the CAA Amendments of 1977." In response to the ERDDAA amendments, EPA changed the charter in 1981 to reflect that certain congressional committees could also request advice. Additional changes to the charter over the years regarding to whom the SAB is to provide advice are reflected in the table below.

Table 2: EPA Science Advisory Board (SAB) Charter Changes Regarding to Whom the SAB Is to Provide Advice, 1981–2013

Year of charter	Charter's objectives and responsibilities (changes underlined and italicized)
1981	The objective of the Board is to provide advice to EPA's Administrator on the scientific and technical aspects of environmental problems and issues. <i>While the Board reports to the administrator, it may also be requested to provide advice to the U.S. Senate Committee on Environment and Public Works or the U.S. House Committees on Science and Technology, Interstate and Foreign Commerce, or Public Works and Transportation.</i>
1983	Same as above.
1985	Similar to above. <i>House Committee name changed to Committees on Science and Technology, Energy and Commerce, or Public Works and Transportation</i>
1987	Same as above.
1989	Same as above.
1991	The objective of the Board is to provide <i>independent</i> advice to EPA's Administrator on the scientific and technical aspects of environmental problems and issues. While the Board reports to the Administrator, it may also be requested to provide advice to the U.S. Senate Committee on Environment and Public Works or the U.S. House Committees on Science and Technology, Energy and Commerce, or Public Works and Transportation.
1993	Same as above.
1995	The objective of the Board is to provide independent advice and <i>peer review</i> to EPA's Administrator on the scientific and technical aspects of environmental problems and issues. While the Board reports to the Administrator, it may also be requested to provide advice to <i>U.S. Senate Committees and Subcommittees and U.S. House Committees and Subcommittees, as appropriate.</i>
1997	Same as above.
1999	Same as above.

**Appendix I: Changes to the Science Advisory
Board Charter**

Year of charter	Charter's objectives and responsibilities (changes underlined and italicized)
2001	Same as above.
2003	The objective of the Board is to provide independent advice and peer review to EPA's Administrator on the scientific and technical aspects of environmental problems and issues. While the SAB reports to the EPA Administrator, certain congressional committees <i>may ask the EPA Administrator to have the SAB provide advice on a particular issue.</i>
2005	Same as above.
2007	The objective of the Board is to provide independent advice and peer review to EPA's Administrator on the scientific and technical aspects of environmental problems and issues. While the SAB reports to the EPA Administrator, certain congressional committees may ask the EPA Administrator to have the SAB <i>address a particular issue.</i>
2009	Same as above.
2011	Same as above.
2013	The objective of the Board is to provide independent advice and peer review to EPA's Administrator on the scientific and technical aspects of environmental problems and issues. While the SAB reports to the EPA Administrator, congressional committees <i>specified in ERDDAA</i> may ask the EPA Administrator to have the SAB provide <i>scientific advice</i> on a particular issue.

Source: GAO analysis of EPA documents. | GAO-15-500

Appendix II: Comments from the Environmental Protection Agency



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON D.C. 20460

OFFICE OF THE ADMINISTRATOR

MAY 22 2015

J. Alfredo Gomez
Director
Natural Resources and Environment
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Gomez:

Thank you for the work of you and your staff on GAO engagement code 361573 regarding the EPA Science Advisory Board (SAB) and the Clean Air Scientific Advisory Committee (CASAC). The SAB, established in 1978 pursuant to the Environmental Research, Development and Demonstration Authorization Act (ERDDAA), and the CASAC, established pursuant to the Clean Air Act, are valued sources of independent, expert scientific and technical advice to the agency.

As noted in the draft report, ERDDAA contains a unique provision that discusses requests for scientific advice from certain congressional committees. During our discussions with GAO regarding the report, the EPA raised the potential for a Constitutionally-based separation of powers concern should that provision of ERDDAA be read as allowing congressional committees to unilaterally direct the expenditure of agency funds for the benefit of Congress wholly outside of the appropriations process. The agency explained, however, that the provision can be read to allow the agency to establish procedures for agency consideration of requests for action from these committees that both respects the unique role given to the committees by ERDDAA and avoids that Constitutional concern.

We are pleased that the GAO's report, as evidenced in the recommendations, recognizes that the agency is authorized to establish procedures for the review and processing of congressional requests for scientific advice from the SAB, including "procedures for reviewing congressional committee requests to determine which questions should be taken up by the SAB and criteria for evaluating such requests." The agency agrees with those recommendations, and will move to establish procedures for agency review and processing of such requests. Summary agency responses to each of the GAO recommendations are provided below.

GAO Recommendation 1. Clarify in the charter when it is renewed which offices should receive and process congressional requests.

Agency Response: The SAB charter currently notes that congressional committees specified in ERDDAA may ask the EPA Administrator to have the SAB provide scientific advice on a particular issue. The agency will clarify the process by which congressional requests will be received and addressed, either by including additional detail in the SAB charter or by developing additional written procedures as envisioned in the recommendations below.

GAO Recommendation 2. Document procedures for reviewing congressional committee requests to determine which questions should be taken up by the SAB and criteria for evaluating such requests.

Agency Response: The agency will develop additional written procedures for evaluating congressional committee requests for advice from the SAB, including criteria to guide the evaluation of such requests by the agency and the SAB.

GAO Recommendation 3. Clarify in policy documents when it is and when it is not appropriate for the EPA Administrator to forward advice to the requesting committee.

Agency Response: SAB advice to the EPA Administrator is provided in the form of written letters and reports, all of which are available to the public on the SAB website. When SAB letters and reports are prepared in response to a request from congressional committees specified in ERDDAA, the letters and reports will be posted to the SAB website and the agency also will forward the written SAB advice to those committees.

GAO Recommendation 4. Specify in policy documents how the SAB should respond to a congressional committee request for scientific advice unrelated to an existing EPA charge question.

Agency Response: As noted in response to Recommendation 2, the agency will develop additional written procedures for evaluating congressional committee requests for advice from the SAB, including criteria to guide the evaluation of such requests by the agency and the SAB.

Sincerely,



John E. Reeder
Deputy Chief of Staff

cc: Christopher Zarba, Director
SAB Staff Office

Appendix III: GAO Contact and Staff Acknowledgments

GAO Contact

J. Alfredo Gómez, (202) 512-3841 or gomezj@gao.gov

Staff Acknowledgments

In addition to the individual named above, Vincent Price and Janet Frisch, Assistant Directors; Ulana Bihun; Antoinette Capaccio; Greg Carroll; and John Delicath made key contributions to this report.

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June 8, 2017

The Honorable Lisa Murkowski
Chairman
The Honorable Tom Udall
Ranking Member
Subcommittee on Interior, Environment, and Related Agencies
Committee on Appropriations
United States Senate

The Honorable Ken Calvert
Chairman
The Honorable Betty McCollum
Ranking Member
Subcommittee on Interior, Environment, and Related Agencies
Committee on Appropriations
House of Representatives

EPA Science Advisory Board: Policy Statement on Science Quality and Integrity

In formulating rules to protect the environment and public health, the Environmental Protection Agency (EPA) relies on advice from scientific and technical experts. EPA's Science Advisory Board (SAB) is one source of scientific and technical advice for EPA. The SAB consists of about 45 independent experts in the fields of science, engineering, economics, and other social sciences and is overseen by the SAB Staff Office, which is staffed by EPA employees. As a federal advisory committee, the SAB must comply with the Federal Advisory Committee Act (FACA).¹ Among other things, FACA requires that EPA establish uniform administrative guidelines and management controls for its advisory committees.

An explanatory statement accompanying the Consolidated Appropriations Act, 2016 directed EPA to develop an updated policy statement on science quality and integrity for the SAB.² According to the explanatory statement, the policy statement should include (1) goals on increasing membership from states and tribes; (2) an evaluation of potential bias, if EPA's Administrator decides that financial-related metrics are appropriate to identify conflicts of interest or bias; and (3) direction on treating public comments. The explanatory statement also directed EPA to submit a draft of the policy statement to GAO for review and included a provision for GAO to review the updated policy statement and determine whether the updated policy met the intent of the explanatory statement. The deadline for EPA's submission to us was March 17, 2016.

¹Pub. L. No. 92-463, 86 Stat. 770 (Oct. 6, 1972), codified, as amended, at 5 U.S.C. app. 2.

²The explanatory statement noted that EPA had "not yet resolved long-standing questions regarding conflicts of interest that have spanned multiple Administrations." 161 Cong. Rec. H10220 (daily ed. Dec. 17, 2015) (explanatory statement submitted by Representative Hal Rogers regarding House Amendment #1 to the Senate Amendment on H.R. 2029, later enacted as Pub. L. No. 114-113, 129 Stat. 2242 (2015)).

For this report, we assessed whether EPA drafted an updated policy statement that addressed the directives in the explanatory statement. To do this, we reviewed EPA documents and interviewed EPA officials, including SAB Staff Office officials. We conducted this performance audit from January 2017 to June 2017, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

EPA's Response Did Not Address All Congressional Directives

EPA did not update its policies or requirements for the SAB in response to the direction in the explanatory statement, nor did it specifically address all of the directives in the statement. Instead, EPA developed a draft document that describes how the SAB Staff Office implements existing policies and procedures, according to the letter accompanying this document and SAB Staff Office officials we interviewed.³ Moreover, the letter accompanying the draft document was dated September 30, 2016—more than 6 months after the deadline for EPA to submit the draft policy statement and updated policies to us for review.

Our review of the draft document noted the following:

- The draft document states that EPA has policies to ensure that advisory committees operate in accordance with (1) FACA and its implementing regulations, (2) statutes and regulations regarding ethics requirements for members of advisory committees and panels, and (3) other relevant EPA policies, including the Scientific Integrity Policy and the Peer Review Policy.⁴
- According to the draft document, EPA addresses SAB scientific quality and integrity issues—such as independence and objectivity, committee composition and balance, and freedom from financial conflicts of interest—through its Scientific Integrity Policy, Peer Review Policy, Peer Review Handbook, and the Office of Management and Budget Peer Review Bulletin.⁵

SAB Staff Office officials we interviewed stated that to develop the draft document, EPA synthesized the policies and procedures that it has developed and continuously updated in

³Environmental Protection Agency, *Ensuring the Scientific Quality and Integrity of SAB and CASAC Advisory Processes*, Draft Document (Sept. 8, 2016).

⁴Environmental Protection Agency, *Scientific Integrity Policy* (February 2012), accessed March 16, 2017, https://www.epa.gov/sites/production/files/2014-02/documents/scientific_integrity_policy_2012.pdf; and Environmental Protection Agency, *Peer Review and Peer Involvement at the U.S. Environmental Protection Agency* (Jan. 31, 2006), accessed April 20, 2017, https://www.epa.gov/sites/production/files/2015-01/documents/peer_review_policy_and_memo.pdf. In January 2017, EPA published corrections to the *Scientific Integrity Policy*; see Environmental Protection Agency, *Supplemental Information for the U.S. Environmental Protection Agency's Scientific Integrity Policy* (January 2017), accessed April 14, 2017, https://www.epa.gov/sites/production/files/2017-01/documents/fy2017_scientific_integrity_policy_supplemental_information_0.pdf.

⁵Environmental Protection Agency, Science and Technology Policy Council, *Peer Review Handbook*, 4th Ed., EPA/100/B-15/001 (Washington, D.C.: October 2015) and Office of Management and Budget, *Final Information Quality Bulletin for Peer Review* (Dec. 15, 2004).

response to FACA, implementing regulations, SAB Staff Office guidance, and stakeholder feedback. According to these officials, EPA has made numerous updates to its policies and procedures to enhance the openness, transparency, and balance of SAB reviews. The officials stated that these updates include larger, more diverse review panels; increased opportunities for public input; and outreach to industry and other groups to ensure greater participation.⁶

With regard to the specific directives in the explanatory statement, we noted the following:

- With regard to the first directive in the explanatory statement, the draft document does not include specific or numeric goals on increasing membership from states and tribes. However, it states that the SAB Staff Office is committed to expanding the diversity of scientific perspectives on the SAB, including the perspectives of scientists from state and local governments, tribes, industry, and nongovernmental organizations. According to SAB Staff Office officials, while they seek to increase the participation of state scientists, they often receive few applications from these scientists and, therefore, meeting a numeric goal could be challenging.
- With regard to the second directive in the explanatory statement, the draft document does not discuss whether EPA's Administrator made a decision about the appropriateness of updating financial-related metrics for identifying conflicts of interest or bias. SAB Staff Office officials told us that this is because they rely on the existing legal and policy framework—including FACA requirements and Office of Government Ethics regulations—as appropriate financial metrics for identifying conflicts of interest or bias.⁷
- With regard to the third directive in the explanatory statement, the draft document refers to but does not update the practices for considering and responding to public comments that are included in the Peer Review Handbook and the SAB handbook.⁸

In conclusion, while EPA developed a draft document that describes how the SAB Staff Office implements existing policies and procedures, as well as describes past actions to update and improve these policies and procedures, EPA did not update its policies or requirements for the SAB as directed by the explanatory statement. We are not making a recommendation at this time, because EPA has not yet finalized its policy statement. However, as EPA moves forward, we encourage it to specifically address the directives provided in the explanatory statement.

Agency Comments and Our Evaluation

We provided a draft of this report to EPA for review and comment. In its written comments, reproduced in enclosure I, EPA stated that its draft document synthesized its policies and procedures to evaluate conflict of interest committee composition and balance, qualitative goals to increase state and tribal membership, and eligibility requirements for service on the SAB to ensure fairness and objectivity. In addition, EPA stated that it has and will continue to update its policies and procedures to enhance the openness, transparency, and balance of its membership. While we recognize that EPA's draft document synthesized its existing policies

⁶We did not review the composition of SAB panels for changes in diversity or other levels of participation.

⁷The Office of Government Ethics provides overall leadership and oversight of the executive branch ethics program designed to prevent and resolve conflicts of interest.

⁸Environmental Protection Agency, *Serving on the EPA Science Advisory Board: A Handbook for Members and Consultants*, EPA-SABSO-12-001 (March 2012).

and procedures, as well as describing past actions to update and improve these policies and procedures, EPA did not update its policies or requirements for the SAB as directed by the explanatory statement. Therefore, as EPA moves forward, we continue to encourage the agency to specifically address the directives provided in the explanatory statement.

We are sending copies of this report to the appropriate congressional committees, the EPA Administrator, and other interested parties. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff members have any questions about this report, please contact me at (202) 512-3841 or gomezj@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are Janet Frisch (Assistant Director), Antoinette Capaccio, Chad M. Gorman, and Richard Johnson.

A handwritten signature in black ink that reads "Alfredo Gómez". The signature is written in a cursive style with a large, stylized "A" and "G".

J. Alfredo Gómez
Director, Natural Resources and Environment

Enclosure – 1

Enclosure I: Comments from the Environmental Protection Agency



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

May 18, 2017

J. Alfredo Gomez
Director, Natural Resources and Environment
U.S. Government Accountability Office
331 G Street, NW
Washington, DC 20548

OFFICE OF THE
ADMINISTRATOR

Dear Mr. Gomez:

Thank you for the work of you and your staff on GAO engagement code 101351 regarding the Consolidated Appropriations Act, 2016 directing the EPA Administrator to develop a policy statement on science quality and integrity for the Science Advisory Board (SAB) and all Board members.

As you may know, EPA developed the draft policy document entitled *Ensuring the Scientific Quality and Integrity of SAB and CASAC Advisory Processes* in response to the explanatory statement. EPA synthesized its policies and procedures to evaluate conflict of interest committee composition and balance, qualitative goals to increase State and tribal membership, and eligibility requirements for service on the SAB to ensure fairness and objectivity.

As we move forward under the new Administration, there will be a concerted effort to assure diversity and to look for additional ways to strengthen scientific review at EPA. Already that process is underway. The Agency is committed to diversity of scientific perspectives on the SAB to the maximum extent possible, including the perspectives of scientists from state and local governments, tribes, industry, and nongovernmental organizations, while maintaining foremost attention to essential scientific expertise. EPA has and will continue to update its policies and procedures to enhance the openness, transparency and balance of its membership. EPA has adopted and will continue to adopt new practices to improve accessibility and responsiveness to the public.

While the draft proposed GAO report does not provide specific recommendations, it does encourage the EPA to address directives provided in the explanatory statement. The agency has responded to recommendations in previous reports to improve policies in this regard and the SAB Staff Office will continue advancing and improving procedures to assure the independence, integrity and quality of the scientific and technical advice the SAB provides to the Administrator.

Sincerely,

John E. Reeder
Deputy Chief of Staff

cc: Christopher Zarba, Director
SAB Staff Office

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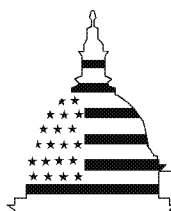
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April 2004

FEDERAL ADVISORY COMMITTEES

Additional Guidance Could Help Agencies Better Ensure Independence and Balance



G A O

Accountability * Integrity * Reliability



Highlights of GAO-04-328, a report to congressional requesters

Why GAO Did This Study

Because advisory committees are established to advise federal decision makers on significant national issues, it is essential that their membership be, and be perceived as being, free from conflicts of interest and balanced as a whole. GAO was asked to (1) describe the role of federal advisory committees in the development of national policies, (2) examine the extent to which existing guidance and policies and procedures for evaluating committee members for conflicts of interest and points of view ensure independent members and balanced committees, and (3) identify practices and measures that could help ensure independence and balance.

What GAO Recommends

GAO recommends that GSA and/or OGE, as appropriate, give direction to agencies on: the proper use of representative appointments; information that would help ensure committees are, and are perceived as, balanced; and practices that would better ensure independence and balance and enhance transparency in the advisory committee process. GSA agreed with GAO's findings and agreed to work with OGE to implement the recommendations. OGE agreed that representative appointments need review but disagreed that its guidance has limitations. GAO continues to believe the guidance could be improved to better ensure that agencies are appropriately appointing committee members.

www.gao.gov/cgi-bin/gettrpt?GAO-04-328.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Robin Nazzaro at (202) 512-3841 or NazzaroR@gao.gov.

FEDERAL ADVISORY COMMITTEES

Additional Guidance Could Help Agencies Better Ensure Independence and Balance

What GAO Found

Federal advisory committees play an important role in shaping public policy by providing advice on a wide array of issues, such as stem cell research, drinking water standards, space exploration, drug approvals, and federal land management. About 950 advisory committees perform peer reviews of scientific research; offer advice on policy issues; identify long-range issues; and evaluate grant proposals, among other functions.

Additional governmentwide guidance could help agencies better ensure the independence of members—that is, that they are free from significant conflicts of interest—and balance of federal advisory committees. For example, current limitations in the Office of Government Ethics' (OGE) guidance are a factor in at least three agencies' continuing a long-standing practice of appointing most or all members as "representatives"—expected to reflect the views of the entity or group they are representing and not subject to conflict-of-interest reviews—even when the agencies call upon the members to provide advice on behalf of the government. Such members would be more appropriately appointed as "special government employees," who are reviewed for conflicts of interest. OGE officials agreed with GAO that these agencies' appointments of some members as representatives of their fields of expertise are not appropriate, and this practice avoids using the special government employee category that was created to help the government hire experts in various fields for such purposes. OGE guidance that representatives may speak for, among others, any recognizable group of persons should be clarified to state that they generally are not to represent an expertise. Also, to be effective, advisory committees must be, and be perceived as being, fairly balanced in terms of points of view and functions to be performed. However, the General Services Administration's (GSA) guidance on advisory committee management does not address what types of information could be helpful to agencies in assessing the points of view of potential committee members, nor do agency procedures identify what information should be collected about potential members to make decisions about committee balance. Consequently, many agencies do not identify and systematically collect and evaluate information pertinent to determining the points of view of potential committee members, such as previous public positions or statements on matters being reviewed.

GAO identified promising practices and measures that can better ensure independence and balance and promote transparency in the federal advisory committee system, such as obtaining nominations from the public and making public information about how members are identified and screened. Wider use of these practices—particularly for committees addressing sensitive or controversial topics—could reduce the likelihood that committees are, or are perceived as being, biased or imbalanced.

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Abbreviations

CDC	Centers for Disease Control and Prevention
CODEX	Codex Alimentarius Commission
CV	curricula vitae
EPA	Environmental Protection Agency
FACA	Federal Advisory Committee Act
FAO	Food and Agriculture Organization
FDA	Food and Drug Administration
FIFRA	Federal Insecticide, Fungicide, and Rodenticide Act of 1977
FSIS	Food Safety and Inspection Service
GSA	General Services Administration
HACCP	Hazard Analysis and Critical Control Point
HHS	Department of Health and Human Services
ICCVAM	Interagency Coordinating Committee on the Validation of Alternative Methods
NASA	National Aeronautics and Space Administration
NIEHS	National Institute of Environmental Health Sciences
NIH	National Institutes of Health
OGE	Office of Government Ethics
USDA	United States Department of Agriculture
USGS	United States Geological Survey
WHO	World Health Organization

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United States General Accounting Office
Washington, D.C. 20548

April 16, 2004

The Honorable Eddie Bernice Johnson
Ranking Minority Member, Subcommittee
on Research
Committee on Science
House of Representatives

The Honorable Brian Baird
House of Representatives

Federal advisory committees have been called the “fifth arm of government” because of the significant role they play in advising federal agencies, the Congress, and the President on important national issues.¹ To be effective, these advisory committees must be—and, just as importantly, be perceived as being—independent and balanced. Specifically, individual committee members who provide advice to the government must be free from significant conflicts of interest—that is, they must be “independent.” In addition, while it may be desirable to include experts on committees who have particular viewpoints, federal law requires each committee, as a whole, to be balanced in terms of the points of view and the functions to be performed. Recently, some appointments to scientific and technical advisory committees have generated controversy because of the perception by some scientists and others that these appointments were based on ideology rather than expertise or were weighted to favor one group of stakeholders over others.

In 1962, the Congress established the category of “special government employee” and made the conflict-of-interest rules for such employees less restrictive than for regular federal government employees to overcome obstacles in hiring outside experts for occasional service, such as on federal advisory committees. Members of federal advisory committees are often appointed as special government employees to provide advice on behalf of the government on the basis of their best judgment. In contrast, members may also be appointed to federal advisory committees as “representatives” to provide stakeholder advice—that is, advice reflecting

¹In this view, federal advisory committees follow the executive, legislative, judicial, and regulatory “arms” of government. *Hearings on S. 1637, S. 2064, S. 1964 before the Subcommittee on Intergovernmental Relations of the Senate Committee on Government Operations, 92nd Congress, 1st Sess., pt. 1 at 12 (1971).*

the views of the entity or interest group they are representing, such as industry, labor, or consumers.

Federal advisory committee members who are employees of the federal government must meet federal requirements pertaining to freedom from conflicts of interest—which we refer to in this report as independence—and the committees as a whole must meet requirements pertaining to balance. Federal conflict-of-interest statutes (18 U.S.C. §§ 201), including the principal criminal financial conflict-of-interest statute (18 U.S.C. § 208), apply to regular and, in large part, special government employees. The Office of Government Ethics (OGE) is responsible for developing regulations and guidance for these statutory provisions. The criminal financial conflict-of-interest statute and related OGE regulations prohibit regular and special government employees from participating in a “particular matter”² that may have a direct and predictable effect on their financial interest, unless granted a waiver. Members appointed as representatives who are neither regular nor special government employees are not subject to statutes regarding conflicts of interest. The Federal Advisory Committee Act³ (FACA) requires, among other things, that committee memberships be “fairly balanced in terms of points of view presented and the functions to be performed by the advisory committee.” Courts have interpreted this requirement as providing agencies with broad discretion in balancing their committees. The General Services Administration (GSA) is responsible for developing regulations and guidance regarding the establishment of advisory committees under FACA. In addition to OGE and GSA regulations and guidance, federal agencies have their own policies and procedures to establish and manage advisory committees.

You asked us to examine several issues regarding federal advisory committees. As agreed with your offices, this report (1) describes the role of federal advisory committees in the development of national policies; (2) examines the extent to which governmentwide guidance and agency-specific policies and procedures for evaluating committee members for conflicts of interest and points of view ensure independent members and balanced federal advisory committees; and (3) identifies practices that

²A particular matter is one that involves deliberation, decision, or action that is focused on the interests of specific people or a discrete and identifiable class of people. 5 C.F.R. § 2640.103(a)(1).

³Pub. L. No. 92-463, 86 Stat. 770 (1972) (classified at 5 U.S.C. app. 2).

could better ensure that committees are, and are perceived as being, independent and balanced.

To address these objectives, we reviewed OGE regulations and guidance to federal agencies regarding federal conflict-of-interest provisions and GSA regulations and guidance to federal agencies regarding FACA. We reviewed the policies and procedures at six federal departments and agencies that make extensive use of scientific and technical advisory committees—the Departments of Agriculture (USDA), Energy, Health and Human Services (HHS), and the Interior; the National Aeronautics and Space Administration (NASA); and the Environmental Protection Agency (EPA). Because HHS entities sponsor 26 percent of all federal advisory committees and 36 percent of all scientific and technical advisory committees, we also reviewed the policies and procedures at three HHS agencies that sponsor many advisory committees—the Centers for Disease Control and Prevention (CDC), the Food and Drug Administration (FDA), and the National Institutes of Health (NIH). We reviewed the procedures used by these nine departments and agencies to identify, screen, and appoint members for committees so as to ensure that members are free of conflicts of interest (where conflict-of-interest requirements apply) and that committees are balanced. To better understand how agencies implement OGE and GSA governmentwide regulations and guidance as well as their own policies, we examined the management of one committee at each agency.⁴ We reviewed the confidential financial disclosure forms of the committee members who were appointed as special government employees, along with other information, and discussed with staff how the committees used this information. We did not, however, make any judgments on whether conflicts of interest existed or whether these panels were properly balanced. To identify practices that promote independence and balance, we examined the relevant policies and procedures of the National Academies;⁵ the nine committees and agencies examined in this review; and EPA's Science Advisory Board, which made a number of

⁴We selected a nonprobability sample of nine committees that address scientific and technical issues using criteria described in appendix I. Results from nonprobability samples cannot be used to make inferences about a population because some elements of the population being studied have no chance or an unknown chance of being selected as part of the sample.

⁵The National Academies consist of four private, nonprofit organizations that advise the federal government on scientific and technical matters: the National Academy of Sciences, the National Academy of Engineering, the Institute of Medicine, and the National Research Council.

changes to its policies and procedures in response to our June 2001 report.⁶ We conducted our review from January 2003 through March 2004 in accordance with generally accepted government auditing standards. For more details on the scope and methodology of our review, see appendix I.

Results in Brief

Approximately 950 federal advisory committees with about 62,000 members play an important role in shaping public policy by advising policymakers on a wide array of important and challenging issues. For example, advisory committees provide advice in the form of peer reviews of scientific research that may be used to support health, environmental, and safety regulations; recommendations about specific policy decisions; identification of long-range issues facing the nation; and evaluations of grant proposals, among other functions. Federal advisory committees have been established to work in broad areas of public policy, such as national security, the economy, the environment, and public health. Illustrative of the range of issues addressed by federal advisory committees are the current committees that advise agencies on matters related to AIDS research, food safety, hazardous waste cleanup, trade policy, and homeland security. Advisory committees are sometimes established specifically to address controversial issues about which the government believes it is beneficial to solicit the advice of individuals with the relevant background and/or expertise from outside the government. For example, some of the issues addressed by advisory committees are inherently controversial because they deal with sensitive personal and ideological matters, such as stem cell research and genetic engineering. Other committees address issues that are controversial because of their potential regulatory impact, such as food and drug approvals or environmental regulations.

Additional governmentwide guidance could help agencies better ensure the independence of federal advisory committee members and the balance of federal advisory committees. For example, OGE guidance to federal agencies has shortcomings and does not adequately ensure that agencies appoint individuals selected to provide advice on behalf of the government as special government employees subject to conflict-of-interest regulations. In addition, GSA guidance to federal agencies and agency-specific policies and procedures could be improved to better ensure that

⁶U.S. General Accounting Office, *EPA's Science Advisory Board Panels: Improved Policies and Procedures Needed to Ensure Independence and Balance*, GAO-01-536 (Washington, D.C.: June 12, 2001).

agencies collect and evaluate information that could be helpful in determining the viewpoints of potential committee members regarding the subject matters being considered and in ensuring that committees are, and are perceived as being, balanced. Specifically, we found the following:

- OGE guidance on the appropriate use of representative or special government employee appointments to advisory committees has limitations that we believe are a factor in three of the agencies we reviewed continuing the long-standing practice of essentially appointing all members as representatives. That is, we found that USDA, Energy, and Interior have appointed most or all members to their federal advisory committees as representatives—even in cases where the members are called upon to provide advice on behalf of the government and thus would be more appropriately appointed as special government employees. Because conflict-of-interest reviews are only required for federal or special government employees, agencies do not conduct conflict-of-interest reviews for members appointed as representatives. As a result, the agencies cannot be assured that the real or perceived conflicts of interest of their committee members who provide advice on behalf of the government are identified and appropriately mitigated. Further, allegations that the members have conflicts of interest could call into question the independence of the committee and jeopardize the credibility of the committee's work.
- FACA requires that federal advisory committees be fairly balanced in terms of the points of view and the functions to be performed, and courts have interpreted this requirement as providing agencies with broad discretion in balancing their committees. In addition to the legal requirement for balance, it is important that committees are perceived as balanced in order for their advice to be credible and effective. However, GSA guidance does not address what types of information could be helpful to agencies in assessing the points of view of potential committee members, nor do agency procedures identify what information should be collected about potential members to make decisions about committee balance. Consequently, many agencies do not identify and systematically collect and evaluate information pertinent to determining the points of view of committee members regarding the subject matters being considered. For example, of the nine departments and agencies we reviewed, only EPA consistently (1) collected information on committee members appointed as special government employees that enabled the agency to assess the points of view of the potential members and (2) used this information to help

achieve balance. Without sufficient information about prospective committee members prior to appointment, agencies cannot ensure that their committees are, and are perceived as being, balanced.

We identified several promising practices for forming and managing federal advisory committees that can better ensure that committees are, and are perceived as being, independent and balanced. These practices include (1) obtaining nominations for committees from the public, (2) using clearly defined processes to obtain and review pertinent information on potential members regarding potential conflicts of interest and points of view, and (3) prescreening prospective members using a structured interview. In our view, these measures reflect the principles of FACA by employing clearly defined procedures to promote systematic, consistent, and transparent efforts to achieve independent and balanced committees. Some of the practices, such as seeking public comment on proposed committees, are particularly relevant to those committees addressing sensitive or controversial topics. In addition, we identified selected measures that could promote greater transparency in the federal advisory committee process and improve the public's ability to evaluate whether agencies have complied with conflict-of-interest requirements and FACA requirements for balance, such as providing information on how the members of the committees are identified and screened and indicating whether the committee members are providing independent or stakeholder advice. Implemented effectively, these practices could help agencies avoid the public criticisms to which some committees have been subjected. That is, if more agencies adopted and effectively implemented these practices, they would have greater assurance that their committees are, and are perceived as being, independent and balanced.

Because the effectiveness of competent federal advisory committees can be undermined if the members are, or are perceived as, lacking in independence or if committees as a whole do not appear to be properly balanced, we are making 12 recommendations to GSA and OGE to provide additional guidance to federal agencies. The broad categories of these recommendations include (1) clarifying the appropriate use of representative appointments; (2) systematically obtaining information that could help ensure committees are, in fact and in perception, balanced; and (3) adopting certain practices that can better ensure independent and balanced committees and increase transparency in the federal advisory process. While our report focuses primarily on scientific and technical federal advisory committees, the limitations in guidance and the promising practices we identified pertaining to independence and balance are

pertinent to federal advisory committees in general, and thus our recommendations are directed to GSA and OGE because of their responsibilities for providing guidance to federal agencies on these matters.

GSA reviewed a draft of this report and generally agreed with the findings relating to the areas directly under its purview. The agency committed to, among other things, continuing to work in partnership with OGE to address those areas under OGE's jurisdiction relating to FACA. GSA outlined a proactive approach to responding to the report's recommendations, including making changes to its on-line FACA database. OGE reviewed the draft report and also generally agreed with the problems we identified regarding appointments to federal advisory committees, but the agency disagreed that there are any limitations in its guidance that contribute to the problems and also reiterated the measures that OGE has taken to address this issue (most of which were highlighted in the draft report). OGE believes the agencies making inappropriate appointments are disregarding, rather than misinterpreting, the OGE guidance. While we recognize that there may be other reasons as well, we have identified the limitations in OGE's guidance as one factor in some agencies' continuing the long-standing practice of essentially appointing all committee members as representatives. We believe the effectiveness of OGE's and GSA's efforts to ensure that agencies make appropriate appointment decisions for members of their federal advisory committees will not improve until the limitations we identified in OGE's guidance on appointments are addressed. Our view is also that clear, unambiguous guidance would make it more difficult for agencies to misapply the guidance. GSA's and OGE's written comments are discussed further at the end of this report and their letters are provided in appendixes XII and XIII. Overall, the comments from the agencies whose advisory committee management policies and procedures we reviewed—EPA; Energy; HHS (and component agencies CDC, FDA, and NIH); Interior; NASA; and USDA—were generally positive about the draft report, viewing it as providing helpful information on federal advisory committee management. Four of these agencies also cited some specific concerns about, for example, the requirements for independence and assessing prospective members' points of view. We address these issues at the end of this report and provide the pertinent letters from these four agencies in appendixes XIV through XVII.

Background

In recent years, controversies regarding the federal advisory committee system have included concerns about the appointment of specific

individuals to committees and agency decisions to create or terminate some committees. Although a variety of concerns have been raised, the overarching concern was that ideological bias was influencing the selection of experts for scientific and health advisory panels. Publications such as *Science*, *The Lancet*, and *Chemical and Engineering News* have published editorials and articles containing criticisms of decisions seen as injecting ideology into a committee system that should be nonideological. Further, some current and potential federal advisory committee members reported being asked about their political views in the context of decisions regarding their appointment or reappointment to committees.

A number of recent articles and editorials identified specific concerns about HHS committees that address controversial scientific and technical issues. Observers have alleged that some appointees either were unqualified for the position, had extreme views that were outside the mainstream of scientific thinking, or had personal conflicts of interest that should have disqualified them from serving on particular committees. Further, observers alleged that HHS has replaced large portions of the membership of ongoing committees as a way of obtaining committees that shared the administration's viewpoint about particular issues. Finally, concerns were raised that HHS had terminated some advisory committees with which the administration allegedly had ideological differences and replaced them with committees that had different charters and a largely new membership.

In 2003, the National Academy of Sciences issued a report on organizational issues within NIH that included a discussion of the perceived politicization of the advisory committee appointment process. The report noted that these concerns had recently arisen within the scientific and health advocacy communities and were similar to concerns that were raised in the early 1970s. In response to the most recent concerns, the academy recommended, among other things, that appointments to NIH advisory committees be based solely on a person's scientific or clinical expertise or his or her commitment to and involvement in issues of relevance to the mission of the institute.

Also in 2003, the Center for Science in the Public Interest sent a letter to the director of OGE about its concerns that conflicts of interest were introducing biases into the federal advisory committee process at HHS,

Interior, and other agencies.⁷ The center's letter, signed by 21 individuals, including public health advocates and members of academia, made a number of recommendations to OGE aimed at strengthening independence, transparency, and public trust in the federal advisory committee process. Further, the National Academies is examining the selection of scientists, engineers, and health professionals to federal advisory committees addressing science-based policy or reviewing research proposals. This study stems from its regular review of senior scientific technical appointments in the federal government as well as from concerns that scientists and others have raised to the academies about some federal advisory committee appointments and the appointment practices used by some agencies. A report is planned for November 2004.

The Federal Advisory Committee Act Sets Broad Requirements and Guidelines for Advisory Committees

The Congress enacted FACA in 1972 in response to two principal concerns: (1) that federal advisory committees were proliferating without adequate review, oversight, or accountability and (2) that certain special interests had too much influence over federal agency decision makers. In this act, the Congress articulated certain principles regarding advisory committees, including broad requirements for balance, independence, and transparency. Specifically, as previously discussed, FACA requires that the membership of committees be fairly balanced in terms of points of view and functions to be performed. Further, FACA requires that any legislation or agency action that creates a committee contain provisions to ensure that the advice and recommendations of the committee will be independent and not inappropriately influenced by the appointing authority (the agency) or any special interest. Finally, FACA generally requires that agencies announce committee meetings ahead of time and give notice to interested parties about such meetings. With some exceptions, the meetings are to be open to the public, and agencies are to prepare meeting minutes and make them available to interested parties.⁸

FACA also set broad guidelines for the creation and management of federal advisory committees, most of which are created or authorized by the

⁷The Center for Science in the Public Interest is a consumer advocacy organization that conducts research and advocacy programs on health and nutrition.

⁸The President or head of an agency may determine that a meeting be closed if, for example, the meeting will include discussions of classified information, reviews of proprietary data submitted in support of federal grant applications, or deliberations involving considerations of personal privacy.

Congress. Agencies also establish committees using general statutory authority, and some are created by presidential directives (see app. II). Further, the act requires that all committees have a charter, and that each charter contain specific information, including the committee's scope and objectives, a description of duties, the period of time necessary to carry out its purposes, the estimated operating costs, and the number and frequency of meetings. As required by FACA, the advisory committee charters generally expire at the end of 2 years unless renewed by the agency or by the Congress.⁹ The requirement encourages agencies to periodically reexamine their need for committees.

GSA, through its Committee Management Secretariat, is responsible for prescribing administrative guidelines and management controls applicable to advisory committees governmentwide. However, GSA does not have the authority to approve or deny agency decisions regarding the creation or management of advisory committees. To fulfill its responsibilities, GSA has developed regulations and other guidance to assist agencies in implementing FACA requirements, provides training to agency officials, and was instrumental in creating the Interagency Committee on Federal Advisory Committee Management. GSA also has created and maintains an on-line FACA database (available to the public at www.fido.gov/facadatabase) for which the agencies provide and verify the data, including committee charters, membership rosters, budgets, and in many cases links to committee meeting schedules, minutes, and reports. The database also includes information about a committee's classification (i.e., scientific and technical or national policy issue). According to the database, 208 committees with 7,910 members were classified as scientific and technical committees. In addition, 131 committees with over 41,000 members were classified as grant review committees—a category that also often addresses scientific and technical issues. Appendix II provides data on the classifications of the federal advisory committees in fiscal year 2003.

While the GSA's Committee Management Secretariat provides FACA guidance to federal agencies, each agency also develops its own policies and procedures for following FACA requirements. Under FACA, agency heads are responsible for issuing administrative guidelines and management controls applicable to their agency's advisory committees. Generally, federal agencies have a reasonable amount of discretion with

⁹Several of Interior's committees do not expire because the legislation creating them exempts them from the biennial charter expiration.

regards to creating committees, drafting their charters, establishing their scope and objectives, classifying the committee type, determining what type of advice they are to provide, and appointing members to serve on committees.¹⁰ However, when the Congress authorizes an agency to establish a particular committee or a President establishes a committee, the agency may have less flexibility in establishing and managing the committee because such things as the committee's objectives, the types of expertise and backgrounds of members, and even the type of advice that is to be provided may be specified by the Congress or the President.

Finally, to assist with the management of their federal advisory committees, agency heads are required to appoint a committee management officer to oversee the agency's compliance with FACA requirements, including recordkeeping. Agency heads must also appoint a designated federal official for each committee to oversee the committee's activities. Among other things, the designated federal official must approve or call the meetings of the committee, approve the agendas (except for presidential advisory committees), and attend the meetings.

Criminal Financial Conflict-of-Interest Statute Applies to Some Advisory Committee Members

OGE is responsible for issuing regulations and guidance for agencies to follow in complying with the statutory conflict-of-interest provisions that apply to all federal employees, including special government employees serving on federal advisory committees. A special government employee is statutorily defined as an officer or employee who is retained, designated, appointed, or employed by the government to perform temporary duties, with or without compensation, for not more than 130 days during any period of 365 consecutive days. Many agencies use special government employees, either as advisory committee members or as individual experts or consultants. Special government employees, like regular federal employees, are to provide their own best judgment in a manner that is free from conflicts of interest and without acting as a stakeholder to represent any particular point of view.¹¹ Accordingly, special government employees appointed to federal advisory committees are hired for their expertise and skills and are expected to provide advice on behalf of the government on

¹⁰In response to Executive Order 12838 directing agencies to reduce by at least one-third the number of discretionary committees, the Office of Management and Budget established a maximum number of discretionary advisory committees for each agency.

¹¹Office of Government Ethics Letter to the Chairman of a National Commission, June 24, 1993 (93 x 14).

the basis of their own best judgment. Special government employees are subject to the federal financial conflict-of-interest requirements, although ones that are somewhat less restrictive than those for regular federal government employees.

The criminal financial conflict-of-interest statute (18 U.S.C. § 208) and related OGE regulations prohibit federal employees, including special government employees, from participating in “particular matters” that may have a direct and predictable effect on their financial interests or those interests of a spouse, minor child, or general partner. A particular matter is defined as one involving a deliberation, decision, or action that is focused on the interests of specific people or an identifiable class of people. Special government employees serving on federal advisory committees thus are prohibited from participating when the subjects they consider are particular matters in which the member has a financial interest. However, special government employees serving on federal advisory committees are provided with an exemption that allows them to participate in particular matters that have a direct and predictable effect on their financial interest if the interest arises from their nonfederal employment and the matter will not have a special or distinct effect on the employee or employer other than as part of a class. This exemption does not extend to the committee member’s personal financial and other interests in the matter, such as stock ownership in the employer. If a committee member has a potential financial conflict of interest that is not covered under this or other exemptions, a waiver of the conflict-of-interest provisions may be granted if the appointing official determines that the need for the special government employee’s services outweighs the potential for conflict of interest or that the conflict is not significant. This standard for granting waivers is less stringent than the standard for regular government employees.

The principal tool that agencies use to assess whether nominees or members of advisory committees have conflicts of interest is the OGE Form 450, Executive Branch Confidential Financial Disclosure Report, which special government employees are required to submit annually. The form 450 requests financial information about the committee member and the member’s spouse and dependent children, such as the sources of income and the identification of assets, but it does not request filers to

provide the related dollar amounts, such as salaries.¹² For committees addressing broad or general issues, rather than particular matters, committee members hired as special government employees are still generally required to complete the confidential financial disclosure form.¹³

Agencies appoint ethics officials who are responsible for ensuring agency compliance with the federal conflict-of-interest statutes. OGE conducts periodic audits of agency ethics programs to evaluate their compliance and, as warranted, makes recommendations to agencies to correct deficiencies in their ethics programs.

Under administrative guidance initially developed in the early 1960s, a number of members of federal advisory committees are not hired as special government employees, but are instead appointed as representatives. Members appointed to advisory committees as representatives are expected to represent the views of relevant stakeholders with an interest in the subject of discussion, such as an industry, a union, an environmental organization, or other such entity. That is, representative members are expected to represent a particular and known bias—it is understood that information, opinions, and advice from representatives are to reflect the bias of the particular group that they are appointed to represent.¹⁴ Because these individuals are to represent outside interests, they do not meet the statutory definition of federal employee or special government employee and are therefore not subject to the criminal financial conflict-of-interest statute. According to GSA and OGE officials, reliable governmentwide data on the number of representative members serving on federal advisory committees are not available. However, data that agencies report to OGE on special government employees serving on federal advisory committees and to GSA on the number of federal advisory committee members indicate

¹²Some agencies, such as EPA and FDA, have developed alternative confidential financial disclosure forms that request additional information on activities and affiliations, such as expert legal testimony.

¹³Special government employees who serve in excess of 60 days above a certain salary level, however, must file a public disclosure form.

¹⁴EPA noted in its comments on our draft report that in the case of a small category of advisory committees that EPA uses, known as regulatory negotiation committees, representative members may bind their organization to take a course of action.

that only about 35 percent of the government's federal advisory committee members are appointed as special government employees.¹⁵

Advisory Committees Play an Important Role in the Development of Federal Policies

Generally composed of individuals from outside of the federal government, federal advisory committees play an important role in the development of public policy and government regulations by providing advice to policymakers on a wide array of issues. In fiscal year 2003, 54 agencies sponsored approximately 950 committees with about 62,000 members to provide advice by performing peer reviews of scientific research; developing recommendations on specific policy decisions; identifying long-range issues facing the nation; and evaluating grant proposals, among other functions. Their advice—on issues such as stem cell research, space exploration, trade policy, drinking water standards, and drug approvals—can enhance the quality and credibility of federal decision making.

Advisory committees have been and continue to be involved in issues of great importance to the advancement of knowledge and the development of national policies and regulations. For example, Energy's decision to undertake the Human Genome Project was based in part on the 1987 recommendation of the department's Health and Environmental Research Advisory Committee.¹⁶ As a result, Energy, working with NIH, successfully coordinated the multibillion-dollar research effort that succeeded in identifying all of the genes on every chromosome in the human body and determining their biochemical nature—leading the way to numerous advances in medical science.

Advisory committees provide agencies with advice in a variety of broad areas of federal policy, such as the environment, public health, and the economy. Committees provide agencies with advice about a wide array of

¹⁵The estimate of the percentage of special government employees is based on data that agencies (1) provide to OGE regarding the number of special government employees serving on federal advisory committees and (2) provide on the GSA FACA database on the total number of federal advisory committee members. This estimate does not include advisory committee members serving on NIH "special emphasis panels," which are not standing committees but rather involve one-time reviews of various science and technical funding applications to NIH (grants, cooperative agreement applications, etc.). If these individuals were included in the estimate above, the percentage of advisory committee members appointed as special government employees would be reduced to about 25 percent.

¹⁶This committee is currently called the Biological and Environmental Research Advisory Committee.

specific issues, such as the management of federal lands, the development of alternative sources of energy, guidelines for assessing cancer risks, risk assessments of toxic chemicals, hazardous waste cleanup, the establishment of new standards for food safety, the delivery of health care services, and the effectiveness of new prescription drugs and medical devices. Recently, federal advisory committees were established to help agencies marshal the facts and weigh options in response to new national issues, such as information security and terrorist attacks.

Federal advisory committees are sometimes established specifically to address controversial issues about which the government believes it is necessary to solicit the advice of individuals with the relevant background and/or expertise from outside of the government. Some of the issues addressed by advisory committees are controversial because they touch upon inherently sensitive personal, religious, or ideological matters, such as stem cell research and genetic engineering. Other committees address issues that are controversial because of their potential regulatory impact on industries or consumers, such as in the case of food and drug approvals or environmental regulations.

To address controversial and other important matters, scientific and technical advisory committees—which are the primary focus of this report—play a number of different roles on behalf of agencies. One role of science committees is to advise agencies on how to address a set of particular problems. For example, the Advisory Committee on Foreign Animal and Poultry Diseases gives the Secretary of Agriculture information and advice on measures necessary to prevent and combat such threats as foot-and-mouth disease. The charter also charges the committee with providing advice on the prevention or management of other threats from foreign animal or poultry diseases. Recent recommendations from the committee addressed coordination between USDA and the Department of Homeland Security and support for a national food animal identification work plan.

In 1990, the Congress authorized the creation of the Aquatic Nuisance Species Task Force to, among other things, coordinate federal efforts to address the threats posed by nonnative aquatic plants and animals.¹⁷ The task force operates as a federal advisory committee and is composed of 7

¹⁷The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 codified at 16 U.S.C. §§ 4701-4741.

federal agency representatives and 13 nonfederal members in an ex officio status. It reports to the Departments of the Interior and Commerce. Among the task force's accomplishments are a number of reports and publications on risk assessment, prevention initiatives, and control programs for such nonnative species as the brown tree snake and the green crab.

Some science advisory committees offer advice to agencies on specific regulatory decisions. For example, FDA established science advisory committees that offer advice on the licensing of specific drugs and on the safety and effectiveness of medical devices. These committees play an important role in determining whether drugs and other medical products make it into the marketplace and can therefore have a significant impact on specific manufacturers as well as potential patients and consumers.

Other science advisory committees make recommendations to agencies on strategic planning efforts needed to address long-range issues facing the nation. Existing committees are exploring efforts to chart new directions in research in biology, physics, astronomy, and space exploration, to name just a few. For example, Energy's Basic Energy Sciences Advisory Committee issued a report in February 2003 entitled *Basic Research Needs to Assure a Secure Energy Future*.¹⁸ In that report, the committee stated its belief that a new national energy research program is essential and must be initiated with the intensity and commitment of the Manhattan Project. The report included a lengthy list of proposed research topics.

Advisory committees may be established to provide a peer review function. For example, a peer review group could be asked to review a body of scientific literature and offer its opinion on the adequacy of the scientific data that may be used to support regulatory actions. As an illustration, in 2001, EPA revised its standards for safe levels of arsenic in drinking water using, in part, the analysis and recommendations of two federal advisory committees—the National Drinking Water Advisory Council and the EPA's Science Advisory Board. This revised standard will have a far-reaching effect on both human health and the operation of public drinking water systems. Other peer review groups are asked to judge the merits of proposals submitted to national grant competitions. For example, the

¹⁸*Basic Research Needs to Assure a Secure Energy Future: A Report from the Basic Energy Sciences Advisory Committee*, prepared by Oak Ridge National Laboratory (Oak Ridge, TN: February 2003).

National Science Foundation, NIH, and other agencies use such groups to evaluate proposals submitted for possible funding by academic or clinical researchers covering a wide range of subject matter. After the peer review groups evaluate the proposals, other science advisory committees may make recommendations to the agencies regarding which proposals to fund.

Federal Guidance Could Better Ensure Independence and Balance

OGE and GSA governmentwide guidance and the policies and procedures of the nine departments and agencies we reviewed have limitations that reduce their effectiveness in ensuring that advisory committee members are independent and that advisory committees are, and are perceived as being, balanced. First, with respect to independence, OGE guidance on whether to appoint members to advisory committees as special government employees or representatives—a decision that determines whether an agency conducts a conflict-of-interest review—has limitations that we believe are a factor in three agencies’ continuing their long-standing practice of essentially appointing all members as representatives. We found that USDA, Energy, and Interior appoint all or almost all members to their federal advisory committees as representatives, even when the members are called on to provide advice on behalf of the government on the basis of their best judgment.¹⁹ Because such members are not providing stakeholder advice, they would be more appropriately appointed as special government employees, subject to reviews for conflicts of interest. However, because conflict-of-interest reviews are only required for federal or special government employees, agencies do not conduct conflict-of-interest reviews for members appointed as representatives. As a result, the agencies cannot be assured that the real or perceived conflicts of interest of their committee members’ providing advice on behalf of the government are identified and appropriately mitigated. Further, allegations that the members have conflicts of interest could call into question the independence of the committee and jeopardize the credibility of the committee’s work. Second, with respect to balance, GSA guidance does not address what types of information would be helpful in assessing the points of view of potential committee members with regard to the matters the committees will consider, nor do agency procedures

¹⁹OGE data indicate that some other agencies, such as the Small Business Administration and the Department of Justice, also rely exclusively on representative appointments to federal advisory committees. OGE staff told us the agency did not examine whether representatives appointed to those agencies’ committees provided independent or stakeholder advice.

identify what information the agencies believe should be collected about potential members—an important step that can help agencies ensure committees are, and are perceived as being, balanced. We found that many agencies do not consistently request information that would be helpful in assessing the overall balance of committee members' viewpoints—such as previous public positions the members may have taken on the matters being reviewed. Without adequate policies and procedures, agencies are vulnerable to allegations that committee members have conflicts of interest and that committees are imbalanced. Such allegations may call into question a committee's legitimacy and may jeopardize the work of otherwise credible and competent committees.

Reviews for Conflicts of Interest Are Not Always Performed

Some agencies appoint most or all members to their advisory committees as representatives, rather than as special government employees. However, some of these committee members appointed as representatives are asked to provide agencies with advice on behalf of the government without representing any particular point of view, and thus it appears that the members would be more appropriately appointed as special government employees. Because only regular and special government employees are subject to the conflict-of-interest statutes, agencies do not conduct conflict-of-interest reviews for members appointed as representatives. Some committees thus have members who had they been appointed as special government employees would have undergone reviews for conflicts of interest, but they have not been reviewed for potential conflicts of interest because they were appointed as representatives.

Representative members and special government employees are supposed to serve different functions on advisory committees. In 1962, the Congress established the category of special government employee and amended the federal conflict-of-interest laws to overcome obstacles in hiring outside experts for occasional service. Special government employees are appointed to federal advisory committees to provide advice on behalf of the government on the basis of their best judgment. Representative members, in contrast, are generally considered as those members of advisory committees who are “chosen for committee membership only to present the views of a private interest.”²⁰

²⁰See Office of Legal Counsel, Department of Justice, Applicability of 18 U.S.C. § 219 to Representative Members of Federal Advisory Committees (Sept. 15, 1999).

In 1982, in response to uncertainties regarding when agencies should appoint members to their advisory committees as special government employees or representatives, OGE developed guidance on the appropriate use of these two appointment categories for federal advisory committees.²¹ In this guidance, OGE noted that it disagreed with “an occasional flat assertion” by agencies that advisory committee members are never subject to the federal conflict-of-interest laws. The 1982 guidance, which is still OGE’s principal guidance on this issue,²² states that a “consultant or advisor whose advice is obtained by a department or agency from time to time because of his individual qualifications and who serves in an independent capacity is an officer or employee of the government”—that is, this person is a regular federal employee or a special government employee. In contrast, a consultant or advisor “who is requested to appear before a government department or agency to present the views of a non-governmental organization or group which he represents, or for which he is in a position to speak, does not act as a servant of the government and is not its officer or employee” but is a representative member. The OGE 1982 guidance concludes by noting that if language used in the enabling legislation, executive order, charter, or other pertinent document does not specify whether the members are functioning as special government employees or representatives, it is fair to conclude that the member is a special government employee because this is the usual status of those appointed by agencies to serve the government.

OGE’s most recent guidance that addresses representative appointments to advisory committees is its February 2000 summary of ethical requirements applicable to special government employees. This summary includes a paragraph discussing representative appointments, highlighting the fact that unlike special government employees and other federal employees, representatives are not expected to render disinterested advice to the government but are expected to “represent a particular bias.” This document explains that representatives are described more fully in OGE’s 1982 guidance and also refers readers to two 1993 advisory letters that (1) conclude that representatives can make policy recommendations to the

²¹Memorandum 82 x 22, Members of Federal Advisory Committees and the Conflict-of-Interest Statutes, July 9, 1982.

²²This guidance has been amplified by several other documents in later years including Advisory Letter 93 x 14 to the Chairman of a National Commission, June 24, 1993; Advisory Letter 93 x 30 to the Executive Director of a Federal Commission, October 22, 1993; and Advisory Opinion 00 x 1, Memorandum dated February 15, 2000.

government and (2) explain the difference between the two types of appointment as follows: representatives are asked to represent a particular bias, while special government employees are asked to provide their own best judgment without representing any particular point of view and in a manner that is free from conflict of interest.

In addition to developing the 2000 guidance on special government employees, OGE has taken steps to educate agencies about special government employee and representative appointments by participating in GSA's FACA management course that includes a session on ethics, conflict-of-interest, and financial disclosure issues. According to GSA, this class is conducted five times each year, reaching about 300 advisory committee staff. According to OGE, the ethics training begins with a discussion of the special government employee/representative designation issue. The course material includes a discussion of representatives and also refers readers to OGE's 1982 guidance. Further, OGE provides training at annual ethics conferences for ethics officials in the executive branch.

Despite these efforts, a recent OGE staff study on agency management of federal advisory committees, summarized in a November 2002 memorandum, indicates that some uncertainties about appointments to federal advisory committees may continue to exist. That is, OGE found that four of the seven agencies it reviewed—Energy, Interior, the Commission on Civil Rights, and the Small Business Administration—appointed all, or nearly all, members as representatives.²³ Further, the OGE memorandum expressed concern that these agencies may be purposely designating their committee members as representatives to avoid subjecting them to the financial disclosure statements required for special government employees and may not be conducting conflict-of-interest reviews for some committee members when they should have been conducted. The OGE memorandum concluded that further scrutiny and education about the proper designation of committee appointments was warranted. As a result, at the next annual conference for agency ethics officials in March 2003, OGE included a session, Ethics Management Tools for Your Federal Advisory Committee, which was principally devoted to “designation” issues involving appointments to federal advisory

²³OGE reviewed the management of advisory committees at the Departments of Energy, the Interior, the Army, and Education; the Commission on Civil Rights; the National Endowment for the Arts; and the Small Business Administration.

committees.²⁴ In addition, in May 2003, OGE issued new audit guidelines for its periodic reviews of agency ethics programs that provide for additional focus and review of appointment designations for individuals serving on committees, councils, boards, and commissions. Finally, as previously mentioned, OGE officials conduct a segment on ethics that addresses the appointments of representatives and special government employees during GSA's FACA management course.

Nonetheless, three of the agencies we reviewed—USDA, Energy,²⁵ and Interior—appoint most or all of the members to their federal advisory committees as representatives.²⁶ Upon examining some of the specific committees at these agencies, we found that these agencies appoint members as representatives even when the members are called on to provide advice on behalf of the government on the basis of their best judgment, rather than to represent views of outside organizations. Specifically, USDA, Energy, and Interior have committees comprised entirely of representative members where, on the basis of the agencies' descriptions of the type of advice that the members are to provide, the use of special government employees seems more appropriate, such as in the following cases:

- *USDA's National Advisory Committee for Microbiological Criteria for Foods.*²⁷ According to its charter, the purpose of the committee is to provide impartial, scientific advice to federal food safety agencies on the development of an integrated national system to monitor food safety from farm to final consumption in order to ensure the safety of domestic, imported, and exported foods.

²⁴OGE also addressed the designation issue at a session of its 2004 annual conference.

²⁵In April 2003, Energy's Acting Assistant General Counsel for General Law told us that all but one of the department's committees use only representative members. The one committee that appointed special government employees was the National Nuclear Security Administration Advisory Committee, which was established in June 2001 and expired in June 2003.

²⁶Coincidentally, our review included two of the departments (Energy and Interior) included in OGE's staff study. OGE found that the Small Business Administration and the Commission on Civil Rights also appoint most or all committee members as representatives. OGE data indicate that some other agencies, such as the Departments of Justice and State, also rely primarily on representative appointments to federal advisory committees.

²⁷According to USDA, the committee is cosponsored with HHS, the Department of Defense, and Commerce but is managed by USDA.

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- *Energy's Biological and Environmental Research Advisory Committee.* According to the committee's designated federal official, the department uses the committee to obtain independent scientific advice on Energy's Biological and Environmental Research Program. The committee addresses issues such as genomics, the health effects of low-dose radiation, DNA sequencing, medical sciences, environmental remediation, and climate change research. In addition to reviewing scientific issues, the committee provides advice on long-range research plans and priorities and appropriate levels of funding.
 - *Interior's Scientific Earthquake Studies Advisory Committee.* According to the committee's designated federal official, members are selected to provide their independent advice to the U.S. Geological Survey (USGS) on matters relating to the survey's role in the National Earthquake Hazards Reduction Program, which is a multiagency strategic program to reduce risks to lives and property resulting from earthquakes. The committee is to review the USGS National Earthquake Hazards Reduction Program's roles, goals, and objectives; assess its capabilities and research needs; provide guidance on achieving major objectives; and establish and measure performance goals. (As discussed below, in January 2004, Interior officials determined that the members of this committee should be appointed as special government employees, and the officials said that the committee would not meet again until the appointments as special government employees have been made.)

In contrast, we found that EPA, HHS, and NASA appoint members as special government employees to committees that provide advice on behalf of the government about scientific and technical issues similar to those addressed by the committees discussed above. Consequently, these agencies do evaluate committee members who provide advice on behalf of the government for potential conflicts of interest.

USDA, Energy, and Interior have 30 other committees with about 750 members that are classified as scientific and technical committees.²⁸ In addition, some committees in other categories, such as national policy advisory committees, also address scientific and technology issues—subject matters for which advice on behalf of the government on the basis of members' best judgment, rather than stakeholder advice, is typically

²⁸In total, these agencies have 189 federal advisory committees with 4,517 members.

sought. In speaking with USDA, Energy, and Interior officials about the basis for their decisions to essentially appoint all advisory committee members as representatives, we learned that this practice is long-standing and firmly rooted in agency cultures—that is, it represents the way these agencies have traditionally staffed their federal advisory committees. The agencies we reviewed generally have not developed sufficient policies, procedures, or guidance for their staff to use when determining which type of appointment is appropriate for individual committees. For example, the guidance of some agencies, such as USDA and Interior, does not address the types of appointments that may be made. Others, such as NASA and Energy, recognize in agency policies and procedures that members can be either special government employees or representatives. However, few of the agencies that have policies identifying the types of appointments specify criteria that should be used when deciding whether the members should be appointed as either special government employees or representatives.

In our view, shortcomings in the OGE 1982 guidance regarding members of federal advisory committees and the conflict-of-interest statutes may (1) contribute to the agencies' overreliance on representative appointments to their advisory committees and (2) limit the effectiveness of OGE's and GSA's education efforts on appointments to advisory committees. Specifically, we found the following shortcomings in the 1982 guidance, which OGE cites as its most complete discussion on the use of representative appointments:

- The OGE guidance is overly broad in describing the groups for which representatives may speak. That is, the guidance indicates that representatives may speak for firms or an industry; for labor or agriculture; or for “any other recognizable group of persons including, on occasion the public at large.” We found that Energy, Interior, and USDA appoint some members to their committees on the basis that they represent various scientific or technical fields, such as biology or toxicology. However, appointing individuals as representatives of a broad category of people, such as a field of expertise, appears to generally be more consistent with providing advice on behalf of the government on the basis of the individual's best judgment, rather than acting as a stakeholder to represent the views of a nongovernment entity or group with an interest in the matter. At our exit conference, OGE officials agreed that, generally, it is not appropriate to appoint committee members as representatives on the basis of their expertise. Further, this approach to classifying members does not recognize and

essentially avoids using the special government employee category, which was specifically created to facilitate the government's ability to retain the services of experts in various fields for such purposes as temporary service on federal advisory committees.

- The conclusion section of the OGE guidance implies that when the term “representative” is used in authorizing legislation, or other such documents, members should be classified as representatives, despite the fact that this term may be used for more generic purposes, such as to direct the balance of a committee. The guidance states that the decision to make representative appointments to federal advisory committees can be indicated in enabling legislation, executive orders, committee charters, or other pertinent documents by “the use of words to characterize [committee members] as the representatives of individuals or entities outside the government who have an interest in the subject matter assigned to the committee.” However, the use of some form of the terms “represent” or “representative” in these documents does not always clearly indicate that the members are to be appointed to serve as representatives; sometimes these terms are used to define committee composition or balance. For example, some of the documents use the term “representative” to identify fields of expertise or employment background needed—specifying, that is, the expertise and points of view deemed pertinent. Some of the documents do not state that the representatives identified have an interest in the matter (as the guidance quoted above calls for) or that they are to speak for their organizations; thus the documents using the term “representative” are sometimes ambiguous. Unlike the guidance on identifying committee members appointed as special government employees—“by the use of words to command the members to exercise individual and independent judgment”—the guidance on identifying representative members does not specify the nature of the advice to be provided (e.g., stakeholder advice).
- The OGE guidance states that the fact that someone is appointed to a committee on the recommendation of an outside organization tends to support the conclusion that the person has a representative function. However, a number of committees solicit recommendations from outside organizations when appointing special government employees in order to achieve appropriate balance and expertise on their committees. Thus, the guidance does not take into account a common practice that agencies use to identify potential committee members and

may overemphasize the weight that agencies should give to this factor when determining what constitutes a representative appointment.

Officials at EPA and NASA also said that the OGE guidance on representative appointments is ambiguous in some respects. They believe it would be very helpful for agencies to have clear criteria for representative appointments. Further, the officials said that training on the issue of appointments to advisory committees has limitations. Specifically, the EPA and NASA officials said that, in their view, the FACA management course does not sufficiently clarify when appointments should be made as special government employees and when they should be made as representatives. These officials also noted that the agencies' ethics officials generally are not the ones who make decisions on the appropriate appointment category; rather, appointment type is viewed more as a FACA management issue. Thus, agency officials managing federal advisory committees may look to GSA more than to OGE for clarification on appointment questions. For example, an official at EPA who has served a detail at GSA said that GSA regularly receives calls from agencies with questions about the distinction between the two types of appointments. We believe these circumstances highlight the importance of both the coordination between GSA and OGE to ensure that GSA is prepared to respond to questions about appointments and the GSA FACA management training directed at agency staff who manage federal advisory committees.

Although the FACA management course manual provides useful information on appointments to committees, we identified some limitations in this material as well. For example, the introductory sentence on appointments states that determining the status of an individual serving on a federal advisory committee is "largely a matter of personnel classification and should be coordinated with an agency's personnel office." In our view, this statement minimizes the importance of examining the type of advice that the individual is being asked to provide as a key determinant of the status of an individual (i.e., the type of appointment to be made). In this regard, in December 2003 officials at OGE told us that they have now concluded (1) that agencies should decide at the outset whether the members of each committee are going to be representatives or special government employees and (2) that this decision should be part of the chartering process. In addition, the GSA manual is not clear and unambiguous on the role of representative members, stating that, in general, representative members of advisory committees "serve as representatives of outside entities and *may* [emphasis added] represent the views of a particular industry or group (e.g., labor, agriculture or other

similar group of interests).” In contrast, OGE guidance states that representatives *are* to represent the views of identified entities or groups. Finally, the GSA manual highlights some OGE criteria from its 1982 guidance document that, as discussed above, we believe need clarification.

The consequences of appointing advisory committee members as representatives when they are in fact asked to provide advice on behalf of the government without representing any particular outside entity’s or group’s point of view exposes the relevant committees to potentially serious problems. Because representative members are not subject to reviews for potential conflicts of interest, allegations of conflicts of interest may call into question the integrity of the committee and jeopardize the credibility of the committee’s work.

Some agencies do address the potential conflicts of interest of their representative members to some extent. For example, Interior’s Bureau of Land Management prohibits its advisory committee members from participating in any matter in which they, a spouse, or dependent child have a direct interest and requires the members to disclose any direct or indirect interest in leases, licenses, permits, contracts, or claims and related litigation that involve lands or resources administered by the bureau. However, this policy does not require the representative members to identify any other financial interests. Interior officials also told us that the department has begun inserting standard language into its committee charters briefly stating the ethics obligations of the members, whether they are special government employees or representatives. The charters for committees with representative members will include a statement that “a member may not participate in matters that will directly affect, or appear to affect, the financial interests of the member or the member’s spouse or minor children, unless authorized by the designated federal official.”²⁹

In January 2004, Interior officials also said that the department has begun working with its committee management officers to develop training and distribute materials to heighten committee members’ awareness of applicable ethical obligations and to develop and institute the appropriate screening mechanisms. Similarly, Energy does not require representative

²⁹The charters will also state that compensation from employment does not constitute a financial interest of the member so long as the matter before the committee will not have a special or distinct effect on the member or the member’s employer, other than as part of a class.

members to provide information on their financial interests and affiliations but does tell representative members in letters appointing them to committees that they “are required to recuse themselves from participating in any meeting, study, recommendation, or other committee activity that could have a direct and predictable effect on the companies, organizations, agencies, or entities with which they are associated or in which they have financial interest.” Interior and Energy policies thus rely on committee members’ correctly identifying and voluntarily disclosing such circumstances. In contrast, USDA requires its representative members to provide information about their employment and sources of income in excess of \$10,000 but does not ask for information about other financial assets that may affect impartiality, such as stock holdings. However, if these members should have been, and actually were, appointed as special government employees, none of these approaches would be adequate to ensure that the members did not have conflicts of interest requiring mitigation.

At the start of our review, Interior officials told us that they had begun to review their appointment classifications for their 115 advisory committees as a result of the November 2002 OGE study. The officials noted that many of their committees addressing federal land management issues are not scientific and technical in content and, in their view, are appropriately staffed with representative members. In January 2004, Interior officials acknowledged that it was appropriate to change the nature of some committee members’ appointments upon reexamination of any underlying legislation and the purpose of the committees. The officials said the department has been reviewing the appointments to committees as their charters expire, and that the department has appointed special government employees to a few advisory committees during the past year.³⁰ Regarding the earthquake studies committee discussed above, in January 2004 the department examined the appointments while renewing the charter and determined, on the basis of its review of the committee’s authorizing legislation, that the members of this committee should properly serve as special government employees. This committee has been operating for 2 years with members appointed as representatives. Interior officials said the change in appointments will be reflected in the charter and in the

³⁰The department appointed members of the Flight 93 Advisory Commission and the Jimmy Carter National Historic Site Advisory Commission as special government employees in September 2003 and January 2004, respectively.

pending appointment letters, and the committee will not be active again until these changes are made.

While noting that it now believes the authorizing language for the earthquake committee clearly calls for the appointment of the members as special government employees, the officials said that other committees that address scientific and technical issues specifically call for the appointment of representatives, such as Interior's National Cooperative Geologic Mapping Advisory Committee. This committee, comprised primarily of officials from five federal agencies, is to review and provide advice on a 5-year plan for the geologic mapping program that the Secretary of the Interior is required to prepare. In our view, while the statute calls for the committee to include two representatives from the state geological surveys and one each from "academia" and "the private sector," it does not clearly and unambiguously call for these individuals to be appointed as representative members rather than special government employees. As previously discussed, the term "representative" may be used in a variety of ways and may be used in a more generic manner to describe a committee's composition. The term "representative" does not necessarily indicate that members should be stakeholders speaking for entities with an interest in the matter, nor is it clear in this case that academia or the private sector would have a specific point of view that could be represented. We believe the department could choose to appoint these members as special government employees to obtain their advice, if Interior decided that nonstakeholder advice was appropriate in light of the committee's function. On the other hand, if the department wants to obtain stakeholder advice from the nonfederal committee members regarding the government's 5-year geologic mapping program plan, the representative members should be clearly informed about the specific interest and points of view they are to represent.

On this point, Interior officials acknowledged that their advisory committee members themselves are not always clear on whether they are to provide stakeholder advice or advice on behalf of the government. For example, during our review we learned that this question was raised at the initial meeting of the earthquake committee in 2001, at which point in time the representative members were told that they were charged with providing advice on behalf of the government, guidance indicating that the representative members were to function as special government employees. To be certain that committee members are clear on their roles in the future, Interior officials said that the department has begun to ensure that letters appointing individuals to advisory committees clearly inform

the member of their status as either a special government employee or a representative. Further, if the members are to serve as representatives, they are to be clearly informed of the constituencies they are to represent before the committee. Clearly, this is an important fact to communicate to the committee members.

GSA officials also told us that appointment information is relevant and important to understanding the work of the various committees. The officials agreed that information on the nature of the advice being provided—and, in the case of representative appointments, of the entities or groups represented—that is not currently available to the public would be useful and informative. They further indicated that the GSA FACA database, which is available to the public and which identifies the members of the advisory committees, could be expanded to include, for each committee member, the type of appointment and the entity or group represented.

**Information That Can Help
Agencies Ensure
Committees Are Balanced Is
Not Systematically
Gathered and Evaluated**

Many agencies do not identify and systematically collect and evaluate information that can help them determine the points of view of their potential committee members regarding the subject matters the committees will consider and thus better ensure that committees are, and are perceived as being, balanced. FACA requires that committees be fairly balanced both in terms of the points of view represented and the functions to be performed. Courts have interpreted the FACA requirement for committee balance as providing agencies with broad discretion in balancing their committees. In addition to the legal requirement for balance, it is important that committees are perceived as being balanced in order to be credible and effective. However, GSA guidance does not address what types of information could be helpful to agencies in assessing the points of view of potential committee members, nor do agency procedures identify what information should be collected about potential members to make decisions about committee balance. Many agencies do not identify and systematically collect and evaluate information that would be helpful in determining the points of view of committee members relevant to the subject matters the committees will consider. For example, of the nine departments and agencies we reviewed, only EPA consistently collected information on committee members who were appointed as special government employees in order to assess the points of view of the potential members and used this information to help achieve balance.

Assessing the points of view of individual members is fundamental to ensuring that committees as a whole are, and are perceived as being, fairly balanced in terms of points of view because agencies must first know whether the members have particular viewpoints or whether they may have—or may reasonably be perceived as having—certain biases. For example, only financial interests and affiliations during the prior year are considered pertinent for conflict-of-interest purposes, but financial and other relevant affiliations—extending beyond the 12-month period—may identify a potential bias or point of view that agencies should consider both in selecting individual members and balancing the committees as a whole. Even when a legal conflict of interest does not exist, a committee member may be so closely aligned with a point of view or an organization that his or her ability to provide objective and impartial advice is impaired or appears to be impaired. Such circumstances in which a person’s impartiality may be called into question, sometimes referred to as an “apparent conflict of interest” and a “perceived conflict of interest,” are important for agencies to be aware of because the perception of bias that can harm the reputation of advisory committees is independent of the legal definition of a conflict of interest.³¹ In some cases, however, agencies may find it helpful to include individuals with known biases, perspectives, or affiliations to serve on certain advisory committees in order to ensure that the relevant points of view are considered.³² In these cases, the issue of the overall balance of viewpoints on the committees is heightened in the sense of an agency’s ability to ensure that the committee is balanced with respect to points of view. When agencies are unaware of the viewpoints and biases of its members, they cannot adequately ensure that the committees are, and are perceived as being, balanced as a whole.

³¹Under 5 C.F.R. § 2635.502, impartiality is considered in some cases in conjunction with particular matters. For example, a special government employee should not participate in a particular matter involving a specific party where the employee knows the matter will have a direct and predicable effect on the financial interest of a member of their household and where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question their impartiality in the matter, unless the employee has received authorization from an agency designee.

³²For scientific committees, the relevant points of view may be different scientific perspectives.

Agencies typically rely on two sources to collect data about committee members who were appointed as special government employees: curricula vitae (CV) or résumés and the OGE form 450, the confidential financial disclosure form. Agencies generally collect CVs³³ or résumés that may provide some information pertinent to assessing points of view, such as professional affiliations and published articles. Some agencies may also perform Internet searches for background information on candidates. However, these sources vary in content and reliability and may not be sufficient to consistently provide the information needed to assess for points of view.³⁴

The form 450, which does collect specific information in a systematic manner, was developed specifically for reviews for potential financial conflicts of interest. Some of the information on this form, however, also is relevant to assessing the overall balance of viewpoints on a committee. The form 450 requires potential committee members (and returning members at least annually) to provide information on sources of income and assets, liabilities, and outside positions during the prior year and on existing employment agreements or arrangements, such as promises of future employment and leaves of absence.³⁵ The information on income sources, honoraria, and outside positions held during the prior year may be important to assessing for points of view.³⁶ For example, a university professor who is also an official of an environmental advocacy organization may reasonably be viewed by a sponsoring agency and others as representing an environmental rather than an unaligned “academic” perspective. Similarly, a university professor who is also an official of a

³³CVs are most pertinent to assessing expertise, generally providing information on education, employment experience, professional memberships, service on boards or journals, and publications and presentations.

³⁴Typically, members are rotating off committees periodically and thus issues of overall balance need to be revisited whenever membership changes are made. While special government employees serving on advisory committees are required to provide forms 450 at least annually, CVs and résumés may be collected once and not updated over the years that the members serve on the committees.

³⁵Income includes salaries, fees, and honoraria of the individual and his or her spouse and dependent children. Assets producing more than \$200 in income during the prior year also are to be reported, such as rent, interest, dividends, and capital gains. Information is requested on the sources of income and the identification of assets but not on the related dollar amounts.

³⁶Some relevant affiliations would not be identified because the form 450 only requests information covering the immediate prior 12 months.

toxicology institute that receives funding from chemical companies or who provided expert legal testimony for a corporation may reasonably be viewed by a sponsoring agency and others as providing an industry perspective.

Importantly, while the form 450 can provide some pertinent information for assessing points of view, it was neither designed for nor does it provide sufficient information for this purpose. Specifically, as our review of EPA's Science Advisory Board demonstrated,³⁷ the form 450—designed for financial conflict-of-interest reviews—solicits information covering only the prior year and does not request other information relevant to assessing points of view, such as

- previous public statements or positions on the matter being reviewed, including statements in articles, testimony, or speeches;
- positions taken in various legal forums, particularly in providing expert legal testimony, on the matter;
- research conducted on the matter;
- interests of their employers or clients in the matter; and
- sources of funding for research or other activities.

However, such information is helpful to understand the points of view of potential committee members and therefore to assess how an individual member's participation on the committee would affect overall committee balance. For example, it is helpful for agencies to be aware of public pronouncements that candidates have made on matters relevant to their committees so that they can assess how such individuals may be viewed in terms of impartiality. In those instances where an agency selects a member for their expertise who may have a viewpoint that is aligned with an industry or environmental interest, without the information that would reveal the existing viewpoint, the agency would not be aware of whether including a member with a different viewpoint would be beneficial in terms of the public's perception of committee balance.

³⁷GAO-01-536.

In addition, the extent to which a committee member's employment is funded by a grant or grants from the sponsoring agency is a reasonable factor to consider in assessing the member's impartiality in terms of independence from the agency. On this point, the Office of Management and Budget recently highlighted in its proposed rule on peer review procedures that the independence of scientists conducting peer reviews for agencies while at the same time receiving funding from these agencies might be called into question. Similarly, the 2003 report by the National Academies on organizational issues within NIH recommended that a substantial portion of a committee's scientific membership should consist of persons whose primary source of research support is derived from a different NIH center or institute or from outside of NIH in order to achieve sufficient independence from the agency.³⁸ Officials at EPA and FDA told us that they try to avoid appointing to committees members who receive agency grants for work that is related to matters before the committee. In contrast, Energy and NASA officials said it would be difficult for them to find for some committees the scientific and technical experts they need who do not also receive grants from their agencies. We are not suggesting that having grants or contracts with the sponsoring agency should disqualify individuals from serving on federal advisory committees, but rather that agencies should consider the support they provide to potential members since this does present potential issues of independence from the agency.

Agencies generally have even less information to evaluate the viewpoints of their representative members because representatives are not required to complete the form 450. Consequently, agencies generally do not collect information relating to the financial interests of the representative members. Although representatives are not subject to the financial conflict-of-interest rules, their financial interests could affect their viewpoints. An EPA official acknowledged that for some representative committees, it may be important to consider this information, depending on the work of the committees. However, another EPA official expressed a concern that asking representative members—who are not paid for their services—for financial information, such as is obtained from those retained

³⁸National Research Council, Institute of Medicine, the National Academies, *Enhancing the Vitality of the National Institutes of Health: Organizational Change to Meet New Challenges*, 2003.

as special government employees, could have a chilling effect on the willingness of people to serve on advisory committees as representatives.³⁹

Regarding special government employees, we found that although agencies have generally collected forms 450 from these employees, the forms are not always collected in time for them to be of any use in also evaluating the points of view of potential committee members. For example, some agencies, such as NASA and CDC, do not collect the form 450 until the agency has made decisions about appointments. (We recognize that the form 450 was designed to assess for conflicts of interest and that agencies are not required to also use it to assess for points of view; however, as previously discussed, the form nonetheless can provide some valuable information to agencies regarding the viewpoints of an individual.)

Of the nine committees we reviewed, only EPA's Federal Insecticide, Fungicide, and Rodenticide (FIFRA) Scientific Advisory Panel consistently collected information relevant to assessing the points of view of prospective members and considered this information in selecting members for its peer review panels.⁴⁰ Agencies with committees served by special government employees generally collected information from CVs and résumés and on the form 450, which, as discussed above, has limitations in terms of assessing the points of view of committee members. Agencies with representative members either collected only CVs or, in the case of USDA, collected some additional information about sources of income. (See table 1.)

³⁹Special government employees may or may not be paid for their services, depending on the policy of the agency that is sponsoring the committee.

⁴⁰In January 2004, FDA officials said the agency uses a standard form to collect information from potential appointees early in the selection process that provides information similar to what EPA collects. We reviewed the form and its instructions and note that this effort is directed at potential conflicts of interest; it is not clear the extent to which the information is used to balance points of view. Further, FDA officials said they could not provide copies of the forms for the FDA committee we reviewed because the designated federal official had left the agency.

Table 1: Documentation That Agencies Systematically Collected on Potential Members of Selected Committees

Department/Agency	Committee name	Documentation that agencies systematically collected on potential members of selected committees			
		Curriculum vitae or résumé	Conflict-of-interest financial disclosure form		Other data collection instrument
			OGE form 450	Alternative form approved by OGE	
Agriculture/Food Safety and Inspection Service	National Advisory Committee for Microbiological Criteria for Foods ^b	X			USDA form AD-755 ^a
Energy	Biological and Environmental Research Advisory Committee ^b	X			
Environmental Protection Agency	Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel	X		X ^c	Structured telephone interview
Health and Human Services	Secretary's Advisory Committee on Human Research Protection	X	X		
Health and Human Services/Centers for Disease Control and Prevention	Advisory Committee on Childhood Lead Poisoning Prevention	X	X		
Health and Human Services/Food and Drug Administration	Food Advisory Committee	X	X	X ^d	Structured telephone interview ^e
Health and Human Services/National Institutes of Health	Scientific Advisory Committee on Alternative Toxicological Methods	X	X		
Interior/U.S. Geological Survey	Scientific Earthquake Studies Advisory Committee ^b	X			
National Aeronautics and Space Administration	Space Science Advisory Committee	X ^f	X ^f		

Sources: Data collected from agencies' committee management offices, designated federal officials, or other agency officials responsible for nominating members of committees.

^aUSDA requires members of its advisory committees to file a USDA form AD-755. This form requests information on the individual's primary employment, sources of income over \$10,000, and other matters related to the individual's background in agriculture.

^bMembers were appointed as representatives not subject to conflict-of-interest reviews.

^cThe EPA FIFRA Scientific Advisory Panel uses the EPA form 3110-48 in lieu of the OGE form 450. The EPA form requests more detailed information from members about their affiliations and association with the work of the committee.

^dFDA requires members of its Food Advisory Committee to file a form 450 during the appointment process. However, if the Food Advisory Committee, or any other FDA advisory committee, plans to discuss "particular matters" of specific applicability, the agency will require members to file an FDA form 3410 prior to the meeting. The form 3410 requests more specific information about a member's

affiliation with particular companies identified by FDA that might be affected by the committee's deliberations during a specific meeting.

*See footnote 40.

†The designated federal official for the NASA Space Science Advisory Committee requests short biographical sketches from prospective members. Agency officials consider these sketches when deciding whom to appoint. After the agency has decided to appoint an individual, it requests a copy of a curriculum vitae and a completed form 450.

Regarding the EPA FIFRA Scientific Advisory Panel, this advisory committee convenes about six panels annually to address scientific and technical issues. For example, we reviewed one such panel that was (1) evaluating the range of developmental effects associated with the exposure of amphibians to the pesticide atrazine and (2) determining the significance of these effects for risk assessment and the likely threshold exposure value for eliciting these effects. The executive director of this committee said that candidates with known positions or biases generally are not selected for the panels—that is, the agency does not select individuals previously associated with the agency, regulated industries, or stakeholder communities. In addition, the agency generally does not select individuals with a stated position on the particular matter being reviewed. The FIFRA Scientific Advisory Panel defines balanced membership as including the necessary areas of technical expertise, different scientific perspectives within each technical discipline, and the collective breadth of experience needed to address the agency's charge. In order to evaluate potential members, the FIFRA Scientific Advisory Panel uses CVs and the EPA alternative disclosure form that asks committee members to provide information needed to assess impartiality, such as information about compensated expert testimony and sources of research and project funding during the prior 2 years. The form also asks candidates to consider all relevant information over the past 5 years and to identify and describe any reason that they may be unable to provide impartial advice on the matter to be considered by the panel.

The executive secretary of the FIFRA Scientific Advisory Panel told us that EPA's alternative financial disclosure form—developed to address the limitations we identified in our report on EPA's Science Advisory Board—has greatly facilitated their ability to consistently obtain relevant information. The FIFRA Scientific Advisory Panel also asks potential members several standard questions that we identified in our prior report as relevant to assessing impartiality, such as whether they have made any

oral or written public statement on the issue before the panel.⁴¹ As a result of obtaining and reviewing this information in order to select members and ensure appropriate committee balance overall, the FIFRA Scientific Advisory Panel is in a position to make informed choices. By systematically collecting relevant background information on all candidates, the FIFRA Scientific Advisory Panel is in a position to ensure that its panels are balanced in terms of the points of view represented. We also found that FDA often collects similar information on an alternative form that provides some pertinent information for assessing points of view, but the agency does not use this information to assess the overall balance of the committees. That is, FDA generally uses the form 450 in reviewing candidates for appointments to committees and uses the alternative form to review for conflicts of interest for specific meetings that involve particular matters.

In addition, agencies that have collected forms 450 for special government employees for the purpose of conflict-of-interest reviews may not use the information available to them on the forms that—although designed for conflict-of-interest reviews—could also be helpful in evaluating the points of view committee members may have. For example, the Director of the White House Liaison Office at HHS, who developed the committee roster for the Secretary’s Advisory Committee on Human Research Protections that the Secretary of HHS approved, said that she did not review the forms 450 in selecting members.⁴² She viewed the task of reviewing the forms 450 as the purview of the agency ethics officials who would determine whether financial conflicts of interest existed. In response to our questions about whether affiliations with law firms, identified by some members on the forms 450, may be relevant to consider in terms of their points of view, she said that she did not need to know the particulars about the legal work since she did not consider such information relevant to selection decisions. Further, she said that she did not consider particular points of view candidates may have in making selections. For example, we asked her if she considered the point of view of one member who had publicly stated disagreement on religious grounds with certain research that is included in the committee’s charter, and she said she did not. The Director stated that

⁴¹These questions were not added to EPA’s confidential financial disclosure form, the purpose of which is to support reviews for potential financial conflicts of interest.

⁴²This committee replaced a committee established by the prior administration. In this case, HHS did not renew the committee charter when it expired in 2002, instead HHS opted to create a new committee with a revised charter.

she nominated members to the Secretary for his approval primarily on the basis of their expertise and also considering several demographic factors (gender, race, and geographic location) to the extent these additional factors did not impinge on the department's ability to pick qualified members. She noted that these factors reflect the department's written policies and procedures.⁴³

Officials at other agencies said they considered similar factors in balancing the other eight committees we examined. Specifically, officials indicated that they focused on expertise, demographic characteristics, and employment history as factors to assess points of view as it affects balance. (See table 2.) As previously discussed, FACA does not elaborate on how agencies are to ensure that advisory committees are fairly balanced in terms of the expertise and the points of view of the members, nor does it provide criteria for assessing balance.⁴⁴ Thus, agencies have considerable discretion in determining how they will meet the requirement for achieving balanced committees.

⁴³The Director of the White House Liaison at HHS also managed the appointments to another committee we reviewed, the CDC Advisory Committee on Childhood Lead Poisoning Prevention. She recommended 10 new members to the Secretary for appointments made in 2002 and 2003 to replace members with expiring terms.

⁴⁴In its July 19, 2001, final rule on advisory committee management, GSA did provide a list of factors to consider in achieving a balanced advisory committee membership, such as the advisory committee's mission and the geographic, ethnic, social, economic, or scientific impact of the advisory committee's recommendations.

Table 2: Factors Used by Agencies to Balance Selected Committees

Department/Agency	Name of committee	Expertise	Ethnicity	Gender	Geography	Employment sector
Agriculture/Food Safety and Inspection Service	National Advisory Committee on Microbiological Criteria for Foods	X	X	X	X	X
Energy	Biological and Environmental Research Advisory Committee	X	X	X	X	X
Environmental Protection Agency	Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel	X	X	X		
Health and Human Services	Secretary's Advisory Committee on Human Research Protections	X	X	X	X	
Health and Human Services/Centers for Disease Control and Prevention	Advisory Committee on Childhood Lead Poisoning Prevention	X	X	X	X	
Health and Human Services/Food and Drug Administration	Food Advisory Committee	X	X	X	X	X
Health and Human Services/National Institutes of Health	Scientific Advisory Committee on Alternative Toxicological Methods	X	X	X	X	X
Interior/U.S. Geological Survey	Scientific Earthquake Studies Advisory Committee	X		X	X	X
National Aeronautics and Space Administration	Space Science Advisory Committee	X	X	X	X	X

Sources: Information on the criteria considered to balance committees came from designated federal officials, committee management officials, or other agency officials responsible for nominating or appointing members of committees.

In discussing their selection criteria, most officials reported that in selecting members for these science and technical committees, they focused first and foremost on expertise. Some agency officials said that they do not consider a balance of points of view as relevant to science and technical committees, believing that the appropriate focus for such committees is obtaining the appropriate balance of required expertise. We do not disagree that this focus is appropriate, particularly for committees that address scientific and technical issues. While courts have interpreted FACA as giving agencies broad discretion in how to balance their committees, in our view, the integrity of these committees' advice would be better served if agencies were to consider additional information about potential members' points of view. For example, experts in a given field of expertise may have varying scientific perspectives that agencies could consider for balancing the committee. Along these lines, the FIFRA

Scientific Advisory Panel defines balance as including different scientific perspectives within each technical discipline.

Second, the officials most commonly related “points of view” to demographic factors, such as race, gender, or geographic locations—that is, defining a balance of points of view in terms of demographic diversity. While important, these criteria alone do not provide a robust understanding of the points of view and potential biases the members may bring to the committee vis-à-vis the specific matters the committees will address. That is, these approaches may achieve demographic diversity, but they cannot ensure an appropriate balance of viewpoints relative to the matters being considered by the committees. Third, some of the officials also identified the primary employment affiliation as a factor relevant to achieving a balance of points of view. For example, a factor in committee balance for one committee is the breakdown of members employed by universities, private industry, and federal and state agencies. We agree the primary employment affiliation may be an important consideration for a number of committees to ensure a balance of points of view. However, as we illustrated in our work at EPA’s Science Advisory Board, the staff director of the board viewed some academics as aligned either with industry or environmental perspectives and some experts affiliated with industry as representing an environmental perspective on the basis of information about their other affiliations. Additional information about the candidates’ viewpoints and potential biases would better ensure that the committees are, and are perceived as being, fairly balanced in terms of points of view—and that no one interest or viewpoint dominates. Along these lines, NIH officials told us that the information EPA collects to evaluate potential committee members would be very helpful to them in selecting members and ensuring that committees are balanced as a whole.

Finally, we note that other practices agencies use in forming new committees and in selecting replacement members for existing committees can help them better ensure that their committees are appropriately balanced. These include steps agencies take to identify potential candidates and to seek feedback on proposed committee membership. Appendixes III through XI provide information on the nine committees we reviewed, including how the agencies identified candidates and whether they requested public comments on the committee membership. These and other practices are discussed in the next section.

Promising Practices Could Better Ensure Independence and Balance

Some agencies use practices when forming and managing their committees that can better ensure that federal advisory committee members are independent and that committees are balanced. These practices include (1) obtaining nominations for committee members from the public, (2) using clearly defined processes to obtain and review pertinent information on potential members regarding potential conflicts of interest and impartiality, and (3) prescreening prospective members using a structured interview. In our view, these measures constitute promising practices because they reflect the principles of conflict-of-interest provisions and FACA by employing clearly defined procedures to promote systematic, consistent, and transparent efforts to achieve independent and balanced committees. Although these practices for obtaining and reviewing pertinent information to assess for conflicts of interest and impartiality are broadly applicable, some of the practices, such as seeking public comment on proposed committees, are most particularly relevant to those committees addressing sensitive or controversial topics. If more agencies adopted and effectively implemented these practices, we believe they would have greater assurance that their committees are, and are perceived as being, independent and balanced. In addition, we have identified selected measures that could promote greater transparency in the federal advisory committee system.

Obtaining Nominations from the Public

When seeking to appoint members to their federal advisory committees, agencies often use a combination of methods to obtain nominations for potential committee members. Agencies typically rely on relevant program officials in the agency, officials from other agencies, members of professional organizations, and authors of relevant scientific and technical literatures as ways to identify potential committee members. Some agencies also seek nominations from the public by using widely available resources, such as the *Federal Register* and agency Web sites, to broaden the pool of candidates from which committee members may be drawn. The latter approach is a systematic and transparent method of obtaining

nominations and can provide agencies with greater assurance that a range of relevant experts and/or stakeholders capable of creating impartial and balanced committees are identified.⁴⁵

In addition to their other methods of obtaining nominations from colleagues, professional associations, and the like, we believe agencies should also routinely consider obtaining nominations from the public because this practice can both (1) help agencies identify qualified candidates and (2) alleviate any perception that they are choosing from a narrow pool of candidates that may not provide the appropriate expertise and points of view. It may be particularly relevant to solicit nominations from the public for committees that address sensitive or controversial issues. Obtaining nominations from the public may require more time and effort than less formal approaches to identifying committee members and may also involve a publishing cost. However, by actively engaging the public and all interested parties in the process in an open and transparent manner, the agency's credibility may be enhanced.

Using Clearly Defined Processes to Screen for Conflicts of Interest and Points of View

As previously discussed, many agencies do not consistently collect information that could be helpful in determining the viewpoints of potential members and ensuring that committees are, and are perceived as being, balanced. However, the National Academies and EPA have developed clear processes that, if effectively implemented, can provide them with greater assurance that relevant conflicts of interest and biases are identified and addressed, and that committees are appropriately balanced in terms of points of view because they have identified and evaluated the necessary information before committees are finalized.

⁴⁵Some of the committees and agencies that publish *Federal Register* notices seeking nominations include EPA's Science Advisory Board; EPA's FIFRA Scientific Advisory Panel; all committees managed by FDA, such as the Food Advisory Committee; and a number of committees managed by USDA's Food Safety and Inspection Service, such as the National Advisory Committee on Microbiological Criteria for Foods. USDA also sought nominations using an announcement on the agency and advisory committee Web pages and in a weekly newsletter sent to interested organizations and individuals. EPA's Science Advisory Board also uses its Web site as a vehicle for soliciting nominations to its peer review committees.

Specifically, the processes used by the National Academies and EPA's Science Advisory Board clearly and consistently

- identify the information they deem necessary to assess candidates for independence and to balance committees,
- explain to the candidates why the required information is important to protect the integrity of the committee's work,
- request public comment on proposed committee membership, and
- require evaluation of the overall balance of committees before committees are finalized.

Overviews of the processes used by the National Academies and the Science Advisory Board are provided below.

The National Academies

In 2001, we reported that to help balance their committees and safeguard their credibility, the National Academies provide prospective members with a document that offers a succinct, straightforward discussion of what constitutes potential conflicts of interest and biases and explains what information they are required to provide to the National Academies on a standard form.⁴⁶ In 2003, the National Academies updated their procedures covering conflicts of interest and bias, issuing their *Policy on Committee Composition and Balance and Conflicts of Interest for Committees Used in the Development of Reports*. In explaining the need for obtaining background information about prospective members, the National Academies emphasize that the work of their committees must be, and must be perceived as being, free of any significant conflict of interest⁴⁷ and uncompromised by bias. The National Academies state that allegations of conflict of interest or lack of balance and objectivity can undermine the

⁴⁶GAO-01-536.

⁴⁷Members of committees of the National Academies are not subject to the same conflict-of-interest provisions as are members of FACA committees sponsored by federal agencies. The National Academy of Science is required to make its best effort to ensure that no committee member has a conflict of interest that is relevant to the functions to be performed, unless the conflict is publicly disclosed and the academy determines that it is unavoidable. The academies define a conflict of interest as any financial or other interest that conflicts with the service of an individual because it (1) could impair the individual's objectivity or (2) could create an unfair competitive advantage for any person or organization.

conclusions of fully competent committees. The academies continue to request the following information from potential members on a standard form:⁴⁸

- organizational affiliations,
- financial interests,
- research support,
- government service, and
- public statements and positions.

In addition, prospective committee members are asked to identify and describe any other circumstances in their background or present connections that might reasonably be construed as unduly affecting their judgment or that might be reasonably viewed as creating an actual or potential bias or conflict of interest or the appearance of a bias or conflict of interest. Further, the National Academies post information about panel candidates on a Web site for public comment, allowing the public the opportunity to identify any real or perceived conflicts or biases associated with individual members and the ability to raise issues regarding the balance of viewpoints on the proposed committee. Lastly, the National Academies do not finalize their committee selections until officials have reviewed and evaluated information provided by prospective members and comments received from the public regarding the proposed makeup of the committee. As we previously reported, this process has proven beneficial to the academies in selecting balanced peer review panels.⁴⁹

EPA's Science Advisory Board

EPA's Science Advisory Board staff office has also developed a systematic process to obtain and evaluate the information it needs to assess potential members for potential conflicts of interest and to properly balance the range of expertise and viewpoints on the board. As previously discussed, federal committee members serving as special government employees are

⁴⁸Potential members complete one of three similar forms covering background information and confidential conflict-of-interest disclosure, depending on the type of study involved: program reviews and evaluations, general scientific and technical studies and assistance, and studies related to government regulations.

⁴⁹GAO-01-536.

subject to the criminal financial conflict-of-interest statute. The staff office uses the alternative form that EPA developed, form 3110-48, for special government employees serving on advisory committees to collect information that enables the agency to evaluate potential members for legal conflicts of interest and also helps the agency in assessing for impartiality and points of view. The staff office also contacts prospective panelists and asks them five standard questions to help the office assess the panelists' points of view, such as whether they have made any public statements on the issues that the panels will consider. The staff office uses this information to help ensure that any legal conflicts of interest are identified and appropriately mitigated and to help ensure that committees as a whole are balanced in terms of points of view.

EPA's form 3110-48 explains that the information being requested is needed so that EPA ethics officials can make an informed judgment regarding any conflict of interest or appearance of lack of impartiality. The Science Advisory Board staff office further explains how it uses the information that it collects in its brochure entitled *Overview of the Panel Formation Process at the Environmental Protection Agency Science Advisory Board*. As previously discussed, the information that EPA collects on the form 3110-48 includes sources of income and assets, liabilities, outside positions, consulting activities, sources of research support or project funding, and compensated expert testimony. Further, similar to the National Academies, EPA requests potential members to identify and describe on the form any reason they may be unable to provide impartial advice on matters before the committee and any reason their impartiality in the identified matter might be questioned. The Science Advisory Board staff office also searches independently for background information on prospective members to understand their qualifications and points of view. Also, like the National Academies, EPA uses a public notice process to obtain comments on proposed candidates for its Science Advisory Board. That is, the staff office publishes the names and biographical sketches of candidates for its committees on the board's Web site, requesting the public to provide information, analysis, or documentation that it should consider in evaluating the candidates. The staff office does not finalize their committee selections until officials have reviewed and evaluated the information provided by the candidates, any other information the public may have provided, and information gathered by the staff independently on the background of each prospective member. According to a designated federal official for the board, the public comment period is a last check in the screening process that can identify information about prospective candidates, such as publicly stated positions on matters related to the

committee, that the staff office would want to verify and evaluate prior to making panel selections. He said the staff office has received feedback that the biographical sketches are helpful, and he believes this practice enhances the public's perception of the board's panel formation process.

Prescreening Prospective Members Using a Structured Interview

EPA's FIFRA Scientific Advisory Panel has a committee formation process similar to that of the Science Advisory Board that also identifies the specific information the staff will discuss in interviews with prospective members. Although the purposes of the structured interview include assessing the interest, availability, and expertise of the potential member, a primary focus is on evaluating potential financial conflicts of interest and biases. In addition, the interview provides EPA with the opportunity to explain the ethical obligations of committee members and discuss in detail the information that members would have to provide on the EPA form 3110-48 before they could be appointed to the committee. This process is efficient because it enables the panel to quickly identify those individuals who meet its criteria for independence and impartiality.⁵⁰ Further, prospective members who subsequently complete the form 3110-48 will be better prepared to complete the form accurately. We note that the panel's interview protocol, including the structured interview itself, is available on its Web site. Thus, prospective members and the public are informed of the processes and the issues that will be discussed with all prospective members. The panel's approach to obtaining relevant information from prospective committee members is systematic, consistent, and transparent. Further, we believe it unlikely that agencies formalizing and publicizing their processes for obtaining information from prospective committee members would approve questions that are generally inappropriate in a professional working environment, such as questions about party affiliation or political viewpoints that some committee members at other agencies have reported being asked.

⁵⁰FDA also has a form that agency staff may use to conduct a preliminary interview "to identify obvious conflicts of interest that may preclude appointment." This form is called the Prospective Special Government Employee Personal Data Sheet (Preliminary Informal Interview), form FDA 2725a (July 1992).

Selected Measures Could Promote Greater Transparency in the Federal Advisory Committee System

In light of recent controversies surrounding the perceived politicization of federal advisory committees, we identified several other measures to improve transparency in the federal advisory committee system. Although none of these measures can ensure that committee members are independent and that committees are balanced, we believe each of these alternatives has the potential to increase public understanding of the process of appointing advisory committee members and make more transparent the operations of federal advisory committees.

In the interest of transparency, agencies could make public the following information about each of their advisory committees:

- The committee formation process: how members are identified and screened, and how committees are assessed for balance.
- Whether members are appointed as special government employees and are speaking as independent experts, or whether members are appointed as representatives and speaking as stakeholders.
- Whether committees arrive at decisions through a voting process or by consensus.

There are several contexts in which agencies could make this information available to the public. Specifically, the information could be

- written in the committee's charter;
- posted on the GSA on-line database;
- posted on the agency or committee's Web site;
- announced at committee meetings; or
- identified on committee work products (reports, studies, or recommendations).

It is in the public interest to disclose such basic information about federal advisory committees. Further, we believe that taking such measures to make information about committees available to the public would help educate interested parties about the formation of committees and better enable them to evaluate whether agencies have complied with conflict-of-interest requirements and the FACA requirements for balance. Given

recent well-publicized accusations of biases and conflicts of interest, efforts to improve the transparency of the federal advisory committee system can only serve to inspire greater public trust in the process and enhance the credibility of committees' work.

Along these lines, we have identified two additional measures to promote transparency that may warrant consideration: (1) public disclosure of information concerning conflict-of-interest waivers and (2) internal disclosure of potential conflicts of interest and sources of bias among committee members prior to the initiation of committee work.

Agencies may grant waivers to special government employees who have potential conflicts of interest if the agency determines that either (1) the conflict is insignificant or (2) the need for the member's expertise outweighs the conflict. The financial conflict-of-interest statute requires that agencies provide limited information to the public about waivers upon request; namely, that an agency has granted a waiver and the basis on which it was granted. The statute does not require, however, that agencies proactively notify the public about waivers, either during advisory committee meetings, in meeting minutes, or in committee products. Our review of selected committees found that agencies typically did not disclose this information. In contrast, FDA has had a practice of providing at the beginning of meetings a summary disclosure of any waivers granted to members for that meeting. The disclosure identifies which members have received waivers and whether the waivers were granted on the basis that conflict was insignificant or that the need for the expertise outweighed the potential conflict. Because information about the conflicts pertained to information that members provide to agencies on confidential financial disclosure forms that are protected under the Federal Privacy Act, details about the conflicts were not provided. Thus, the public and others could not evaluate the impact of the conflict on a person's ability to provide impartial advice. In February 2002, as a result of a statutory requirement, FDA issued for public comment a draft guidance document describing its policy of disclosing specific information with respect to waivers granted for particular matters of specific applicability—that is, when members have a direct relationship with the products, interests, and issues under the review of the committee. Under this policy, FDA discloses not only the existence of a waiver but also information on the committee member's

interests that constitute a conflict.⁵¹ To address the constraints imposed by the Federal Privacy Act, FDA requires committee members to sign a consent form giving FDA permission to publicly disclose this information before members receive a waiver. According to FDA officials, committee members have generally been willing to sign the consent forms and to disclose this information. We believe the practice of publicly disclosing the issuance of conflict-of-interest waivers to committee members increases transparency and can also increase the credibility of the committee process by allowing the public to know when a potential conflict exists and why the agency saw fit to grant the member a waiver. Further, the application of this practice could be expanded to include not only particular matters of specific applicability (in which a particular company or individual is likely to be affected by the matter) but also to other particular matters (in which, for example, an industry or group of persons is likely to be affected).

The National Academies have a policy of asking their committees to engage in an internal discussion about members' work experiences, affiliations, and other circumstances that might pose a potential conflict of interest. The academies believe that an internal disclosure of this information promotes transparency and serves to increase the credibility of the committees' work. We agree that a confidential discussion among committee members regarding real or perceived conflicts of interest and biases can provide committee members with important background information that can enable them to better evaluate the perspectives of their fellow committee members. Understandably, extending such a practice to federal advisory committees, and in particular to members appointed as special government employees, raises privacy questions because special government employees are under no obligation to disclose such information to fellow committee members or the public. However, we believe that the possibility of requiring members to disclose background information, affiliations, and other sources of potential conflicts of interest and biases among individual committee members at an internal disclosure session prior to the committee's beginning its work warrants study.

⁵¹According to EPA, the staff office for the Science Advisory Board actively avoids granting waivers, preferring to choose another panelist instead. However, in the event that EPA grants a waiver, the designated federal official discloses that information at the start of meetings. EPA would disclose only the name of the individual and the type of waiver granted—not the details of the conflict.

Conclusions

For federal advisory committees to be successful, the members must be independent and the committees balanced—that is, they must be able to provide, and be perceived as providing, credible and balanced advice. A spectrum of scientists and other experts perceive recent appointments to some science and technical committees as being influenced more by ideology than expertise. Independent of the facts and specific issues involved, this perception alone is problematic. The perception of the federal advisory committee system as politicized can jeopardize the value of an individual committee’s work; discourage the participation of scientists, experts, and other potential members on future advisory committees; and call into question the integrity of the federal advisory committee system itself. Because allegations of conflict of interest and bias can undermine the work of otherwise credible and competent committees and threaten the integrity of the federal advisory committee system, the best interests of the government are served by governmentwide guidance and agency-level policies and procedures for addressing potential conflicts of interest and ensuring that committees are, and are perceived as being, balanced. However, federal guidance in these key areas has limitations that reduce its effectiveness.

First, OGE guidance on representative appointments can be strengthened to better ensure that agencies are appropriately appointing committee members. Unless certain ambiguities in the guidance are clarified, some agencies may continue to appoint members providing advice on behalf of the government as representatives and not conduct reviews of potential conflicts, thereby leaving the specific committees and the federal advisory committee system itself vulnerable to potential criticism if potential conflicts of interest are identified. Clarifications that are needed to ensure that representative appointments are made only when the individuals are, in fact, asked to provide advice representing the positions of the stakeholders they are representing include specifying that representative appointments generally are not appropriate for individuals who are to provide advice on the basis of their expertise. Justifying representative appointments on this basis avoids using the special government employee category, which was specifically created to facilitate the government’s ability to hire various experts for just such a purpose as serving on federal advisory committees. The guidance should also clarify that the use of the term “representative” in a statute or charter may be used in a generic sense and does not necessarily mean the members are to be appointed as representatives who are to provide stakeholder advice. Again, in considering which type of appointment is appropriate, the focus should be

on the nature of the advice to be provided. That is, individuals who are appointed to federal advisory committees to provide advice on behalf of the government (i.e., individuals who are not providing stakeholder advice) should be appointed as special government employees. Finally, one of the first steps agency officials should take in establishing new committees is to determine, in consultations with agency ethics officials, the appropriate appointment category for members. These decisions should be reviewed as committee charters are renewed every 2 years.

Second, GSA could provide guidance that would assist agencies in identifying the kinds of information they should systematically collect in order to determine the viewpoints of prospective committee members for the purpose of ensuring that committees are, and are perceived as being, balanced. Although the type of information relevant to each committee might differ in some respects, more systematic information collection and evaluation can support better, and more informed, committee appointments.

Improving existing federal guidance and agency procedures and incorporating the revised guidance into the FACA management course should enable federal agencies to better ensure that (1) potential conflicts of interest of committee members have been identified and appropriately mitigated upfront and (2) committees are appropriately balanced in terms of points of view and functions to be performed. Along these lines, alternative procedures used to create and manage advisory committees at some federal agencies and the National Academies constitute promising practices that can better ensure independence and balance. Procedures such as obtaining nominations for committee members from the public, reviewing more pertinent information regarding members' points of view, and prescreening prospective members using a structured interview would help agencies establish more systematic and consistent methods of achieving independent and balanced committees. Consistent with FACA's principle of transparency, agencies could also adopt selected measures to make public more information regarding how they form and manage their committees. We believe it is in the best interest of both the public and the government to disclose more information about the formation and operation of the advisory committees—for example, how the members are identified and screened, and whether members are serving as representatives of an identified interest or as special government employees to provide independent advice. In light of recent concerns about biases and conflicts of interest, adopting more clearly defined procedures to screen and appoint committee members and to increase

transparency in the advisory committee process would constitute important steps toward protecting the integrity of the federal advisory committee system and maintaining public confidence in the work of federal advisory committees.

Because this report identifies improvements to guidance and promising management practices that generally apply to all federal agencies that sponsor advisory committees and not just to the nine agencies addressed in this report, we are directing our recommendations to OGE and GSA in their roles as providers of governmentwide guidance on federal ethics and advisory committee management requirements. Our expectation is that all 54 federal agencies that currently sponsor federal advisory committees could benefit from the improved guidance and management practices.

Recommendations for Executive Action

To better ensure that federal agencies correctly and consistently comply with federal requirements when appointing federal advisory committee members, we recommend that the Director of the Office of Government Ethics revise its 1982 guidance to federal agencies defining representative appointments to federal advisory committees. The guidance should

- clarify that classes of expertise generally are not a “recognizable group of persons” for purposes of making representative appointments;
- consistently state that appointments as representatives are limited to circumstances in which the members are speaking as stakeholders for the entities or groups they represent; and
- clarify that the term “representative” in statutes and charters may also be used more generically to identify the appropriate balance of points of view or expertise and may not be specifying that representative appointments be used, and revise the directions on specifying representative appointments to focus on the type of advice representatives are to provide—that is, stakeholder advice.

To ensure that agencies’ appointments to federal advisory committees are appropriate, we further recommend that the Director of the Office of Government Ethics and the GSA Committee Management Secretariat

- direct federal agencies to review their representative appointments to federal advisory committees either as the 2-year charters expire or, for those committees with indefinite charters, within 1 year to determine if

the appointments are appropriate and to reappoint members as special government employees, where appropriate, and

- direct agency committee management officials to consult with agency ethics officials in making decisions about the type of appointments that should be made for each committee.

To better ensure that the agency staff managing federal advisory committees understand when to appoint committee members as representatives and when to appoint them as special government employees, we recommend that GSA and OGE revise the training materials for the FACA management course, incorporating the additional OGE guidance as recommended above, and ensure that the course materials highlight the fact that appointment decisions should be based on the type of advice the committee members are to provide.

To better ensure that federal advisory committee members providing stakeholder advice, and thus serving as representative members exempt from federal financial conflict-of-interest statutes, do not have other unknown points of view or biases, we recommend that OGE and GSA direct agencies to determine, for each relevant committee, the potential for such other biases and to take the appropriate steps to ensure their representative members do not have such biases. At a minimum, representatives should receive ethics training and be asked whether they know of any reason their participation on the committee might reasonably be questioned—for example, because of any personal benefits that could ensue from financial holdings, patents, or other interests.

To better ensure that agencies have robust information to establish committees that are balanced in terms of points of view and the functions to be performed, we recommend that GSA provide guidance to agencies regarding what background information might be relevant in assessing committee members' points of view. Relevant information for these purposes could include previous or ongoing research, public statements or positions on the matter being reviewed, the interest of the employer or clients in the matter, participation in legal proceedings, and work for affected entities. In addition, potential committee members should be asked if there is any reason they might be unable to provide impartial advice on the matter or matters before the committee, or if they know of any reason their impartiality on the matter or matters might be questioned.

To better ensure that the committee members, agency and congressional officials, and the public understand the nature of the advice provided by federal advisory committees, we recommend that GSA issue guidance that agencies should

- identify the committee formation process used for each committee, particularly how members are identified and screened and how committees are assessed for overall balance;
- state in the appointment letters to committee members whether they are appointed as special government employees or representatives; in cases where appointments are as representatives, the letters should further identify the entity or group that they are to represent;
- identify each member's appointment category on the GSA FACA database; for representative members, the entity or group represented should also be identified; and
- state in the committee products the nature of the advice provided—that is, whether the product is based on independent advice or consensus among the various identified interests or stakeholders.

Agency Comments and Our Evaluation

We provided copies of a draft of this report to the two agencies, GSA and OGE, to whom we address our recommendations to provide additional guidance to federal agencies, and to the agencies whose advisory committee management policies and procedures we reviewed: EPA; Energy; HHS (with copies to CDC, FDA, and NIH); Interior; NASA; and USDA.

In commenting on the draft report, GSA agreed with the findings relating to those areas under its purview. Further, GSA generally agreed with our recommendations to OGE and GSA and outlined a proactive approach to addressing those that pertain to GSA, including making changes to its on-line FACA database, and to working with OGE on those that pertain to OGE's responsibilities. GSA stated that it expects to complete all necessary actions directly under its purview and those to be achieved collaboratively with OGE and other agencies during fiscal year 2005. GSA's comments are provided in appendix XII.

In its comments, OGE acknowledged that some agencies may be inappropriately using representative appointments. Further, in responding

to our finding that several agencies believe representatives may be appointed to represent their fields of expertise, OGE agrees with us that such appointments are inappropriate—but does not agree that any limitations in its guidance are a factor in the misuse of representative appointments. Instead, OGE believes some agencies may be purposely designating their committee members as representatives to avoid subjecting them to the financial disclosure statements required for special government employees—that is, agencies understand the guidance and are simply disregarding it. Thus, OGE disagrees with us that its guidance should directly address this apparent misinterpretation of its guidance by clarifying, for example, that classes of expertise are not a “recognizable group of persons” for purposes of making representative appointments. OGE states that its 1982 guidance accurately represents a decades old, executive branch interpretation of the definition of special government employees, and that our report does not provide adequate support for a recommendation that the guidance be modified. We disagree. Unless OGE clarifies the issues our report has identified, progress will likely continue to be slow or nonexistent—remembering that the 1982 guidance itself was developed to address uncertainties regarding the appropriate uses of representative and special government employee appointments. We believe that clearer guidance would make it more difficult for agencies to misapply the guidance. Further, unambiguous guidance would better assist agency staff managing committees and better support oversight by agency ethics officials, OGE, and others, such as inspectors general and GAO. In addition, OGE’s response that clarifications are not needed does not acknowledge the views of other federal agencies, presented in the draft report, that OGE guidance is ambiguous in some respects. For example, EPA and NASA officials stated that having clear criteria for representative appointments would be helpful to agencies. In addition, we note that Interior states in its comments to us on the report that “GAO’s generalization that representation of fields of expertise is not appropriate ignores the importance of such representation to some committees.” On the basis of this statement, we do not believe Interior appreciates that expert advice can be appropriately obtained by the appointment of special government employees. In addition, NASA’s and Energy’s comments on the report also support the appointment of representatives to represent fields of expertise. We believe these statements illustrate the need for clarifications to OGE guidance on representative and special government employee appointments to federal advisory committees. Finally, in our view, if agencies are continuing to make inappropriate appointments decades after criteria and guidance were developed, it is not unreasonable

to take another look at the guidance. OGE's comments and our evaluation of them are discussed in more detail in appendix XIII.

In commenting on the draft, officials from EPA and USDA agreed with the substance of the report, providing only technical comments that we incorporated into the draft as appropriate. USDA indicated that the report is a helpful and comprehensive review of issues that can be used as a resource for agencies that rely on the advice of federal advisory committees.

HHS provided consolidated written comments (including its component agencies CDC, FDA, and NIH). HHS said the report will be useful in evaluating current practices for appointing members to serve on federal advisory committees and also noted that the report provides a number of interesting ideas for determining balance in points of view and ensuring transparency in the committee process. HHS said that it finds the report's recommendations of great value and indicated that NIH has volunteered to work with GSA to assist them in implementing the recommendations. At the same time, HHS expressed its belief that members of scientific advisory committees should be selected because of their expertise, background, and personal experience, rather than through a "process seeking out some indefinable range of personal opinion"—characterizing points of view as both undefinable and open to misinterpretation. However, the draft and final reports do not espouse a "process seeking out some indefinable range of personal opinion" but rather identify processes that include an evaluation of potential members' points of view *relevant to the subject matters advisory committees will consider* while focusing on the relevant expertise needed. The examples of agency processes provided in the report include targeted evaluations of points of view by asking potential members a few questions, such as whether they have made public statements or taken public positions on the issue or matters the committee will consider. They also ask potential members to identify and describe any reason they may be unable to provide impartial advice on matters before the committee and any reason their impartiality in the identified matter might be questioned. In our view, agencies that do not proactively and transparently address the relevant points of view of prospective committee members regarding the matters the committees will consider are more likely to be subject to questions about committee balance from the public and potential users of the committees' products than those agencies that use such processes. We continue to believe that the credibility of advisory committees, in particular those that address sensitive and controversial issues, depends in part upon agencies' ability to

identify and balance points of view held by members and prospective members that are relevant to the work of the committee. HHS's comments and our evaluation of them are discussed in more detail in appendix XIV.

In written comments, Interior agreed with much in the report and indicated that it contains many useful recommendations that can be used to enhance the successful use of advisory committees. Interior identified one overarching concern with the draft report, however. That is, Interior said our report gave the incorrect impression that FACA requires individuals on committees to be free of conflicts of interest, noting that FACA requires that committees, rather than individuals, not be inappropriately influenced by the appointing authority or any special interest. The draft and final reports acknowledge this FACA requirement in the background section. However, the draft and final reports also explicitly state that our focus was on (1) the requirements regarding individual conflicts of interest that are included in federal conflict-of-interest statutes and (2) the FACA requirement for committee balance. Further, in the introduction, we state that "federal advisory committee members who are employees of the federal government must meet federal requirements pertaining to freedom from conflicts of interest—which we refer to in this report as independence—and committees as a whole must meet the requirements pertaining to balance." We further highlight the key provisions of the federal conflict-of-interest statutes that must be complied with unless granted a waiver in one section of the report and the FACA requirements for balance in another. Interior's comments and our evaluation of them are discussed in more detail in appendix XV.

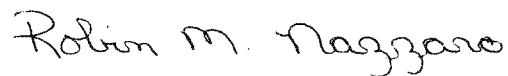
In commenting on the draft report, NASA said that our conclusion that agencies could benefit from additional guidance to better ensure independence, balance, and transparency is sound. However, NASA supports the appointment of federal advisory committee members as representatives of their fields of expertise on the basis that some experts would not be able to serve as special government employees due to financial conflicts of interest. We believe this perspective provides additional support for our view that OGE needs to provide additional guidance on the appropriate use of representative appointments, including clarifying that fields of expertise generally are not a recognizable group of persons for purposes of making representative appointments. NASA's comments and our evaluation of them are discussed in more detail in appendix XVI.

In commenting on the draft report, Energy's Office of Science expressed its concern that we were recommending a "one-size-fits-all" approach that would diminish the effectiveness of the office's advisory committees. In addition, the office said that our interpretation of the term "representative" is unpersuasive and would be an unsound basis of guidance for the department. We do not believe that we are recommending a "one-size-fits-all" approach to advisory committee management. We recognize that there are many types of committees that serve different functions. Nevertheless, we believe that there are certain requirements in FACA and the conflict-of-interest statutes that must be met by all committees. With regard to the suggestions we made for selecting committee members, we note that they were described as "promising practices" that could be useful to agencies. They were not recommendations. As for the term "representative," we continue to believe that our interpretation of the OGE guidance is correct and that our interpretation is supported by OGE's comments on our draft report. In particular, we believe that it is inappropriate for agencies to appoint members as "representatives" of a field of expertise, as Energy's Office of Science indicates it will continue to do. Energy's comments and our evaluation of them are discussed in more detail in appendix XVII.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we will plan no further distribution until 30 days from the report date. At that time, we will send copies of this report to other interested congressional committees; the Secretaries of Agriculture, Energy, Health and Human Services, and the Interior; the Administrators of the U.S. Environmental Protection Agency, the General Services Administration, and the National Aeronautics and Space Administration; and the Director of the Office of Government Ethics. We will make copies

available to others upon request. In addition, the report will be available at no charge on GAO's Web site at <http://www.gao.gov>.

If you or your staff have any questions, please call me at (202) 512-3841. Key contributors to this report are listed in appendix XVIII.

A handwritten signature in black ink that reads "Robin M. Nazzaro". The script is cursive and fluid, with the first letters of each word being capitalized and prominent.

Robin M. Nazzaro
Director, Natural Resources
and Environment

Objectives, Scope, and Methodology

This report (1) describes the role of federal advisory committees in the development of national policies; (2) examines the extent to which governmentwide and agency-specific policies and procedures for evaluating committee members for conflicts of interest and points of view ensure independent and balanced federal advisory committees; and (3) identifies practices that could better ensure that committees are, and are perceived as being, independent and balanced.

To describe the role of federal advisory committees in the development of national policies, we reviewed committee charters, reports, and Web pages available through the General Services Administration's (GSA) on-line Federal Advisory Committee Act (FACA) database. We discussed the FACA database with the GSA staff that developed and maintain the database. Our discussion included issues such as data entry access, quality control procedures, and the accuracy and completeness of the data. We determined that the data on the overall universe of advisory committees were reliable for the purposes of this report, including describing the variety of issues the committees address.

To examine the extent to which current policies and procedures for evaluating committee members for conflicts of interest and points of view ensure independent and balanced federal advisory committees, we reviewed the relevant policies and procedures at six federal departments and agencies that make extensive use of federal advisory committees—the Departments of Agriculture (USDA), Energy, Health and Human Services (HHS), and the Interior; the National Aeronautics and Space Administration (NASA); and the Environmental Protection Agency (EPA). These agencies were among the 11 that used the most science and technical committees in 2003.¹ Because HHS entities manage 26 percent of all federal advisory committees and 36 percent of the scientific and technical committees, we also reviewed the policies and procedures at three HHS entities that sponsor many federal advisory committees—the Centers for Disease Control and Prevention (CDC), the Food and Drug Administration (FDA), and the National Institutes of Health (NIH). We reviewed the policies and procedures used by these nine departments and agencies to manage federal advisory committees. These policies, in some cases, address appointments of committee members as special government employees or representatives and address how agencies identify, screen,

¹In fiscal year 2003, the six agencies we reviewed sponsored 477 of 948 active federal advisory committees. They sponsored 126 of the 208 scientific and technical committees.

and appoint members so as to ensure that they are free of conflicts of interest and that the committees are balanced. We interviewed committee management officials, designated federal officials, and agency staff on committee management issues.

Further, to better understand how the agencies implement their policies and procedures as well as the Office of Government Ethics's (OGE) and GSA's governmentwide regulations and guidance, we examined the management of one committee at each of the nine departments and agencies. We selected a nonprobability sample² of nine committees that address scientific and technical issues using the following criteria: selected committees had to examine issues that are national in scope and scientifically complex, could have regulatory implications, and/or could be potentially controversial either because of the issues that they address or because the committee had been the subject of allegations regarding membership. For these nine committees, we reviewed the confidential financial disclosure forms of the committee members appointed as special government employees and discussed with staff how the committees used this information with respect to conflict-of-interest and/or balance determinations. To learn more about how agencies screen individuals for membership, we also examined other materials that agencies collected about them, such as their curricula vitae (CV) and résumés. The focus of our review was on the adequacy of federal policies and procedures to ensure independence and balance, and we did not make any judgments on whether conflicts of interest existed or whether the committees we examined were properly balanced. The way in which the agencies managed these particular committees cannot be generalized to represent the way in which the agencies manage all of their committees.

To determine if conflict-of-interest evaluations were performed as required by OGE guidance, we reviewed the relevant guidance and discussed with agency officials their use of representative and special government employee appointments. The purpose of the discussions was to determine whether the representative appointments were appropriately used because representative members are not required to undergo conflict-of-interest reviews. For the three departments that used representative appointments almost exclusively, we identified the committees the agencies categorize as

²Results from nonprobability samples cannot be used to make inferences about a population. This is because, in a nonprobability sample, some elements of the population being studied have no chance or an unknown chance of being selected as part of the sample.

addressing scientific and technical matters for which advice on behalf of the government on the basis of best judgment is often sought, rather than stakeholder advice. For the individual committees selected for review at each agency (described above), we examined the committee statutes and charters and interviewed agency officials to determine whether the representative members were asked to provide stakeholder or nonstakeholder advice.

To determine if agencies collect sufficient information to assess the points of view of its committee members appointed as special government employees, we assessed whether agencies systematically collected background information on committee members in addition to the OGE form 450 used to evaluate for potential financial conflicts of interest and CVs or résumés. We identified other information that is helpful in assessing points of view and thus to ensuring that the committees achieve a proper balance of viewpoints.

Further, in examining the extent to which the regulations and guidance on evaluating committee members for conflicts of interest and impartiality ensure independent and balanced federal advisory committees, we reviewed the OGE regulations and guidance to federal agencies regarding federal conflict-of-interest provisions and GSA regulations and guidance to federal agencies regarding FACA. We interviewed OGE staff who are responsible for auditing agencies' ethics programs and who assist agencies in resolving conflict-of-interest issues. These staff members also address issues related to the appointment of special government employees and representative members to federal advisory committees. We interviewed the director and other officials from GSA's Committee Management Secretariat to learn about FACA requirements, GSA regulations, and other GSA guidance documents designed to assist agencies in managing their committees. We also discussed with GSA officials how agencies use the GSA FACA database to provide information to the public about committee membership and activities.

To identify practices that could better ensure that committees are, and are perceived as being, independent and balanced, we examined the relevant policies and procedures of the National Academies;³ the nine committees and agencies examined in this review; and EPA's Science Advisory Board, which had implemented a number of relevant changes to its policies and procedures in response to our June 2001 report.⁴

We conducted our review from January 2003 through March 2004 in accordance with generally accepted government auditing standards.

³The National Academies consist of four private, nonprofit organizations that advise the federal government on scientific and technical matters: the National Academy of Sciences, the National Academy of Engineering, the Institute of Medicine, and the National Research Council.

⁴U.S. General Accounting Office, *EPA's Science Advisory Board Panels: Improved Policies and Procedures Needed to Ensure Independence and Balance*, GAO-01-536 (Washington, D.C.: June 12, 2001).

Federal Advisory Committees, by Authorizing Mechanism and Type, in Fiscal Year 2003

This appendix provides information on the ways that advisory committees have been authorized, the functional categories of the committees as reported by agencies to GSA, and the number of federal advisory committee members.

Presidents, the Congress, and federal agencies can create federal advisory committees. As shown in table 3, most of the federal advisory committees operating in fiscal year 2003 were required or authorized by the Congress, some were created by the agencies, while the fewest committees were created by presidential directives.

Table 3: Authorizing Mechanism for Active Federal Advisory Committees in Fiscal Year 2003

Authorizing mechanism	Number of committees
Required or authorized by the Congress	
Required by the Congress via statute	421
Specifically authorized by statute but created at the discretion of an agency	213
Subtotal	634
Created by an agency under general statutory authority	271
Presidential directive	43
Total	948

Source: GSA FACA database.

Sponsoring agencies broadly classify their advisory committees according to the types of issues they address, using one of the following seven general categories defined in GSA’s federal advisory committee database: scientific and technical program, nonscientific program, national policy issue, grant review, grant review-special emphasis panel,¹ regulatory negotiation, and “other.” According to GSA’s fiscal year 2003 database (see table 4), 208 of the 948 active committees were categorized as scientific and technical committees. However, in addition to these, committees in other categories also address scientific and technical issues, particularly the grant review committees. There were 131 grant review committees with over 41,000

¹HHS uses the term “special emphasis panel” for some of its grant review panels at NIH. Of the 29 special emphasis panels in fiscal year 2003, NIH sponsored 24 panels.

members in 2003. Further, some committees placed in the national policy, regulatory negotiation, and “other” categories also address scientific and technical issues.

Table 4: Active Federal Advisory Committees, by Type, in Fiscal Year 2003

Type of committee	Number of committees	Number of members
Grant review	102	22,517
Grant review – special emphasis panel ^a	29	19,226
National policy issue advisory board	152	3,834
Nonscientific program advisory board	298	5,470
Other	152	3,323
Regulatory negotiation	7	217
Scientific and technical program advisory board	208	7,910
Total	948	62,497

Source: GSA FACA database.

^aNIH defines a special emphasis panel as a committee that functions both as an initial review group performing the scientific and technical peer review of applications and cooperative agreement applications and as reviewers of contract proposals and concept reviews. The membership is fluid, and individuals are designated to serve for only the meeting they are requested to attend.

The committees in fiscal year 2003 had more than 62,000 members, the majority of whom were members of grant review and special emphasis panels.² Overall, federal advisory committees range in size from under 10 members to over 9,000, with an average of about 48 members.³ The committees classified as scientific and technical had 7,910 members and an

²Although these panels may have several hundred members and may hold dozens or more meetings in a year, the members do not all attend all of the panels’ meetings. Instead, each member might be called upon to attend one meeting per year to review a narrowly focused set of grant proposals. This practice is in contrast to the practice of other categories of committees in which the members are invited to attend each of a generally small number of meetings held each year.

³This average was calculated after subtracting the 6 largest committees, including HHS’s Center for Scientific Review Special Emphasis Panel, which in fiscal year 2003 maintained a roster of 9,080 members and held over 1,100 meetings. Five other advisory committees had over 1,000 members. If those committees are counted, the average size of the committees is about 66 members.

average committee membership size of about 22 members.⁴ Federal advisory committee members come from a wide range of professional backgrounds and include scientists, medical doctors and other health care professionals, academics, lawyers, engineers, corporate executives, state and local government officials, members of nongovernmental organizations, community activists, and representatives from the public at large, among others. Some members are federal employees, often from agencies other than the sponsoring agency.

⁴This average was calculated after subtracting the membership of the 2 largest science committees, both sponsored by the Department of Transportation—RTCA, Inc. (with 2,718 members) and the Intelligent Transportation Society of America (with 570 members).

Information on the Department of Agriculture's National Advisory Committee on Microbiological Criteria for Foods

This appendix contains information about the National Advisory Committee on Microbiological Criteria for Foods. Although this committee is cosponsored by USDA, HHS, and the Departments of Defense and Commerce, USDA is responsible for the overall management of the committee. Within USDA, the Food Safety and Inspection Service (FSIS) manages this committee, and the Secretary of Agriculture appoints the members.

Purpose of the committee: According to its charter, the purpose of the committee is to provide impartial, scientific advice to federal food safety agencies for use in the development of an integrated national food safety systems approach from farm to final consumption to ensure the safety of domestic, imported, and exported foods.

Number of members: 29 (see table 5).

Type of appointment: Representative.

Conflict-of-interest reviews: The members are appointed as representatives and are not required to file OGE financial disclosure forms for USDA review for potential conflicts of interest. USDA does, however, require all committee members to submit a USDA form AD-755, which is to provide information about members' current employment and sources of income greater than \$10,000 in the last calendar year, other than their primary employment.

Conflict-of-interest waivers: Not applicable.

Disclosure of waivers to the public: Not applicable.

Steps taken to gather nominations for the committee: According to FSIS officials, the agency solicits nominations through notices in the *Federal Register*, FSIS Constituent Updates (an electronic newsletter sent to over 300 organizations and individuals), the FSIS Web site, and press releases. Officials said these notices serve to reach interested parties and stakeholders—that is, persons from state and federal governments, industry, consumer groups, and academia.

Criteria used to balance the committee: According to FSIS officials, the most important factor used to balance the committee is the expertise identified in the charter: microbiology, risk assessment, epidemiology, public health, food science, and other relevant disciplines. Membership is

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Information on the Department of
Agriculture's National Advisory Committee
on Microbiological Criteria for Foods

also balanced in terms of points of view by the approximately equal proportions of members appointed from government, industry, and academia. Committee staff also tries to balance committee membership in terms of demographic indicators, such as ethnicity and gender, as well as in terms of geographical distribution.

External feedback on proposed committee membership: None sought.

Table 5: Roster of the National Advisory Committee on Microbiological Criteria for Foods with the Primary Employers and Areas of Expertise as of December 2003

Committee member	Primary employer	Areas of expertise
Academic institutions		
Dr. Larry Beuchat	University of Georgia, Center for Food Safety and Quality Enhancement	Food science
Dr. Catherine Donnelly	University of Vermont, Department of Nutrition and Food Science	Food microbiology and <i>Listeria</i>
Dr. Stephanie Doores	Pennsylvania State University, Department of Food Science	Food science, especially dairy science
Dr. Lee-Ann Jaykus	North Carolina State University	Microbiology and microbial risk assessment
Dr. Carol Maddox	University of Illinois, College of Veterinary Medicine	Veterinary microbiology
Dr. Eli Perencevich	University of Maryland School of Medicine	Public Health
Dr. John Sofos	Colorado State University, Department of Animal Science	Microbiology and <i>E. coli</i>
Companies or industry-affiliated organizations		
Dr. Gary Ades	Most recently employed by Foster Farms	Food safety and quality assurance
Mr. Dane Bernard	Keystone Foods LLC	Food production, food processing, CODEX, ^a and HACCP ^b
Dr. Peggy Cook	Tyson Foods, Inc.	Food microbiology, food chemistry, serology, microbial genetics, and management
Dr. Mahipal Kunduru	Dole Fresh Vegetables, Inc.	Food safety and microbiology
Dr. Roberta Morales	Research Triangle Institute	Microbiology, veterinary medicine, and risk assessment
Ms. Virginia Scott	National Food Processors Association	Foodborne disease bacteria, microbiology, extended shelf life of refrigerated foods, and food safety
Dr. Robert Seward	American Meat Institute	Food microbiology
Dr. Katherine Swanson	Most recently employed by General Mills, Inc.	Food production and food microbiology
Dr. David Theno	Jack in the Box, Inc.	HACCP ^b and animal science

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Information on the Department of
Agriculture's National Advisory Committee
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(Continued From Previous Page)

Committee member	Primary employer	Areas of expertise
Dr. R. Bruce Tompkin	ConAgra Refrigerated Foods (retired)	Microbiology and food safety
Federal, state, and foreign government agencies		
Dr. David Acheson	U.S. Department of Health and Human Services, Food and Drug Administration	<i>E. coli</i> , public health, and medicine
Dr. Frances Downes	Michigan Department of Community Health	Public health and laboratory food testing
Dr. Daniel Engeljohn	U.S. Department of Agriculture Food Safety and Inspection Service	Animal science, meat science, and HACCP ^b
Dr. Jeff Farrar	California Department of Health Services	Public health, epidemiology, and veterinary medicine
Mr. Spencer Garrett	U.S. Department of Commerce National Marine Fisheries Service	Food hygiene, HACCP, ^b and seafood public health
Dr. Patricia Griffin	U.S. Department of Health and Human Services, Centers for Disease Control and Prevention	Epidemiology
Dr. Robin King	U.S. Army Veterinary Corps	Veterinary science and food microbiology
Dr. John Kvenberg	U.S. Department of Health and Human Services, Food and Drug Administration	HACCP, ^b risk management, and <i>Listeria</i> control
Dr. Anna Lammerding	Health Canada	Risk assessment
Dr. John Luchansky	U.S. Department of Agriculture, Agricultural Research Service	Food microbiology and toxicology
Ms. Angela Ruple	U.S. Department of Commerce National Seafood Inspection Laboratory	Food science and microbiology
Dr. Donald Zink	U.S. Department of Health and Human Services, Food and Drug Administration	Food microbiology, food science, food safety, infectious diseases, and epidemiology

Source: USDA.

^aCODEX: Codex Alimentarius Commission. The Codex Alimentarius Commission was created in 1963 by the Food and Agriculture Organization (FAO) and the World Health Organization (WHO) of the United Nations to develop food standards, guidelines, and related texts, such as codes of practice under the Joint FAO/WHO Food Standards Program. The main purposes of this program are protecting the health of consumers and ensuring fair trade practices in the food trade and promoting coordination of all food standards work undertaken by international governmental and nongovernmental organizations.

^bHACCP: Hazard Analysis and Critical Control Point. HACCP is a systematic program for preventing hazards that could cause foodborne illnesses by applying science-based controls from raw material to finished products. The program was first developed for the space program and currently is being adopted by FDA and USDA.

Information on the Department of Energy's Biological and Environmental Research Advisory Committee

This appendix contains information about the Biological and Environmental Research Advisory Committee, which is managed by Energy staff in the Office of Biological and Environmental Research. The members are appointed by the Secretary of Energy.

Purpose of the committee: The advisory committee reviews and makes recommendations on Energy's biological and environmental research program, addressing issues such as genomics, the health effects of low-dose radiation, DNA sequencing, medical sciences, environmental remediation, and climate change research. In addition to reviewing scientific issues, the committee provides advice on long-range plans and priorities and the appropriate levels of funding.

Number of members: 23 (see table 6).

Type of appointment: Representative.

Conflict-of-interest reviews: Because the members are appointed as representatives, they are not required to file OGE financial disclosure forms for Energy review for potential conflicts of interest.

Conflict-of-interest waivers: Not applicable.

Disclosure of waivers to the public: Not applicable.

Steps taken to gather nominations for the committee: According to the committee's designated federal official, the department received nominations from agency staff in the Office of Science.

Criteria used to balance the committee: According to the committee's designated federal official, the primary criterion used to balance the committee is expertise. He also considers gender, ethnicity, and geography and tries to achieve a balance of representatives from industry, academia, and the national laboratories.

External feedback on proposed committee membership: None sought.

Appendix IV
Information on the Department of Energy's
Biological and Environmental Research
Advisory Committee

Table 6: Roster of the Biological and Environmental Research Advisory Committee with the Primary Employers and Areas of Expertise as of December 30, 2003

Committee member	Primary employer	Area of expertise
Colleges, universities, and medical centers		
Keith Hodgson, Ph.D (chair)	Stanford University	Structural biology
James Adelstein, Ph.D.	Harvard Medical School	Education, health risk, and medicine
Michelle Broido, Ph.D.	University of Pittsburgh	Atmospheric science, ecology, education, environmental remediation, global change, and structural biology
David Burgess, Ph.D.	Boston College	Developmental and molecular biology and education
Carlos Bustamante, Ph.D.	University of California at Berkeley	Bioengineering and molecular and structural biology
Charles DeLisi, Ph.D.	Boston University	Bioengineering, biomedical science, biotechnology, computational and molecular biology, education, genomics, mathematics, and informatics
Raymond Gesteland, Ph.D.	University of Utah	Biotechnology, education, genomics, and molecular biology
Willard Harrison, Ph.D.	University of Florida	Analytical chemistry
Steven Larson, M.D.	Memorial Sloan-Kettering Cancer Center	Biomedical science, education, and medicine
Jill Merisov, Ph.D.	Massachusetts Institute of Technology Center for Genome Research	Computational biology, computer modeling, genomics, mathematics, and informatics
Louis Pitelka, Ph.D.	University of Maryland Center for Environmental Science	Ecology and global change
Janet Smith, Ph.D.	Purdue University	Computational and structural biology
James Tiedje, Ph.D.	Michigan State University	Environmental remediation, biotechnology, microbiology, and molecular biology
Barbara Wold, Ph.D.	California Institute of Technology	Biotechnology, developmental and molecular biology, and genomics
Companies		
Jonathan Greer, Ph.D.	Abbot Laboratories	Biotechnology and computational and structural biology
James Mitchell, Ph.D.	Lucent Technologies	Analytical chemistry
Nonprofit research institution		
Leroy Hood, Ph.D.	Institute for Systems Biology	Bioengineering, biomedical sciences, biotechnology, developmental and molecular biology, and genomics
Professional associations		
Eugene Bierly, Ph.D.	American Geophysical Union	Atmospheric science and global change
Richard Hallgren, Ph.D.	American Meteorological Society	Computer modeling and global change

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Information on the Department of Energy's
Biological and Environmental Research
Advisory Committee

(Continued From Previous Page)

Committee member	Primary employer	Area of expertise
Roger McClellan, D.V.M.	Chemical Industry Institute of Toxicology	Health risk and toxicology
DOE national laboratory		
Lisa Stubbs, Ph.D.	Lawrence Livermore National Laboratory	Biotechnology, genomics, and molecular biology
Federally funded research organization		
Warren Washington, Ph.D.	National Center for Atmospheric Research	Computer modeling and global change
Other		
Robert Fri	Resources for the Future; National Academy of Sciences	Education and global change

Source: Department of Energy.

Information on the Environmental Protection Agency's Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel

This appendix contains information about the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel. The committee is managed by EPA staff, and the members are appointed by the Deputy Administrator of EPA.

Purpose of the committee: The FIFRA Scientific Advisory Panel provides advice, information, and recommendations on pesticides and pesticide-related issues regarding the impact of regulatory actions on health and the environment of regulatory actions. The objectives include providing advice and recommendations on (1) scientific studies and issues in the form of a peer review, (2) methods to ensure that pesticides do not cause “unreasonable adverse effects on the environment,” and (3) guidelines to improve the effectiveness and quality of scientific testing and of data submitted to EPA.

Number of members: There are 7 permanent members on the standing committee (see table 7). These members are appointed for 4-year terms and serve on a number of individual peer review panels. The FIFRA Scientific Advisory Panel establishes between 5 and 7 peer review panels each year to address a variety of specific topics.¹ These committees are comprised of permanent members and ad hoc expert consultants. Meeting panels typically consist of approximately 15 members.

Type of appointment: Special government employees.

Conflict-of-interest reviews: As special government employees, committee members are required to file financial disclosure forms. As discussed in this report, the EPA form 3110-48, an OGE-approved alternative disclosure form, is used. In addition, as also is discussed in this report, FIFRA staff interview potential candidates using a structured interview format to assess the interest, availability, and appropriateness of candidates to serve on individual committees. The structured interview includes a discussion of financial conflicts of interest (statutory conflicts and appearance problems), impartiality, and a review of the information that is requested on the form 3110-48.

Conflict-of-interest waivers: No waivers have been granted to current members.

¹In this review, we examined the FIFRA Scientific Advisory Panel on atrazine (see table 8).

Disclosure of waivers to the public: Not applicable.

Steps taken to gather nominations for the committee: The Federal Insecticide, Fungicide, and Rodenticide Act of 1977 requires the EPA Deputy Administrator to select the 7 members of the standing Scientific Advisory Panel from nominees provided by NIH and the National Science Foundation. The committee's management also routinely solicits nominations for ad hoc expert consultants on the agency's Web site and through notices in the *Federal Register*.

Criteria used to balance the committee: Technical expertise is the primary criterion used to balance the FIFRA Scientific Advisory Panel committees. The FIFRA Scientific Advisory Panel defines balanced membership as including the necessary areas of technical expertise, different scientific perspectives within each technical discipline, and the collective breadth of experience needed to address the agency's charge.

External feedback on proposed committee membership: As required by statute, the advisory committee's management posts the names, professional affiliations, and selected biographical data of nominees proposed for appointment as permanent members in the *Federal Register* and on its Web site for public comment, providing instructions on how to submit comments regarding the nominees. Unlike the standing committee, nominees considered for temporary service at particular meetings are not subject to public comment prior to their appointment.

Appendix V
Information on the Environmental
Protection Agency's Federal Insecticide,
Fungicide, and Rodenticide Act Scientific
Advisory Panel

Table 7: Roster of the Standing FIFRA Scientific Advisory Panel with the Primary Employers and Areas of Expertise as of December 2003

Committee member	Primary employer	Areas of expertise
Universities and medical centers		
Stuart Handwerger M.D.	Cincinnati Children's Hospital Medical Center	Endocrinology, toxicology, and veterinary medicine
Steven G. Heeringa, Ph.D. ^a	University of Michigan, Institute for Social Research	Biostatistics
Gary E. Isom, Ph.D. ^a	Purdue University, School of Pharmacy and Pharmacal Sciences	Neurotoxicology and clinical pediatric research
Fumio Matsumura, Ph.D. ^a	University of California at Davis, Institute of Toxicology and Environmental Health	Biochemical toxicology
Mary Anna Thrall, D.V.M. ^a	Colorado State University, Department of Microbiology, Immunology and Pathology	Veterinary pathology and veterinary clinical pathology
Stephen Roberts, Ph.D. ^a	University of Florida, Center for Environmental & Human Toxicology	Human toxicology
Federal agency		
Christopher Portier, Ph.D.	National Institutes of Health, National Institute of Environmental Health Sciences	Human health risk assessment

Source: EPA.

^aMembers participated in the June 17 to 20, 2003, meeting on atrazine.

Appendix V
Information on the Environmental
Protection Agency's Federal Insecticide,
Fungicide, and Rodenticide Act Scientific
Advisory Panel

Table 8: Roster of the Temporary (Ad Hoc) Members Serving on the June 17 to 20, 2003, Meeting on Atrazine

Committee member	Primary employer	Area of expertise
Universities		
Joel Coats, Ph.D.	Iowa State University, Department of Entomology	Environmental toxicology (fate and effects of pesticides in environment)
Robert J. Denver, Ph.D.	The University of Michigan, Department of Ecology and Evolutionary Biology	Amphibian development
James Gibbs, Ph.D.	State University of New York - Syracuse	Amphibian biological monitoring, conservation biology, and herpetology
Sherril L. Green, D.V.M., Ph.D.	Stanford University School of Medicine	<i>Xenopus</i> husbandry ^a
Darcy B. Kelley, Ph.D.	Columbia University	Developmental biology
Gerald A. LeBlanc, Ph.D.	North Carolina State University	Aquatic toxicology
Carl Richards, Ph.D.	University of Minnesota Duluth, Minnesota Sea Grant College Program	Aquatic biology
David Skelly, Ph.D.	Yale University, School of Forestry and Environmental Studies	Field amphibian ecology
Foreign organizations		
Peter Delorme, Ph.D.	Health Canada (Canadian Federal Government)	Environmental toxicology (aquatic) and environmental risk assessment
Werner Kloas, Ph.D.	Department of Inland Fisheries, Leibniz-Institute of Freshwater Ecology and Inland Fisheries, Berlin, Germany	<i>Xenopus</i> ^a development and anuran (frog/toad) endocrinology

Source: EPA.

^a*Xenopus laevis* is a species of frog that, along with the mouse, rat, fruit fly, and other species of animals and plants, serves as a model organism for biomedical research.

Information on the Department of Health and Human Services's Advisory Committee on Human Research Protections

This appendix contains information about the Secretary's Advisory Committee on Human Research Protections. The committee replaced the National Human Research Protections Advisory Committee, established in 2000, whose charter HHS did not renew when it expired in 2002.¹ HHS officials chose to revise the charter of the initial committee primarily by adding populations potentially affected by human research protections, appointing new members to provide advice to the Secretary. The committee is sponsored and generally managed by the Office of Public Health Service, but the members are appointed by the HHS Secretary.² The nominating and selection processes in 2002 and 2003 were managed by the HHS Office of White House Liaison.

Purpose of the committee: According to its charter, the committee is to advise the HHS Secretary and the Assistant Secretary for Health on matters pertaining to the continuance and improvement of functions within the authority of HHS directed toward protections for human subjects in research. Specifically, the committee is to provide advice relating to the responsible conduct of research involving human subjects with particular emphasis on

- special populations, such as neonates and children, prisoners, and the decisionally impaired;
- pregnant women, embryos, and fetuses;
- individuals and populations in international studies;
- populations in which there are individually identifiable samples, data, or information; and
- investigator conflicts of interest.

In addition, the committee is responsible for reviewing selected ongoing work and planned activities of the Office of Human Research Protections

¹As noted in this report, FACA requires that advisory committee charters expire at the end of 2 years unless renewed by the agency.

²HHS and its components, such as CDC, FDA, and NIH, had 247 federal advisory committees in fiscal year 2003. While the heads of the various component agencies generally appoint committee members, according to the Director of the Office of the White House Liaison, the HHS Secretary appoints the members to about 30 percent of the committees.

and other offices/agencies within HHS that are responsible for human subjects protection. These evaluations may include but are not limited to a review of assurance systems, the application of minimal research risk standards, the granting of waivers, education programs sponsored by the Office of Human Research Protections, and the ongoing monitoring and oversight of institutional review boards and the institutions that sponsor research.

Number of members: 11 (see table 9).

Type of appointment: Special government employees.

Conflict-of-interest reviews: As special government employees, committee members are required to file OGE financial disclosure forms for HHS's review for potential conflicts of interest. These forms were reviewed by the cognizant committee management officer who consulted with the designated federal official and the Office of General Counsel ethics division. In June 2003, after the members had been appointed to the committee, the committee management officer identified some potential conflicts of interest stemming from investments that she and the Office of General Counsel believed required mitigation, such as waivers. She also requested that the designated federal official determine whether other potential conflicts required waivers if the appointed members work for institutions involved in research activities/studies/projects that may impact human research protections.

Conflict-of-interest waivers: Waivers were not issued before the committee's first meeting in July 2003. The nine waivers granted were finalized on January 16, 2004.

Disclosure of waivers to the public: HHS policies and procedures do not address the disclosure of waivers to the public. HHS does not proactively disclose the issuance of waivers to the public at committee meetings.

Steps taken to gather nominations for the committee: According to the Director of the Office of White House Liaison, she asked a couple of individuals at the Association of American Medical Colleges for nominations for this committee. The Director said that an Office of Public Health Service staff member familiar with the previous committee also assisted in identifying nominees from the previous slate to serve on the new committee. In addition, she said that HHS received self-nominations

Appendix VI
Information on the Department of Health and
Human Services's Advisory Committee on
Human Research Protections

and also used names from NIH's database, particularly the group that was solicited for the Secretary's Advisory Committee on Genetics, Health, and Society.

Criteria used to balance the committee: According to the agency official responsible for nominating members for the committee, the factors she considered in balancing the committee were expertise along with geographic, gender, and racial diversity. After HHS announced the committee membership in January 2003, the National Organization for Rare Disorders and some members of the predecessor advisory committee expressed concern that the regulated research industry was overrepresented and that there were no consumer or patient advocates on the committee. A week later, HHS added a member with a background in patient advocacy.

External feedback on proposed committee membership: None sought.

Table 9: Roster of the Secretary's Advisory Committee on Human Research Protections with the Primary Employers and Areas of Expertise as of December 2003

Committee member	Primary employer	Area of expertise
Medical and academic institutions		
Dr. Celia B. Fisher	Fordham University	Bioethics
Dr. Nigel Harris	Morehouse School of Medicine	Rheumatology and antiphospholipid research
Dr. Robert G. Hauser	Abbott Northwest Hospital	Cardiology
Dr. Nancy L. Jones	Wake Forest University School of Medicine	Biochemistry and pathology
Ms. Susan Kornetsky	Children's Hospital, Boston, MA	Clinical research compliance and public health
Dr. Mary Lake Polan	Stanford University School of Medicine	Reproductive endocrinology and infertility
Dr. Ernest D. Prentice	University of Nebraska Medical Center	Cell biology, anatomy, and regulatory Compliance
Company, law firm, and professional organization		
Mr. Thomas Adams	Association of Clinical Research Professionals	Medical trade association management
Mr. Mark Barnes	Ropes & Gray Law Firm	Health care law and Health Insurance Portability and Accountability Act of 1996 regulation and compliance
Dr. Felix A Khin-Maung-Gyi	Chesapeake Research Review, Inc.	Human subject protection, bioethics, and pharmacy
Patient advocacy organization		
Dr. Susan L. Weiner	The Children's Cause, Inc.	Developmental psychology

Source: HHS.

Information on the Centers for Disease Control and Prevention's Advisory Committee on Childhood Lead Poisoning Prevention

This appendix contains information about the Advisory Committee on Childhood Lead Poisoning Prevention. The committee is sponsored and generally managed by CDC, but the members are appointed by the HHS Secretary.¹ The nominating and selection processes in 2002 and 2003 were managed by the HHS Office of White House Liaison.

Purpose of the committee: The Advisory Committee on Childhood Lead Poisoning Prevention provides advice and guidance to the Secretary; the Assistant Secretary for Health; and the CDC Director, regarding new scientific knowledge and technological developments and their practical implications for childhood lead poisoning prevention efforts. The committee also reviews and reports on childhood lead poisoning prevention practices and recommends improvements in national childhood lead poisoning prevention efforts.

Number of members: 12 (see table 10).

Type of appointment: Special government employees.

Conflict-of-interest reviews: As special government employees, committee members are required to file OGE financial disclosure forms for HHS and CDC review for potential conflicts of interest. CDC's designated federal official, a conflict-of-interest specialist in the CDC's Committee Management Office, and the director of CDC's Management Analysis and Services Office reviewed the completed forms for the current members of the committee.

Conflict-of-interest waivers: None granted to current members.

Disclosure of waivers to the public: Not applicable.

Steps taken to gather nominations for the committee: According to the Director of the Office of White House Liaison and the designated federal official for the committee, nominations were generally solicited informally, such as during conversations. According to the Director, HHS received nominations from the Dean of the St. Francis Hospital in Tulsa, Oklahoma; the Chancellor of Columbia University; Senator Thad Cochran; and the Deputy Secretary's office. They also used the Internet to search for

¹See appendix 6, footnote 2.

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Information on the Centers for Disease
Control and Prevention's Advisory
Committee on Childhood Lead Poisoning
Prevention

candidates associated with successful lead poison reduction programs in large cities.

Criteria used to balance the committee: According to the Office of White House Liaison, the department and agency worked to find potential appointees and balance the committee on the basis of expertise as well as gender, ethnicity, and geography to the extent these additional factors did not impinge on the department's ability to pick qualified members.

External feedback on proposed committee membership: None sought.

Table 10: Roster of the Advisory Committee on Childhood Lead Poisoning Prevention with the Primary Employers and Areas of Expertise as of December 2003

Committee member	Primary employer	Area of expertise
Medical institutions		
William Banner, M.D.	The Children's Hospital at St. Francis in Tulsa OK	Toxicology, critical care medicine, and pediatrics
Helen Binns, M.D., M.P.H.	Feinberg School of Medicine, Northwestern University	Pediatric lead poisoning detection and public health
Carla Campbell, M.D., M.S.	Children's Hospital of Philadelphia	Lead poisoning and toxicology
Ing Kang Ho, Ph.D.	University of Mississippi Medical Center, School of Graduate Studies in the Health Sciences	Pharmacology and toxicology
Sergio Piomelli, M.D.	Columbia University College of Physicians and Surgeons	Pediatrics
State and local health agencies		
Walter S. Handy, Jr., Ph.D.	Cincinnati Health Department	Clinical psychology and public health policy
Jessica Leighton, Ph.D., M.P.H.	New York City Department of Health and Mental Hygiene	Public policy and childhood lead poisoning
Tracey Lynn, D.V.M., M.S.	Alaska Department of Health Services	Environmental public health
Kevin U. Stephens, Sr., M.D., J.D.	Department of Health, City of New Orleans, LA	Obstetrics and gynecology, public health, medicine, and law
Private medical practice		
Catherine M. Slota-Varma, M.D.	Pediatrician in private practice	Pediatrics
Private nonprofit organization		
Richard Hoffman, M.D.	Director, Planned Parenthood of Rocky Mountains	Public health
University		
Kimberly Thompson, Sc.D.	Harvard University School of Public Health	Risk analysis and health policy

Source: HHS.

Information on the Food and Drug Administration's Food Advisory Committee

This appendix provides information about the Food Advisory Committee. The committee is managed by FDA. The members are appointed by FDA's Associate Commissioner for External Relations.

Purpose of the committee: The committee is to provide advice to the Director, Center for Food Safety and Applied Nutrition, and to the Commissioner of Food and Drugs and other appropriate officials as needed, on emerging food safety, food science, nutrition, and other food-related health issues that FDA considers of primary importance for its food and cosmetics programs. The committee may be charged with reviewing and evaluating available data and making recommendations on matters such as those relating to the following: broad scientific and technical food- or cosmetic-related issues, the safety of new foods and food ingredients, the labeling of foods and cosmetics, nutrient needs and nutritional adequacy, and safe exposure limits for food contaminants. The committee may also be asked to provide advice and make recommendations on ways of communicating to the public the potential risks associated with these issues and on approaches that might be considered for addressing the issues.

Number of members: 25 (see table 11).

Type of appointment: With the exception of nonvoting industry representatives, all committee members are special government employees.

Conflict-of-interest reviews: As special government employees, committee members are required to file the OGE confidential financial disclosure form 450. Members are required to update this form annually. In addition, for meetings that involve particular matters of general or specific applicability, members also complete an FDA form 3410, which requires them to report interests directly related to the topic of discussion. The designated federal official does an initial screening and officials from FDA's Ethics and Integrity Branch clear the members for conflicts of interest.

Conflict-of-interest waivers: During the last year, waivers were granted seven times for members to participate in specific meetings. FDA granted the waivers on the basis that the need for these individuals' expertise outweighed the potential conflicts of interest.

Disclosure of waivers to the public: The type of waiver and the names of members who have received waivers for particular meetings are read into the record by the designated federal officer at the beginning of the public meeting. Public disclosure of the substance of waivers issued is only required in cases where the meetings deal with particular matters of specific applicability. When such waivers are issued, the members who receive them are asked to sign a consent document authorizing FDA to provide a description of the nature and the magnitude of the financial interests being waived for the public record.

Steps taken to gather nominations for the committee: FDA solicits nominations through notices in the *Federal Register*. According to the committee's designated federal official and an agency document identifying the sources of the nominations, the agency obtained nominations from (1) FDA and HHS officials; (2) interest groups and trade associations and other interested parties, including the American Society for Nutritional Services, the Center for Science in the Public Interest, the Association of Food and Drug Officials, and officials at the Center for Health Policy at the University of Oklahoma and the Massachusetts Institute of Technology; and (3) individuals who nominated themselves in response to the *Federal Register* notice.

Criteria used to balance the committee: Committee managers reported the following five criteria used to achieve balance: (1) scientific expertise representing a range of scientific interpretation; (2) demographic characteristics, including geographic distribution, gender, and ethnicity; (3) differing levels of experience on advisory committees; (4) stakeholder representation (e.g., consumers, industry, and academicians); and (5) membership on advisory committees that is used to help ensure that the agency has balance by not repeatedly appointing a limited set of people either for a particular committee or for various committees the agency has on related topics. Temporary voting members may be added to enhance balance.

External feedback on proposed committee membership: None sought.

Appendix VIII
Information on the Food and Drug
Administration's Food Advisory Committee

Table 11: Roster of the Food Advisory Committee with the Primary Employers and Areas of Expertise as of June 3, 2003

Committee member	Primary employer	Area of expertise
Universities and medical centers		
Alex D.W. Acholonu, Ph.D.	Alcorn State University	Microbiology and parasitology
Douglas L. Archer, Ph.D.	University of Florida, Department of Food Science & Human Nutrition	Microbiology, food science, and food law
Jonathan A. Arias, Ph.D.	University of Maryland, Center for Biosystems	Molecular biology
Fred McDaniel Atkins, M.D.	National Jewish Medical and Research Center	Pediatrics and allergies
Jeffrey Blumberg, Ph.D.	Tufts University	Pharmacology and biostatistics
Bob B. Buchanan, Ph.D.	University of California, Berkeley, Department of Plant and Microbial Biology	Molecular plant biology
Francis Fredrick Busta, Ph.D.	University of Minnesota, Department of Food Science and Nutrition	Food science and microbiology
Nancy M. Childs, Ph.D.	Saint Joseph's University	Food marketing
Johanna Dwyer, Ph.D.	Tufts University Schools of Medicine and Nutrition	Public health and nutrition
Lawrence J. Fischer, Ph.D.	Michigan State University, Institute for Environmental Toxicology	Toxicology
George M. Gray, Ph.D.	Harvard University, School of Public Health	Risk analysis and toxicology
Rachel K. Johnson, Ph.D., M.P.H., R.D.	University of Vermont, Department of Nutrition and Food Sciences	Pediatrics and nutrition
Anne R. Kapuscinski, Ph.D.	University of Minnesota, Department of Fisheries and Wildlife	Conservation biology
Ken Lee, Ph.D.	Ohio State University, Department of Food Science	Food science and processing
Harihara Mehendale, Ph.D.	University of Louisiana at Monroe, College of Pharmacy	Toxicology
Sanford A. Miller, Ph.D. (Chair)	Virginia Polytechnic and State University	Chemistry, toxicology, and food science
Abigail A. Salyers, Ph.D.	University of Illinois at Urbana-Champaign	Microbiology and gene transfer
Michael W. Shannon, Ph.D.	Children's Hospital, Boston, MA	Pediatrics and toxicology
J. Antonio Torres, Ph.D.	Oregon State University	Food science and processing
Steven Zeisel, MD, Ph.D.	University of North Carolina, School of Health & Medicine	Pediatrics
Nonprofit associations		
Annette Dickinson, Ph.D. (industry representative)	Council for Responsible Nutrition	Dietary supplements
Goulda Angella Downer, Ph.D. (consumer representative)	Metroplex Health and Nutrition Services	Nutrition and epidemiology
Douglas Gurian-Sherman, Ph.D. (consumer representative)	Center for Science in the Public Interest	Genetic engineering

Appendix VIII
Information on the Food and Drug
Administration's Food Advisory Committee

(Continued From Previous Page)

Committee member	Primary employer	Area of expertise
State agency		
Marion H. Fuller, D.V.M.	Florida Department of Agriculture, Division of Food Safety	Veterinary medicine federal-state relations
Industry association		
Brandon Scholz	Wisconsin Grocers Association	Industry representative

Source: USDA.

Information on the National Institutes of Health's Scientific Advisory Committee on Alternative Toxicological Methods

This appendix contains information about the Scientific Advisory Committee on Alternative Toxicological Methods, which is sponsored and managed by NIH. Members are appointed by the Director of the National Institute of Environmental Health Sciences.

Purpose of the committee: The committee provides advice to the Director of the National Institute of Environmental Health Sciences (NIEHS); the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM); and the National Toxicology Program Center regarding statutorily mandated functions, including

- reviewing and evaluating new; revised; or alternative test methods, including batteries of tests and test screens that may be acceptable for specific regulatory uses;
- facilitating appropriate interagency and international harmonization of acute or chronic toxicological test protocols that encourage the reduction, refinement, or replacement of animal test methods;
- facilitating and providing guidance on the development of validation criteria; validation studies; and processes for new, revised, or alternative test methods and helping to facilitate the acceptance of such scientifically valid test methods and awareness of accepted test methods by federal agencies and other stakeholders; and
- submitting ICCVAM test recommendations for the test methods reviewed by ICCVAM, through expeditious transmittal by the HHS Secretary (or the designee of the Secretary), to each appropriate federal agency, along with the identification of specific agency guidelines; recommendations; or regulations for test methods, including batteries of tests and test screens, for chemicals or a class of chemicals within a regulatory framework that may be appropriate for scientific improvement, while seeking to reduce, refine, or replace animal test methods.

The committee also provides advice to the Director of the NIEHS and the National Toxicology Program Center on activities and directives relating to the National Toxicology Program Center, such as on priorities and opportunities for alternative test methods that may provide improved prediction of adverse health effects compared with currently used methods or advantages in terms of reduced expense and time, reduced animal use, and reduced animal pain and distress.

Number of members: 15 (see table 12).

Type of appointment: Special government employees.

Conflict-of-interest reviews: As special government employees, committee members are required to file OGE financial disclosure forms for review for potential conflicts of interest. The NIH committee management officer performed a first-level review of the financial disclosure forms, followed by a second-level review by the designated federal officer. The NIH's Deputy Ethics Counselor performed the final review.

Conflict-of-interest waivers: Fourteen of 15 members received waivers because NIH determined that the need for their expertise outweighed the potential conflicts. One of the 15 members received a waiver because the conflict was deemed not significant.

Disclosure of waivers to the public: According to the designated federal officer, the issuance of waivers to committee members was not disclosed to the public. For example, the waivers were not discussed at any committee meetings. According to the NIH committee management officer, the agency sends its waivers to the HHS Ethics Counsels assigned to NIH, who then sends them to OGE.

Steps taken to gather nominations for the committee: The Director of the Environmental Toxicology Program, NIEHS, asked the members of the ICCVAM for nominations to the advisory committee and also asked for nominations from former members and ad hoc advisors of the committee. The Director also requested nominations from two stakeholder groups that regularly attend committee meetings, the Doris Day Animal League and the People for the Ethical Treatment of Animals.

Criteria used to balance the committee: According to the committee management officer and the designated federal officer, the legislation that created the committee gives direction regarding membership that focuses on expertise and work affiliations, and NIH uses these factors to achieve committee balance. Specifically, the legislation calls for members to come from an academic institution; a state government agency; an international regulatory body; or any corporation developing or marketing new, revised, or alternative test methodologies, including contract laboratories. The legislation also specifies that there shall be at least one knowledgeable representative having a history of expertise, development, or evaluation of new, revised, or alternative test methods from each of the following

categories: (1) personal care, pharmaceutical, industrial chemicals, or agricultural industry; (2) any other industry that is regulated by one of the federal agencies on ICCVAM; and (3) a national animal protection organization established under section 501(c)(3) of the Internal Revenue Code of 1986. The committee management officer also told us that NIH considered ethnicity, gender, and geography in balancing the committee membership.

External feedback on proposed committee membership: None sought.

Appendix IX
Information on the National Institutes of
Health's Scientific Advisory Committee on
Alternative Toxicological Methods

Table 12: Roster of the Scientific Advisory Committee on Alternative Toxicological Methods with the Primary Employers, and Areas of Expertise as of December 30, 2003

Committee member	Primary employer	Area of expertise
Universities		
Dr. Daniel Acosta, Jr.	University of Cincinnati, College of Pharmacy	<i>In vitro</i> toxicology, pharmacology, and development of <i>in vitro</i> cellular models
Dr. Nancy Flournoy	University of Missouri-Columbia, Department of Statistics	Biostatistics, applied stochastic processes, and statistical theory
Dr. Alan M. Goldberg	Johns Hopkins University, Center for Alternatives to Animal Testing, Bloomberg School of Public Health	Neurotoxicology, <i>in vitro</i> toxicology, and alternative models
Dr. Sidney Green, Jr.	Howard University, Department of Pharmacology, College of Medicine	Pharmacology, genetic toxicology, and regulatory toxicology
Dr. A. Wallace Hayes	Harvard University, School of Public Health	General toxicology, biochemical toxicology, and <i>in vitro</i> models
Dr. Nancy A. Monteiro-Riviere	North Carolina State University, Department of Clinical Sciences, College of Veterinary Medicine	Dermal toxicology, biochemical toxicology, and <i>in vitro</i> models
Dr. Steven H. Safe	Texas A & M University, Departments of Veterinary Physiology and Pharmacology, College of Veterinary Medicine	Environmental estrogens, toxicology, and biochemistry
Dr. Carlos Sonnenschein	Tufts University School of Medicine, Department of Anatomy and Cellular Biology	Environmental toxicology, medicine, environmental estrogens, and reproductive toxicology
Companies		
Dr. Jack H. Dean	Sanofi-Synthelabo, Inc.	Molecular biology, regulatory toxicology, toxicogenomics, and immunotoxicology
Dr. Rodger D. Curren	Institute for In Vitro Sciences, Inc.	<i>In vitro</i> toxicological testing
Dr. Jacqueline H. Smith	Chesapeake Consulting Team	Pharmacology, environmental toxicology, regulatory toxicology, and the petroleum industry
Nonprofit associations		
Dr. Martin L. Stephens	The Humane Society of the United States	Animal welfare and environmental toxicology
Dr. Peter Theran	Massachusetts Society for the Prevention of Cruelty to Animals/American Humane Education Society	Internal medicine, laboratory animal medicine, animal welfare, and comparative medicine
State agency		
Dr. Calvin C. Willhite	State of California, Department of Toxic Substance Control	Reproductive toxicology, pharmacology, risk assessment and management, and regulatory toxicology
Other		
Dr. Katherine A. Stitzel	Veterinarian (Retired)	Acute toxicity, <i>in vitro</i> methods, and regulatory toxicology

Source: HHS.

Information on the Department of the Interior's U.S. Geological Survey's Scientific Earthquake Studies Advisory Committee

This appendix provides information about the Scientific Earthquake Studies Advisory Committee. The committee is managed by the U.S. Geological Survey (USGS), and members are appointed by the Secretary of the Interior.

Purpose of the committee: The advisory committee was established under the Earthquake Hazards Reduction Authorization Act of 2000 (Pub. L. No. 106-503, Title II) to advise the Director of USGS on matters relating to the USGS's participation in the National Earthquake Hazards Reduction Program, a multiagency strategic program to reduce risks to lives and property resulting from earthquakes. The committee is to provide advice on the USGS Earthquake Hazards Reduction Program's roles, goals, and objectives; capabilities and research needs; guidance on achieving major objectives; and establishing and measuring performance goals.

Number of members: 9 (see table 13).

Type of appointment: Representative.

Conflict-of-interest reviews: In 2001, the committee members were appointed as representatives and were not required to file OGE financial disclosure forms for Interior review for potential conflicts of interest. In January 2004, Interior reevaluated the appointments and determined that the members should be appointed as special government employees. Interior said that the committee would not conduct further meetings until the appointments had been changed.

Conflict-of-interest waivers: Not applicable in 2001.

Disclosure of waivers to the public: Not applicable.

Steps taken to gather nominations for the committee: The Earthquake Hazards Reduction Authorization Act of 2000 requires the Director of USGS to obtain nominations from the National Academy of Sciences, professional societies, and other appropriate organizations. The Director obtained nominations from the academy, the Geological Society of America, the Seismological Society of America, the American Society of Civil Engineers, the American Institute of Professional Geologists, the American Geophysical Union, and the Earthquake Engineering Research Institute.

Appendix X
Information on the Department of the
Interior's U.S. Geological Survey's Scientific
Earthquake Studies Advisory Committee

Criteria used to balance the committee: According to the statute that established the advisory committee, the selection of individuals for the committee is to be based solely on established records of distinguished service and the USGS Director is required to ensure that “a reasonable cross-section of views and expertise is represented.” According to the designated federal official, the primary factor for selection was expertise in fields such as geology, seismology, engineering, and public safety. In addition, according to department officials, the agency also considered gender, geography, and employment sector.

External feedback on proposed committee membership: USGS sought feedback from the National Academies on its slate of proposed members.

Table 13: Roster of the Scientific Earthquake Studies Advisory Committee with the Primary Employers and Areas of Expertise as of December 2003

Committee member	Primary employer	Area of expertise
Universities		
Dr. Daniel P. Abrams	University of Illinois at Urbana-Champaign	Engineering
Dr. Thomas H. Jordan	University of Southern California, Department of Earth Sciences	Seismology, geodynamics, tectonics, geodesy, and marine geology
Dr. Paul Segall	Stanford University, Department of Geophysics	Earthquake physics
Dr. Robert B. Smith	University of Utah, Department of Geology and Geophysics,	Geology
Dr. Sharon L. Wood	University of Texas, Ferguson Structural Engineering Laboratory	Engineering
Companies		
Dr. Lloyd Cluff	Pacific Gas and Electric Company	Earthquake hazard assessment
Mr. Ronald T. Eguchi	ImageCat, Inc.	Earthquake risk analysis
State agencies		
Ms. Mimi Garstang	Missouri Geological Survey	Earthquake hazard analysis in the eastern United States and state-level mitigation policy
Dr. Jonathan G. Price	Nevada Bureau of Mines and Geology	Seismology and earthquake hazard analysis in the western United States.

Source: Interior.

Information on the National Aeronautics and Space Administration's Space Science Advisory Committee

This appendix provides information about the Space Science Advisory Committee. The committee is managed by the Office of Space Science, and members are appointed by NASA's Associate Administrator for Space Science.

Purpose of the committee: The NASA Space Science Advisory Committee is to draw on the expertise of its members and other sources to provide advice and make recommendations to the Administrator of NASA on plans, policies, programs, and other matters pertinent to the agency's space science responsibilities.

Number of members: 17 (see table 14).

Type of appointment: Special government employees.

Conflict-of-interest reviews: NASA uses the OGE form 450 to collect financial information from committee members. The forms are collected and reviewed after the Associate Administrator has concurred with the appointment decisions. The forms 450 are reviewed and approved by the committee's designated federal official and the Office of General Counsel. On the basis of these reviews, the Office of General Counsel sometimes sends cautionary letters to members indicating that they may need to recuse themselves if the committees address matters that relate to their financial interests.

Conflict-of-interest waivers: No current members have waivers.¹

Disclosure of waivers to the public: Not applicable.

Steps taken to gather nominations for the committee: According to the committee's designated federal official, NASA gathered nominations from staff within the agency's Office of Space Science.

Criteria used to balance the committee: The committee's designated federal official told us said that in addition to considering the nominees' areas of expertise relative to the four themes of the Office of Space Science, he also considers their gender, ethnicity, geography, and institutional affiliation.

¹According to an ethics official in NASA's Office of General Counsel, NASA issues very few (five or fewer) waivers each year.

Appendix XI
Information on the National Aeronautics and
Space Administration's Space Science
Advisory Committee

External feedback on proposed committee membership: None sought.

Table 14: Roster of the Space Science Advisory Committee Members with the Primary Employers and Areas of Expertise as of December 30, 2003

Committee member	Primary employer	Area of expertise
Universities		
Dr. David Deamer	University of California at Santa Cruz	Astrobiology
Dr. Jonathan Grindlay	Harvard-Smithsonian Center for Astrophysics	Astrophysics
Dr. Fiona Harrison	California Institute of Technology	Astrophysics
Dr. Roderick Heelis	University of Texas at Dallas	Solar physics
Dr. Garth Illingworth	University of California at Santa Cruz	Astrophysics
Dr. Andrew Klein	Oregon State University	Nuclear engineering
Dr. Jonathan Lunine	University of Arizona	Planetary exploration
Dr. John Mustard	Brown University	Astrobiology
Dr. David Spergel	Princeton University	Astrophysics
Federal research facilities		
Dr. Judith Karpen	U.S. Naval Research Laboratory	Solar physics
Dr. Edward Kolb	Fermi National Accelerator Laboratory	Astrophysics
Dr. Jeremy Mould	National Optical Astronomy Observatory	Astrophysics
Dr. Michelle Thompson	Los Alamos National Laboratory	Sun-earth connections
For profit company		
Dr. Andrew Christensen (chair)	Northrop Grumman Space Technology	Sun-earth connections
Private, nonprofit research organizations		
Dr. Heidi Hammel	Space Science Institute	Planetary science
Mr. Martin Kress	Battelle Memorial Institute	Space policy
Private museum		
Dr. Paul Knappenberger	Adler Planetarium	Education and public outreach

Source: NASA.

Comments from the General Services Administration



GSA Administrator

March 24, 2004

The Honorable David M. Walker
Comptroller General
United States General
Accounting Office
Washington, DC 20548

Dear Mr. Walker:

Enclosed are comments on the draft report entitled "Federal Advisory Committees: Additional Guidance Could Help Agencies Better Ensure Independence and Balance."

GSA agrees that additional guidance and best practices suggestions relating overall to the Federal advisory committee appointment and membership processes could help agencies to ensure that committees are perceived to be independent and have fairly balanced membership. The General Services Administration (GSA) remains committed to these key policy goals of the Federal Advisory Committee Act (FACA) and believes that they should be implemented consistently across the executive branch. GSA also believes that such guidance should be of sufficient detail and clarity to ensure the utmost compliance with FACA and other related or impacted statutes and regulations. GSA is in general accord with the findings in the draft report relating to those areas directly under the purview of GSA.

We are committed to our strong partnership with the Office of Government Ethics (OGE) to address both those areas under OGE's jurisdiction relating to FACA and the appointment and membership processes that are under the decision making authority of individual agencies. GSA will consult frequently with OGE and executive agencies in developing enhanced guidance that will achieve not only the best solutions, but also reflect the consensus of agencies that sponsor a wide variety of advisory committees.

GSA is taking a proactive approach, to include changes to its shared FACA Database management and reporting system, and some activities already are underway. The enclosed comments indicate our overall plan in the major areas of continuing dialogue with

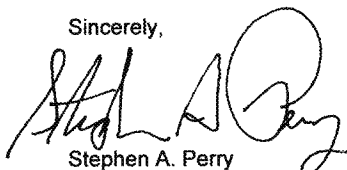
U.S. General Services Administration
1800 F Street, NW
Washington, DC 20405-0002
Telephone: (202) 501-0800
Fax: (202) 219-1243
www.gsa.gov

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OGE, incorporating changes to current interagency training, issuing more detailed guidance to enhance data collection, and improving the agency consultation process with GSA in the establishment of new discretionary Federal advisory committees.

Thank you for the opportunity to comment on the draft report.

Sincerely,



Stephen A. Perry
Administrator

Enclosure

Comments of the General Services Administration on
The General Accounting Office's Draft Report, "Federal Advisory Committees:
Additional Guidance Could Help Agencies Better Ensure Independence and Balance"
(GAO-04-328)

Overall GAO Recommendation

GAO is recommending that OGE and GSA provide additional guidance to federal agencies with regards to clarifying the appropriate use of representative appointments; systematically obtaining relevant information to ensure committees are, and are perceived as, balanced; and adopting some promising practices and measures that would better ensure independence and balance and make the formation and operation of advisory committees more transparent.

General GSA Comments

As addressed in the report, because Federal advisory committees are established to advise executive agencies on significant issues and play an important role in the development of Federal policies, their membership should be perceived as being free from conflicts of interest and be fairly balanced in terms of the points of view represented and the functions to be performed. Prior to issuing any new guidance, to include best practices suggestions, GSA intends to consult specifically with the Office of Government Ethics (OGE), and executive branch departments and agencies generally, as substantial parts of these processes reside in the area of OGE's regulatory and interpretive jurisdiction, or are within the purview of each individual agency's decisionmaking authority with respect to membership selection and appointments. GSA's ongoing partnership with OGE extends both to ensuring that GSA's Governmentwide issuances relating to the Federal Advisory Committee Act (FACA) are consistent with all statutes and regulations for which OGE is responsible, and also to the use of OGE staff in the delivery of the ethics and conflicts of interest portions of GSA's interagency FACA management training.

Additional comments are provided below relating to specific actions that already are underway or planned to address the findings upon which the GAO's recommendations are based. Several of these actions were discussed in general with GAO's staff during the course of its review, to include proposed changes to GSA's shared FACA Database management and reporting system. We expect to complete all necessary actions directly under the purview of GSA and those achieved collaboratively with OGE and other agencies during fiscal year 2005.

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GAO Finding

Additional government-wide guidance could help agencies better ensure the independence and balance of federal advisory committees.

GSA Comments

GSA generally agrees that additional guidance and best practices suggestions relating overall to the Federal advisory committee appointment and membership processes could help agencies to ensure that committees are perceived to be independent and free from conflicts of interest, and that committee membership, as contemplated by FACA, will be fairly balanced.

GAO Finding

Also, to be effective, advisory committees must be, and be perceived as being, fairly balanced in terms of points of view and functions to be performed. However, GSA's guidance on advisory committee management does not address what types of information could be helpful to agencies in assessing the points of view of potential committee members to make decisions about committee balance.

GSA Comments

GSA proposes to provide additional guidance within the format of a comprehensive template describing the various factors for, and illustrating the various components of what, in GSA's opinion, would comprise a plan for fairly balanced membership consistent with FACA. Secretariat staff work on this template was begun during the course of this GAO review, with baseline information already obtained from selected FACA Committee Management Officers (CMOs) on their agencies' current plans.

GAO Finding

Consequently, many agencies do not identify and systematically collect and evaluate information pertinent to determining the points of view of potential committee members, such as previous public positions or statements on matters being reviewed.

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GSA Comments

GSA believes that a collaborative approach, sponsored by the Committee Management Secretariat among CMOs in the form of a focus subgroup under the ambit of GSA's standing Interagency Committee on Federal Advisory Committee Management (IAC), would address this issue best initially. It is the Secretariat's opinion that current practices should be shared first, so that all agencies are aware of what options exist that might improve a given agency's membership selection and appointment process, and what new initiatives are feasible and pertinent to a particular agency, given the existing wide variety of types of advisory committees. This effort is planned for discussion at the next scheduled IAC meeting.

Specific GAO Recommendations for GSA Action Contained in the Draft Report

(The Director of OGE and) the GSA Committee Management Secretariat (should) direct federal agencies to review their representative appointments to federal advisory committees either as the 2-year charters expire or, for those committees with indefinite charters, within one year to determine if the appointments are appropriate, and to reappoint members as special government employees, where appropriate, and direct agency committee management officials to consult with agency ethics officials in making decisions about the type of appointments that should be made for each committee.

GSA Comments

GSA proposes to address this both in consultation with OGE and in the Secretariat's proposed IAC subgroup. We believe this collaboration will best define the specific method and process by which the executive branch may address this procedure most effectively on a Governmentwide basis, consistent with the specific authorities and responsibilities of OGE, GSA, and individual executive agencies. Further, GSA believes, based on its current guidance and from information provided in its interagency training, that a firm basis already exists for enhancing consultations between CMOs and Designated Agency Ethics Officials (DAEOs).

We recommend that GSA (and OGE) revise the training materials for the FACA management course, incorporating the additional OGE guidance as recommended above...

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GSA Comments

GSA agrees in principle, but if any revisions are to be made in the ethics and conflicts of interest portions, GSA would do so following consultation with OGE. Any appropriate revisions would reflect the decisions made by OGE.

We recommend that (OGE and) GSA direct agencies to determine, for each relevant committee, the potential for such other biases and take appropriate steps to ensure their representative members do not have such biases.

GSA Comments

GSA believes that addressing this recommendation initially is principally within the purview of OGE, and intends to consult further with OGE accordingly.

We recommend that GSA provide guidance to agencies regarding what background information might be relevant in assessing committee members' points of view.

GSA Comments

GSA intends to provide additional guidance in several ways.

- (1) GSA will coordinate with OGE staff that delivers the ethics and conflicts of interest portions of GSA's interagency FACA management training course. The appropriate content revisions will be made pursuant to OGE's decisions with respect to the recommendations contained in the final version of this GAO report that relate to the subject matter of the course under OGE's regulatory and interpretive jurisdiction. We also expect to obtain with OGE, the necessary input of the affected executive branch agencies under whose purview rests decisionmaking authority for individual membership selection and appointments.
- (2) GSA intends to issue, as an adjunct to its formal guidelines on Federal advisory committee management, at 41 CFR Part 102-3, a suggested best practice guideline in the form of a comprehensive template describing the various factors for, and illustrating the various components of what, in GSA's opinion, would comprise a plan for fairly balanced membership consistent with FACA. Such template likely will include all suggested and recommended factors deriving from the experience of executive agencies, to include agency program needs, the technical qualifications and expertise of individuals, stakeholder, organizational, and interested party viewpoints, congressional and public concerns,

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demographic and diversity factors as appropriate, and others. Such template would be used by agencies to address the fair balance requirement in FACA for an advisory committee's membership that is under the discretion of an agency and not otherwise determined by statute or Presidential directive.

- (3) GSA, through its Committee Management Secretariat staff, intends to review and discuss with selected individual CMOs, their respective agency practices in the areas of membership identification, solicitation, nomination, and selection, and how their agencies interact in this process with both specific stakeholders and the public at large. Best practices will be shared within the FACA management community through the IAC, which is comprised of all executive agency CMOs.

We recommend that GSA issue guidance that agencies should identify the committee (membership) formation process for each committee...; state in the appointment letters to committee members whether they are appointed as special government employees (SGEs) or representatives (and the latter's organizations)...; identify each member's appointment category in the GSA FACA Database...; (and) state in the committee products the nature of the advice provided (independent or consensus)...

GSA Comments

GSA believes that addressing these several discreet recommendations initially will require further consultation on its part with OGE and the affected executive agencies, and will so do accordingly. GSA does propose at this time to modify its shared FACA Database management and reporting system by the addition of a single field to the Members Table to identify each member's current appointment category (SGE or Representative Member). Also, the system has the capability of incorporating additional membership specificity and appointment information with certain fields and displays, and additional linkages to information posted by individual agencies on the Internet. Furthermore, the Committee Management Secretariat will review its current on-line consultation process for the establishment of new discretionary Federal advisory committees to determine what enhancements may be made to the ability of CMOs to upload certain information to the FACA Database contemporaneously for public view.

Comments from the Office of Government Ethics

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



March 17, 2004

Robin M. Nazzaro
Director
Natural Resources and Environment
United States General Accounting Office
Washington, DC 20548

Dear Ms. Nazzaro:

Thank you for the opportunity to comment on the General Accounting Office (GAO) proposed report, Federal Advisory Committees: Additional Guidance Could Help Agencies Better Ensure Independence and Balance (GAO-04-328). The Office of Government Ethics (OGE) shares the concern expressed in the report that members of Federal advisory committees follow all applicable ethical requirements under Federal law. We therefore welcome the contribution made by the proposed report to efforts that OGE is making in this area.

As you know, OGE recently undertook its own "single-issue review" of Federal advisory committee management, which was completed in November 2002. Based on information gathered in that review, we agree with the conclusion of the proposed report that officials in some agencies may be misidentifying certain advisory committee members as "representatives," as opposed to special Government employees (SGEs). OGE believes that it is crucial that agencies correctly apply the criteria for distinguishing between SGEs, who are generally subject to financial disclosure and other ethical requirements applicable to Federal employees, and representatives, who are not Federal employees at all and therefore are not subject to Federal ethics requirements. As described in more detail in section B below, OGE has already undertaken a number of measures to address this issue, such as training, legal guidance, and new guidelines for OGE reviews of agency ethics programs. In addition, OGE has and continues to work with the General Services Administration (GSA) in close coordination and partnership on a variety of matters that concern Federal advisory committees.

OGE does not agree, however, with GAO's conclusion that the problems identified in the proposed report are attributable to inadequacies in the legal guidance provided by OGE with respect to the distinction between SGEs and representatives. As we explain in

United States Office of Government Ethics • 1201 New York Avenue, NW., Suite 500, Washington, DC 20005-3917

See comment 1.

Ms. Robin M. Nazzaro
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See comment 1.

section A below, OGE's guidance accurately represents a longstanding executive branch interpretation of the definition of SGE in 18 U.S.C. § 202. Moreover, with respect to GAO's three specific recommendations, OGE does not believe that the proposed report fully describes OGE's guidance or the reasonable inferences that agency officials can fairly draw from this guidance. Indeed, the proposed report itself contains suggestions that the problems experienced at some agencies may be attributable to factors other than a misunderstanding of OGE's guidance.

A. GAO Recommendations Regarding the Adequacy of OGE Guidance

See comment 2.

At the outset, it is important to emphasize that most of the statements in OGE Informal Advisory Opinion 82 x 22 to which GAO takes exception did not originate in the OGE memorandum itself. Rather, as 82 x 22 makes clear, the basic criteria for distinguishing between SGEs and representatives are reproduced verbatim from a memorandum issued by President Kennedy in 1963, shortly after enactment of the legislation creating the SGE category. This Presidential memorandum, which was drafted by the Office of Legal Counsel at the Department of Justice, has long been accorded great weight "as a contemporaneous interpretation of the conflict of interest laws by the Department charged with construing them." 2 Op. O.L.C. 151, 155 n.3 (1978). For over 40 years, the criteria derived from this memorandum have provided guidance to the executive branch in the interpretation of the definition of SGE, and any recommendation to alter the content of that advice bears a significant burden of persuasion, which we do not think is met by the proposed report.

1. Recognizable Group of Persons

GAO's first objection is that the language of the guidance is "overly broad" in indicating that an individual may be considered a representative, as opposed to an SGE, if the individual speaks for a "recognizable group of persons." The proposed report concludes that this language has led some agency officials to believe that this language permits the appointment of non-SGEs "to represent various technical fields, such as biology and toxicology."

See comment 3.

We do not believe that any reasonable interpretation of the phrase "recognizable group of persons" would include "field of expertise." It is simply not logical to say that a field or area of expertise is a "group of persons." Moreover, any such interpretation would require taking a single phrase out of a larger textual context that makes abundantly clear that the thrust is that

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representatives are appointed to speak in a representative capacity for organizations and groups that have a stake in a matter.¹ There is little evidence in the proposed report that any agencies who may have incorrectly appointed experts as representatives did so on the basis of a legitimate interpretation of a particular phrase in 82 x 22. Indeed, the proposed report itself contains evidence that some agencies may not be engaging at all in the analysis described in 82 x 22. The proposed report states that the agencies appointed members as representatives based on longstanding practice and agency culture, without any policies identifying criteria for distinguishing between representatives and SGEs. It is hard therefore to understand how such practices themselves are derived from a misunderstanding or misapplication of the criteria. Furthermore, the report specifically indicated that a recent OGE report on the same subject expressed concern that certain agencies "may be purposely designating their committee members as representatives to avoid subjecting them to the financial disclosure statements required for special government employees." This suggests a possible basis for improper designations other than misunderstanding of the criteria described in 82 x 22.

2. Ambiguity of "Represent" and its Cognate Forms

The proposed report also states that 82 x 22 "implies that when the term 'representative' is used in authorizing legislation, or other such documents, that members should be classified as representatives, despite the fact that this term may be used for more generic purposes, such as to direct the balance of a committee." The proposed report states that, contrary to this purported implication in the OGE guidance, "the use of some form of the terms represent or representative in these documents does not always clearly indicate that the members are to be appointed to serve as representatives."

OGE's guidance does not imply that any use of the word "represent" or its cognate forms in a statute or other document means that the members of the committee are not SGEs. To the contrary, 82 x 22 provides specific examples of documents using such terms and concludes that the given committees nevertheless are comprised of SGEs. The OGE guidance discusses one particular committee document that used the term "represent" in a generic sense to describe the required technical expertise for membership,

¹GAO itself has relied on the same phrase, without apparent misunderstanding. See Decision of the Comptroller General, B-192734 (1978).

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and OGE expressly concluded that the members of this committee were to be treated as SGEs, "[w]hatever the degree of contradiction produced by the use of 'represent'" (BRAC committee). Memorandum 82 x 22 also includes an example of legislation referring to points of view "represented" on a particular committee and nevertheless concludes that this committee was comprised of SGEs (FPUPAC committee). Yet another example in 82 x 22 concerns a statute that made the members of a particular committee "representatives of their practicing colleagues," and OGE still concluded that these members were SGEs (NPSRC committee). Finally, 82 x 22 discusses the language of the Federal Advisory Committee Act (FACA) itself and states that the statutory phrase "points of view represented" in FACA "asserts a standard of fairness but is short of being a command that every advisory committee must consist of individuals who represent the interests of persons or entities outside the Government." Far from implying that the use of "represent" or "representative" automatically rules out SGE status, 82 x 22 makes clear that careful attention to all relevant factors is required in order to determine whether the committee members are actually intended to serve as representatives of interest groups.

3. Effect of Recommendation by Outside Organization

The proposed report takes issue with the statement in 82x 22 that "[t]he fact that an individual is appointed by an agency to an advisory committee upon the recommendation of an outside group or organization tends to support the conclusion that he has a representative function." According to GAO, "this guidance does not take into account a common practice that agencies use to identify potential committee members and overemphasizes the weight agencies may give to this factor when determining what constitutes a representative appointment."

OGE does not understand how the statement that outside recommendation "tends to support" the conclusion of representative status can be taken as "overemphasizing" this factor. Indeed, the intentionally moderate phrase "tends to support" would seem to indicate just the opposite. If this factor were intended to be determinative, the guidance would have said so expressly, as it does in the case of two other factors listed. The outside recommendation factor is just one of several enumerated items that must be considered in light of the totality of the circumstances, and we believe nothing in 82 x 22 fairly suggests otherwise.

In sum, while OGE may agree that some agencies are not adequately performing the analysis required by 82 x 22, we do not believe that any such problems reasonably can be attributed to the

See comment 5.

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See comment 6.

language used in 82 x 22 and the other official documents that have contained the same criteria ever since the 1962 SGE legislation was first implemented. As discussed below, we agree that measures may be undertaken -- and indeed some already have been undertaken -- to address this matter. We do not believe, however, that the measures should include interference with a set of criteria that represent a contemporaneous construction of a criminal statute that has guided the executive branch for over four decades.

B. OGE Efforts to Address the Issue

See comment 7.

OGE has devoted considerable attention to educating ethics officials and other individuals involved in FACA management on issues related to special Government employees (SGEs) and representatives. While some of OGE's continuing efforts in this area involve collaborative efforts with GSA, OGE has pursued other initiatives to strengthen ethics awareness about this important issue. What follows is a short description of some of OGE's training, awareness, and auditing efforts:

1. Improved OGE Program Audit Guidelines

See comment 8.

As the proposed report notes, OGE formally issued new audit guidelines in 2003 that provided for additional focus and review of advisory committee appointment designations. In particular, these guidelines were immediately implemented and provided for additional focus and inquiry by OGE's agency program reviewers on whether individuals who serve as members of committees, councils, boards, commissions, or other groups were properly being designated as SGEs or representatives. After these guidelines were implemented, at least one of our program reviews in 2003 included a specific recommendation that the agency reassess the status of employees and members serving on one of its advisory committees.

2. Continuing GSA Support and Coordination:

See comment 9.

In September 2003, OGE submitted substantial comments on a proposed GSA template for improving the process of establishing Federal advisory committees in the executive branch. This proposed template, to be provided to executive branch agencies and other offices involved in the formation of advisory committees contained suggested language for legislation creating advisory committees. Some of the comments that OGE made to the template were specifically focused on handling the preliminary determination of whether an advisory committee member will be serving as an employee or non-employee representative. Once completed, the template will better enable executive branch agencies and other persons or

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entities involved in establishing Federal advisory committees to appropriately consider member status issues when creating these committees. The template is still in a draft form and OGE will continue to work with GSA on preparing the final template.

3. GSA FACA Training Support

The proposed report states that changes should be made to the training materials used at GSA's FACA Management Training Course to address concerns about the overall adequacy of OGE guidance on the SGE/representative designation issue. The course provides 20 pages of written materials on ethics, including five pages devoted to issues involving the status of members serving on these committees. For the reasons noted above, we believe the suggested changes to the text arise from an unreasonable interpretation of OGE guidance. Much of the guidance for distinguishing between SGE's and representatives comes from a Presidential memorandum that was issued shortly after enactment of the legislation creating the SGE category. Because much of the course material dealing with the SGE/representative distinction comes from that memorandum, we would not support any changes that would be inconsistent with the weight of that contemporaneous interpretation of the SGE category.

Nevertheless, OGE will continue to work with GSA to modify these materials to make clearer for attendees the SGE/representative distinction. In addition, OGE instructors at the course will continue to ensure that the content of these course materials dealing with this issue are fully discussed with course attendees.

4. OGE Ethics Conferences

Almost every year since 1996, OGE has presented a session on FACA issues at its annual ethics conference. For example, a session at the 2003 conference was principally devoted to "designation" issues involving Federal advisory committees. The session discussed recent reviews conducted by both OGE and GAO involving the management of Federal advisory committees at several agencies and some of the issues raised by those reviews. In particular, during the conference panel session, the Department of Veterans Affairs (VA) Committee Management Officer discussed his agency's process for designating advisory committee members within the VA.

See comment 10.

See comment 11.

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5. Additional SGE Guidance and Training Materials

See comment 12.

Since publishing OGE informal advisory opinion 82 x 22, OGE has issued other advisory opinions that have discussed SGE and/or representative status (e.g., 87 x 12, 88 x 16, 90 x 5, 90 x 22, 92 x 25, 93 x 14, 93 x 30 & 95 x 8). Most recently, in February 2000 OGE issued a summary regarding "Conflict of Interest and the Special Government Employee," which was subsequently issued as OGE Informal Advisory Opinion 00 x 01. A substantial portion of this summary is dedicated to explaining the concept of what is an SGE, and distinguishing SGE's from non-employees such as representatives and independent contractors. Ethics officials were asked to disseminate the summary to other components within their organizations (such as regional offices) who they thought might encounter questions pertaining to SGEs.

6. Continuing Review

See comment 13.

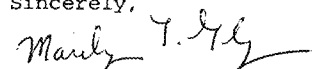
Finally, many of the issues regarding SGE/representative designations can be better addressed when Federal advisory committees are being created. In this regard, OGE monitors and comments on proposals to create advisory committees to ensure that SGE/Representative designation issues are fully considered.

Conclusion

Thank you again for the opportunity to comment on the proposed report. As noted above, OGE recognizes the importance of correctly applying the criteria for distinguishing between advisory committee members who are serving as SGEs and members who are serving as representatives, and has devoted considerable attention to this issue. We therefore welcome your contribution to our continued efforts in this area.

If you need any further assistance regarding any particular item discussed in this letter, please contact OGE Associate General Counsel Vincent Salamone or OGE Associate General Counsel Richard Thomas. Their telephone number is 202-482-9300.

Sincerely,



Marilyn L. Glynn
Acting Director

The following are GAO's comments on the Office of Government Ethics letter dated March 17, 2004.

GAO Comments

1. We continue to believe that OGE's ongoing efforts to encourage agencies to evaluate whether appointments should be made as special government employees or representatives would prove more effective if clear, unambiguous guidance addressing the limitations we identified were available to agency staff.

The draft and final reports present the OGE guidance as a factor in some agencies' inappropriately appointing some members as representatives and acknowledge OGE's concern that some agencies may be doing so to avoid the conflict-of-interest reviews. Unless OGE clarifies the limitations in the guidance identified in our report, we believe progress in moving agencies toward appropriate appointments will likely continue to be slow or nonexistent—remembering that the 1982 guidance was issued because of confusion over the proper use of representative appointments. Unambiguous guidance would help all agencies implement it; would support more effective oversight by ethics officials, including OGE, and by Inspectors General; and would make it more difficult for any agency to misapply the guidance and misidentify certain advisory committee members as “representatives.”

2. The clarifications we identified do not change the criteria but rather amplify them to address areas where continued confusion or misuse has occurred. The 1982 guidance was developed to address uncertainties regarding when agencies should appoint individuals as either special government employees or representatives. In our view, the findings in our report indicate that additional clarifications are warranted. Along these lines, we note that when OGE's staff determined in 2002 that some agencies use only representative appointments, they suggested that additional training materials may be appropriate. The staff suggested a communication to agency ethics officials to assist them in making the determination for their committee members. Our draft and final reports recommend revisions to the guidance and the training materials.
3. Given that agencies are appointing representatives to represent their individual fields of expertise and that OGE agrees this use of representative appointments is not appropriate, we believe OGE should revise its guidance to clarify that such appointments generally are not

appropriate. (We note that an exception would be if a committee were considering an issue that would impact a particular group, for example, physicists or biologists—a case in which a group of experts would be stakeholders in the matter being considered.) Instead, OGE’s response is to state that it is not logical to say that a field or area of expertise is a “group of persons” and to disagree that clarification to its guidance may be warranted to eliminate this practice. It is possible, as OGE suggests, that some agencies understand the guidance and are simply disregarding it. However, we believe ambiguities in the OGE guidance may provide agencies with some “cover” to support their interpretations. In such cases, clear guidance would make it more difficult for them to continue to misapply it. In addition, we direct OGE’s attention to the responses to this report from Interior, NASA, and Energy (see apps. XV, XVI, and XVII), which suggest that clarifications to the guidance regarding the appointment of representatives to represent fields of expertise may be necessary.

4. On the basis of our work at several agencies and our review of the OGE guidance, we continue to believe some clarification is needed vis-à-vis the use of the term “represent” and its cognate forms. As the draft and final reports state, OGE’s direction to agencies in making decisions regarding representative appointments is to use “words to characterize them as the representatives of individuals or entities outside the government who have an interest in the subject matter assigned to the committee.” Notably missing from OGE’s specific direction to agencies is a focus on the nature of the advice they will be giving—that is, that they are to represent stakeholder views. This is in contrast to OGE’s direction to agencies regarding special government employees that does focus on the fact that they are to exercise individual and independent judgment. Although OGE’s guidance does provide helpful examples to agencies in examining statutory language to determine whether committee members are actually intended to serve as representatives of interest groups, we believe that language in the conclusions section of the guidance that directs agencies how to indicate the type of appointment contradicts the examples that OGE cites. We have clarified the final report to indicate that we were specifically discussing the conclusions section of the OGE guidance. We also note that OGE developed these conclusions in 1982—that is, it is not citing the 1962 guidance the agency is hesitant to revise. Overall, we believe that clarifications, but not departures from the criteria regarding appointments, are needed.

We point OGE also to the comments from the Interior (see app. XV) on the matter of the term representative. Interior stated that “GAO agrees that the statute authorizing the National Cooperative Geologic Mapping Advisory Committee’ calls for the committee to include...representatives,’ but then goes on to say that the statute does not “clearly and unambiguously call for these members to be appointed as representatives rather than special government employees.’” Interior then characterized our statements as a contradiction and said that the Secretary of the Interior “reasonably may interpret such a statute by relying on its plain language....”. In our draft and final reports, we indicate that it is not clear what point of view the private sector and academia members could be called upon to provide if appointed as representatives, and the statute did not appear to clearly mandate that they be appointed as representatives—that is, it may be using the term generically. We continue to believe that the statute does not clearly and unambiguously call for representative appointments and that this example underscores the need for OGE clarification as we recommend.

5. Seeking recommendations for advisory committee members from outside groups or organizations does not tend to support either representative or special government employee status. As noted in the draft and final reports, obtaining outside nominations is a common practice for committees appointing special government employees; thus, it is not used only for representative appointments. We think it would be appropriate for the OGE guidance to reflect current practices regarding nominations to federal advisory committees and avoid the potential of agencies’ giving undue weight to this criterion.
6. We are only recommending clarifications to OGE’s guidance, not changes to the fundamental principles or criteria upon which OGE based its guidance. See also comment 2 above.
7. Our draft and final reports highlight the various efforts OGE discusses below. However, we believe the effectiveness of these efforts will continue to be reduced until OGE’s guidance on appointments is clarified.
8. OGE has subsequently clarified this comment. The program review cited in the comment led to a recommendation that an agency reassess the status of employees serving on a federally chartered corporation and not on a federal advisory committee.

9. We have not evaluated the template that was still in draft form during our review.
10. OGE does not explain its view that the clarifications to the GSA FACA management training course that we identified in the report represent an unreasonable interpretation of OGE guidance. We continue to believe the suggestions our draft and final reports highlight would improve the effectiveness of the training sessions. For example, the GSA materials state that representatives *may* (emphasis added) represent the views of a particular industry or group. It is not clear to us why OGE would object to revising the FACA training materials to be consistent with OGE's guidance that representatives *are* expected to "represent a particular bias."
11. The draft and final reports identify the session at the 2003 OGE Ethics Conference cited in OGE's letter.
12. The draft and final reports cite the most significant and comprehensive OGE guidance documents addressing representative appointments, including OGE Informal Advisory Opinion 00 x 01 highlighted by OGE in its comments. (In the report text, we refer to this guidance as OGE's February 2000 guidance, and we have added a legal citation to it in a footnote.) We note that this opinion includes one paragraph addressing representative appointments and states that representatives are described more fully in OGE Informal Advisory Letter 82 x 22, the guidance document cited in our draft and final reports as OGE's principal guidance on the issue of appointment categories for federal advisory committees.
13. We support OGE's commitment to monitor and comment on appointments to newly created committees. However, in light of evidence that some appointments to existing committees are inappropriate, we believe it is appropriate to also review the appointments for approximately 950 advisory committees that are currently active.

Comments from the Department of Health and Human Services

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

MAR 19 2004

Ms. Robin M. Nazzaro
Director
Natural Resources and Environment
United States General
Accounting Office
Washington, D.C. 20548

Dear Ms. Nazzaro:

Enclosed are the Department's comments on your draft report entitled, "Federal Advisory Committees – Additional Guidance Could Help Agencies Better Ensure Independence and Balance." The comments represent the tentative position of the Department and are subject to reevaluation when the final version of this report is received.

The Department provided several technical comments directly to your staff.

The Department appreciates the opportunity to comment on this draft report before its publication.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dara Corrigan".

Dara Corrigan
Acting Principal Deputy Inspector General

Enclosure

The Office of Inspector General (OIG) is transmitting the Department's response to this draft report in our capacity as the Department's designated focal point and coordinator for General Accounting Office reports. OIG has not conducted an independent assessment of these comments and therefore expresses no opinion on them.

**COMMENTS ON THE DEPARTMENT OF HEALTH AND HUMAN SERVICES ON
THE U.S. GENERAL ACCOUNTING OFFICE'S DRAFT REPORT, "FEDERAL
ADVISORY COMMITTEES: ADDITIONAL GUIDANCE COULD HELP AGENCIES
BETTER ENSURE INDEPENDENCE AND BALANCE" (GAO-04-328)**

The Department of Health and Human Services (HHS) appreciates the opportunity to comment on the GAO's draft report. The Department strives to abide by the General Services Administration's (GSA) guidelines and the General Administration Manual that describes the Department's advisory committee policies.

This report will be useful in evaluating current practices for appointing members to serve on Federal advisory committees. In addition, GAO has provided a number of interesting ideas for determining balance in points of view and ensuring transparency in the advisory committee process.

Although we agree in principle that the information the Environmental Protection Agency (EPA) collects on their potential nominees may be useful in the selection process, we also believe that a few of the practices identified may have unintended consequences. We are concerned about the collection of background information on prospective members to understand their points of view.

We believe both the scientific community and the public at large is more comfortable with a process that seeks to achieve balance through a mix of expertise, background, and personal experience, rather than through a process based on seeking out some indefinable range of personal opinion. In many cases, points of view can be misinterpreted based on the frame of reference of the individual reviewing the nominee, either the public, Federal staff, or both. Also, we feel that this type of activity may make Federal agencies more vulnerable to litigation if potential nominees think that they were not selected because of their points of view rather than their expertise. We think this practice might not be acceptable to our nation's scientific community.

We feel that it is more appropriate to base the selection of members on the scientific expertise needed for each committee. For instance, the National Institutes of Health (NIH) has a vast number of scientific and technical advisory committees. NIH first seeks balance in the area of scientific expertise but also considers several other factors: geographic, ethnic, gender, minority status, bias, and orderly rotation, that helps to ensure that committees are balanced in terms of points of view. For example, when NIH seeks to recruit scientists to serve on a committee looking at human genetics issues, they try to recruit a diverse group of individuals with varied backgrounds to bring balance to this committee. Therefore, NIH might look for experts with specialties in human genetics, ethics, law, psychology, molecular biology, public health, social sciences, bio-terrorism, forensics, healthcare, and other relevant fields. We believe that such diversity in the selection process would invariably ensure diverse points of view and balance.

HHS agrees with GAO's recommendation that advisory committee operations and member appointments should be a transparent process. We believe in the public notification process and feel that the public should be privy to advisory committee activities. We also agree that it is in the best interest of both the public and the Government to disclose information about the

See comment 1.

See comment 1.

See comment 2.

formation and operation of advisory committees. Although the public notice process to obtain comments on proposed candidates might be feasible for some HHS committees, it would not be workable for all of them. Unlike EPA with 24 committees, HHS had 234 active committees in 2003 and various subcommittee structures within these committees. Some HHS agencies are limited by legislation in terms of the appointment process. For example, most of NIH's national advisory councils are established under Section 406 [284a] (c) of the Public Health Service Act. This law requires that the Secretary, HHS, fill all national advisory council vacancies within 90 days from the date the vacancy occurs. Soliciting public input could gravely delay each committee's ability to meet the requirements of this law, accomplish its charge and appoint its members. It could also seriously increase administrative costs for staff and contract support to handle this function.

See comment 3.

The Federal Advisory Committee Act (FACA) requires that membership be "fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee." This is reflected in the Food and Drug Administration's (FDA) advisory committee regulations (see 21 CFR 14.40(f)(2)). The FDA has 31 of the HHS advisory committees, all highly technical. The draft report also states that, for science and technical committees, viewpoint balance is appropriately achieved by obtaining a variety of scientific expertise and perspectives. FDA agrees and its advisory committee regulations have adopted this approach. For technical committees, the agency must ensure that prospective members have expertise in the subject matter with which the committee is concerned and that they have diverse professional education, training, and experience (see 21 CFR 14.80(b)(1)(i)). However, the draft report implies that agencies should also screen for policy views, as a way to ensure impartiality. FDA does not screen for policy views on technical committees; rather, its approach follows the National Academy of Sciences' recommendation that appointments to scientific advisory committees be based solely on a person's scientific or clinical expertise or his or her commitment to and involvement in issues of relevance to the agency's mission. While FDA does not screen for policy views on technical committees, prospective members are subject to conflict of interest restrictions, as established by Congress, and the agency may remove a member who demonstrates a bias that interferes with the ability to render objective advice (see 21 CFR 14.80(f)).

See comment 4.

GAO's draft report cites EPA as the benchmark to which all other agencies should aspire. A previous GAO report criticized the advisory committee practices of EPA. It was the FDA that assisted in the remediation of the EPA advisory committees. The draft report does not recognize this effort on the part of FDA.

See comment 5.

In the interest of transparency, GAO's draft report states that agencies could make more information available on the operations of advisory committees. FDA's selection process is clearly spelled out in its regulation as well as in every Federal Register notice calling for nominations. On a product specific meeting, a disclosure form with a scope and type of conflict is disclosed and signed by the member. For a general matters meeting, it is disclosed that waivers are granted and the impact will be minimized by the fact that large segments of industry will be impacted in the same way. FDA regulations also state that if the discussion turns specific, either additional waivers will be issued or the meeting will cease. FDA may be the only

agency that posts, on the web, a Conflict of Interest algorithmic document that demonstrates exactly how the agency makes decisions relative to the scope and magnitude of a conflict.

FDA stands behind its work to ensure that the advisory committees are balanced, not only demographically, but by scientific point-of-view. In addition, FDA makes every effort to ensure that all its committees have its stakeholders represented i.e., academics, industry, patient advocates and consumer advocacy groups. FDA is secure in the knowledge that it makes every effort to have an open process of member recruitment, of conflict of interest matters and of balance to achieve the recruitment of the best scientists to provide the most cutting edge scientific advice for its regulatory process.

It is departmental policy to avoid excessively long individual service on advisory committees. The 2002 roster for Childhood Lead Prevention and Poisoning Advisory Committee included twelve individuals serving expired terms, some of them serving on terms overdue since 1998. As noted in the report, the Office of the White House Liaison has enforced that all advisory committee members serve no longer than 180 days beyond the expiration of their terms to ensure a proper turnover of committee members, which the Department believes contributes to maintaining independent and balanced advisory committees.

Again, we appreciate the opportunity to be a part of this review and find the report's recommendations of great value. HHS advisory committees play an integral role in developing health and science policy for the nation and the world and determining the scientific merit of future research. We will continue to review and evaluate each of the ideas presented in the report to identify those that may be implemented for our advisory committees. In addition, since the NIH has 145 of the HHS advisory committees, they have volunteered to work with GSA to assist them in implementing the 12 recommendations noted in the report.

The following are GAO's comments on the Department of Health and Human Services's letter dated March 19, 2004.

GAO Comments

1. The draft and final reports identify processes that include an evaluation of potential members' points of view *relevant to the subject matters advisory committees will consider* while focusing on the relevant expertise needed. Thus, it is not accurate to characterize the report as espousing "a process based on seeking out some indefinable range of personal opinion." The examples in the report of agency processes include targeted evaluations of points of view that ask potential members if they have made public statements or taken positions on the issue or matters the committee will consider, including expert legal testimony on the issue or matters. The processes cited also ask the potential members to identify and describe any reason they may be unable to provide impartial advice *on matters before the committee* and any reason their impartiality *in the identified matter* might be questioned. We have added the phrase "regarding the subject matters being considered" in several other places in the final report in which we discuss determining the viewpoints of potential members for further clarity on this point. The report also points out that if agencies use a systematic, consistent, and transparent approach to obtaining relevant information from prospective committee members, it is unlikely they would approve questions that are generally inappropriate in a professional working environment, such as questions about party affiliations or political viewpoints that some committee members have reported being asked. In our view, agencies that do not proactively and transparently address the relevant points of view of prospective committee members regarding the matters the committees will consider are more likely to be subject to questions about committee balance from the public and users of the committees' products than those agencies that use such processes. That is, even if agencies choose to either not identify or acknowledge relevant public positions its committee members have taken on matters the committees will consider, others are often aware of such positions and are likely to raise questions about them. Such circumstances can have a negative impact on the credibility of the specific committees involved and on federal advisory committees overall. We believe this practice has been the case regarding some HHS federal advisory committees about which scientists and others have expressed concerns. Finally, in terms of HHS's concern that obtaining information on relevant points of view might not be acceptable to the nation's scientific community, our report

shows that both the National Academies and EPA routinely obtain such relevant information from its prospective members.

2. The report identifies the practice of soliciting public input on nominations to advisory committees, used by the National Academies and some federal advisory committees, as one that can be helpful in ensuring an appropriate balance of points of view of committees, particularly those that address sensitive and controversial matters. Agencies can determine whether to use this tool on a case-by-case basis. Thus, we do not disagree with HHS's comment that obtaining comments on proposed candidates might be feasible for some HHS committees but not workable for all of them.
3. Although we agree with HHS that FDA should emphasize technical qualifications when selecting advisory committee members, we also believe that it is important for agencies to assess prospective members for viewpoints that they have that are relevant to the work of the committee (see also comment 1). HHS says that FDA follows the National Academy of Sciences' recommendation that the appointment of members to scientific advisory committees be based primarily on expertise and involvement in relevant issues. This report notes that the academies also seek to determine, through a few simple questions, whether there is any reason to believe that the impartiality of members or prospective members might be questioned.
4. EPA made changes in how it manages the Science Advisory Board in response to the specific recommendations in our 2001 report.¹ We did not attempt to determine any role FDA may have had in assisting EPA, but we note that EPA, unlike FDA, revised its processes for achieving overall balance in terms of points of view, expressly integrating it with its reviews for potential conflicts of interest and obtaining relevant information prior to the appointment of committee members.
5. We agree that FDA provides useful information about its selection process, but we continue to believe that FDA and the other agencies could improve their processes for balancing committees. The draft and final reports highlight FDA policies for public notice of waivers. We note that the selection and waiver processes used by FDA are not used by HHS, CDC, and NIH.

¹GAO-01-536.

Comments from the Department of the Interior

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



United States Department of the Interior

OFFICE OF THE ASSISTANT SECRETARY
POLICY, MANAGEMENT AND BUDGET
Washington, DC 20240



MAR 18 2004

Christine Fishkin
Assistant Director
Natural Resources and Environment
United States General Accounting Office
Washington, D.C. 20548

Re: DOI Comments on GAO Draft Report on Advisory Committees

Dear Ms. Fishkin:

Thank you for the opportunity to review the GAO's draft report entitled, "Federal Advisory Committees: Additional Guidance Could Help Agencies Better Ensure Independence and Balance."

We agree with much in the report; it contains many useful recommendations that can be used to enhance the successful use of advisory committees. However, the Department has a number of general and specific concerns with the GAO analysis.

Enclosed please find DOI's response. If you have any additional questions, please feel free to contact us.

Sincerely,

P. Lynn Scarlett

Department of the Interior Comments on GAO Draft Report on Advisory Committees

Following are the Department's response to the GAO's draft report entitled, "Federal Advisory Committees: Additional Guidance Could Help Agencies Better Ensure Independence and Balance."

We agree with much in the report; it contains many useful recommendations that can be used to enhance the successful use of advisory committees. However, we note that the GAO's focus on scientific advisory committees ignored the wide ranging purposes and programs for which advisory committees are used in many agencies, such as managing public lands and natural resources. As a result, many of the report's recommendations and observations about independence and balance of committees, while useful, have limited applicability in non-science settings. GAO should clearly identify the purpose and scope of this report as focusing on science committees.

The Department strongly disagrees with GAO's basic approach to the concept of balance that is required under the Federal Advisory Committee Act (FACA). The GAO's approach reflects neither actual experience nor practical considerations associated with creating, staffing, and managing advisory committees under the FACA. On page one, and throughout the report, GAO repeats the basic point that "Specifically, individual committee members providing advice to the government must be free from significant conflicts of interest – that is, they must be independent." It is not clear exactly where the report's apparent requirement that *individual* committee members be "independent" originates. In Section 5 of the FACA, Congressional committees are directed to "...assure that the advice and recommendations of the advisory committee will not be inappropriately influenced by the appointing authority or any special interest, but will instead be the result of the advisory committee's independent judgment." Though this statutory requirement, by its terms, is not applicable to discretionary committees established by agency heads, it is repeated verbatim in the GSA regulations at 41 C.F.R. § 102-3.105(g), as a responsibility of agency heads for committees they establish. An "independent" committee member is simply never discussed.

The report's focus on "independence" of individual committee members has several practical and conceptual difficulties. First, it does not accurately reflect the FACA's and the regulations' requirement that the *advisory committee* itself remain free from inappropriate influence and that its recommendations result from its independent judgment. There is no guarantee that a committee made of "independent" members will also be a committee that is not inappropriately influenced by the appointing authority, or that the committee is acting on its independent judgment. The more logical way to implement these provisions would focus on the operation of the committee itself, ensuring that the appointing authority does not mandate any particular results from the committee members and that the committee is not structured in such a way as to give any special interest control over its advice. For example, although consensus is often desired on advisory committees, mandating a unanimous vote in support of committee advice would enable a single member to thwart other members of the committee by refusing to support the other member's preferred advice. This would not only be inappropriate influence, but it would also prevent the committee from giving its independent judgment, as it would make the

committee potentially beholden to a single member.

See comment 2.

The report unnecessarily focuses on a requirement for membership that does not exist, i.e., "independence." The report therefore detracts from addressing the membership requirement that does exist: that the committee be fairly balanced in its membership in the points of view to be represented and the functions to be performed. Once again, this requirement only goes to the balance of the committee as a whole, though the balance may only be addressed by reference to the "points of view" of individual committee members, i.e., there is balance on a committee when a member with a particular "point of view" is on a committee with others with differing or conflicting points of view. The relevant question is how to determine what "point of view" to attribute to a member and how to distinguish one point of view from another, to reasonably assure balance on the committee as a whole. Using "independence" as a criteria for membership at best does not help this analysis, and at worst it confuses the issue and hinders an agency in seeking the requisite balance on its committees.

See comment 2.

The report defines "independence" as freedom from "significant conflicts of interest," a definition that appears to conflate the ethics requirements applicable to Federal employees (including SGEs) and some concern over complaints about certain advisory committee members into an entirely new, inappropriate, and unworkable standard. There is nowhere in the ethics rules that states that even full-time Federal employees must be free from "conflicts of interest," let alone "significant conflicts of interest." The system instead is set up to identify the financial interests that may lead to conflict (primarily via financial disclosure reports), and then instructs employees: 1) to avoid participating personally and substantially in particular matters that may directly and predictably affect their financial interests (18 U.S.C. § 208); and 2) to avoid "participating" in a particular matter involving specific parties in circumstances where a reasonable person may question their impartiality (5 C.F.R. § 2635.502). In each case, the agency may nonetheless authorize participation. Further, "substantial" conflicts (those materially impairing the employee's performance of official duties or requiring disqualification too often) are dealt with by divesting the interest. See 5 C.F.R. § 2635.403(b). The report attempts to short-circuit this system by imposing the vague "independence" standard on advisory committee members, as some sort of appointment requirement.

See comment 3.

The report's emphasis on the "independent" committee member standard ignores the agencies' ability to work with committee members to ensure that they do not violate the ethics rules. As set forth in the system described above, the question of whether or not a member should participate in a particular committee function is properly resolved on a case-by-case basis, evaluating the nature of the committee action and the nature of the financial interest involved. For example, it is not clear when casting one vote out of a number of committee member votes that results in a committee's advice to a Federal agency will be "personally and substantially" participating in a matter sufficient to trigger the conflict of interest statute. The question of whether a particular piece of advice will "directly and predictably" affect a financial interest also should be closely considered. Should an actual conflict exist, the agency should be able to determine whether to authorize participation, as it could with other matters in which employees are involved. Accordingly, the report should focus more on how an agency may effectively address ethics-related issues in terms of participation of members in committee activities and in terms of how to articulate, achieve, and publicly support the fair balance of its committees.

See comments 3 and 4.

See comment 2.

Imposing “independence” as an appointment requirement does not help an agency bring the requisite balance to a committee. It will necessarily be very difficult, and ultimately not worthwhile, to attempt to determine whether a committee member or the committee member’s “point of view” is “independent,” whatever that means. The report recommends that agencies identify and systematically collect and evaluate information pertinent to determining “points of view” of committee members. Scientific advisory committee members are generally chosen for their expertise and objective understanding of the science involved and not on the basis of perceived “points of view.” This is not really the relevant question. The relevant question is whether a committee has balance in terms of the points of view to be represented and the functions to be performed. The report would be more useful if it would focus on suggestions regarding how to help agencies define and achieve such balance in points of view when exercising their discretion in committee appointments.

See comment 5.

See comment 6.

Departmental officials have informed your staff of the many steps we have taken over the past 18 months to improve the way we identify and appoint advisory committee members as special government employees. I understand that this information was shared with you at one of your initial meetings at the Department in June of 2003. The draft report repeatedly states, however, that this information was provided only in January of this year. It is important that GAO properly acknowledge the efforts the Department is undertaking in this area.

Our other specific comments are set forth below.

See comment 7.

P. 4: Last sentence: It is inaccurate to single out three agencies to say they “do not conduct conflict-of-interest reviews for members appointed as representatives.” First, it is unlikely that *any* agency does this for representatives, not just these three. Second, given the differing levels of ethics screening that may be done (such as for BLM Resource Advisory Councils), the more accurate statement is that agencies do not collect and review OGE Form 450s (or other approved form) for representatives. We recommend that this substitution be made throughout the report or else define “conflict-of-interest reviews” as a term of art meaning use of the OGE Form 450 or similar form.

See comment 8.

P. 8: Last paragraph, second sentence: GAO ignores the authority of agency heads to exercise discretion under their organic statutes to create advisory committees that are not expressly authorized by Congress or by a president.

See comment 9.

P. 16: The definitions on this page and on page 17 should be clarified as early as possible in the report to ensure that readers understand the two categories of membership (representatives and special government employees).

See comment 10.

P. 20: Last paragraph: GAO significantly misconstrues DOI’s “agency culture,” not only on this page but throughout the draft report. With the majority of its committees advising the Secretary on the management of public lands, DOI historically has strongly believed that its committees members should represent local stakeholders. Thus the practice of appointing representatives is based on decisions strongly rooted in DOI’s authorities, responsibilities and philosophies. Ignoring the appropriate use of representatives, GAO

repeatedly assumes without factual support that most representatives should have been appointed as SGEs.

See comment 11.

P. 21: GAO's generalization that representation of fields of expertise is not appropriate ignores the importance of such representation to some committees. However, we agree that agencies have proper guidance in how and when to use such expertise.

See comment 12.

P. 24: First paragraph: Reference to DOI's efforts to add ethics language to all FACA charters misleadingly suggests that DOI began this effort in January 2004. GAO is aware that DOI began this effort in 2003 in response to OGE's 2002 study.

See comment 13.

P. 25: First paragraph: In paraphrasing DOI officials regarding the tendency "to err on the side of continuing with representative appointments," GAO omitted important information that was presented in the same discussion. That is, where the purpose of the committee is to advise the Secretary on the management of public lands or other resources, the Department firmly believes the views of local stakeholders are essential to sound and useful advice. In such cases, DOI is likely to continue to appoint representatives. In doing so, it does not "err," especially if an authorizing statute does not restrict the Secretary's discretion to do so. Rather, GAO errs by invoking OGE's guidance without regard to the stated purpose of the advisory committee.

See comment 14.

Second paragraph: GAO agrees that the statute authorizing the National Cooperative Geologic Mapping Advisory Committee "calls for the committee to include ... representatives," but then goes on to say the statute does not "clearly and unambiguously call for these members to be appointed as representatives rather than special government employees." Notwithstanding this apparent contradiction, the Secretary reasonably may interpret such a statute by relying on its plain language, especially where the Secretary desires representative advice to assist a committee's function.

See comment 15.

P. 27 - 35: The report continually confuses the distinctly separate concerns for balance and avoiding financial conflicts of interest. Additionally, GAO's positions regarding a committee's balance and perceived objectivity when compared to points of view of its members are simply unrealistic and impractical, and unrelated to the actual functioning of advisory committees. The kinds of inquiries into the biases and points of view of potential appointees recommended by GAO is intrusive, of little practical utility, and will turn qualified individuals away from government service. GAO apparently has a single concept of how to achieve balance and seems to ignore the FACA's requirement that committees be balanced based on the function they are called upon to perform. Further, representatives are placed on committees precisely because of their stated representative interests; because they are not subject to the ethics rules, it is illogical to assert that their participation is improper on the basis of bias. GAO's view that agencies cannot properly balance their committees without understanding all perceived biases of all members is simply fallacious. Finally, as the report notes on p. 37, courts have interpreted the FACA as giving agencies broad discretion on how to balance their committees.

See comment 16.

Additionally, the report should note that a committee of representatives may obtain "expert

advice” from individuals with scientific or technical expertise. For example, a scientific or technical expert may be invited to a meeting of the committee or its working groups to provide expert guidance to assist the representatives in formulating their advice to the federal government. Describing such options might help organizations and others to understand that representative membership can also be effective in providing useful, technically accurate, and unbiased advice to the federal government.

The following are GAO's comments on the Department of the Interior's letter dated March 18, 2004.

GAO Comments

1. This report states, as did the draft, that while our report focuses primarily on scientific and technical federal advisory committees, the limitations in guidance and the promising practices we identified pertaining to independence and balance are pertinent to federal advisory committees in general. This report and the draft also identified the wide range of issues addressed by federal advisory committees, including managing federal lands and natural resources.
2. The background section of the report and the draft acknowledged the FACA requirement that committees not be inappropriately influenced by the appointing authority or any special interest. However, the draft report also clearly stated that in addressing independence, our focus was on the requirements regarding individual conflicts of interest that are included in federal conflict-of-interest statutes, unless specifically noted otherwise. In our introduction, we state that "federal advisory committee members who are employees of the federal government must meet federal requirements pertaining to freedom from conflicts of interest—which we refer to in this report as independence—and committees as a whole must meet the requirements pertaining to balance." Thus, we use the term "independence" as shorthand for the conflict-of-interest requirements to which individual committee members must adhere. We further highlight the key provisions of the federal conflict-of-interest statutes that must be complied with, including a description of the ability of an individual who has a conflict of interest to nonetheless participate on a committee if granted a waiver. Alternatively, an individual may divest the financial interest.

We note that all federal employees are prohibited not only from holding financial interests that conflict with the conscientious performance of duty, as Interior suggests in its comments, but also from engaging in outside employment or activities that conflict with their official duties and responsibilities. See 18 U.S.C. § 208, 5 C.F.R. §§ 2635.101(b)(2), and 2635.101(a)(10). Further, employees are also required to avoid any action that creates the appearance that they are violating the law or ethics standards. 5 C.F.R. § 2635.101(b)(14). It is precisely because these obligations are imposed only on employees that it is crucial to ensure that FACA committee members are appropriately characterized as "representatives" or special government employees. Both special

government employees and representatives should be evaluated for biases to ensure that the FACA committees as a whole are balanced. Special government employees must also be subject to a conflict-of-interest review, including an analysis of whether their nongovernment activities and employment present a conflict or create “the appearance that they are violating...ethics standards.” 5 C.F.R. § 2635.101(b)(14).

3. We agree that the question of whether a member should participate in a particular committee function (or whether they should be appointed to a particular committee) is properly resolved on a case-by-base basis, evaluating the nature of the committee action or work and the nature of the financial interest involved. Further, the draft and final reports recognize that agencies may grant waivers to members to serve on advisory committees upon determining that either (1) the conflict is insignificant or (2) the need for the member’s expertise outweighs the conflict. The draft and final reports also discuss some promising practices regarding the disclosure of such waivers to the public and among committee members.
4. The draft and final reports discuss in considerable detail information that can help agencies ensure committees are balanced and provide examples of promising practices that would better ensure the balance of advisory committees.
5. We agree that a relevant question for federal advisory committees is whether a committee has balance in terms of points of view to be represented and the functions to be performed. Our report provides examples of promising practices used by other agencies and the National Academies that can help agencies define and achieve an appropriate balance of points of view.
6. Our draft and final reports state that at the start of our review, Interior officials told us that they had begun to review their appointment classifications for the 115 advisory committees as a result of the November 2002 OGE study. The draft and final reports also state that the department has been reviewing the appointments to committees as their charters expire. We do indicate that in January 2004, Interior officials acknowledged that it was appropriate to change the nature of some appointments upon reexamination. This was the first time any results of the reviews were communicated to us. Further, Interior notified us of the decision to change the appointments to the

earthquake studies committee on January 16, 2004, subsequent to our meeting on January 12, 2004.

7. We revised the report to indicate that agencies do not conduct conflict-of-interest reviews for members appointed as representatives because conflict-of-interest reviews are only required for federal or special government employees. Thus, we removed any unintended implication that other agencies do more than the three we are reporting on in this report in terms of representative appointments. In our draft and final reports we indicate that the ethics screening vis-à-vis representatives done by one bureau of the department (Bureau of Land Management) is not sufficient to constitute a conflict-of-interest review for those appointed as special government employees. In this section, we are discussing those members who were appointed as representatives but who would be more appropriately appointed as special government employees.
8. We modified the language in the report to more clearly describe the authorities under which committees may be formed.
9. The draft and final reports define the two categories of appointments on page 1.
10. The draft and final reports state on page 1 that members of federal advisory committees may be appointed as (1) special government employees to provide advice on behalf of the government on the basis of their best judgment or (2) representatives to provide stakeholder advice. We do not take issue with representative appointments when the members are, in fact, appointed to represent a particular interest or view of an entity or group with an interest in the matter before the committees, and they are fully informed as to the point of view or interest they are to represent. Further, the reports state that Interior officials noted that many of their committees addressing federal land management issues are not scientific and technical in content and, in their view, are appropriately staffed with representative members. The reports do indicate that committees classified as scientific and technical, as well as others that address scientific and technical issues, are those for which advice on behalf of the government on the basis of members' best judgment is typically sought, rather than stakeholder advice. Interior has 11 committees with 288 members that are classified by the agency as scientific and technical committees in GSA's

FACA database, and some other committees not so classified also address scientific and technical issues.

11. We are not certain what Interior means in stating that “GAO’s generalization that representation of fields of expertise is not appropriate ignores the importance of such representation to some committees.” However, the comment does suggest that Interior continues to believe that it is appropriate to appoint members to represent their field of expertise as representatives, rather than as special government employees. We and OGE disagree with this interpretation of OGE’s guidance on appointments to advisory committees. Representatives are to espouse a particular point of view of a party with an interest in the matter, whereas experts having specific expertise provide advice on behalf of the government on the basis of their best judgment. Thus, experts in various fields are more appropriately appointed as special government employees. (Subsequent to sending its comment letter, Interior clarified that the second sentence of this comment should read “However, we agree that agencies *should* have proper guidance in how and when to use such expertise.”.)
12. We have removed the reference to January 2004 in this instance, reporting that Interior officials told us that they have begun to insert standard language in the charters regarding the ethics obligations of the members. See also comment 6.
13. On the basis of a January 2004 discussion with Interior officials, we understood the officials to say that in reviewing their appointment designations as committee charters expire, the agency was erring on the side of representative appointments when the information relevant to the committee was ambiguous on the issue of appointments. However, in its comments, Interior officials said they disagreed with our characterization of their previous comments, and we have deleted the statement from the report. In its comments, Interior officials said that the agency was likely to continue to appoint representatives to committees whose purpose is to advise the Secretary on the management of public lands or other resources as they are seeking the views of local stakeholders in these instances. As noted above, we do not take issue with representative appointments when the members are, in fact, appointed to represent a particular interest or view of an entity or group with an interest in the matter before the committees,

and they are fully informed as to the point of view or interest they are to represent.

14. Interior states that “GAO agrees that the statute authorizing the National Cooperative Geologic Mapping Advisory Committee ‘calls for the committee to include...representatives,’ but then goes on to state that the statute does not ‘clearly and unambiguously call for these members to be appointed as representatives rather than special government employees.’” Interior then characterizes our statements as a contradiction and said that the Secretary of the Interior “reasonably may interpret such a statute by relying on its plain language....”. In our draft and final reports, we indicate that the statute did not appear to clearly mandate that the members be appointed as representatives—that is, it may be using the term “representative” generically—and we further noted that is not clear what point of view the private-sector and academia members could be called upon to provide if appointed as representatives. We continue to believe this statute does not clearly and unambiguously call for representative appointments and that this example underscores the need for OGE clarification regarding the use of the term representative, as we recommend.
15. As the draft and final reports state, FACA requires that all committees be balanced overall in terms of both points of view represented and the function to be performed. In our view, in order for advisory committees to be effective, it is important that they are, and are perceived as being, balanced. The draft and final reports identify processes that include an evaluation of potential members’ points of view *relevant to the subject matters advisory committees will consider* while focusing on the relevant expertise needed. The examples in the reports of agency processes that include such targeted evaluations of points of view ask potential members if they have made public statements or taken positions on the issue or matters the committee will consider, including expert legal testimony on the issue or matters. They also ask the potential members to identify and describe any reason they may be unable to provide impartial advice on matters before the committee and any reason their impartiality in the identified matter might be questioned. We disagree with Interior’s view that these inquiries would be intrusive, of little practical utility, and would turn qualified individuals away from government service. We also disagree with Interior’s view that we are saying that agencies need to understand all perceived biases of advisory committee members. As

shown above, the information identified as relevant to members' points of view is targeted and focuses on their points of view relevant to the subject matter to be considered. We disagree that such inquiries will turn qualified individuals away from government service, evidenced by the fact that the National Academies and EPA routinely obtain such relevant information from its prospective members. Finally, we recognize that representatives are placed on committees because of their stated stakeholder interests and do not assert that participation of representatives is improper.

16. We agree that committees, whether composed of representatives or special government employees, may invite outside experts to provide information or guidance. However, that does not affect the obligation agencies have to make appropriate decisions about appointing members as either representatives or special government employees.

Comments from the National Aeronautics and Space Administration

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

National Aeronautics and
Space Administration
Office of the Administrator
Washington, DC 20546-0001



March 26, 2004

Ms. Robin M. Nazzaro
Director
Natural Resources and Environment
United States General Accounting Office
Room 2T23
441 G Street, NW
Washington, DC 20548

Dear Ms. Nazzaro:

NASA has reviewed the draft GAO report, *Federal Advisory Committees: Additional Guidance Could Help Agencies Better Ensure Independence and Balance* (GAO-04-328). Advisory committees serve an important role for NASA and the agency appreciates the effort to strengthen the independence and balance of these committees.

The overall conclusion that agencies could benefit from additional guidance to better ensure independence, balance, and transparency is sound. However, NASA is concerned about the implications of the finding that would limit the use of representative appointments for advisory committees to those persons who represent specific organizations, rather than a community at large (e.g., industry, education, or a particular field of scientific research). It is important that NASA retain the flexibility to use representatives who do not represent specific stakeholders. This is because individual stakeholder organizations would not necessarily be in a position to represent the overall interests of a broader community, and neither would their employees. Finally, since each community at large is itself comprised of individual organizations or stakeholders (for example, particular universities or trade groups, in the case of education), advisory committee members appointed as Special Government Employees rather than representatives would be precluded by the conflict of interest laws from participating in any discussion relating to their own organization, and by extension their community at large. This would effectively eliminate the perspective they were appointed to provide.

In conclusion, in order to permit agencies to receive the views of entire communities, not just individual organizations, the draft recommendation should be modified to request that the Office of Government Ethics' guidance allow for the appointment of representatives of stakeholder communities as well as individual stakeholder organizations. Mr. Andrew Falcon, NASA's

See comment 1.

See comment 2.

2

Advisory Committee Management Officer, is available to discuss this matter further, and can be reached at (202) 358-2465.

I look forward to receiving a copy of the final report when available.

Cordially,



Frederick D. Gregory
Deputy Administrator

The following are GAO's comments on the National Aeronautics and Space Administration's letter dated March 26, 2004.

GAO Comments

1. NASA's comments support the appointment of federal advisory committee members as representative of their fields of expertise on the basis that some experts would not be able to serve as special government employees due to financial conflicts of interest. First, this view conflicts with OGE's and our view that representatives are not appropriately appointed to represent fields of expertise (see comment 2 below). Second, this view does not recognize that agencies may grant waivers to members to serve on advisory committees upon determining that either (1) the conflict is insignificant or (2) the need for the member's expertise outweighs the conflict.¹ Our draft and final reports discuss waivers and some promising practices regarding the disclosure of such waivers to the public and among committee members.
2. NASA also recommends that the OGE guidance allow for the appointment of representatives of "stakeholder communities" as well as individual stakeholder organizations. NASA identifies those that may represent a community as industry, education, or a particular field of expertise. We note that OGE guidance on representative appointments states that representatives may speak for stakeholders—that is, firms or an industry, labor or agriculture, or for any other recognizable group of persons with an interest in the matter under consideration. Thus, we believe that NASA can appoint experts as representatives to provide the views of, for example, the aerospace industry—if these experts are to provide stakeholder advice on matters in which the aerospace industry has an interest. If, however, NASA wants such experts to provide advice on behalf of the government on the basis of their individual and expert judgment, the appointments would be appropriately made as special government employees. These individuals would then be reviewed for potential financial conflicts of interest; if conflicts were identified, the conflicts would require mitigation. Regarding NASA's support for representatives providing the views of "stakeholder communities," we continue to believe that fields of expertise generally are not appropriately considered to be

¹This view also provides support that OGE clarification on this issue is needed so that agencies can make appropriate decisions regarding representative appointments to federal advisory committees.

stakeholder communities. Specifically, fields of expertise may be defined as a stakeholder community only in instances where the subject matter a committee is addressing would have a particular impact on a field of expertise—for example, biologists, teachers, or doctors—but not in cases where the experts are called upon to provide expert advice on the basis of their individual judgment.

Comments from the Department of Energy

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



Department of Energy
Office of Science
Washington, DC 20585

Office of the Director

APR 01 2004

Dr. Robin M. Nazzaro
Director, Natural Resources
and Environment
General Accounting Office
Washington, D.C. 20548

Dear Dr. Nazzaro:

In response to your letter of March 3, 2004 inviting comment on the proposed report *Federal Advisory Committees Additional Guidance Could Help Agencies Better Ensure Independence and Balance* (the Report), the Department of Energy (DOE) is pleased to submit three general sets of comments:

1. We are concerned about the implications of the "one-size-fits-all" approach that is being advocated in this Report. In particular, the special role that the Office of Science's six standing Advisory Committees play, within the U.S. scientific enterprise is not recognized and their overall effectiveness could be diminished if GAO recommendations are followed.
2. The suggestions made by GAO to change the way that DOE selects Advisory Committee members should be implemented only if they would result in clearly defined benefits for DOE programs. Without that clear articulation of benefits, which we believe is absent in this Report, DOE should continue to select members according to our specific needs and circumstances.
3. GAO's interpretation of the term "representative" is unpersuasive and would be an unsound basis of guidance for the Department.

"One-Size-Fits-All" Approach

The Report correctly notes that DOE views members of its scientific Advisory Committees as representatives, in contrast to persons who provide individually-centered advice on behalf of the government who should become special government employees and concludes that this practice:

"... exposes the relevant committees to potentially serious problems. Because representative members are not subject to reviews for potential conflicts of interest, allegation of conflicts of interest may call into question the integrity of the committee and jeopardize the credibility of the committee's work."



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See comment 1.

See comment 2.

See comment 3.

See comment 1.

See comment 1.

Report at 23.¹

While this critique of government-wide Advisory Committees, generally, may be meritorious, applying it to DOE's Office of Science (SC) Advisory Committees appears to stem from a misunderstanding of SC's unique structure and how its scientific advisory committees assist in accomplishing DOE's vital national missions. This critique also fails to note the many self-regulating mechanisms inherent within the SC Advisory Committee structure that greatly diminish, or even eliminate, the potential for conflicts of interest.

DOE's basic research portfolio, which is managed by SC, is organized according to *scientific disciplines* (physics, chemistry, mathematics, etc.). This organizational structure -- which is manifested through SC's budget categories, office structures, personnel assignments, etc. -- is critical to understanding why SC's Advisory Committee members are inherently representative.

The reason we say this is that SC's Advisory Committees are focused on the health of specific scientific disciplines. It might surprise you to learn that although more than 50% of SC's research dollars go to DOE's national laboratories, only 15% of the total membership of SC's Advisory Committees comes from those laboratories. The majority of representatives come from universities (65%), non-profits and other parts of the U.S. scientific community who have a stronger interest in the overall health of the disciplines that they represent than in the institutions that perform the research. As an example, the Nuclear Science Advisory Committee's charter states:

"Committee members shall be appointed with a view towards achieving balanced representation of the various subfields involved in basic nuclear science research by the Secretary of Energy following nomination by the Director, Office of Science, Department of Energy, with concurrence of the Assistant Director, Mathematical and Physical Sciences Directorate, National Science Foundation."

As a final note on this subject, we would invite you to speak individually with the SC Advisory Committee Chairs and Members and ask them if they believe that a Member's potential conflict of interest would escape the attention of other

See comment 4.

¹ DOE does not uniformly conclude that members of its advisory committees are "representative". When a member is selected for his or her expertise, as contrasted to being a representative, the member is appointed as a special government employee. For example, earlier this year, the Department determined that several individuals who were to be appointed to the Environmental Management Advisory Committee were selected because of their expertise in certain areas. These individuals will be serving on this Committee as special government employees.

See comment 2.

Committee Members or the SC professional program managers for very long. We believe you would find that conflicts of interest are simply not an issue for the reasons cited above.

Selection of Committee Membership

The Report urges agencies to obtain Committee members via a public process such as Federal Register notice. Here too, we believe that a one-size-fits-all approach is inappropriate.

In certain areas pertinent to its Advisory Committees, DOE funds and/or directly conducts all or virtually all United States research. This is particularly true for SC's Advisory Committees in Nuclear Physics, Fusion and High Energy Physics. These Committees provide advice to SC programs that support 90-100% of total Federal R&D in these scientific disciplines.

Their knowledge of their fields is such that the SC program managers and Advisory Committee Members know the research areas and credentials of all of the leading scientists in their field. In addition, the program managers are often aware of the personal biases, work ethic and degree of frankness that key players may bring to the Advisory Committee so that they are especially well qualified to select a balanced committee. A public selection process would not result in the selection of more appropriate members nor a more balanced committee. For this reason alone, DOE's current selection practice should be maintained.

But there is another compelling reason that DOE's processes for selection of Advisory Committees should not be changed – neither GAO nor any other study group has ever provided a rationale for change that would result in higher quality advice from the SC Advisory Committees. SC Advisory Committees, for the most part, have been in existence for decades. They perform their functions admirably and it is deemed a great honor within the U.S. scientific community to serve – without compensation – on these Committees. To our knowledge, no one who understands how they truly function has ever asserted that these Committees are anything less than superb and appropriate for the work that they do and the role that they perform within DOE and the U.S. scientific enterprise. Changing them for change's sake (or to force uniformity upon Federal advisory committees with widely ranging purposes) would be a serious error and could have significant (and adverse) consequences for the way that science is conducted in the United States.

Meaning of the Term "Representative"

The Report, at 21, states that "Office of Government Ethics guidance is overly-broad in that it states representatives may speak for an industry, or for labor or agriculture, or for any other recognizable group of persons including, on occasion, the public at large. We are concerned about the implications of this statement."

See comment 3.

DOE has certain Advisory Committees that it views as clearly representational in that they do speak for industries such as the National Coal Council and the National Petroleum Council, all of whose members are affiliated with energy companies or entities that have an organizational interest in the matters before the Councils. The Environmental Management Site Specific Advisory Board, which has many members who speak for the local public at large, was established to serve as a channel for communicating advice from the communities impacted by DOE activities. DOE is concerned that the report inadvertently and unnecessarily calls into question the use of representatives on these committees.

The Report, at 22, states that "at times the terms 'represent' or 'representative', when included in legislation or executive orders regarding the membership of advisory committees, does not always clearly indicate that the members are to be appointed to serve as representatives; sometimes these terms are used to define committee composition or balance." The Report does not cite the authority for its statement.

DOE is not persuaded of the soundness of this view as a source of guidance for the Department. Congress or the President use words like "expert" or "expertise" where it is intended for the members to be appointed as special government employees. Agencies should not be called on in this area to violate one of the basic rules of statutory construction and thereby to question the plain meaning of words.

Sincerely,



Raymond L. Orbach
Director
Office of Science

The following are GAO's comments on the Department of Energy's letter dated April 1, 2004.

GAO Comments

1. The first issue that Energy identifies as being of concern vis-à-vis its perception of "GAO's advocacy of a 'one-size-fits-all' approach" is, in essence, the governmentwide application of OGE's criteria for representative appointments. That is, while Energy does not disagree that it may be generally inappropriate to appoint advisory committee members to represent various fields of expertise, the department believes it is appropriate for its Office of Science to do so on the basis of the agency's "unique structure." Specifically, Energy says that the Office of Science's advisory committee members are inherently representative because the department's basic research portfolio is managed according to scientific disciplines (physics, chemistry, mathematics) and the related advisory committees are "focused on the health of specific scientific disciplines." In our view, the department's research structure is not unique and does not provide a basis for appointing experts providing advice on the basis of their best judgment as representatives. For example, both the National Science Foundation and NASA manage research portfolios by scientific disciplines, and they generally appoint members to their scientific and technical advisory committees appropriately as special government employees.¹ We believe Energy's comments support our view that OGE needs to clarify its guidance on representative appointments.
2. The second issue that Energy views as our advocacy of a "one-size-fits-all" approach concerns obtaining input on the "selection of committee membership." Energy does not specify whether it is addressing (1) nominations for committee membership from the public, (2) comments on proposed committee membership, or (3) both of these practices. In any event, the draft and final reports identify these as promising practices that are particularly relevant to those committees addressing sensitive or controversial issues, and not as practices that should be applied to all committees.

¹NASA's comments in response to this report indicate that NASA does, at least in some cases, appoint members to represent their expertise. Unlike Energy, NASA cites issues related to conflicts of interest as a basis for doing so.

3. Energy states that our interpretation of the term representative is unpersuasive and would be an unsound basis of guidance for the department. In elaborating on this perspective, the department makes two points. First, the department states that it has certain advisory committees, such as the National Coal Council and the National Petroleum Council, that it views as clearly representational in that the members do speak for energy companies or entities that have an organizational interest in the matter. Energy expresses concern that the report inadvertently and unnecessarily calls into question the use of representatives on these committees. We disagree. The draft and final reports state on page 1 that members of federal advisory committees may be appointed as (1) special government employees to provide advice on behalf of the government on the basis of their best judgment or (2) representatives to provide stakeholder advice. We do not take issue with representative appointments when the members are, in fact, appointed to represent a particular interest or view of an entity or group with an interest in the matter before the committees, and they are fully informed as to the point of view or interest they are to represent. Second, Energy questions our view that use of the terms “represent” or “representative” regarding the membership of advisory committees does not always clearly indicate that the members are to be appointed to serve as representatives. In its comments on the draft report, OGE stated that its guidance does not imply that any use of the word “represent” or its cognate forms in a statute or other document means that the members of the committees are not special government employees. Further, OGE stated that its guidance makes clear that careful attention to all relevant factors is required in order to determine whether the committee members are actually intended to serve as representatives of interest groups. While OGE disagreed with our recommendation that its guidance needed to be clarified to state that the term representative in statutes and charters may be used more generically to identify the appropriate balance of points of view or expertise and may not be specifying that representative appointments be made, we believe Energy’s comments on this point provide additional support for our recommendation.
4. The draft and final reports state that USDA, Energy, and Interior appoint most or all of the members to their federal advisory committees as representatives. We believe this statement accurately describes Energy’s appointments. For example, our draft and final reports state that in April 2003, Energy’s Acting Assistant General Counsel for General Law told us that all but one of the department’s

committees use only representatives members; we indicated that this one committee expired in June 2003. In its comments on the draft report, Energy identifies another committee for which DOE appointed several members in 2004 as special government employees.

GAO Contacts and Staff Acknowledgments

GAO Contacts

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Staff Acknowledgments

In addition to those individuals named above, Lindsay Bach, Ross Campbell, Bernice Dawson, John Delicath, Judy Pagano, and Amy Webbink made key contributions to this report.

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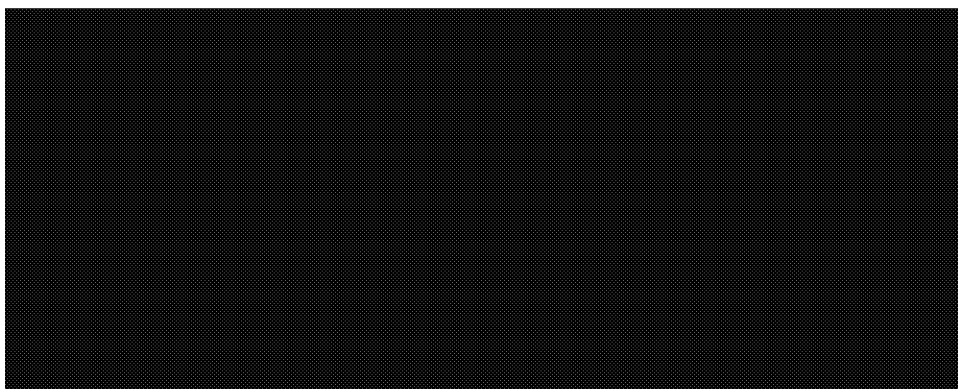
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as Red, or it would not be categorized at Severity Level I.

(3) The licensee submits a letter of intent by December 31, 2005, stating its intent to transition to 10 CFR 50.48(c).

After December 31, 2005, as addressed in (3) above, this enforcement discretion for implementation of corrective actions for existing identified noncompliances will not be available and the requirements of 10 CFR 50.48(b) (and any other requirements in fire protection license conditions) will be enforced in accordance with normal enforcement practices.

Dated at Rockville, MD, this 11th day of January, 2005.

For the Nuclear Regulatory Commission.
Annette L. Vietti-Cook,
Secretary of the Commission.
 [FR Doc. 05-887 Filed 1-13-05; 8:45 am]
 BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting Notice

AGENCY: Nuclear Regulatory Commission.

DATE: Week of January 17, 2005.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

ADDITIONAL MATTERS TO BE CONSIDERED:

Week of January 17, 2005

Tuesday, January 18, 2005

9:55 a.m. Affirmation Session (Public Meeting) (Tentative).

a. System Energy Resources Inc. (Early Site Permit for Grand Gulf Nuclear Site), Docket Number 52-009, Appeal by National Association for the Advancement of Colored People—Claiborne County, Mississippi Branch, Nuclear Information Service, Public Citizen, and Mississippi Chapter of the Sierra Club from LBP-04-19. (Tentative).

b. Louisiana Energy Services, L.P. (National Enrichment Facility) (Tentative).

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415-1292. Contact person for more information: Dave Gamberoni, (301) 415-1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: <http://www.nrc.gov/what-we-do/policy-making/schedule.html>.

* * * * *

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Dated: January 11, 2005.

Dave Gamberoni,

Office of the Secretary.

[FR Doc. 05-890 Filed 1-12-05; 9:32 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Final Information Quality Bulletin for Peer Review

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Final bulletin.

SUMMARY: On December 16, 2004, the Office of Management and Budget (OMB), in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review to the heads of departments and agencies (available at <http://www.whitehouse.gov/omb/memoranda/fy2005/m05-03.html>). This new guidance is designed to realize the benefits of meaningful peer review of the most important science disseminated by the Federal Government. It is part of an ongoing effort to improve the quality, objectivity, utility, and integrity of information disseminated by the Federal Government to the public. This final bulletin has benefited from an extensive stakeholder process. OMB originally requested comment on its "Proposed

Bulletin on Peer Review and Information Quality," published in the **Federal Register** on September 15, 2003. OMB received 187 public comments during the comment period (available at http://www.whitehouse.gov/omb/inforg/2003iq/iq_list.html). In addition, to improve the draft Bulletin, OMB encouraged federal agencies to sponsor a public workshop at the National Academy of Sciences (NAS). The NAS workshop (November 18, 2003, at the National Academies in Washington, DC) attracted several hundred participants, including leaders in the scientific community (available at http://www7.nationalacademies.org/stl/STL_Peer_Review_Agenda.html). OMB also participated in outreach activities with major scientific organizations and societies that had expressed specific interest in the draft Bulletin. A formal interagency review of the draft Bulletin, resulting in detailed comments from numerous Federal departments and agencies, was undertaken in collaboration with the White House Office of Science and Technology Policy. In light of the substantial interest in the Bulletin, including a wide range of constructive criticisms of the initial draft, OMB decided to issue a revised draft for further comment. This revised draft was published in the **Federal Register** on April 28, 2004, and solicited a second round of public comment. The revised draft stimulated a much smaller number of comments (57) (available at: http://www.whitehouse.gov/omb/inforg/peer2004/list_peer2004.html). OMB's response to the additional criticisms, suggestions, and refinements offered for consideration is available at: http://www.whitehouse.gov/omb/inforg/peer2004/peer_response.pdf. The final Bulletin includes refinements that strike a balance among the diverse perspectives expressed during the comment period. Part I of the **SUPPLEMENTARY INFORMATION** below provides background. Part II provides the text of the final Bulletin.

DATES: The requirements of this Bulletin, with the exception of those in Section V (Peer Review Planning), apply to information disseminated on or after June 16, 2005. However, they do not apply to information for which an agency has already provided a draft report and an associated charge to peer reviewers. The requirements in Section V regarding "highly influential scientific assessments" are effective June 16, 2005. The requirements in Section V regarding "influential scientific information" are effective December 16, 2005.

FOR FURTHER INFORMATION CONTACT: Dr. Margo Schwab, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., New Executive Office Building, Room 10201, Washington, DC 20503. Telephone (202) 395-5647 or email: OMB_peer_review@omb.eop.gov.
SUPPLEMENTARY INFORMATION:

Introduction

This Bulletin establishes that important scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal government. We published a proposed Bulletin on September 15, 2003. Based on public comments, we published a revised proposal for additional comment on April 28, 2004. We are now finalizing the April version, with minor revisions responsive to the public's comments.

The purpose of the Bulletin is to enhance the quality and credibility of the government's scientific information. We recognize that different types of peer review are appropriate for different types of information. Under this Bulletin, agencies are granted broad discretion to weigh the benefits and costs of using a particular peer review mechanism for a specific information product. The selection of an appropriate peer review mechanism for scientific information is left to the agency's discretion. Various types of information are exempted from the requirements of this Bulletin, including time-sensitive health and safety determinations, in order to ensure that peer review does not unduly delay the release of urgent findings.

This Bulletin also applies stricter minimum requirements for the peer review of highly influential scientific assessments, which are a subset of influential scientific information. A scientific assessment is an evaluation of a body of scientific or technical knowledge that typically synthesizes multiple factual inputs, data, models, assumptions, and/or applies best professional judgment to bridge uncertainties in the available information. To ensure that the Bulletin is not too costly or rigid, these requirements for more intensive peer review apply only to the more important scientific assessments disseminated by the Federal government.

Even for these highly influential scientific assessments, the Bulletin leaves significant discretion to the agency formulating the peer review plan. In general, an agency conducting a peer review of a highly influential scientific assessment must ensure that the peer review process is transparent

by making available to the public the written charge to the peer reviewers, the peer reviewers' report(s), and the agency's response to the peer reviewers' report(s). The agency selecting peer reviewers must ensure that the reviewers possess the necessary expertise. In addition, the agency must address reviewers' potential conflicts of interest (including those stemming from ties to regulated businesses and other stakeholders) and independence from the agency. This Bulletin requires agencies to adopt or adapt the committee selection policies employed by the National Academy of Sciences (NAS)¹ when selecting peer reviewers who are not government employees. Those that are government employees are subject to federal ethics requirements. The use of a transparent process, coupled with the selection of qualified and independent peer reviewers, should improve the quality of government science while promoting public confidence in the integrity of the government's scientific products.

Peer Review

Peer review is one of the important procedures used to ensure that the quality of published information meets the standards of the scientific and technical community. It is a form of deliberation involving an exchange of judgments about the appropriateness of methods and the strength of the author's inferences.² Peer review involves the review of a draft product for quality by specialists in the field who were not involved in producing the draft.

The peer reviewer's report is an evaluation or critique that is used by the authors of the draft to improve the product. Peer review typically evaluates the clarity of hypotheses, the validity of the research design, the quality of data collection procedures, the robustness of the methods employed, the appropriateness of the methods for the hypotheses being tested, the extent to which the conclusions follow from the analysis, and the strengths and limitations of the overall product.

Peer review has diverse purposes. Editors of scientific journals use reviewer comments to help determine whether a draft scientific article is of sufficient quality, importance, and interest to a field of study to justify

publication. Research funding organizations often use peer review to evaluate research proposals. In addition, some Federal agencies make use of peer review to obtain evaluations of draft information that contains important scientific determinations.

Peer review should not be confused with public comment and other stakeholder processes. The selection of participants in a peer review is based on expertise, with due consideration of independence and conflict of interest. Furthermore, notice-and-comment procedures for agency rulemaking do not provide an adequate substitute for peer review, as some experts—especially those most knowledgeable in a field—may not file public comments with Federal agencies.

The critique provided by a peer review often suggests ways to clarify assumptions, findings, and conclusions. For instance, peer reviews can filter out biases and identify oversights, omissions, and inconsistencies.³ Peer review also may encourage authors to more fully acknowledge limitations and uncertainties. In some cases, reviewers might recommend major changes to the draft, such as refinement of hypotheses, reconsideration of research design, modifications of data collection or analysis methods, or alternative conclusions. However, peer review does not always lead to specific modifications in the draft product. In some cases, a draft is in excellent shape prior to being submitted for review. In others, the authors do not concur with changes suggested by one or more reviewers.

Peer review may take a variety of forms, depending upon the nature and importance of the product. For example, the reviewers may represent one scientific discipline or a variety of disciplines; the number of reviewers may range from a few to more than a dozen; the names of each reviewer may be disclosed publicly or may remain anonymous (e.g., to encourage candor); the reviewers may be blinded to the authors of the report or the names of the authors may be disclosed to the reviewers; the reviewers may prepare individual reports or a panel of reviewers may be constituted to produce a collaborative report; panels may do their work electronically or they may meet together in person to discuss and prepare their evaluations; and reviewers may be compensated for their work or they may donate their time as a

¹ National Academy of Sciences, "Policy and Procedures on Committee Composition and Balance and Conflicts of Interest for Committees Used in the Development of Reports," May 2003; Available at: <http://www.nationalacademies.org/col/index.html>.

² Carnegie Commission on Science, Technology, and Government, *Risk and the Environment: Improving Regulatory Decision Making*, Carnegie Commission, New York, 1993: 75.

³ William W. Lowrance, *Modern Science and Human Values*, Oxford University Press, New York, NY 1985: 85.

contribution to science or public service.

For large, complex reports, different reviewers may be assigned to different chapters or topics. Such reports may be reviewed in stages, sometimes with confidential reviews that precede a public process of panel review. As part of government-sponsored peer review, there may be opportunity for written and/or oral public comments on the draft product.

The results of peer review are often only one of the criteria used to make decisions about journal publication, grant funding, and information dissemination. For instance, the editors of scientific journals (rather than the peer reviewers) make final decisions about a manuscript's appropriateness for publication based on a variety of considerations. In research-funding decisions, the reports of peer reviewers often play an important role, but the final decisions about funding are often made by accountable officials based on a variety of considerations. Similarly, when a government agency sponsors peer review of its own draft documents, the peer review reports are an important factor in information dissemination decisions but rarely are the sole consideration. Agencies are not expected to cede their discretion with regard to dissemination or use of information to peer reviewers; accountable agency officials must make the final decisions.

The Need for Stronger Peer Review Policies

There are a multiplicity of science advisory procedures used at Federal agencies and across the wide variety of scientific products prepared by agencies.⁴ In response to congressional inquiry, the U.S. General Accounting Office (now the Government Accountability Office) documented the variability in both the definition and implementation of peer review across agencies.⁵ The Carnegie Commission on Science, Technology and Government⁶ has highlighted the importance of "internal" scientific advice (within the agency) and "external" advice (through scientific advisory boards and other mechanisms).

A wide variety of authorities have argued that peer review practices at

federal agencies need to be strengthened.⁷ Some arguments focus on specific types of scientific products (e.g., assessments of health, safety and environmental hazards).⁸ The Congressional/Presidential Commission on Risk Assessment and Risk Management suggests that "peer review of economic and social science information should have as high a priority as peer review of health, ecological, and engineering information."⁹

Some agencies have formal peer review policies, while others do not. Even agencies that have such policies do not always follow them prior to the release of important scientific products.

Prior to the development of this Bulletin, there were no government-wide standards concerning when peer review is required and, if required, what type of peer review processes are appropriate. No formal interagency mechanism existed to foster cross-agency sharing of experiences with peer review practices and policies. Despite the importance of peer review for the credibility of agency scientific products, the public lacked a consistent way to determine when an important scientific information product is being developed by an agency, the type of peer review planned for that product, or whether there would be an opportunity to provide comments and data to the reviewers.

This Bulletin establishes minimum standards for when peer review is

required for scientific information and the types of peer review that should be considered by agencies in different circumstances. It also establishes a transparent process for public disclosure of peer review planning, including a Web-accessible description of the peer review plan that the agency has developed for each of its forthcoming influential scientific disseminations.

Legal Authority for the Bulletin

This Bulletin is issued under the Information Quality Act and OMB's general authorities to oversee the quality of agency information, analyses, and regulatory actions. In the Information Quality Act, Congress directed OMB to issue guidelines to "provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility and integrity of information" disseminated by Federal agencies. Public Law No. 106-554, § 515(a). The Information Quality Act was developed as a supplement to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, which requires OMB, among other things, to "develop and oversee the implementation of policies, principles, standards, and guidelines to * * * apply to Federal agency dissemination of public information." In addition, Executive Order 12866, 58 FR 51,735 (Oct. 4, 1993), establishes that OIRA is "the repository of expertise concerning regulatory issues," and it directs OMB to provide guidance to the agencies on regulatory planning. E.O. 12866, § 2(b). The Order also requires that "[e]ach agency shall base its decisions on the best reasonably obtainable scientific, technical, economic, or other information." E.O. 12866, § 1(b)(7). Finally, OMB has authority in certain circumstances to manage the agencies under the purview of the President's Constitutional authority to supervise the unitary Executive Branch. All of these authorities support this Bulletin.

The Requirements of This Bulletin

This Bulletin addresses peer review of scientific information disseminations that contain findings or conclusions that represent the official position of one or more agencies of the Federal government.

Section I: Definitions

Section I provides definitions that are central to this Bulletin. Several terms are identical to or based on those used in OMB's government-wide information quality guidelines, 67 FR 8452 (Feb. 22, 2002), and the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

⁴ Sheila Jasanoff, *The Fifth Branch: Science Advisors as Policy Makers*, Harvard University Press, Boston, 1990.

⁵ U.S. General Accounting Office, *Federal Research: Peer Review Practices at Federal Agencies Vary*, GAO/RCED-99-99, Washington, DC, 1999.

⁶ Carnegie Commission on Science, Technology, and Government, *Risk and the Environment: Improving Regulatory Decision Making*, Carnegie Commission, New York, 1993: 90.

⁷ National Academy of Sciences, *Peer Review in the Department of Energy—Office of Science and Technology*, Interim Report, National Academy Press, Washington, DC, 1997; National Academy of Sciences, *Peer Review in Environmental Technology Development: The Department of Energy—Office of Science and Technology*, National Academy Press, Washington, DC, 1998; National Academy of Sciences, *Strengthening Science at the U.S. Environmental Protection Agency: Research-Management and Peer-Review Practices*, National Academy Press, Washington, DC, 2000; U.S. General Accounting Office, *EPA's Science Advisory Board Panels: Improved Policies and Procedures Needed to Ensure Independence and Balance*, GAO-01-536, Washington, DC, 2001; U.S. Environmental Protection Agency, Office of Inspector General, *Pilot Study: Science in Support of Rulemaking 2003-P-00003*, Washington, DC, 2002; Carnegie Commission on Science, Technology, and Government, *In the National Interest: The Federal Government in the Reform of K-12 Math and Science Education*, Carnegie Commission, New York, 1991; U.S. General Accounting Office, *Endangered Species Program: Information on How Funds Are Allocated and What Activities are Emphasized*, GAO-02-581, Washington, DC, 2002.

⁸ National Research Council, *Science and Judgment in Risk Assessment*, National Academy Press, Washington, DC, 1994.

⁹ Presidential/Congressional Commission on Risk Assessment and Risk Management, *Risk Assessment and Risk Management in Regulatory Decision-Making*, 1997:103.

The term "Administrator" means the Administrator of the Office of Information and Regulatory Affairs in the Office of Management and Budget (OIRA).

The term "agency" has the same meaning as in the Paperwork Reduction Act, 44 U.S.C. 3502(1).

The term "Information Quality Act" means Section 515 of Public Law 106-554 (Pub. L. No. 106-554, § 515, 114 Stat. 2763, 2763A-153-154 (2000)).

The term "dissemination" means agency initiated or sponsored distribution of information to the public. Dissemination does not include distribution limited to government employees or agency contractors or grantees; intra- or inter-agency use or sharing of government information; or responses to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act, the Government Performance and Results Act, or similar laws. This definition also excludes distribution limited to correspondence with individuals or persons, press releases, archival records, public filings, subpoenas and adjudicative processes. In the context of this Bulletin, the definition of "dissemination" modifies the definition in OMB's government-wide information quality guidelines to address the need for peer review prior to official dissemination of the information product. Accordingly, under this Bulletin, "dissemination" also excludes information distributed for peer review in compliance with this Bulletin or shared confidentially with scientific colleagues, provided that the distributing agency includes an appropriate and clear disclaimer on the information, as explained more fully below. Finally, the Bulletin does not directly cover information supplied to the government by third parties (e.g., studies by private consultants, companies and private, non-profit organizations, or research institutions such as universities). However, if an agency plans to disseminate information supplied by a third party (e.g., using this information as the basis for an agency's factual determination that a particular behavior causes a disease), the requirements of the Bulletin apply, if the dissemination is "influential".

In cases where a draft report or other information is released by an agency solely for purposes of peer review, a question may arise as to whether the draft report constitutes an official "dissemination" under information-quality guidelines. Section I instructs agencies to make this clear by presenting the following disclaimer in the report:

This information is distributed solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. It has not been formally disseminated by [the agency]. It does not represent and should not be construed to represent any agency determination or policy.

In cases where the information is highly relevant to specific policy or regulatory deliberations, this disclaimer shall appear on each page of a draft report. Agencies also shall discourage state, local, international and private organizations from using information in draft reports that are undergoing peer review. Draft influential scientific information presented at scientific meetings or shared confidentially with colleagues for scientific input prior to peer review shall include the disclaimer: "The Findings and Conclusions in This Report (Presentation) Have Not Been Formally Disseminated by [The Agency] and Should Not Be Construed to Represent Any Agency Determination or Policy."

An information product is not covered by the Bulletin unless it represents an official view of one or more departments or agencies of the Federal government. Accordingly, for the purposes of this Bulletin, "dissemination" excludes research produced by government-funded scientists (e.g., those supported extramurally or intramurally by Federal agencies or those working in state or local governments with Federal support) if that information is not represented as the views of a department or agency (i.e., they are not official government disseminations). For influential scientific information that does not have the imprimatur of the Federal government, scientists employed by the Federal government are required to include in their information product a clear disclaimer that "the findings and conclusions in this report are those of the author(s) and do not necessarily represent the views of the funding agency." A similar disclaimer is advised for non-government employees who publish government-funded research.

For the purposes of the peer review Bulletin, the term "scientific information" means factual inputs, data, models, analyses, technical information, or scientific assessments related to such disciplines as the behavioral and social sciences, public health and medical sciences, life and earth sciences, engineering, or physical sciences. This includes any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual

forms. This definition includes information that an agency disseminates from a Web page, but does not include the provision of hyperlinks on a Web page to information that others disseminate. This definition excludes opinions, where the agency's presentation makes clear that an individual's opinion, rather than a statement of fact or of the agency's findings and conclusions, is being offered.

The term "influential scientific information" means scientific information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions. In the term "influential scientific information," the term "influential" should be interpreted consistently with OMB's government-wide information quality guidelines and the information quality guidelines of the agency. Information dissemination can have a significant economic impact even if it is not part of a rulemaking. For instance, the economic viability of a technology can be influenced by the government's characterization of its attributes. Alternatively, the Federal government's assessment of risk can directly or indirectly influence the response actions of state and local agencies or international bodies.

One type of scientific information is a scientific assessment. For the purposes of this Bulletin, the term "scientific assessment" means an evaluation of a body of scientific or technical knowledge, which typically synthesizes multiple factual inputs, data, models, assumptions, and/or applies best professional judgment to bridge uncertainties in the available information. These assessments include, but are not limited to, state-of-science reports; technology assessments; weight-of-evidence analyses; meta-analyses; health, safety, or ecological risk assessments; toxicological characterizations of substances; integrated assessment models; hazard determinations; or exposure assessments. Such assessments often draw upon knowledge from multiple disciplines. Typically, the data and models used in scientific assessments have already been subject to some form of peer review (e.g., refereed journal peer review or peer review under Section II of this Bulletin).

Section II: Peer Review of Influential Scientific Information

Section II requires each agency to subject "influential" scientific information to peer review prior to dissemination. For dissemination of

influential scientific information, Section II provides agencies broad discretion in determining what type of peer review is appropriate and what procedures should be employed to select appropriate reviewers. Agencies are directed to choose a peer review mechanism that is adequate, giving due consideration to the novelty and complexity of the science to be reviewed, the relevance of the information to decision making, the extent of prior peer reviews, and the expected benefits and costs of additional review.

The National Academy of Public Administration suggests that the intensity of peer review should be commensurate with the significance of the information being disseminated and the likely implications for policy decisions.¹⁰ Furthermore, agencies need to consider tradeoffs between depth of peer review and timeliness.¹¹ More rigorous peer review is necessary for information that is based on novel methods or presents complex challenges for interpretation. Furthermore, the need for rigorous peer review is greater when the information contains precedent-setting methods or models, presents conclusions that are likely to change prevailing practices, or is likely to affect policy decisions that have a significant impact.

This tradeoff can be considered in a benefit-cost framework. The costs of peer review include both the direct costs of the peer review activity and those stemming from potential delay in government and private actions that can result from peer review. The benefits of peer review are equally clear: the insights offered by peer reviewers may lead to policy with more benefits and/or fewer costs. In addition to contributing to strong science, peer review, if performed fairly and rigorously, can build consensus among stakeholders and reduce the temptation for courts and legislators to second-guess or overturn agency actions.¹² While it will not always be easy for agencies to quantify the benefits and costs of peer review, agencies are

encouraged to approach peer review from a benefit-cost perspective.

Regardless of the peer review mechanism chosen, agencies should strive to ensure that their peer review practices are characterized by both scientific integrity and process integrity. "Scientific integrity," in the context of peer review, refers to such issues as "expertise and balance of the panel members; the identification of the scientific issues and clarity of the charge to the panel; the quality, focus and depth of the discussion of the issues by the panel; the rationale and supportability of the panel's findings; and the accuracy and clarity of the panel report." "Process integrity" includes such issues as "transparency and openness, avoidance of real or perceived conflicts of interest, a workable process for public comment and involvement," and adherence to defined procedures.¹³

When deciding what type of peer review mechanism is appropriate for a specific information product, agencies will need to consider at least the following issues: Individual versus panel review; timing; scope of the review; selection of reviewers; disclosure and attribution; public participation; disposition of reviewer comments; and adequacy of prior peer review.

Individual Versus Panel Review

Letter reviews by several experts generally will be more expeditious than convening a panel of experts. Individual letter reviews are more appropriate when a draft document covers only one discipline or when premature disclosure of a sensitive report to a public panel could cause harm to government or private interests. When time and resources warrant, panels are preferable, as they tend to be more deliberative than individual letter reviews and the reviewers can learn from each other. There are also multi-stage processes in which confidential letter reviews are conducted prior to release of a draft document for public notice and comment, followed by a formal panel review. These more rigorous and expensive processes are particularly valuable for highly complex, multidisciplinary, and more important documents, especially those that are novel or precedent-setting.

Timing of Peer Review

As a general rule, it is most useful to consult with peers early in the process

of producing information. For example, in the context of risk assessments, it is valuable to have the choice of input data and the specification of the model reviewed by peers before the agency invests time and resources in implementing the model and interpreting the results. "Early" peer review occurs in time to "focus attention on data inadequacies in time for corrections."

When an information product is a critical component of rule-making, it is important to obtain peer review before the agency announces its regulatory options so that any technical corrections can be made before the agency becomes invested in a specific approach or the positions of interest groups have hardened. If review occurs too late, it is unlikely to contribute to the course of a rulemaking. Furthermore, investing in a more rigorous peer review early in the process "may provide net benefit by reducing the prospect of challenges to a regulation that later may trigger time consuming and resource-draining litigation."¹⁴

Scope of the Review

The "charge" contains the instructions to the peer reviewers regarding the objective of the peer review and the specific advice sought. The importance of the information, which shapes the goal of the peer review, influences the charge. For instance, the goal of the review might be to determine the utility of a body of literature for drawing certain conclusions about the feasibility of a technology or the safety of a product. In this context, an agency might ask reviewers to determine the relevance of conclusions drawn in one context for other contexts (e.g., different exposure conditions or patient populations).

The charge to the reviewers should be determined in advance of the selection of the reviewers. In drafting the charge, it is important to remember the strengths and limitations of peer review. Peer review is most powerful when the charge is specific and steers the reviewers to specific technical questions while also directing reviewers to offer a broad evaluation of the overall product.

Uncertainty is inherent in science, and in many cases individual studies do not produce conclusive evidence. Thus, when an agency generates a scientific

¹⁰ National Academy of Public Administration, *Setting Priorities, Getting Results: A New Direction for EPA*, National Academy Press, Washington, DC, 1995:23.

¹¹ Presidential/Congressional Commission on Risk Assessment and Risk Management, *Risk Commission Report*, 1997.

¹² Mark R. Powell, *Science at EPA: Information in the Regulatory Process*, Resources for the Future, Washington, DC, 1999: 148, 176; Sheila Jasanoff, *The Fifth Branch: Science Advisors as Policy Makers*, Harvard University Press, Boston, 1990: 242.

¹³ ILSI Risk Sciences Institute, "Policies and Procedures: Model Peer Review Center of Excellence," 2002: 4. Available at <http://rsi.ilsr.org/file/Policies&Procedures.pdf>.

¹⁴ Fred Anderson, Mary Ann Chirba Martin, E. Donald Elliott, Cynthia Farina, Ernest Gellhorn, John D. Graham, C. Boyden Gray, Jeffrey Holmstead, Ronald M. Levin, Lars Noah, Katherine Rhyne, Jonathan Baert Wiener, "Regulatory Improvement Legislation: Risk Assessment, Cost-Benefit Analysis, and Judicial Review," *Duke Environmental Law and Policy Forum*, Fall 2000, vol. XI (1): 132.

assessment, it is presenting its scientific judgment about the accumulated evidence rather than scientific fact.¹⁵ Specialists attempt to reach a consensus by weighing the accumulated evidence. Peer reviewers can make an important contribution by distinguishing scientific facts from professional judgments. Furthermore, where appropriate, reviewers should be asked to provide advice on the reasonableness of judgments made from the scientific evidence. However, the charge should make clear that the reviewers are not to provide advice on the policy (e.g., the amount of uncertainty that is acceptable or the amount of precaution that should be embedded in an analysis). Such considerations are the purview of the government.¹⁶

The charge should ask that peer reviewers ensure that scientific uncertainties are clearly identified and characterized. Since not all uncertainties have an equal effect on the conclusions drawn, reviewers should be asked to ensure that the potential implications of the uncertainties for the technical conclusions drawn are clear. In addition, peer reviewers might be asked to consider value-of-information analyses that identify whether more research is likely to decrease key uncertainties.¹⁷ Value-of-information analysis was suggested for this purpose in the report of the Presidential/Congressional Commission on Risk Assessment and Risk Management.¹⁸ A description of additional research that would appreciably influence the conclusions of the assessment can help an agency assess and target subsequent efforts.

Selection of Reviewers

Expertise. The most important factor in selecting reviewers is expertise: ensuring that the selected reviewer has the knowledge, experience, and skills necessary to perform the review. Agencies shall ensure that, in cases where the document being reviewed spans a variety of scientific disciplines or areas of technical expertise, reviewers who represent the necessary spectrum of knowledge are chosen. For instance, expertise in applied mathematics and

statistics is essential in the review of models, thereby allowing an audit of calculations and claims of significance and robustness based on the numeric data.¹⁹ For some reviews, evaluation of biological plausibility is as important as statistical modeling. Agencies shall consider requesting that the public, including scientific and professional societies, nominate potential reviewers.

Balance. While expertise is the primary consideration, reviewers should also be selected to represent a diversity of scientific perspectives relevant to the subject. On most controversial issues, there exists a range of respected scientific viewpoints regarding interpretation of the available literature. Inviting reviewers with competing views on the science may lead to a sharper, more focused peer review. Indeed, as a final layer of review, some organizations (e.g., the National Academy of Sciences) specifically recruit reviewers with strong opinions to test the scientific strength and balance of their reports. The NAS policy on committee composition and balance²⁰ highlights important considerations associated with perspective, bias, and objectivity.

Independence. In its narrowest sense, independence in a reviewer means that the reviewer was not involved in producing the draft document to be reviewed. However, for peer review of some documents, a broader view of independence is necessary to assure credibility of the process. Reviewers are generally not employed by the agency or office producing the document. As the National Academy of Sciences has stated, "external experts often can be more open, frank, and challenging to the status quo than internal reviewers, who may feel constrained by organizational concerns."²¹ The Carnegie Commission on Science, Technology, and Government notes that "external science advisory boards serve a critically important function in providing regulatory agencies with expert advice on a range of issues."²² However, the choice of reviewers requires a case-by-

case analysis. Reviewers employed by other Federal and state agencies may possess unique or indispensable expertise.

A related issue is whether government-funded scientists in universities and consulting firms have sufficient independence from the federal agencies that support their work to be appropriate peer reviewers for those agencies.²³ This concern can be mitigated in situations where the scientist initiates the hypothesis to be tested or the method to be developed, which effectively creates a buffer between the scientist and the agency. When an agency awards grants through a competitive process that includes peer review, the agency's potential to influence the scientist's research is limited. As such, when a scientist is awarded a government research grant through an investigator-initiated, peer-reviewed competition, there generally should be no question as to that scientist's ability to offer independent scientific advice to the agency on other projects. This contrasts, for example, to a situation in which a scientist has a consulting or contractual arrangement with the agency or office sponsoring a peer review. Likewise, when the agency and a researcher work together (e.g., through a cooperative agreement) to design or implement a study, there is less independence from the agency. Furthermore, if a scientist has repeatedly served as a reviewer for the same agency, some may question whether that scientist is sufficiently independent from the agency to be employed as a peer reviewer on agency-sponsored projects.

As the foregoing suggests, independence poses a complex set of questions that must be considered by agencies when peer reviewers are selected. In general, agencies shall make an effort to rotate peer review responsibilities across the available pool of qualified reviewers, recognizing that in some cases repeated service by the same reviewer is needed because of essential expertise.

Some agencies have built entire organizations to provide independent scientific advice while other agencies tend to employ ad hoc scientific panels on specific issues. Respect for the independence of reviewers may be enhanced if an agency collects names of potential reviewers (based on considerations of expertise and reputation for objectivity) from the

¹⁵ Mark R. Powell, *Science at EPA: Information in the Regulatory Process*, Resources for the Future, Washington, DC, 1999: 139.

¹⁶ *Ibid.*

¹⁷ Granger Morgan and Max Henrion, "The Value of Knowing How Little You Know," *Uncertainty: A Guide to Dealing with Uncertainty in Quantitative Risk and Policy Analysis*, Cambridge University Press, 1990: 307.

¹⁸ Presidential/Congressional Commission on Risk Assessment and Risk Management, Risk Commission Report, 1997, Volume 1: 39, Volume 2: 91.

¹⁹ William W. Lowrance, *Modern Science and Human Values*, Oxford University Press, New York, NY 1985: 86.

²⁰ National Academy of Sciences, "Policy and Procedures on Committee Composition and Balance and Conflicts of Interest for Committees Used in the Development of Reports," May 2003: Available at: <http://www.nationalacademies.org/col/index.html>.

²¹ National Research Council, *Peer Review in Environmental Technology Development Programs: The Department of Energy's Office of Science and Technology*, National Academy Press, Washington, DC, 1998: 3.

²² Carnegie Commission on Science, Technology, and Government, *Risk and the Environment: Improving Regulatory Decision Making*, Carnegie Commission, New York, 1993: 90.

²³ Lars Noah, "Scientific 'Republicanism': Expert Peer Review and the Quest for Regulatory Deliberation," *Emory Law Journal*, Atlanta, Fall 2000:1066.

public, including scientific or professional societies. The Department of Energy's use of the American Society of Mechanical Engineers to identify potential peer reviewers from a variety of different scientific societies provides an example of how professional societies can assist in the development of an independent peer review panel.²⁴

Conflict of Interest. The National Academy of Sciences defines "conflict of interest" as any financial or other interest that conflicts with the service of an individual on the review panel because it could impair the individual's objectivity or could create an unfair competitive advantage for a person or organization.²⁵ This standard provides a useful benchmark for agencies to consider in selecting peer reviewers. Agencies shall make a special effort to examine prospective reviewers' potential financial conflicts, including significant investments, consulting arrangements, employer affiliations and grants/contracts. Financial ties of potential reviewers to regulated entities (e.g., businesses), other stakeholders, and regulatory agencies shall be scrutinized when the information being reviewed is likely to be relevant to regulatory policy. The inquiry into potential conflicts goes beyond financial investments and business relationships and includes work as an expert witness, consulting arrangements, honoraria and sources of grants and contracts. To evaluate any real or perceived conflicts of interest with potential reviewers and questions regarding the independence of reviewers, agencies are referred to federal ethics requirements, applicable standards issued by the Office of Government Ethics, and the prevailing practices of the National Academy of Sciences. Specifically, peer reviewers who are Federal employees (including special government employees) are subject to Federal requirements governing conflicts of interest. *See, e.g.*, 18 U.S.C. 208; 5 CFR part 2635 (2004). With respect to reviewers who are not Federal employees, agencies shall adopt or adapt the NAS policy for committee selection with respect to evaluating conflicts of interest.²⁶ Both the NAS and the Federal government recognize that under certain circumstances some

conflict may be unavoidable in order to obtain the necessary expertise. *See, e.g.*, 18 U.S.C. 208(b)(3); 5 U.S.C. App. 15 (governing NAS committees). To improve the transparency of the process, when an agency determines that it is necessary to use a reviewer with a real or perceived conflict of interest, the agency should consider publicly disclosing those conflicts. In such situations, the agency shall inform potential reviewers of such disclosure at the time they are recruited.

Disclosure and Attribution: Anonymous Versus Identified

Peer reviewers must have a clear understanding of how their comments will be conveyed to the authors of the document and to the public. When peer review of government reports is considered, the case for transparency is stronger, particularly when the report addresses an issue with significant ramifications for the public and private sectors. The public may not have confidence in the peer review process when the names and affiliations of the peer reviewers are unknown. Without access to the comments of reviewers, the public is incapable of determining whether the government has seriously considered the comments of reviewers and made appropriate revisions. Disclosure of the slate of reviewers and the substance of their comments can strengthen public confidence in the peer review process. It is common at many journals and research funding agencies to disclose annually the slate of reviewers. Moreover, the National Academy of Sciences now discloses the names of its peer reviewers, without disclosing the substance of their comments. The science advisory committees to regulatory agencies typically disclose at least a summary of the comments of reviewers as well as their names and affiliations.

For agency-sponsored peer review conducted under Sections II and III, this Bulletin strikes a compromise by requiring disclosure of the identity of the reviewers, but not public attribution of specific comments to specific reviewers. The agency has considerable discretion in the implementation of this compromise (e.g., summarizing the views of reviewers as a group or disclosing individual reviewer comments without attribution). Whatever approach is employed, the agency must inform reviewers in advance of how it intends to address this issue. Information about a reviewer retrieved from a record filed by the reviewer's name or other identifier may be disclosed only as permitted by the conditions of disclosure enumerated in

the Privacy Act, 5 U.S.C. 552a as amended, and as interpreted in OMB implementing guidance, 40 FR 28,948 (July 9, 1975).

Public Participation

Public comments can be important in shaping expert deliberations. Agencies may decide that peer review should precede an opportunity for public comment to ensure that the public receives the most scientifically strong product (rather than one that may change substantially as a result of peer reviewer suggestions). However, there are situations in which public participation in peer review is an important aspect of obtaining a high-quality product through a credible process. Agencies, however, should avoid open-ended comment periods, which may delay completion of peer reviews and complicate the completion of the final work product.

Public participation can take a variety of forms, including opportunities to provide oral comments before a peer review panel or requests to provide written comments to the peer reviewers. Another option is for agencies to publish a "request for comment" or other notice in which they solicit public comment before a panel of peer reviewers performs its work.

Disposition of Reviewer Comments

A peer review is considered completed once the agency considers and addresses the reviewers' comments. All reviewer comments should be given consideration and be incorporated where relevant and valid. For instance, in the context of risk assessments, the National Academy of Sciences recommends that peer review include a written evaluation made available for public inspection.²⁷ In cases where there is a public panel, the agency should plan publication of the peer review report(s) and the agency's response to peer reviewer comments.

In addition, the credibility of the final scientific report is likely to be enhanced if the public understands how the agency addressed the specific concerns raised by the peer reviewers. Accordingly, agencies should consider preparing a written response to the peer review report explaining: The agency's agreement or disagreement, the actions the agency has undertaken or will undertake in response to the report, and (if applicable) the reasons the agency believes those actions satisfy any key

²⁴ American Society for Mechanical Engineers, *Assessment of Technologies Supported by the Office of Science and Technology. Department of Energy: Results of the Peer Review for Fiscal Year 2002*. ASME Technical Publishing, Danvers, MA, 2003.

²⁵ National Academy of Sciences, "Policy and Procedures on Committee Composition and Balance and Conflicts of Interest for Committees Used in the Development of Reports," May 2003; Available at: <http://www.nationalacademies.org/col/index.html>.

²⁶ *Ibid.*

²⁷ National Research Council, *Risk Assessment in the Federal Government: Managing the Process*, National Academy Press, Washington, DC, 1983.

concerns or recommendations in the report.

Adequacy of Prior Peer Review

In light of the broad range of information covered by Section II, agencies are directed to choose a peer review mechanism that is adequate, giving due consideration to the novelty and complexity of the science to be reviewed, the relevance of the information to decision making, the extent of prior peer reviews, and the expected benefits and costs of additional review.

Publication in a refereed scientific journal may mean that adequate peer review has been performed. However, the intensity of peer review is highly variable across journals. There will be cases in which an agency determines that a more rigorous or transparent review process is necessary. For instance, an agency may determine a particular journal review process did not address questions (e.g., the extent of uncertainty inherent in a finding) that the agency determines should be addressed before disseminating that information. As such, prior peer review and publication is not by itself sufficient grounds for determining that no further review is necessary.

Section III: Peer Review of Highly Influential Scientific Assessments

Whereas Section II leaves most of the considerations regarding the form of the peer review to the agency's discretion, Section III requires a more rigorous form of peer review for highly influential scientific assessments. The requirements of Section II of this Bulletin apply to Section III, but Section III has some additional requirements, which are discussed below. In planning a peer review under Section III, agencies typically will have to devote greater resources and attention to the issues discussed in Section II, i.e., individual versus panel review; timing; scope of the review; selection of reviewers; disclosure and attribution; public participation; and disposition of reviewer comments.

A scientific assessment is considered "highly influential" if the agency or the OIRA Administrator determines that the dissemination could have a potential impact of more than \$500 million in any one year on either the public or private sector or that the dissemination is novel, controversial, or precedent-setting, or has significant interagency interest. One of the ways information can exert economic impact is through the costs or benefits of a regulation based on the disseminated information. The qualitative aspect of this definition may

be most useful in cases where it is difficult for an agency to predict the potential economic effect of dissemination. In the context of this Bulletin, it may be either the approach used in the assessment or the interpretation of the information itself that is novel or precedent-setting. Peer review can be valuable in establishing the bounds of the scientific debate when methods or interpretations are a source of controversy among interested parties. If information is covered by Section III, an agency is required to adhere to the peer review procedures specified in Section III.

Section III(2) clarifies that the principal findings, conclusions and recommendations in official reports of the National Academy of Sciences that fall under this Section are generally presumed not to require additional peer review. All other highly influential scientific assessments require a review that meets the requirements of Section III of this Bulletin.

With regard to the selection of reviewers, Section III(3)(a) emphasizes consideration of expertise and balance. As discussed in Section II, expertise refers to the required knowledge, experience and skills required to perform the review whereas balance refers to the need for diversity in scientific perspective and disciplines. We emphasize that the term "balance" here refers not to balancing of stakeholder or political interests but rather to a broad and diverse representation of respected perspectives and intellectual traditions within the scientific community, as discussed in the NAS policy on committee composition and balance.²⁸

Section III(3)(b) instructs agencies to consider barring participation by scientists with a conflict of interest. The conflict of interest standards for Sections II and III of the Bulletin are identical. As discussed under Section II, those peer reviewers who are Federal employees, including Special Government Employees, are subject to applicable statutory and regulatory standards for Federal employees. For non-government employees, agencies shall adopt or adapt the NAS policy for committee member selection with respect to evaluating conflicts of interest.

Section III(3)(c) instructs agencies to ensure that reviewers are independent of the agency sponsoring the review. Scientists employed by the sponsoring

agency are not permitted to serve as reviewers for highly influential scientific assessments. This does not preclude Special Government Employees, such as academics appointed to advisory committees, from serving as peer reviewers. The only exception to this ban would be the rare situation in which a scientist from a different agency of a Cabinet-level department than the agency that is disseminating the scientific assessment has expertise, experience and skills that are essential but cannot be obtained elsewhere. In evaluating the need for this exception, agencies shall use the NAS criteria for assessing the appropriateness of using employees of sponsors (e.g., the government scientist must not have had any part in the development or prior review of the scientific information and must not hold a position of managerial or policy responsibility).

We also considered whether a reviewer can be independent of the agency if that reviewer receives a substantial amount of research funding from the agency sponsoring the review. Research grants that were awarded to the scientist based on investigator-initiated, competitive, peer-reviewed proposals do not generally raise issues of independence. However, significant consulting and contractual relationships with the agency may raise issues of independence or conflict, depending upon the situation.

Section III(3)(d) addresses concerns regarding repeated use of the same reviewer in multiple assessments. Such repeated use should be avoided unless a particular reviewer's expertise is essential. Agencies should rotate membership across the available pool of qualified reviewers. Similarly, when using standing panels of scientific advisors, it is suggested that the agency rotate membership among qualified scientists in order to obtain fresh perspectives and reinforce the reality and perception of independence from the agency.

Section III(4) requires agencies to provide reviewers with sufficient background information, including access to key studies, data and models, to perform their role as peer reviewers. In this respect, the peer review envisioned in Section III is more rigorous than some forms of journal peer review, where the reviewer is often not provided access to underlying data or models. Reviewers shall be informed of applicable access, objectivity, reproducibility and other quality standards under Federal information quality laws.

²⁸ National Academy of Sciences, "Policy and Procedures on Committee Composition and Balance and Conflicts of Interest for Committees Used in the Development of Reports," May 2003; Available at: <http://www.nationalacademies.org/cci/index.html>.

Section III(5) addresses opportunity for public participation in peer review, and provides that the agency shall, wherever possible, provide for public participation. In some cases, an assessment may be so sensitive that it is critical that the agency's assessment achieve a high level of quality before it is publicized. In those situations, a rigorous yet confidential peer review process may be appropriate, prior to public release of the assessment. If an agency decides to make a draft assessment publicly available at the onset of a peer review process, the agency shall, whenever possible, provide a vehicle for the public to provide written comments, make an oral presentation before the peer reviewers, or both. When written public comments are received, the agency shall ensure that peer reviewers receive copies of comments that address significant scientific issues with ample time to consider them in their review. To avoid undue delay of agency activities, the agency shall specify time limits for public participation throughout the peer review process.

Section III(6) requires that agencies instruct reviewers to prepare a peer review report that describes the nature and scope of their review and their findings and conclusions. The report shall disclose the name of each peer reviewer and a brief description of his or her organizational affiliation, credentials and relevant experiences. The peer review report should either summarize the views of the group as a whole (including any dissenting views) or include a verbatim copy of the comments of the individual reviewers (with or without attribution of specific views to specific names). The agency shall also prepare a written response to the peer review report, indicating whether the agency agrees with the reviewers and what actions the agency has taken or plans to take to address the points made by reviewers. The agency is required to disseminate the peer review report and the agency's response to the report on the agency's Web site, including all the materials related to the peer review such as the charge statement, peer review report, and agency response to the review. If the scientific information is used to support a final rule then, where practicable, the peer review report shall be made available to the public with enough time for the public to consider the implications of the peer review report for the rule being considered.

Section III(7) authorizes but does not require an agency to commission an entity independent of the agency to select peer reviewers and/or manage the

peer review process in accordance with this Bulletin. The entity may be a scientific or professional society, a firm specializing in peer review, or a non-profit organization with experience in peer review.

Section IV: Alternative Procedures

Peer review as described in this Bulletin is only one of many procedures that agencies can employ to ensure an appropriate degree of pre-dissemination quality of influential scientific information. For example, Congress has assigned the NAS a special role in advising the Federal government on scientific and technical issues. The procedures of the NAS are generally quite rigorous, and thus agencies should presume that major findings, conclusions, and recommendations of NAS reports meet the performance standards of this Bulletin.

As an alternative to complying with Sections II and III of this Bulletin, an agency may instead (1) rely on scientific information produced by the National Academy of Sciences, (2) commission the National Academy of Sciences to peer review an agency draft scientific information product, or (3) employ an alternative procedure or set of procedures, specifically approved by the OIRA Administrator in consultation with the Office of Science and Technology Policy (OSTP), that ensures that the scientific information product meets applicable information-quality standards.

An example of an alternative procedure is to commission a respected third party other than the NAS (*e.g.*, the Health Effects Institute or the National Commission on Radiation Protection and Measurement) to conduct an assessment or series of related assessments. Another example of an alternative set of procedures is the three-part process used by the National Institutes of Health (NIH) to generate scientific guidance. Under that process, a scientific proposal or white paper is generated by a working group composed of external, independent scientific experts; that paper is then forwarded to a separate external scientific council, which then makes recommendations to the agency. The agency, in turn, decides whether to adopt and/or modify the proposal. For large science agencies that have diverse research portfolios and do not have significant regulatory responsibilities, such as NIH, an acceptable alternative would be to allow scientists from one part of the agency (for example, an NIH institute) to participate in the review of documents prepared by another part of the agency, as long as the head of the agency

confirms in writing that each of the reviewers meets the NAS criteria relating to the appropriateness of using employees of sponsors (*e.g.*, the government scientist must not have had any part in the development or prior review of the scientific information and must not hold a position of managerial or policy responsibility). The purpose of Section IV is to encourage these types of innovation in the methods used to ensure pre-dissemination quality control of influential scientific information.

The mere existence of a public comment process (*e.g.*, notice-and-comment procedures under the Administrative Procedure Act) does not constitute adequate peer review or an "alternative process," because it does not assure that qualified, impartial specialists in relevant fields have performed a critical evaluation of the agency's draft product.²⁹

Section V: Peer Review Planning

Section V requires agencies to begin a systematic process of peer review planning for influential scientific information (including highly influential scientific assessments) that the agency plans to disseminate in the foreseeable future. A key feature of this planning process is a Web-accessible listing of forthcoming influential scientific disseminations (*i.e.*, an agenda) that is regularly updated by the agency. By making these plans publicly available, agencies will be able to gauge the extent of public interest in the peer review process for influential scientific information, including highly influential scientific assessments. These Web-accessible agendas can also be used by the public to monitor agency compliance with this Bulletin.

Each entry on the agenda shall include a preliminary title of the planned report, a short paragraph describing the subject and purpose of the planned report, and an agency contact person. The agency shall provide its prediction regarding whether the dissemination will be "influential scientific information" or a "highly influential scientific assessment," as the designation can influence the type of peer review to be undertaken. The agency shall discuss the timing of the peer review, as well as the use of any deferrals. Agencies shall include entries in the agenda for influential scientific information, including highly influential scientific assessments, for which the Bulletin's requirements have

²⁹William W. Lowrance, *Modern Science and Human Values*, Oxford University Press, New York, NY 1985: 86.

been deferred or waived. If the agency, in consultation with the OIRA Administrator, has determined that it is appropriate to use a Section IV "alternative procedure" for a specific dissemination, a description of that alternative procedure shall be included in the agenda.

Furthermore, for each entry on the agenda, the agency shall describe the peer review plan. Each peer review plan shall include: (i) A paragraph including the title, subject and purpose of the planned report, as well as an agency contact to whom inquiries may be directed to learn the specifics of the plan; (ii) whether the dissemination is likely to be influential scientific information or a highly influential scientific assessment; (iii) the timing of the review (including deferrals); (iv) whether the review will be conducted through a panel or individual letters (or whether an alternative procedure will be exercised); (v) whether there will be opportunities for the public to comment on the work product to be peer reviewed, and if so, how and when these opportunities will be provided; (vi) whether the agency will provide significant and relevant public comments to the peer reviewers before they conduct their review; (vii) the anticipated number of reviewers (3 or fewer; 4–10; or more than 10); (viii) a succinct description of the primary disciplines or expertise needed in the review; (ix) whether reviewers will be selected by the agency or by a designated outside organization; and (x) whether the public, including scientific or professional societies, will be asked to nominate potential peer reviewers. The agency shall provide a link from the agenda to each document made public pursuant to this Bulletin. Agencies shall link their peer review agendas to the U.S. Government's official Web portal: [firstgov at http://www.FirstGov.gov](http://www.FirstGov.gov).

Agencies should update their peer review agendas at least every six months. However, in some cases—particularly for highly influential scientific assessments and other particularly important information—more frequent updates of existing entries on the agenda, or the addition of new entries to the agenda, may be warranted. When new entries are added to the agenda of forthcoming reports and other information, the public should be provided with sufficient time to comment on the agency's peer review plan for that report or product. Agencies shall consider public comments on the peer review plan. Agencies are encouraged to offer a listserve or similar mechanism for members of the public who would like to be notified by email

each time an agency's peer review agenda has been updated.

The peer review planning requirements of this Bulletin are designed to be implemented in phases. Specifically, the planning requirements of the Bulletin will go into effect for documents subject to Section III of the Bulletin (highly influential scientific assessments) six months after publication. However, the planning requirements for documents subject to Section II of the Bulletin do not go into effect until one year after publication. It is expected that agency experience with the planning requirements of the Bulletin for the smaller scope of documents encompassed in Section III will be used to inform implementation of these planning requirements for the larger scope of documents covered under Section II.

Section VI: Annual Report

Each agency shall prepare an annual report that summarizes key decisions made pursuant to this Bulletin. In particular, each agency should provide to OIRA the following: (1) The number of peer reviews conducted subject to the Bulletin (i.e., for influential scientific information and highly influential scientific assessments); (2) the number of times alternative procedures were invoked; (3) the number of times waivers or deferrals were invoked (and in the case of deferrals, the length of time elapsed between the deferral and the peer review); (4) any decision to appoint a reviewer pursuant to any exception to the applicable independence or conflict of interest standards of the Bulletin, including determinations by the Secretary or Deputy Secretary pursuant to Section III(3)(c); (5) the number of peer review panels that were conducted in public and the number that allowed public comment; (6) the number of public comments provided on the agency's peer review plans; and (7) the number of peer reviewers that the agency used that were recommended by professional societies.

Section VII: Certification in the Administrative Record

If an agency relies on influential scientific information or a highly influential scientific assessment subject to the requirements of this Bulletin in support of a regulatory action, the agency shall include in the administrative record for that action a certification that explains how the agency has complied with the requirements of this Bulletin and the Information Quality Act. Relevant

materials are to be placed in the administrative record.

Section VIII: Safeguards, Deferrals, and Waivers

Section VIII recognizes that individuals serving as peer reviewers have a privacy interest in information about themselves that the government maintains and retrieves by name or identifier from a system of records. To the extent information about a reviewer (name, credential, affiliation) will be disclosed along with his/her comments or analysis, the agency must comply with the requirements of the Privacy Act, 5 U.S.C. 552a, as amended, and OMB Circular A–130, Appendix I, 61 FR 6428 (February 20, 1996) to establish appropriate routine uses in a published System of Records Notice. Furthermore, the peer review must be conducted in a manner that respects confidential business information as well as intellectual property.

Section VIII also allows for a deferral or waiver of the requirements of the Bulletin where necessary. Specifically, the agency head may waive or defer some or all of the peer review requirements of Sections II or III of this Bulletin if there is a compelling rationale for waiver or deferral. Waivers will seldom be warranted under this provision because the Bulletin already provides significant safety valves, such as: The exemptions provided in Section IX, including the exemption for time-sensitive health and safety information; the authorization for alternative procedures in Section IV; and the overall flexibility provided for peer reviews of influential scientific information under Section II. Nonetheless, we have included this waiver and deferral provision to ensure needed flexibility in unusual and compelling situations not otherwise covered by the exemptions to the Bulletin, such as situations where unavoidable legal deadlines prevent full compliance with the Bulletin before information is disseminated. Deadlines found in consent decrees agreed to by agencies after the Bulletin is issued will not ordinarily warrant waiver of the Bulletin's requirements because those deadlines should be negotiated to permit time for all required procedures, including peer review. In addition, when an agency is unavoidably up against a deadline, deferral of some or all requirements of the Bulletin (as opposed to outright waiver of all of them) is the most appropriate accommodation between the need to satisfy immovable deadlines and the need to undertake proper peer review. If the agency head defers any of the peer

review requirements prior to dissemination, peer review should be conducted as soon as practicable thereafter.

Section IX: Exemptions

There are a variety of situations where agencies need not conduct peer review under this Bulletin. These include, for example, disseminations of sensitive information related to certain national security, foreign affairs, or negotiations involving international treaties and trade where compliance with this Bulletin would interfere with the need for secrecy or promptness.

This Bulletin does not cover official disseminations that arise in adjudications and permit proceedings, unless the agency determines that peer review is practical and appropriate and that the influential dissemination is scientifically or technically novel (i.e., a major change in accepted practice) or likely to have precedent-setting influence on future adjudications or permit proceedings. This exclusion is intended to cover, among other things, licensing, approval and registration processes for specific product development activities as well as site-specific activities. The determination as to whether peer review is practical and appropriate is left to the discretion of the agency. While this Bulletin is not broadly applicable to adjudications, agencies are encouraged to hold peer reviews of scientific assessments supporting adjudications to the same technical standards as peer reviews covered by the Bulletin, including transparency and disclosure of the data and models underlying the assessments. Protections apply to confidential business information.

The Bulletin does not cover time-sensitive health and safety disseminations, for example, a dissemination based primarily on data from a recent clinical trial that was adequately peer reviewed before the trial began. For this purpose, "health" includes public health, or plant or animal infectious diseases.

This Bulletin covers original data and formal analytic models used by agencies in Regulatory Impact Analyses (RIAs). However, the RIA documents themselves are already reviewed through an interagency review process under E.O. 12866 that involves application of the principles and methods defined in OMB Circular A-4. In that respect, RIAs are excluded from coverage by this Bulletin, although agencies are encouraged to have RIAs reviewed by peers within the government for adequacy and completeness.

The Bulletin does not cover accounting, budget, actuarial, and financial information including that which is generated or used by agencies that focus on interest rates, banking, currency, securities, commodities, futures, or taxes.

Routine statistical information released by Federal statistical agencies (e.g., periodic demographic and economic statistics) and analyses of these data to compute standard indicators and trends (e.g., unemployment and poverty rates) is excluded from this Bulletin.

The Bulletin does not cover information disseminated in connection with routine rules that materially alter entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof.

If information is disseminated pursuant to an exemption to this Bulletin, subsequent disseminations are not automatically exempted. For example, if influential scientific information is first disseminated in the course of an exempt agency adjudication, but is later disseminated in the context of a non-exempt rulemaking, the subsequent dissemination will be subject to the requirements of this Bulletin even though the first dissemination was not.

Section X: OIRA and OSTP Responsibilities

OIRA, in consultation with OSTP, is responsible for overseeing agency implementation of this Bulletin. In order to foster learning about peer review practices across agencies, OIRA and OSTP shall form an interagency workgroup on peer review that meets regularly, discusses progress and challenges, and recommends improvements to peer review practices.

Section XI: Effective Date and Existing Law

The requirements of this Bulletin, with the exception of Section V, apply to information disseminated on or after six months after publication of this Bulletin. However, the Bulletin does not apply to information that is already being addressed by an agency-initiated peer review process (e.g., a draft is already being reviewed by a formal scientific advisory committee established by the agency). An existing peer review mechanism mandated by law should be implemented by the agency in a manner as consistent as possible with the practices and procedures outlined in this Bulletin. The requirements of Section V apply to "highly influential scientific assessments," as designated in Section

III of the Bulletin, within six months of publication of the final Bulletin. The requirements in Section V apply to documents subject to Section II of the Bulletin one year after publication of the final Bulletin.

Section XII: Judicial Review

This Bulletin is intended to improve the internal management of the Executive Branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its agencies or other entities, its officers or employees, or any other person.

Bulletin for Peer Review

I. Definitions

For purposes of this Bulletin—

1. The term "Administrator" means the Administrator of the Office of Information and Regulatory Affairs in the Office of Management and Budget (OIRA);

2. The term "agency" has the same meaning as in the Paperwork Reduction Act, 44 U.S.C. 3502(1);

3. The term "dissemination" means agency initiated or sponsored distribution of information to the public (see 5 CFR 1320.3(d) (definition of "Conduct or Sponsor")). Dissemination does not include distribution limited to government employees or agency contractors or grantees; intra- or inter-agency use or sharing of government information; or responses to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act, the Government Performance and Results Act or similar law. This definition also excludes distribution limited to correspondence with individuals or persons, press releases, archival records, public filings, subpoenas and adjudicative processes. The term "dissemination" also excludes information distributed for peer review in compliance with this Bulletin, provided that the distributing agency includes a clear disclaimer on the information as follows: "This information is distributed solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. It has not been formally disseminated by [the agency]. It does not represent and should not be construed to represent any agency determination or policy." For the purposes of this Bulletin, "dissemination" excludes research produced by government-funded scientists (e.g., those supported extramurally or intramurally by Federal

agencies or those working in state or local governments with Federal support) if that information does not represent the views of an agency. To qualify for this exemption, the information should display a clear disclaimer that “the findings and conclusions in this report are those of the author(s) and do not necessarily represent the views of the funding agency”;

4. The term “Information Quality Act” means Section 515 of Public Law 106–554 (Pub. L. No. 106–554, § 515, 114 Stat. 2763, 2763A–153–154 (2000));

5. The term “scientific information” means factual inputs, data, models, analyses, technical information, or scientific assessments based on the behavioral and social sciences, public health and medical sciences, life and earth sciences, engineering, or physical sciences. This includes any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms. This definition includes information that an agency disseminates from a Web page, but does not include the provision of hyperlinks to information that others disseminate. This definition does not include opinions, where the agency’s presentation makes clear that what is being offered is someone’s opinion rather than fact or the agency’s views;

6. The term “influential scientific information” means scientific information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions; and

7. The term “scientific assessment” means an evaluation of a body of scientific or technical knowledge, which typically synthesizes multiple factual inputs, data, models, assumptions, and/or applies best professional judgment to bridge uncertainties in the available information. These assessments include, but are not limited to, state-of-science reports; technology assessments; weight-of-evidence analyses; meta-analyses; health, safety, or ecological risk assessments; toxicological characterizations of substances; integrated assessment models; hazard determinations; or exposure assessments.

II. Peer Review of Influential Scientific Information

1. *In General:* To the extent permitted by law, each agency shall conduct a peer review on all influential scientific information that the agency intends to disseminate. Peer reviewers shall be charged with reviewing scientific and

technical matters, leaving policy determinations for the agency. Reviewers shall be informed of applicable access, objectivity, reproducibility and other quality standards under the Federal laws governing information access and quality.

2. *Adequacy of Prior Peer Review:* For information subject to this section of the Bulletin, agencies need not have further peer review conducted on information that has already been subjected to adequate peer review. In determining whether prior peer review is adequate, agencies shall give due consideration to the novelty and complexity of the science to be reviewed, the importance of the information to decision making, the extent of prior peer reviews, and the expected benefits and costs of additional review. Principal findings, conclusions and recommendations in official reports of the National Academy of Sciences are generally presumed to have been adequately peer reviewed.

3. *Selection of Reviewers:* a. *Expertise and Balance:* Peer reviewers shall be selected based on expertise, experience and skills, including specialists from multiple disciplines, as necessary. The group of reviewers shall be sufficiently broad and diverse to fairly represent the relevant scientific and technical perspectives and fields of knowledge. Agencies shall consider requesting that the public, including scientific and professional societies, nominate potential reviewers.

b. *Conflicts:* The agency—or the entity selecting the peer reviewers—shall (i) ensure that those reviewers serving as federal employees (including special government employees) comply with applicable Federal ethics requirements; (ii) in selecting peer reviewers who are not government employees, adopt or adapt the National Academy of Sciences policy for committee selection with respect to evaluating the potential for conflicts (e.g., those arising from investments; agency, employer, and business affiliations; grants, contracts and consulting income). For scientific information relevant to specific regulations, the agency shall examine a reviewer’s financial ties to regulated entities (e.g., businesses), other stakeholders, and the agency.

c. *Independence:* Peer reviewers shall not have participated in development of the work product. Agencies are encouraged to rotate membership on standing panels across the pool of qualified reviewers. Research grants that were awarded to scientists based on investigator-initiated, competitive, peer-reviewed proposals generally do not

raise issues as to independence or conflicts.

4. *Choice of Peer Review Mechanism:* The choice of a peer review mechanism (for example, letter reviews or ad hoc panels) for influential scientific information shall be based on the novelty and complexity of the information to be reviewed, the importance of the information to decision making, the extent of prior peer review, and the expected benefits and costs of review, as well as the factors regarding transparency described in II(5).

5. *Transparency:* The agency—or entity managing the peer review—shall instruct peer reviewers to prepare a report that describes the nature of their review and their findings and conclusions. The peer review report shall either (a) include a verbatim copy of each reviewer’s comments (either with or without specific attributions) or (b) represent the views of the group as a whole, including any disparate and dissenting views. The agency shall disclose the names of the reviewers and their organizational affiliations in the report. Reviewers shall be notified in advance regarding the extent of disclosure and attribution planned by the agency. The agency shall disseminate the final peer review report on the agency’s Web site along with all materials related to the peer review (any charge statement, the peer review report, and any agency response). The peer review report shall be discussed in the preamble to any related rulemaking and included in the administrative record for any related agency action.

6. *Management of Peer Review Process and Reviewer Selection:* The agency may commission independent entities to manage the peer review process, including the selection of peer reviewers, in accordance with this Bulletin.

III. Additional Peer Review Requirements for Highly Influential Scientific Assessments

1. *Applicability:* This section applies to influential scientific information that the agency or the Administrator determines to be a scientific assessment that:

(i) Could have a potential impact of more than \$500 million in any year, or

(ii) Is novel, controversial, or precedent-setting or has significant interagency interest.

2. *In General:* To the extent permitted by law, each agency shall conduct peer reviews on all information subject to this Section. The peer reviews shall satisfy the requirements of Section II of this Bulletin, as well as the additional

requirements found in this Section. Principal findings, conclusions and recommendations in official reports of the National Academy of Sciences that fall under this Section are generally presumed not to require additional peer review.

3. *Selection of Reviewers: a. Expertise and Balance:* Peer reviewers shall be selected based on expertise, experience and skills, including specialists from multiple disciplines, as necessary. The group of reviewers shall be sufficiently broad and diverse to fairly represent the relevant scientific and technical perspectives and fields of knowledge. Agencies shall consider requesting that the public, including scientific and professional societies, nominate potential reviewers.

b. *Conflicts:* The agency—or the entity selecting the peer reviewers—shall (i) ensure that those reviewers serving as Federal employees (including special government employees) comply with applicable Federal ethics requirements; (ii) in selecting peer reviewers who are not government employees, adopt or adapt the National Academy of Sciences' policy for committee selection with respect to evaluating the potential for conflicts (e.g., those arising from investments; agency, employer, and business affiliations; grants, contracts and consulting income). For scientific assessments relevant to specific regulations, a reviewer's financial ties to regulated entities (e.g., businesses), other stakeholders, and the agency shall be examined.

c. *Independence:* In addition to the requirements of Section II (3)(c), which shall apply to all reviews conducted under Section III, the agency—or entity selecting the reviewers—shall bar participation of scientists employed by the sponsoring agency unless the reviewer is employed only for the purpose of conducting the peer review (i.e., special government employees). The only exception to this bar would be the rare case where the agency determines, using the criteria developed by NAS for evaluating use of "employees of sponsors," that a premier government scientist is (a) not in a position of management or policy responsibility and (b) possesses essential expertise that cannot be obtained elsewhere. Furthermore, to be eligible for this exception, the scientist must be employed by a different agency of the Cabinet-level department than the agency that is disseminating the scientific information. The agency's determination shall be documented in writing and approved, on a non-delegable basis, by the Secretary or

Deputy Secretary of the department prior to the scientist's appointment.

d. *Rotation:* Agencies shall avoid repeated use of the same reviewer on multiple assessments unless his or her participation is essential and cannot be obtained elsewhere.

4. *Information Access:* The agency—or entity managing the peer review—shall provide the reviewers with sufficient information—including background information about key studies or models—to enable them to understand the data, analytic procedures, and assumptions used to support the key findings or conclusions of the draft assessment.

5. *Opportunity for Public Participation:* Whenever feasible and appropriate, the agency shall make the draft scientific assessment available to the public for comment at the same time it is submitted for peer review (or during the peer review process) and sponsor a public meeting where oral presentations on scientific issues can be made to the peer reviewers by interested members of the public. When employing a public comment process as part of the peer review, the agency shall, whenever practical, provide peer reviewers with access to public comments that address significant scientific or technical issues. To ensure that public participation does not unduly delay agency activities, the agency shall clearly specify time limits for public participation throughout the peer review process.

6. *Transparency:* In addition to the requirements specified in II(5), which shall apply to all reviews conducted under Section III, the peer review report shall include the charge to the reviewers and a short paragraph on both the credentials and relevant experiences of each peer reviewer. The agency shall prepare a written response to the peer review report explaining (a) the agency's agreement or disagreement with the views expressed in the report, (b) the actions the agency has undertaken or will undertake in response to the report, and (c) the reasons the agency believes those actions satisfy the key concerns stated in the report (if applicable). The agency shall disseminate its response to the peer review report on the agency's Web site with the related material specified in Section II(5).

7. *Management of Peer Review Process and Reviewer Selection:* The agency may commission independent entities to manage the peer review process, including the selection of peer reviewers, in accordance with this Bulletin.

IV. Alternative Procedures

As an alternative to complying with Sections II and III of this Bulletin, an agency may instead: (i) Rely on the principal findings, conclusions and recommendations of a report produced by the National Academy of Sciences; (ii) commission the National Academy of Sciences to peer review an agency's draft scientific information; or (iii) employ an alternative scientific procedure or process, specifically approved by the Administrator in consultation with the Office of Science and Technology Policy (OSTP), that ensures the agency's scientific information satisfies applicable information quality standards. The alternative procedure(s) may be applied to a designated report or group of reports.

V. Peer Review Planning

1. *Peer Review Agenda:* Each agency shall post on its Web site, and update at least every six months, an agenda of peer review plans. The agenda shall describe all planned and ongoing influential scientific information subject to this Bulletin. The agency shall provide a link from the agenda to each document that has been made public pursuant to this Bulletin. Agencies are encouraged to offer a listserve or similar mechanism to alert interested members of the public when entries are added or updated.

2. *Peer Review Plans:* For each entry on the agenda the agency shall describe the peer review plan. Each peer review plan shall include: (i) A paragraph including the title, subject and purpose of the planned report, as well as an agency contact to whom inquiries may be directed to learn the specifics of the plan; (ii) whether the dissemination is likely to be influential scientific information or a highly influential scientific assessment; (iii) the timing of the review (including deferrals); (iv) whether the review will be conducted through a panel or individual letters (or whether an alternative procedure will be employed); (v) whether there will be opportunities for the public to comment on the work product to be peer reviewed, and if so, how and when these opportunities will be provided; (vi) whether the agency will provide significant and relevant public comments to the peer reviewers before they conduct their review; (vii) the anticipated number of reviewers (3 or fewer; 4–10; or more than 10); (viii) a succinct description of the primary disciplines or expertise needed in the review; (ix) whether reviewers will be selected by the agency or by a

designated outside organization; and (x) whether the public, including scientific or professional societies, will be asked to nominate potential peer reviewers.

3. *Public Comment:* Agencies shall establish a mechanism for allowing the public to comment on the adequacy of the peer review plans. Agencies shall consider public comments on peer review plans.

VI. Annual Reports

Each agency shall provide to OIRA, by December 15 of each year, a summary of the peer reviews conducted by the agency during the fiscal year. The report should include the following: (1) The number of peer reviews conducted subject to the Bulletin (*i.e.*, for influential scientific information and highly influential scientific assessments); (2) the number of times alternative procedures were invoked; (3) the number of times waivers or deferrals were invoked (and in the case of deferrals, the length of time elapsed between the deferral and the peer review); (4) any decision to appoint a reviewer pursuant to any exception to the applicable independence or conflict of interest standards of the Bulletin, including determinations by the Secretary pursuant to Section III(3)(c); (5) the number of peer review panels that were conducted in public and the number that allowed public comment; (6) the number of public comments provided on the agency's peer review plans; and (7) the number of peer reviewers that the agency used that were recommended by professional societies.

VII. Certification in the Administrative Record

If an agency relies on influential scientific information or a highly influential scientific assessment subject to this Bulletin to support a regulatory action, it shall include in the administrative record for that action a certification explaining how the agency has complied with the requirements of this Bulletin and the applicable information quality guidelines. Relevant materials shall be placed in the administrative record.

VIII. Safeguards, Deferrals, and Waivers

1. *Privacy:* To the extent information about a reviewer (name, credentials, affiliation) will be disclosed along with his/her comments or analysis, the agency shall comply with the requirements of the Privacy Act, 5 U.S.C. 522a as amended, and OMB Circular A-130, Appendix I, 61 FR 6428 (February 20, 1996) to establish appropriate routine uses in a published System of Records Notice.

2. *Confidentiality:* Peer review shall be conducted in a manner that respects (i) confidential business information and (ii) intellectual property.

3. *Deferral and Waiver:* The agency head may waive or defer some or all of the peer review requirements of Sections II and III of this Bulletin where warranted by a compelling rationale. If the agency head defers the peer review requirements prior to dissemination, peer review shall be conducted as soon as practicable.

IX. Exemptions

Agencies need not have peer review conducted on information that is:

1. Related to certain national security, foreign affairs, or negotiations involving international trade or treaties where compliance with this Bulletin would interfere with the need for secrecy or promptness;

2. Disseminated in the course of an individual agency adjudication or permit proceeding (including a registration, approval, licensing, site-specific determination), unless the agency determines that peer review is practical and appropriate and that the influential dissemination is scientifically or technically novel or likely to have precedent-setting influence on future adjudications and/or permit proceedings;

3. A health or safety dissemination where the agency determines that the dissemination is time-sensitive (*e.g.*, findings based primarily on data from a recent clinical trial that was adequately peer reviewed before the trial began);

4. An agency regulatory impact analysis or regulatory flexibility analysis subject to interagency review under Executive Order 12866, except for underlying data and analytical models used;

5. Routine statistical information released by federal statistical agencies (*e.g.*, periodic demographic and economic statistics) and analyses of these data to compute standard indicators and trends (*e.g.*, unemployment and poverty rates);

6. Accounting, budget, actuarial, and financial information, including that which is generated or used by agencies that focus on interest rates, banking, currency, securities, commodities, futures, or taxes; or

7. Information disseminated in connection with routine rules that materially alter entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof.

X. Responsibilities of OIRA and OSTP

OIRA, in consultation with OSTP, shall be responsible for overseeing

implementation of this Bulletin. An interagency group, chaired by OSTP and OIRA, shall meet periodically to foster better understanding about peer review practices and to assess progress in implementing this Bulletin.

XI. Effective Date and Existing Law

The requirements of this Bulletin, with the exception of those in Section V (Peer Review Planning), apply to information disseminated on or after six months following publication of this Bulletin, except that they do not apply to information for which an agency has already provided a draft report and an associated charge to peer reviewers. Any existing peer review mechanisms mandated by law shall be employed in a manner as consistent as possible with the practices and procedures laid out herein. The requirements in Section V apply to "highly influential scientific assessments," as designated in Section III of this Bulletin, within six months of publication of this Bulletin. The requirements in Section V apply to documents subject to Section II of this Bulletin one year after publication of this Bulletin.

XII. Judicial Review

This Bulletin is intended to improve the internal management of the executive branch, and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its agencies or other entities, its officers or employees, or any other person.

John D. Graham,

Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 05-769 Filed 1-13-05; 8:45 am]

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OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Meeting; Board of Directors

TIME AND DATE: Thursday, January 27, 2005, 9:30 a.m. (open portion); 9:45 a.m. (closed portion).

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

STATUS: Meeting open to the public from 9:30 a.m. to 9:45 a.m.; closed portion will commence at 9:45 a.m. (approx.).

MATTERS TO BE CONSIDERED:

1. President's Report.
2. Approval of November 10, 2004 Minutes (open portion).



Science and Technology Policy Council

PEER REVIEW HANDBOOK

4th Edition

U.S. Environmental Protection Agency

Peer Review Handbook

4th Edition

October 2015

Prepared for the U.S. Environmental Protection Agency
under the direction of the EPA Peer Review Advisory Group

**Science and Technology Policy Council
U.S. Environmental Protection Agency
Washington, D.C. 20460**

DISCLAIMER

This 4th edition of the *Peer Review Handbook* was developed by the U.S. Environmental Protection Agency (hereafter EPA or the Agency) to provide guidance to EPA staff and managers who are planning and conducting peer reviews. It is intended to improve the internal management of EPA peer review by providing recommended procedures and approaches for EPA staff and managers. This 4th edition is a guidance manual and not a rule or regulation. Some topics in the Handbook refer to laws or EPA policies. In such cases, this Handbook provides recommendations for how those provisions can be implemented. The *Peer Review Handbook* does not replace existing laws or regulations, does not change or substitute for any legal requirement, and is not legally enforceable. This 4th edition does not create or confer legal rights or impose any legally binding requirements on EPA or any party. The use of non-mandatory language such as “may,” “can” or “should” in this *Peer Review Handbook* does not connote a requirement but does indicate EPA’s strongly preferred approach to ensure the quality of peer reviews conducted or initiated by EPA. Mention of trade names or commercial products does not constitute endorsement or recommendation for use.

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FOREWORD

Science is the foundation that supports all of our work at EPA. The quality and integrity of the science that underlies our regulations are vital to the credibility of EPA's decisions and, ultimately, the Agency's effectiveness in pursuing its mission to protect human health and the environment. One important element in ensuring that decisions are based on sound and defensible science is to have an open and transparent peer review process.

EPA has a long-standing history of peer review. The Agency has been a leader across the federal government in developing guidance and support for the peer review process. Even before issuing its Agency-wide Peer Review Policy in 1993, EPA was committed to peer review of its scientific and technical products. Over the years, EPA has repeatedly reaffirmed and updated both its Peer Review Policy and the processes for implementing peer review to ensure that EPA decisions rest on credible science and data.

The Agency's *Peer Review Handbook* was first released in 1998 and has been updated several times since. Each update has emphasized greater transparency and accountability for peer review. The last edition of the Handbook (2006) incorporated the provisions of the Office of Management and Budget's (OMB) *Final Information Quality Bulletin for Peer Review*. An EPA Addendum to the Handbook in 2009 provided guidance on preventing ethics concerns related to the appearance of a loss of impartiality for peer reviewers.

This newly revised 4th edition of the *Peer Review Handbook*, commissioned by the EPA Science and Technology Policy Council (STPC), supersedes all previous editions. Although the basic peer review procedures in the 2006 *Peer Review Handbook* remain current and our overall approach to peer review is not changing, this revision enhances and reinforces the practice of peer review at the Agency.

This *Peer Review Handbook* should be used as guidance by EPA staff and managers to ensure that the Agency's Peer Review Policy is implemented effectively and that the integrity of our peer review activities can be demonstrated transparently to the American public.

Thomas A. Burke, PhD, MPH
EPA Science Advisor

PREFACE

The first edition of the EPA *Peer Review Handbook* was issued in 1998 and was intended to serve as a single, centralized source of implementation guidance on peer review for EPA staff and managers. Subsequent revisions of the Handbook have added necessary clarifications, incorporated insights and experiences gained through its use, and integrated changes to reflect updated government-wide guidance or policy related to peer review. These revisions have increased the transparency and accountability of peer review and helped ensure that Agency decisions are based on sound and defensible science.

For the 4th edition, the EPA's STPC determined that revisions were needed to incorporate several recent EPA policy and process changes related to peer review. Although the 4th edition draws heavily from the 3rd edition, it has been reorganized to emphasize the elements and tools needed to implement a systematic peer review. It retains, however, the "question and answer" format throughout. New flowcharts and checklists have been added, and several substantial updates are included, such as the additional guidance on appearance of a loss of impartiality in external peer reviews, new information on organizational changes and oversight responsibilities, and changes related to the issuance of recent policies and procedures associated with the EPA's Information Quality Guidelines (IQG). The 4th edition also describes process changes for contractor-managed panel peer reviews of scientific and technical documents designated as Influential Scientific Information (ISI), including Highly Influential Scientific Assessments (HISAs), which are a subset of ISI. The process is intended to reduce the potential for organizational or personal conflict-of-interest (COI) concerns. Early public participation in the nomination and selection of peer reviewers and increased internal oversight are features of the process.

As in previous editions of the Handbook, not every peer review scenario can be anticipated or discussed. Through the use of examples, tools (e.g., flow diagrams, checklists) and process descriptions, however, this 4th edition illustrates practices from across the Agency that demonstrate effective implementation of peer review policy. The use of the recommended procedures and approaches in this Handbook should reinforce the open, transparent and objective peer review of Agency products.

ABBREVIATIONS AND ACRONYMS

AA	Assistant Administrator
ADP	Action Development Process
CASAC	Clean Air Scientific Advisory Committee
CBI	Confidential Business Information
CO	Contract(ing) Officer
COI	Conflict of Interest
COR	Contracting Officer's Representative
DA	Deputy Administrator
DAEO	Designated Agency Ethics Official
DEO	Deputy Ethics Official
DFO	Designated Federal Officer
DM	Decision Maker
DQA	Director of Quality Assurance
EIS	Environmental Impact Statement
EPA	U.S. Environmental Protection Agency
EPAAG	EPA Acquisition Guide
FAC	Federal Advisory Committee
FACA	Federal Advisory Committee Act
FAR	Federal Acquisition Regulations
FOIA	Freedom of Information Act
FTE	Full-Time Equivalent
GSAPR	Gratuitous Services Agreement for Peer Review
HISA	Highly Influential Scientific Assessment
IGA	Inherently Governmental Activity
IQG	Information Quality Guidelines
IRIS	Integrated Risk Information System
ISI	Influential Scientific Information
NAS	National Academy of Sciences
NCEA	National Center for Environmental Assessment
NEPA	National Environmental Policy Act
NRC	National Research Council
NTTAA	National Technology Transfer and Advancement Act of 1995
OGC	Office of General Counsel
OGE	U.S. Office of Government Ethics
OMB	Office of Management and Budget
ORC	Office of Regional Counsel
ORD	Office of Research and Development
OSA	Office of the Science Advisor
PI	Principal Investigator
PL	Project Leader
PM	Project Manager
PRAG	Peer Review Advisory Group
PRC	Peer Review Coordinator
PRL	Peer Review Leader
QA	Quality Assurance
QAM	Quality Assurance Manager
RA	Regional Administrator

RGE	Regular Government Employee
ROD	Record of Decision
SAB	Science Advisory Board
SAP	Scientific Advisory Panel
SGE	Special Government Employee
SI	Science Inventory
SOW	Statement of Work
STPC	Science and Technology Policy Council

ROADMAP TO PEER REVIEW AT EPA

ROADMAP TO PEER REVIEW AT EPA

R.1. Overview

The goal of this roadmap is to assist the user in understanding how to apply the material in the Handbook and determining where important decisions should be made and documented. Figure 1 summarizes the Agency's overall peer review process, whereas Figures 2 and 3 provide additional details of the key steps, decisions and milestones. This roadmap is not meant to be a stand-alone document but is to be used as a quick reference to users already familiar with the systematic process of planning, conducting and completing peer reviews. Roadmap users will find flowcharts summarizing major decision points in the process and times where documentation is needed, with references to specific sections in the Handbook containing more detailed information. Although the roadmap assumes familiarity with general Agency terminology, Section 1.2 of the Handbook discusses key terms associated with this guidance.

This roadmap also includes example tools for (1) documenting peer review decisions; (2) developing regulatory action; and (3) planning, conducting and completing the peer review. Because these tools vary depending on both the intended use of the work product and the decisions to be made, more than one tool generally is needed.

R.2. Relationship between the Roadmap and Chapters 1 Through 7

The roadmap figures show the peer review process from start to finish. The Handbook Chapters 1 through 7 have been organized to describe essential elements and concepts (the "what") needed for successful implementation of the peer review process. General concepts included are:

- providing terms and context (see Chapter 1);
- identifying relevant peer review roles, responsibilities and resource considerations of Agency personnel and organizations (see Chapter 2);
- categorizing work products (see Chapter 3);
- determining the appropriate peer review approach (see Chapter 4);
- selecting reviewers and considering associated ethics issues such as potential conflicts of interest (COIs) or an appearance of a loss of impartiality (see Chapter 5);
- conducting and completing the review, including developing the peer review charge (see Chapter 6); and
- ensuring transparency during various steps in the peer review process (see Chapter 7).

For some, the process may be described more effectively visually, using diagrams or graphics to make relationships more apparent and provide easy navigation through the entire process. Figures 1 through 3 are the main processes described in this Handbook, provided in graphic form.

Figure 1, the diagram of the peer review process, illustrates the Agency's overall peer review process for scientific or technical (including economic and social science) work products. The Agency process emphasizes early categorization of the work product—preferably at the conceptual stage—into one of three categories: Influential Scientific Information (ISI); Highly Influential Scientific Assessment (HISA), which is a subset of ISI; or other. The ISI and HISA categories have been identified and defined by the Office of Management and Budget (OMB) in its *Final Information Quality Bulletin for Peer Review* (OMB Peer Review Bulletin) (Appendix B). Management approval and documentation of key decisions throughout the peer review process are emphasized. The EPA also demonstrates its commitment to transparency in the peer review process by providing opportunities for public participation.

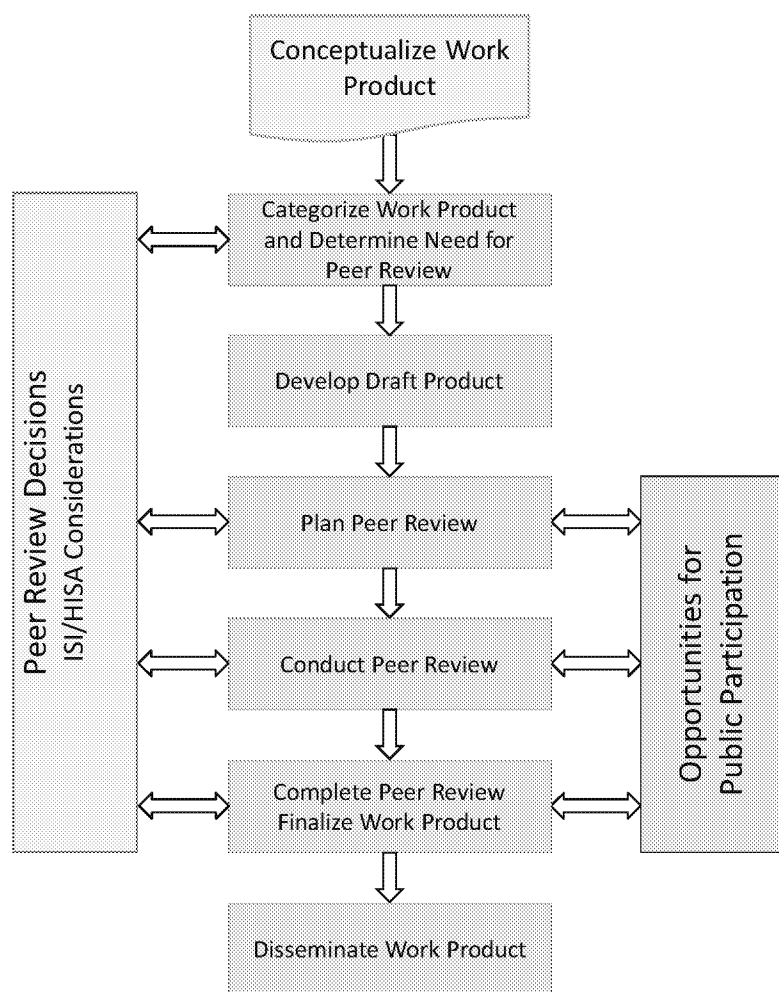


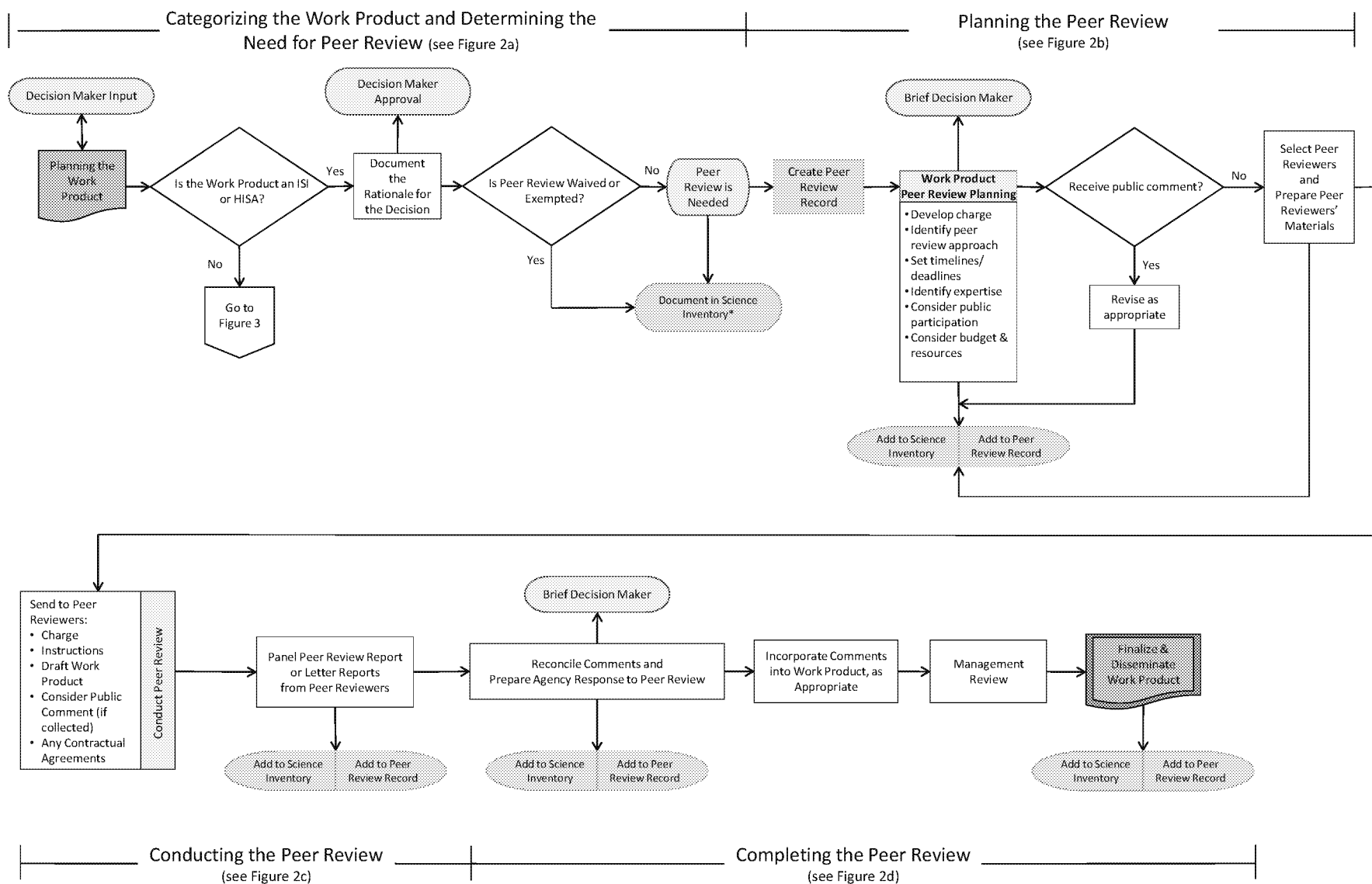
Figure 1. The Peer Review Process

Figure 2, the peer review flowchart for influential work products, illustrates details associated with the general process. Each of the four phases in this flowchart is presented subsequently in Figures 2a through 2d and references to relevant Handbook sections are provided. The figures also include steps at which the Decision Maker (DM) should be involved, and points at which the peer review record, as well as the EPA's searchable database for influential products, the Science Inventory (SI),¹ should be updated. Although updating the SI provides public access to the information about the peer review, the figures indicate various points in the peer review process where the public may also be provided opportunities to comment on materials in the SI.

Figure 3 illustrates the comparable flow for scientific or technical work products not categorized as ISI or a HISA. It includes a specific process for work products that will be submitted to peer-reviewed journals; in that case, work products are subject to management review (following the procedures of the program or regional office) prior to submission to a journal, and authors work with the journal editors/reviewers to resolve any comments. For more information on peer review of work products not categorized as ISI or a HISA, see Sections 3.2.5 and 3.2.6.

¹ EPA. 2015. *EPA Science Inventory*. <http://cfpub.epa.gov/si/>.

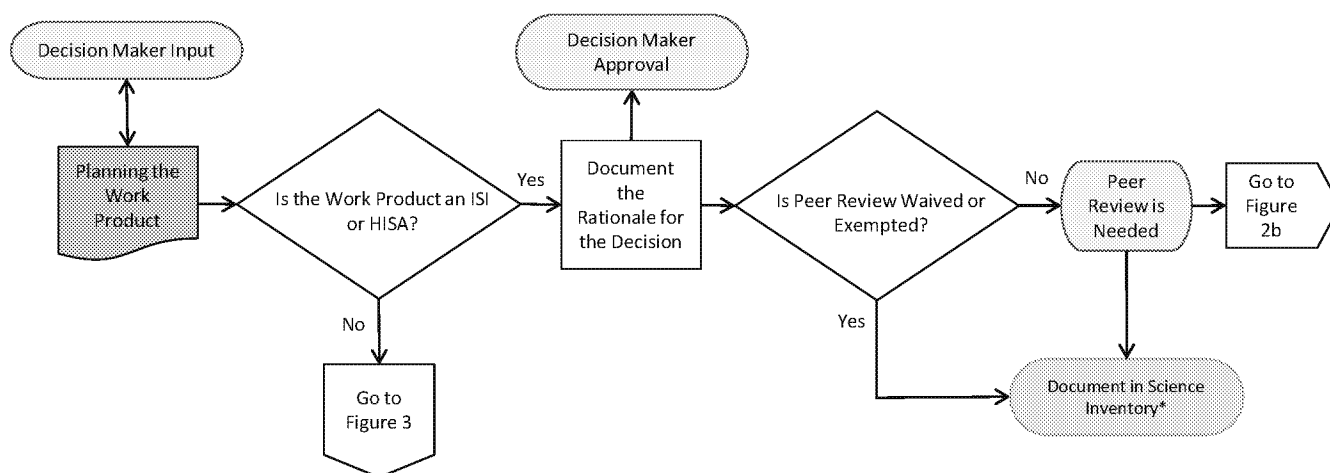
It should be noted that the peer review flow charts show the general steps that are followed for the peer review of work products at EPA. The specific steps taken by individual EPA offices will depend on many factors, including the type of work product, timeframe available for peer review and resource considerations. It should be noted that the term “EPA offices” in this Handbook refers to all headquarters, regional and program offices.



*Agency's Peer Review Agenda is created from information entered in the Science Inventory

Figure 2. Detailed Peer Review Flowchart for Influential Work Products (Including HISAs)*

* For work products categorized as "other," see Figure 3.



*Agency's Peer Review Agenda is created from information entered in the Science Inventory

Figure 2a. Categorizing the Work Product and Determining the Need for Peer Review

1. Determine if the work product:

- Is a scientific, engineering, economic, social science or statistical document (§ 3.1.1, 3.1.3)
- Is ISI/HISA (§§ 3.2.1, 3.2.3, 3.2.4)
- Other work product (see Figure 3)

2. Obtain categorization of work product from the DM:

- Document decision and rationale for decision
- Continue with peer review unless determined not to be needed

3. Peer review typically not needed if:

- ISI/HISA consists only of science previously peer reviewed and the previous peer review is deemed adequate under the Agency's policy (§ 3.3.2)
- ISI/HISA consists only of principal findings, conclusions and recommendations from National Academy of Sciences (NAS) official reports (Appendix B, Section III.2)
- Work product meets criteria for exemption (§§ 3.3.1, 3.3.2)
- Work product receives waiver (§ 3.3.3)
- Peer review otherwise determined not to be warranted

4. Add document with waiver/exemption to the SI²

² EPA. 2015. *Peer Review Agenda*. http://cfpub.epa.gov/si/sj_public_pr_agenda.cfm.

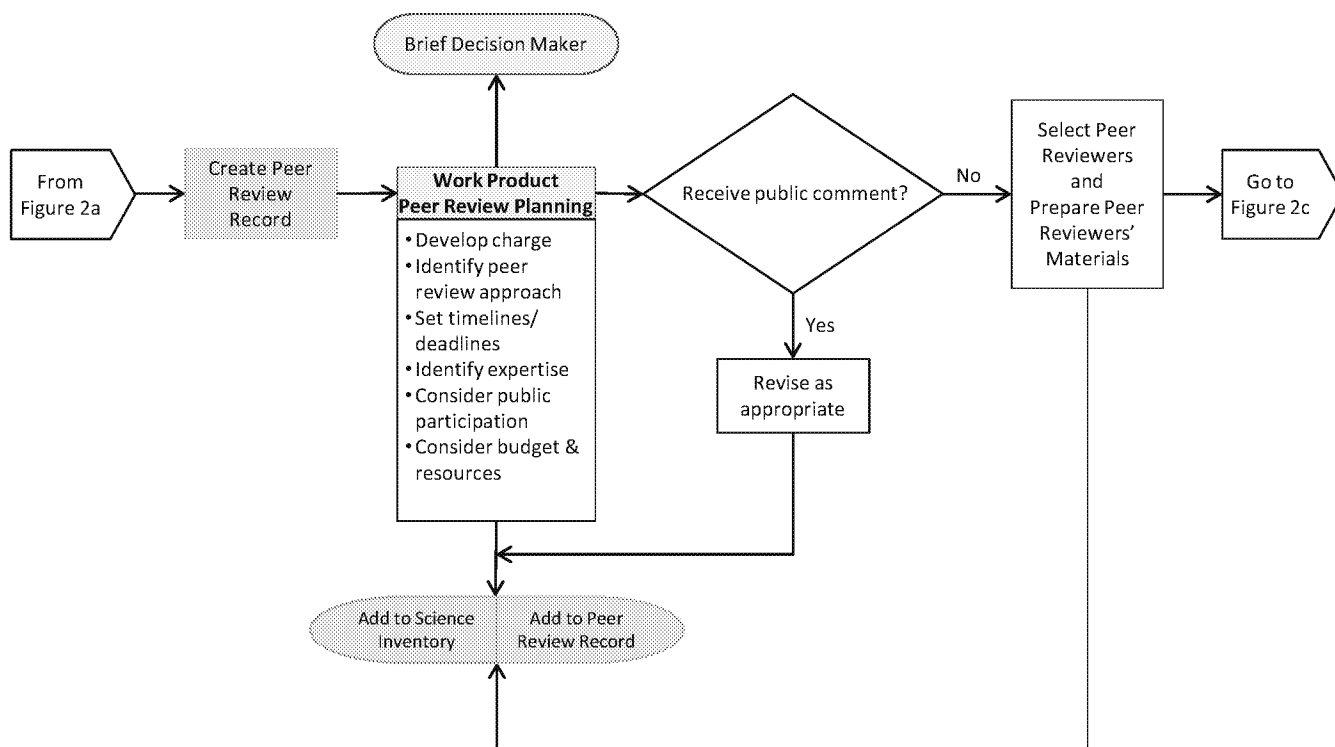


Figure 2b. Planning the Peer Review for Influential Scientific Information (Including HISAs)

1. If a work product is subject to peer review:

- Identify key staff (§ 2.3)
- Create a peer review record (§ 6.5)
- Identify criteria/basis for the charge (§ 6.2)
- Consider options for public participation (§ 7.2)

2. Develop the draft charge (§ 6.2):

- Determine which key issues to address
- Add to the SI and peer review record

3. Ensure adequate resources for the peer review (§ 1.2.5)

4. Identify a peer review approach (§ 4.2):

- Internal (§ 4.2.2), external (§ 4.2.3) or both, as appropriate
- Letter review (§ 4.4):
 - Managed by Agency or contractor (§ 4.6)
- Panel review (§ 4.5):
 - Managed by contractor or federal advisory committee (FAC) (§§ 4.6, 4.7)
 - One-time or multiple meetings (§§ 1.2.3, 4.2.1)
- Add to the SI and peer review record

5. Set timelines/deadlines:

- When will the review be started?
- What are the intermediate checkpoints?
- What is the deadline for completion?
- Add to the SI and peer review record

6. Identify expertise (§ 5):

- Determine the expertise needed (§§ 5.2.1, 5.2.4)
- Determine sources of peer reviewers (§ 5.2.2)
- Consider asking the public to nominate peer reviewers (§ 5.2.2)
- Consider and address the balance of the panel (§ 5.2.4)
- Consider COIs (§§ 4.6.4, 5.3)
- Particularly for a HISA, evaluate rotation (§ 5.2.8)
- If a contractor-managed panel peer review, note special considerations (§ 4.6.4)
- Formalize arrangement with peer reviewers
- Add to the SI and peer review record

7. Determine whether, on what and when public may provide comment (e.g., work product, charge, peer reviewers) (§ 7.2):

- Revise peer review plan accordingly
- Document in the SI and peer review record
- If a HISA, include a public comment process as part of the peer review whenever feasible and appropriate

8. Prepare materials for the peer review (§ 6.2.5):

- Obtain materials from the Project Manager
- Prepare instructions for peer reviewer (§ 6.2.5)
- Include a copy of materials in the peer review record (§ 6.5.2)

Note: Some of these steps may occur concurrently.

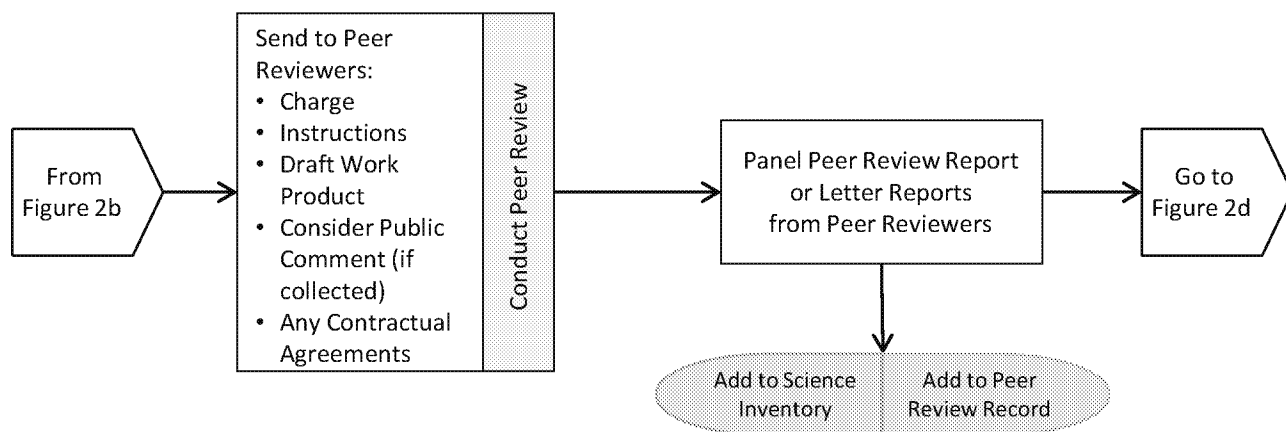


Figure 2c. Conducting the Peer Review of Influential Scientific Information (Including HISAs)

1. Provide materials to the peer reviewers (§ 6.2.5):

- Charge
- Instructions
- Draft work product
- Public comments if plan provided for public comment on work product
- Any contractual agreements associated with the review
- Particularly for HISAs, supporting materials for key decisions and findings

2. Conduct the peer review:

- Particularly if a HISA, public may present comments to peer reviewers at a panel meeting (should be part of peer review plan)

3. Ask reviewers to prepare peer review comments (§ 6.2.5)

4. Prepare Peer Review Report (collective comments from peer reviewers) (§ 6.2.5)

- If conducted by a panel, receive panel peer review report
- If conducted by letter, receive individual letter reviews and prepare consolidated peer review report

5. Add peer review report to the SI and peer review record

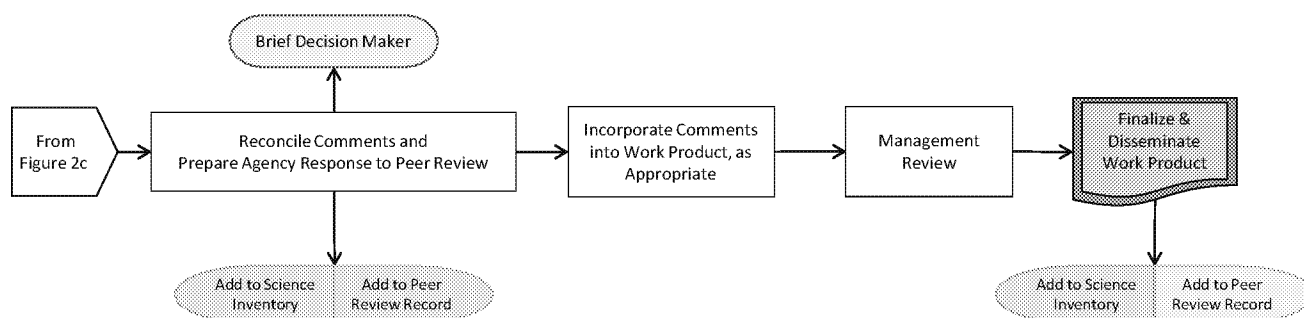


Figure 2d. Completing the Peer Review of Influential Scientific Information (Including HISAs)

1. Evaluate comments from peer reviewers:

- Consider comments
- Obtain clarification, if needed
- Include comments in peer review record

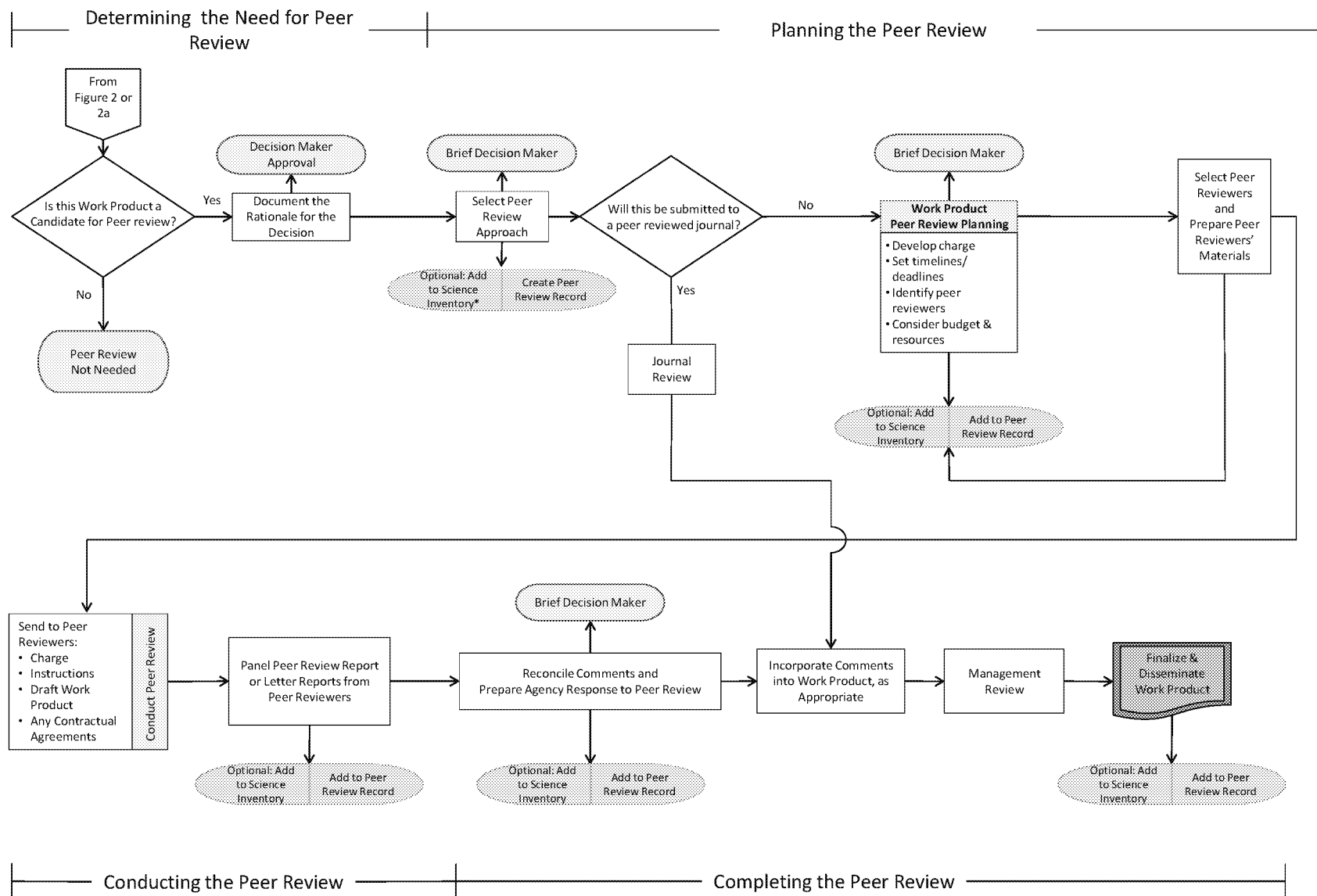
2. Brief the DM on proposed reconciliation of comments

3. Reconcile comments:

- Revise the work product by incorporating comments, as appropriate
- For a HISA, prepare a written Agency response and document why any comments were not used
- Include documentation in peer review record

4. Finalize work product:

- Include in peer review record
- Post peer review report and related materials (e.g., charge, Agency response) on the Internet through the SI:
 - For an ISI, post written Agency response to the peer review report, if prepared
 - For a HISA, post written Agency response to the peer review report
- For all ISI/HISAs that support rulemaking:
 - Include peer review discussion and certification in preamble of the rule



*Although other Work Products (non-Influential) may be added to the Science Inventory, they will not be on the EPA Peer Review Agenda

Figure 3. Detailed Flowchart for Other Work Products

R.3. Organizing the Peer Review Process

R.3.1. Planning the Peer Review

Planning a peer review is a critical first step to ensuring a successful peer review of a work product. The initial step is to determine whether the work product (either at the conceptual stage or while under development) should be peer reviewed. Once it has been determined that a peer review will be conducted, the DM and Peer Review Leader (PRL) need to plan an appropriate review. This includes:

- categorizing the work product and documenting the decision for influential work products;
- determining resources (budget and personnel);
- scheduling for completion of the peer review;
- creating the peer review record;
- making decisions about an appropriate peer review approach, which considers the forum (i.e., internal and/or external), type (i.e., letter or panel) and mechanism for conducting the review (i.e., Agency-managed, contractor-managed, Federal Advisory Committee [FAC], National Academy of Sciences [NAS]);
- planning for opportunities for public participation;
- developing the charge;
- selecting peer reviewers; and
- preparing materials for the reviewers.

Conceptualizing the Peer Review, which includes defining roles, responsibilities and resources, should take place at the very earliest stages of a product's development. Resources, including personnel, time and funding, should be considered. Based on individual EPA office procedures, other considerations might include the need for briefings, quality assurance (QA) components and reviews and pre-dissemination review planning and approvals.

Categorizing the Work Product (Figure 2a) is based on objective criteria associated with whether the work product is considered influential (i.e., is categorized as ISI), and if influential, whether it is a HISA.

Planning the Peer Review for Influential Scientific Information (Including HISAs) (Figure 2b) takes into account the work product categorization in determining the forum, type and mechanism of peer review. Evaluation and selection of peer reviewers are also documented in the plan, as well as decisions about public participation, preparation of the charge, instructions to reviewers and other information that may be useful to reviewers. For HISAs, in particular, it is important to include sufficient information, including background information about key studies or models, to enable reviewers to understand how significant findings or conclusions in the draft assessment were made.

The charge should be drafted before selection of the peer reviewers to ensure that they have the appropriate expertise to address the questions raised. Developing and maintaining a peer review record should begin at the planning stage of the peer review process (see Section 6.5.3).

R.3.2. Conducting the Peer Review

The success and usefulness of any peer review depends on the quality of the draft work product submitted for peer review, the care given to the statement of the issues or “charge,” the match between the peer review draft product and the form of peer review, the match between the peer review draft product and the scientific/technical expertise of the reviewers, and Agency use of peer review comments in the final product. In conducting a peer review, each of the foregoing elements requires serious attention.

Figure 2c shows the order of activities for conducting a peer review of a work product categorized as ISI or a HISA. The peer reviewers are expected to prepare and submit peer review reports at the conclusion of their review. For letter reviews, individual reports are submitted; a single report generally is expected from a peer review panel.

R.3.3. Completing the Peer Review and Finalizing the Work Product

Conducting the peer review of the work product is not the final stage of the peer review process. Rather, the peer review process closes with the following major activities: evaluating peer review comments and recommendations, using the peer review comments for completing the final document, completing the peer review record, and including relevant information in the SI (Figure 2d). The final product represents the true end of the peer review process.

R.3.4. Tools for Managing the Peer Review Process

The following Exhibits may be used by EPA offices to plan, track and document decisions associated with peer review. Note that more than one of the following may be needed for a given draft work product:

- The *Regulatory Action Development Checklist for Workgroups* (Exhibit 1) is an aid for those involved in the development of regulatory actions.
- The list of *Recommended Steps for Planning, Conducting and Completing a Peer Review* (Exhibit 2) is to assist the Project Manager (PM) and PRL in tracking the overall peer review process.
- The *Example EPA Peer Review Decision Summary Documentation* (Exhibit 3) is for the DM, Peer Review Coordinator (PRC) and PRL to document decisions, including the work product categorization, mechanism of peer review and public participation.

Tools and products to enhance the transparency and reporting of peer reviews are summarized in Table 1.

Exhibit 1. Regulatory Action Development Checklist for Workgroups

This checklist will help workgroups plan for peer review in the larger context of regulatory development. Each numbered section corresponds to a time period in the regulatory development process.

1. Peer Review Prior to Proposal

Tier 1 or Tier 2 Rule*

- ☐ Is the peer review schedule incorporated into the analytic blueprint?
- ☐ Does this rule rely upon influential scientific information (ISI/HISA)?
- ☐ Will the work product be reviewed using external peer review?

Tier 3 Rule

- ☐ Is the peer review schedule incorporated into the plans for producing the action?
- ☐ Does this rule rely upon ISI or a HISA?
- ☐ If an internal mechanism will be used for peer review, is it acceptable according to the *Peer Review Handbook*?

2. Sending a Proposed Rule Forward for the Administrator's Signature

- ☐ Has peer review been completed?
- ☐ Does the action memorandum indicate whether the rule relies upon ISI or a HISA?
- ☐ If the proposed rule relies on ISI or a HISA, is there a discussion of the peer review in the preamble of the rule?

3. Before the Proposed Rule Publishes

- ☐ Were the peer review report and any relevant materials included in the docket for this rulemaking?

4. Peer Review Prior to Finalization

- ☐ Is a new peer review plan necessary as a result of new regulatory options?

5. Sending a Final Rule Forward for the Administrator's Signature

- ☐ Has any new peer review of the work product been completed?
- ☐ Does the action memorandum indicate whether the rule relies on ISI or a HISA?
- ☐ If the final rule relies on ISI or a HISA, is there a discussion of the peer review in the preamble of the rule?

6. Before the Final Rule Publishes

- ☐ Were the peer review report and any relevant materials included in the docket for this rulemaking?

Note: For ISI and HISAs, the administrative record for the action should include a certification explaining that the action is consistent with provisions of the Office of Management and Budget (OMB) Peer Review Bulletin (see Appendix C).

*For further information on tiering and criteria used to determine the appropriate tier for an action, see <http://intranet.epa.gov/actiondp/adp-milestones/tiering.htm>.

Exhibit 2. Recommended Steps for Planning, Conducting and Completing a Peer Review

Recommended Steps	Comments
I. Categorize the work product and document your rationale (requires Decision Maker [DM] approval) (see <i>Example EPA Peer Review Decision Summary Documentation</i> form and Chapter 3) <input type="checkbox"/> Influential scientific information (ISI) <input type="checkbox"/> Highly influential scientific assessment (HISA) <input type="checkbox"/> Other	
II. Plan the peer review and brief the DM (Chapters 4 and 5) <input type="checkbox"/> Begin creating a peer review record <input type="checkbox"/> Select the peer review approach <ul style="list-style-type: none"> • Internal, external or both • Letter or panel • EPA- or contractor-managed <input type="checkbox"/> Set timelines/deadlines <input type="checkbox"/> Consider budget and resources <input type="checkbox"/> Develop charge questions <input type="checkbox"/> Identify areas of expertise needed <input type="checkbox"/> Consider public participation, stakeholder involvement <input type="checkbox"/> Identify and evaluate potential peer reviewers (expertise and ethics issues) <input type="checkbox"/> For HISAs and ISI, create public peer review plan and add other relevant information in the EPA Science Inventory * (see Chapter 7) <input type="checkbox"/> Formalize arrangements with the selected peer reviewers	
III. Conduct the peer review (Chapter 6) <input type="checkbox"/> Send peer review materials (e.g., charge and instructions, draft work product and supporting materials, contractual agreements, public comments) to peer reviewers <input type="checkbox"/> Convene panel or conduct letter review <input type="checkbox"/> Obtain reviewers' comments (peer review report)	
IV. Complete the peer review and brief the DM (Chapters 6 and 7) <input type="checkbox"/> Reconcile reviewers' comments and document how comments were addressed <input type="checkbox"/> Finalize work product <input type="checkbox"/> Update peer review record <input type="checkbox"/> For HISAs and ISI, post the peer review report, any Agency response (necessary for a HISA), and the final work product	

* EPA. Peer Review Agenda. http://cfpub.epa.gov/si/si_public_pr_agenda.cfm.

Exhibit 3. Example EPA Peer Review Decision Summary Documentation

1) WORK PRODUCT TITLE:

2) WORK PRODUCT DESCRIPTION:

3) Assistant Administrator (AA)-ship or Region and Originating Office/Division:

4) Decision/Rule/Regulation/Action/Activity That the Work Product Supports: _____

5) Categorization of Work Product (see page 2 of this exhibit for explanation):

- ☐ Influential Scientific Information (ISI)
- ☐ Highly Influential Scientific Assessment (HISA)
- ☐ Other Scientific or Technical Work Product

6) Rationale for Work Product Categorization and if Peer Review is needed: _____

7) Peer Review Mechanism(s) to Be Used, If Applicable (check all that apply):

(If the work product is designated as ISI or a HISA, conduct peer review [unless exempted or deferred]. For other scientific or technical work products, peer review should be conducted if the Decision Maker [DM] determines that it is appropriate. Evaluate and allot sufficient resources, including funds, time and personnel.)

- | | |
|--|--|
| <input type="checkbox"/> Peer Review Not Necessary (provide rationale) | <input type="checkbox"/> External: Contractor-Managed Panel |
| <input type="checkbox"/> Internal | <input type="checkbox"/> External: Federal Advisory Committee (FAC) (e.g., Science Advisory Board [SAB]) |
| <input type="checkbox"/> External: Submit to Peer-Reviewed Journal | <input type="checkbox"/> External: Other Panels (e.g., National Academy of Sciences [NAS]) |
| <input type="checkbox"/> External: Letter Reviews | |

8) Opportunities for Public Participation (check all that apply):

- | | |
|--|---|
| <input type="checkbox"/> Comment on Charge | <input type="checkbox"/> Comment on Draft Work Product |
| <input type="checkbox"/> Nominate Potential Peer Reviewers | <input type="checkbox"/> Comment on Peer Review Mechanism |
| <input type="checkbox"/> Comment on Potential Peer Reviewers | <input type="checkbox"/> Oral Presentation to Reviewers |

Documentation/Approval of Decision for an ISI or HISA Work Product

Peer Review Leader (Recommendation) _____	Date _____
Peer Review Coordinator (Concurrence) _____	Date _____
Decision Maker (Approval) _____	Date _____

The DM must approve the categorization decision for work products designated as ISI or HISA. Work products designated as ISI or HISA should be peer reviewed; for HISA, external peer review is the approach of choice. For work products not designated as ISI or a HISA, peer review should be conducted if the DM determines it is appropriate.

If the ISI/HISA work product is exempted or deferred from peer review, state the reason(s) why:

Note: Exemption or deferral from peer review of an ISI or HISA requires Administrator approval.

Exhibit 3. Example EPA Peer Review Decision Summary Documentation: Explanation

Yes/ No	Item/Instructions	Handbook Section
Designate the Work Product Category*— DM and Peer Review Coordinator (PRC)		
	Is Work Product Scientific or Technical (includes economic and social science work products)?	<u>3.1.1</u>
If scientific or technical, which designation does the work product best fit:		
	ISI: [†] Will have or does have a clear and substantial impact on important public policies or private sector decisions. Decision Makers should consider the following factors when determining whether a product is likely to be influential: <ul style="list-style-type: none"> • Establishes a significant precedent, model or methodology. • Is likely to have an annual effect on the economy of \$100 million or more. • Is likely to adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or state, tribal or local governments or communities. • Addresses significant controversial issues. • Focuses on significant emerging issues. • Has significant cross-Agency/interagency implications. • Involves a significant investment of Agency resources. • Considers an innovative approach for a previously defined problem/process/methodology. • Satisfies a statutory or other legal mandate for peer review. 	<u>3.2.1</u>
	HISA: A scientific assessment (i.e., an evaluation of a body of scientific/technical knowledge that typically synthesizes multiple inputs, data, models and assumptions and/or applies best professional judgment to bridge uncertainties in available information) that meets the following: <ul style="list-style-type: none"> • In addition to meeting the criteria for ISI, could have a potential impact of more than \$500 million in any year; or • Is novel, controversial or precedent-setting or has significant interagency interest. 	<u>3.2.3</u>
	Other (includes journal articles): <ul style="list-style-type: none"> • Define in comments. 	<u>3.2.5</u>

* Designation of a work product's category could change during the course of development. Any changes in designation also should be documented and approved (see Section 3.2.7).

[†] For examples of Agency work products designated as ISI and HISAs, see the Peer Review Agenda website (http://cfpub.epa.gov/si/si_public_pr_agenda.cfm).

Table 1. Agency Tools and Products for Peer Review Transparency and Reporting

Tool (T)/Product (P)	Description	Handbook Section
(T) Roadmap Flowcharts	Graphically describe the Agency's peer review process.	Roadmap
(T) Example Decision Summary Documentation	Individual product documentation is used in each EPA office to start a record of management decision and approval to categorize a product and the type of peer review it will undergo. This document is used at the EPA office level.	Roadmap Exhibit 2
(T) Conducting a Peer Review	A planning and implementation tool for anyone managing the peer review process of a work product.	Roadmap Exhibit 1
(P) Public Peer Review Plan (automatically generated in the SI when information on ISI or a HISA is entered). The SI is a tool to help generate the public peer review plan.	<p>Begin a systematic process of peer review planning for ISI and HISAs that an Agency plans to disseminate in the foreseeable future. Each peer review plan includes:</p> <ul style="list-style-type: none"> • A paragraph including the title, subject and purpose of the planned report, as well as an Agency contact to whom inquiries may be directed to learn the specifics of the plan. • Whether the dissemination is likely to be ISI or a HISA. • The timing of the review (including deferrals). • Whether the review is conducted through a panel or individual letters (or whether an alternative procedure is exercised). • Whether there are opportunities for the public to comment on the work product to be peer reviewed, and if so, how and when these opportunities are provided. • Whether the Agency provides significant and relevant public comments to the peer reviewers before they conduct their review. • The anticipated number of reviewers (3 or fewer, 4–10 or more than 10). • A succinct description of the primary disciplines or expertise needed in the review. • Whether reviewers are selected by the Agency or by a designated outside organization. • Whether the public, including scientific or professional societies, are asked to nominate potential peer reviewers. 	7.3.4
(P) Peer Review Charge	As part of each peer review, the PRL formulates a clear, focused charge that identifies the technical and scientific issues on which the Agency would like feedback and invites suggestions for improving the document as a whole. This request signals the Agency's receptivity to expert recommendations. The charge to peer reviewers usually makes two general requests. First, it focuses the review by presenting specific questions and concerns surrounding such issues as the comprehensiveness of the literature reviewed, the soundness of the method used, the scientific support for the assumptions employed, and the sensitivity analysis (i.e., the sensitivity of the results to alternative assumptions). Secondly, it invites general comments on the work product as a whole.	6.2
(P) The Peer Review Report(collective comments from peer reviewers)	The collective comments on the scientific or technical work product undergoing peer review provided by the peer reviewers in response to the peer review charge is called the Peer Review Report. The EPA makes the reports for ISI and HISAs available on the SI website, which links directly to the Peer Review Agenda entry for that item.	6.2.5

Table 1. Agency Tools and Products for Peer Review Transparency and Reporting

Tool (T)/Product (P)	Description	Handbook Section
(P) Agency's Response to Peer Review Report	The PRL should evaluate and analyze all peer review comments and recommendations carefully. The peer review of a work product is not complete until the peer review comments are incorporated into the final version or reasons are stated why such comments are not incorporated. The peer review record is complete only when it contains a copy of the final work product (when there is one) that addresses the peer review comments and a copy of the response-to-comments document. The PRL should brief the DM on how to address the peer review comments. Per the OMB Peer Review Bulletin, the Agency's response to the peer review report for HISAs should be posted on the SI.	<u>6.3</u>
(P) Peer Review Record	The peer review record is the formal record (file) of decision on the conduct of the peer review, including the type of peer review performed and an explanation of how the peer review comments are addressed. It includes sufficient documentation for an uninvolved individual to understand what happened and why. The peer review record is separate from the entry in the SI. Although some information from the peer review record appears in the SI, the paper peer review record is the official record of the peer review. The PRL (with the Project Manager [PM], if there is one) creates a separate, clearly marked peer review file within the overall file for development of the work. Once the peer review is completed, it is the responsibility of the PRL to ensure that the peer review record is filed and maintained in accordance with the organization's document retention procedures.	<u>6.5</u>
(T) Science Inventory	The SI (www.epa.gov/si) is a searchable database that contains information on EPA publications and presentations. The SI is used to track the Agency's work products that are categorized as ISI and HISAs, including their status and peer review plans. EPA offices are expected to keep this information current by updating SI entries for ISI and HISAs at least every 6 months.	<u>7.3.1</u> , <u>7.3.2</u> , <u>7.3.3</u>
(P) Peer Review Agenda	The Peer Review Agenda (PRA) is a component of the EPA SI. ISI and HISA work product metadata, including peer review information and related documents, are entered into the SI and then published to the Agency PRA, which informs EPA website visitors about EPA's planned and ongoing peer review activities. The website for the EPA's Peer Review Agenda is http://cfpub.epa.gov/si/si_public_pr_agenda.cfm .	<u>7.3.3</u>
(P) Annual Report on Peer Review to OMB	Consistent with the OMB's Peer Review Bulletin, the EPA expects to submit a report to OMB each year. This report includes information concerning the peer reviews conducted on ISI and HISAs during the previous fiscal year. The EPA generates this report from the information in the SI.	<u>7.4</u>

PEER REVIEW GUIDANCE

1. Peer Review at EPA: General Concepts and Context

1.1. Overview

Peer review of all scientific and technical information that is intended to inform or support Agency decisions is encouraged and expected. Influential scientific information, including highly influential scientific assessments, should be peer reviewed in accordance with the Agency's *Peer Review Handbook*. All Agency managers are accountable for ensuring that Agency policy and guidance are appropriately applied in determining if their work products are influential or highly influential, and for deciding the nature, scope, and timing of their peer review. For highly influential scientific assessments, external peer review is the expected procedure. For influential scientific information intended to support important decisions, or for work products that have special importance in their own right, external peer review is the approach of choice. Peer review is not restricted to the nearly final version of work products; in fact, peer review at the planning stage can often be extremely beneficial.

—EPA Peer Review Policy Statement, 2006

To implement the EPA's Peer Review Policy (Appendix A) effectively, individuals involved in peer review activities need to understand what peer review is and why the Agency conducts peer reviews. Those individuals also need to understand how peer review differs from activities such as peer input, stakeholder input and public comment. Familiarity with federal and EPA guidelines related to peer review is essential. This chapter discusses each of these topics and also addresses the role of peer review in regulatory development.

1.2. Peer Review

1.2.1. What Is Peer Review?

Peer review is a documented process for enhancing a scientific or technical work product so that the decision or position taken by the Agency, based on that product, has a sound, credible basis. (For a discussion of what constitutes a scientific or technical work product, see Section 3.1.1.) It is conducted by qualified individuals (or organizations) who are independent of those who performed the work and who are collectively equivalent in technical expertise to those who performed the original work (i.e., peers). Peer review is conducted to ensure that activities are technically defensible, competently performed, properly documented and consistent with established quality criteria. Peer review is an in-depth assessment of the assumptions, calculations, extrapolations, alternate interpretations, methodology, acceptance criteria and conclusions pertaining to the scientific or technical work product, and of the documentation that supports them. Peer review also may provide an evaluation of a topic where quantitative methods of analysis or measures of success are unavailable or undefined. Peer review usually is characterized by a one-time or limited number of interactions by independent peer reviewers who provide responses to a series of questions included in a "charge" developed by EPA (see Section 6.2.1). Peer review is

The goal of peer review is to obtain an independent review of the product from experts who have not contributed to its development.

encouraged during the development of a project or method, and/or as part of the culmination of the work product, as appropriate. Regardless of the timing of peer review, the goal is to ensure that the final product is scientifically and technically sound.

1.2.2. Why Use Peer Review?

Peer review is intended to identify any technical problems or unresolved issues in a preliminary (or draft) work product through the use of independent experts. This information then is used to revise the draft product so that the final work product will reflect sound scientific and technical information and analyses. To be most effective, peer review of a scientific or technical work product should be incorporated into the up-front planning of any action based on the work product; this includes obtaining the proper resource commitments (personnel and money) and establishing realistic schedules.

Although conducting a peer review requires an up-front commitment of time and resources, the benefits usually justify these added resources. Peer review enhances the credibility and acceptance of the decision based on the work product. Also, by ensuring a sound basis for decisions, cost savings are likely to be realized because decisions are less likely to be challenged.

Peer review is not free; however, not doing peer review can be costly.

1.2.3. When and How Often Should Peer Review Occur?

The Agency has significant discretion in deciding on the timing and the frequency of peer review. Options abound, each with merits depending on the context and specified peer review objectives. In many situations, a single peer review event, beginning when the final draft work product becomes available, is the approach taken. It is increasingly apparent, however, that peer review performed earlier in the work product development stages can provide a superior approach for some work products. There may be substantial incremental benefit to conducting more than one peer review during work product development, particularly when development involves complex tasks, has decision branching points, or could be expected to produce controversial findings. Sometimes additional peer reviews are conducted if the product changes significantly after the initial peer review, or if the Agency would like to know whether the peer reviewers' comments were adequately addressed in the revised product. In addition, early review could be beneficial at the stage of research design or data collection planning when the product involves extensive primary data collection. The Decision Maker (DM) should determine when the peer review(s) should occur, considering the type of work product under development and at what point a peer review would be most beneficial (see Sections 2.3.2 and 3.1.3).

Other types of work products that could benefit from early, up-front peer review in their development include scientific and technical planning products. Examples of such products are research proposals, plans and strategies. Although more than one peer review can be beneficial, the distinction between peer input and peer review should be kept in mind. Experts providing input during the development or planning stages of the work product generally do not become peer reviewers of that product. For more on this distinction, see Sections 1.2.11 and 5.2.7.

1.2.4. What Factors Are Considered in Setting the Timeframe for Peer Review?

The peer review schedule is a critical feature of the process. The schedule should take into account the availability of a quality draft work product; deadlines for the completion of a project, research program or rulemaking; funding availability; availability of qualified peer reviewers; the complexity and length

of the product; the possible need to seek public comment on the peer review product; statutory and/or court-ordered deadlines; and logistical aspects of the peer review (e.g., contracting procedures).

The time required to complete an external peer review will depend greatly on the peer review mechanism selected, ranging from several months for individual letter reviews to 10 to 12 months for a review by a federal advisory committee (FAC) *ad hoc* panel or more than a year for a review by a National Academy of Sciences (NAS) panel. Federal Advisory Committee Act (FACA) requirements for advanced notification of committee meetings and opportunities for public participation add to the time required to complete the review but enhance the transparency of the peer review process. Regardless of the peer review mechanism selected, the schedule must include adequate time to evaluate prospective peer reviewers for ethics issues such as potential conflicts of interest (COIs) or an appearance of a loss of impartiality (see Section 5.3).

1.2.5. What Budgetary Factors Should Be Considered in Planning a Peer Review?

Resources necessary to perform peer review should be requested as part of the costs of projects, rules or guidance. For purposes of budget planning, the costs of peer review would include the allocation of staff resources (full-time equivalents, or FTE), the contract or other costs associated with the use of outside peer reviewers and the administrative costs of conducting a review (e.g., copying, travel expenses). For peer reviews conducted by the Science Advisory Board (SAB) or Clean Air Scientific Advisory Committee (CASAC), the SAB Staff Office budgets for the peer review, including peer reviewer travel expenses, contract costs for meeting support and FTEs to support the advisory committee's work.

Peer review is part of the normal cost of doing business.

Senior management in EPA offices should ensure that budget requests include anticipated resources for peer review. (It should be noted that the term “EPA offices” in this Handbook refers to all headquarters, regional and program offices.) Peer review should be considered as a normal part of doing business. Peer review resource considerations also should be addressed in the analytic blueprint for Agency rulemaking actions.

1.2.6. Who Are the Peer Reviewers?

Peer reviewers are individuals who have technical expertise in the subject matter of the work product undergoing peer review. For this reason, they may be referred to as “subject matter experts.” Peer reviewers should not be associated with generating the work product undergoing review; they should be able to offer independent scientific advice. Peer reviewers need to be willing participants in the peer review process; they should agree to read all materials, participate fully and act ethically. Peer reviewers should maintain the confidentiality of the product and information contained in the product (when necessary), perform the review within the agreed-upon timeframe and be unbiased and objective. Peer reviewers should disclose any activities or circumstances that could pose a conflict of interest or create an appearance of a loss of impartiality that could interfere with an objective review. See Chapter 5 for a thorough discussion of peer reviewer qualifications and ethical considerations.

1.2.7. What Is the Difference Between Internal and External Peer Review?

An internal peer review is a technical or scientific review by individuals from within the Agency who have the appropriate expertise and are independent from the development of the work product. Internal

peer reviewers should come from a different organizational unit than the one in which the work originates. Examples of internal peer review mechanisms may be found in Section 4.2.2.

An external peer review is a review by non-EPA experts with appropriate knowledge and skills who are independent from the development of the work product. External reviewers may come from other federal agencies, state and local government agencies, academia, industry, nongovernmental organizations or other outside organizations. Examples of external peer review mechanisms may be found in Section 4.2.3.

For work products that are intended to support important public policy or private sector decisions, external peer review is the approach of choice. Note that an internal peer review or technical review often precedes an external peer review. Refer to Section 4.2.1 for guidance on when to use internal and external peer reviews.

1.2.8. What Is the Difference Between Internal Peer Review and Internal Management Review?

An internal peer review is an assessment of the scientific and technical quality of a work product by independent Agency experts prior to the publication or release of the work product outside the Agency. An internal management review (sometimes referred to as “clearance”) is a process for obtaining line management approvals prior to the work product’s release or publication. While an internal peer review may be included as part of the internal management review (as in the case of a technical review conducted prior to the submission of a manuscript to a journal), the internal management review does not substitute for an internal peer review.

1.2.9. What Is a Letter Peer Review?

A letter review takes place when EPA seeks individual written peer review comments from independent experts, typically in the form of correspondence to EPA from the peer reviewer. The number of reviewers selected depends largely on the scientific and technical expertise required to address the issues presented in the peer review charge. Each reviewer evaluates the draft technical work product independently without consultation with other reviewers. No collaborative or consensus peer review report is developed. For letter reviews managed by a contractor, the contractor may compile all peer review comments into a single report but should not edit the comments in any way, transmitting comments unaltered to EPA. For more information on letter peer reviews, see Section 4.4.

1.2.10. What Is a Peer Review Panel?

A peer review panel is a group of experts who share and discuss their peer review comments with one another, regardless of whether the sharing takes place in a face-to-face meeting or via email or teleconference. The number of panel members selected for a peer review will depend on the issue being investigated, the time available and resources. Individuals should have appropriate scientific and technical expertise such that the review panel as a whole covers the broad spectrum of expertise necessary to address the issues and questions presented in the peer review charge. For some panels, members may be asked to prepare individual comments for submission to the Agency; for others, the panel members may be asked to collaborate and provide consensus advice in a single report to EPA. If panels provide collective or consensus (rather than individual) advice, they may be subject to the requirements of the FACA, which imposes certain open meeting, balanced membership and committee chartering requirements. For more information on peer review panels, including FACs, see Chapter 4.

1.2.11. What Is Peer Input, and How Does It Differ From Peer Review?

Peer input, sometimes referred to as peer consultation, is a form of peer involvement that generally connotes an interaction during the development of an evolving Agency work product, providing an open exchange of data, insights and ideas. Such input may be continued and iterative, and it often involves scientific and technical experts from both inside and outside the Agency. A common example is the input received from workgroup members during the development of a product.

Peer input is not a substitute for peer review.

The key distinctions between peer input and formal peer review are the independence of the peer reviewers and their level of involvement. Generally, someone who provided peer input on a work product no longer is considered independent and should not become a peer reviewer for that same work product.

Peer input provides valuable contributions to the development of the work product. Peer input does not substitute, however, for peer review. In other words, one cannot argue that a peer review is not necessary simply because a work product has received “enough” peer input.

1.2.12. What Is Stakeholder Involvement, and How Does It Differ From Peer Review?

Stakeholder involvement occurs when the Agency engages a select set of individuals, groups or representatives from organizations or interest groups that have a stake in the outcome of the EPA’s work and policies or that seek to influence the Agency’s future direction to work directly on specific issues.

Stakeholder involvement is not a peer review mechanism.

The Agency often seeks stakeholder involvement to ensure that all relevant facts and viewpoints related to the issue are considered. This is an interactive process that usually involves other agencies, industry groups, regulated-community experts, environmental groups and other interest groups that represent a broad spectrum of the regulated community, among others. The process of stakeholder involvement usually strives for general agreement among the involved groups and may be subject to the FACA. Stakeholders should not be involved in the peer review process if there has been prior engagement with the Agency on the development of the product or the issue. If stakeholders are involved in the peer review process, they must meet all applicable ethics laws and regulations.

Although stakeholder involvement is an outreach activity that contributes greatly to the development of a work product, it is not considered a peer review mechanism.

1.2.13. How Does Public Comment Differ From Peer Review?

The critical distinction between public comment and peer review is that public comment does not necessarily draw the kind of independent, expert information and in-depth analyses expected from the peer review process. Public comment frequently is open to all issues, and may be solicited for policy purposes or as part of the regulatory process, whereas the peer review process focuses on scientific and technical issues specified in the peer review charge.

Public comment solicited from the general public through the *Federal Register* or by other means may be required by the Administrative Procedure Act or other statutes. Public commenters usually include a

broad array of individuals; some may be scientific experts (and may provide peer input), some may be experts in other areas, and some are interested non-experts.

In terms of peer review, public comments can provide important input to the identification and selection of peer reviewers, the refinement of charge questions to be addressed in peer review, and identification of technical issues to be considered by the peer reviewers. Generally, public comment enhances the transparency of the peer review process. Although it may be an important component of the EPA's decision-making process, public comment does not substitute for peer review. See Section 7.2 for more information on public participation in the peer review process.

1.3. Policies and Guidance That Relate to Peer Review

To provide the framework for ensuring the credibility and utility of the Agency's science, EPA relies on its Peer Review Policy and peer review procedures and guidelines in this *Peer Review Handbook*; guidance from the Office of Management and Budget (OMB) Peer Review Bulletin; and the EPA's Quality System, *Information Quality Guidelines* and Scientific Integrity Policy. Each is briefly discussed below.

1.3.1. What Is the EPA's Peer Review Policy?

The EPA's Peer Review Policy³ was first issued in 1993 and was updated in 2006 (see Appendix A). It emphasizes the critical role of peer review in ensuring that the EPA's decisions rest on sound science and data.

1.3.2. What Are the Legal Ramifications of the Peer Review Policy?

The Peer Review Policy does not establish or affect legal rights or obligations. Rather, it confirms the importance of peer review where appropriate, outlines relevant principles and identifies factors that Agency staff should consider in implementing the policy. Except where provided otherwise by law, peer review is not a formal part of, or substitute for notice-and-comment rulemaking or adjudicative procedures. The EPA's decision to conduct peer review in any particular case is wholly within the Agency's discretion. Similarly, nothing in the Peer Review Policy creates a legal requirement that EPA respond to peer review comments. To the extent that EPA decisions rely on scientific and technical work products that have been subjected to peer review, however, the remarks of peer reviewers should be included in the record for those decisions.

EPA staff and management should consult with attorney(s) in the Office of General Counsel (OGC) and/or Office of Regional Counsel (ORC), to obtain legal advice related to peer review. OGC has attorneys who are specialists in specific areas (e.g., FACA considerations, contractual responsibilities, ethics issues), and they should be consulted as needed, following consultations with local resources.

³ EPA. 2006. *Peer Review and Peer Involvement at the U.S. Environmental Protection Agency*.
<http://epa.gov/peerreview/pdfs/peer%20review%20policy%202006.pdf>.

1.3.3. What Is the Office of Management and Budget’s Peer Review Bulletin, and How Does It Relate to Peer Review at EPA?

OMB’s *Final Information Quality Bulletin for Peer Review*⁴ (see Handbook Appendix B), hereafter the OMB Peer Review Bulletin, provides guidance to federal agencies for enhancing the peer review of government science documents and establishes minimum standards for when to conduct peer review. EPA conducts peer review of its products in accordance with the guidance in the OMB Peer Review Bulletin.

OMB’s Peer Review Bulletin provides two important definitions:

- **Influential Scientific Information (ISI):** Scientific information that the Agency “reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions.”
- **Highly Influential Scientific Assessment (HISA):** A subset of ISI that is a scientific assessment (i.e., an evaluation of a body of scientific or technical knowledge, which typically synthesizes multiple factual inputs, data, models, assumptions and/or applies best professional judgment to bridge uncertainties in the available information) that “could have a potential impact of more than \$500 million in any year on either the public or private sector” or “is novel, controversial, or precedent-setting, or has significant interagency interest.”

Per the OMB Peer Review Bulletin, all of the Agency’s ISI/HISA should be peer reviewed unless they meet specified exemption criteria (see Handbook Section 3.3). Decisions regarding categorization of products as HISA or ISI should be made early in the stages of product development; relevant guidance may be found in Section 4.2.1. The OMB Peer Review Bulletin instructs federal agencies to establish a process for public disclosure of peer review planning, including a Web-accessible description of the plan that each agency has developed for reviewing its ISI and HISAs. An agenda of the Agency’s plans for reviewing these products may be found on the EPA Peer Review Agenda (http://cfpub.epa.gov/si/si_public_pr_agenda.cfm) (see Section 7.3).

1.3.4. What Is the EPA’s Quality System, and How Does It Relate to Peer Review?

The Quality System framework consists of policies, procedures and oversight processes that assure the Agency’s environmental data are of sufficient quantity and quality to support the data’s intended use. All EPA programs generating environmental data and information, or using data and information from non-EPA sources, are to conform to the Agency’s Quality Policy, CIO 2105.0 (May 5, 2000)⁵, which is based on international quality standards and practices. The EPA Quality System specifies systematic planning for quality and documentation of the data quality requirements for the scientific or technical work product being developed. The Office of Environmental Information has Agency-wide oversight of the mandatory quality system, and the program and regional offices are responsible for developing a Quality Management Plan for implementing their organization-specific Quality Assurance (QA)

⁴ OMB. 2004. Memorandum for Heads of Departments and Agencies, *Final Information Quality Bulletin for Peer Review*. <http://www.whitehouse.gov/sites/default/files/omb/memoranda/iv2005/m05-03.pdf>.

⁵ EPA. 2000. *Policy and Program Requirements for the Mandatory Agency-Wide Quality System*. EPA Order Classification No. CIO 2105.0. <http://intranet.epa.gov/quality/documents/21050.pdf>.

program. Each organization has a designated Director of Quality Assurance (DQA) or Quality Assurance Manager (QAM) responsible for quality.

QA and peer review are complementary activities and ensure that EPA uses scientifically sound data and information in making programmatic and regulatory decisions. Peer review does not replace the Agency's mandatory requirements to collect and use data of appropriate quality for the intended use in decision making. QA promotes the application of quality requirements at the project level such as determining precision, accuracy, representativeness, comparability, completeness and sensitivity of the data. Peer review primarily focuses on the scientific soundness of the results and conclusions presented in the work product. It is recognized as a valuable process that provides an objective and transparent assessment of the utility and credibility of the science. QA requirements and activities should be documented during the planning and development of the product prior to peer review. The Handbook encourages the Peer Review Leader (PRL) to contact the organization's quality assurance individual about applicable QA requirements for the product being peer reviewed. QA specifications are usually documented in a Quality Assurance Project Plan.

1.3.5. What Are the EPA's Information Quality Guidelines (IQG), and How Do They Relate to Peer Review?

The EPA's *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency*,⁶ better known as the EPA's Information Quality Guidelines (IQG), contain procedural guidance for ensuring that the information the Agency disseminates to the public is reliable and accurate, appropriate for its intended use, and protected from compromise (i.e., its objectivity, reliability and integrity are maintained). The EPA's IQG allows persons affected by EPA's publicly disseminated information to seek and obtain corrections from EPA (through its Office of Environmental Information). Peer review is a key step in ensuring the quality, objectivity, utility and integrity of the information that EPA disseminates.

Products undergoing peer review (pre-disseminated products) need a disclaimer.

Agency products undergoing peer review are not considered "disseminated" under the EPA's IQG because they are dynamic documents and are subject to change and, therefore, they do not represent the EPA's final decision or position. These "pre-dissemination" products should contain the following disclaimer:

This information is distributed solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. It has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency determination or policy.

In cases where the information is highly relevant to specific policy or regulatory deliberations, the disclaimer should appear on each page of the work product. Agency work products that are disseminated after the peer review process is completed are subject to the EPA's IQG.

⁶ EPA. 2002. *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency*. EPA/260R-02-008.
http://www.epa.gov/quality/informationguidelines/documents/EPA_InfoQualityGuidelines.pdf.

1.3.6. What Are the General Assessment Factors, and How Do They Relate to Peer Review?

The guidance titled *General Assessment Factors for Evaluating the Quality of Scientific and Technical Information*⁷ (see Appendix C) and its addendum⁸ complement the EPA's IQG and Quality System and are an additional resource for EPA staff involved in the peer review process. The guidance establishes the EPA's expectations for scientific and technical information that is voluntarily submitted to or gathered by the Agency. Regardless of source, this information must be evaluated for quality and relevance prior to being used in support of EPA actions. The Agency takes into account five general assessment factors to determine whether the information meets its quality requirements: (1) soundness, (2) applicability and utility, (3) clarity and completeness, (4) uncertainty and variability, and (5) evaluation and review. The "evaluation and review" factor refers to the extent of independent verification, validation and peer review of the information. For a previous peer review to be considered adequate by the Agency, it should meet the intent of the EPA's Peer Review Policy, and the rigor of the review should be commensurate with the proposed use of the information by the Agency.

1.3.7. What Is the EPA's Scientific Integrity Policy, and How Does It Relate to Peer Review?

The EPA's *Scientific Integrity Policy*⁹ facilitates scientific integrity Agency-wide through: (1) the promotion of scientific and ethical standards; (2) communications with the public; (3) the use of peer review and advisory committees; and (4) professional development. The policy promotes the culture of scientific integrity and enhances transparency within scientific processes.

The policy emphasizes the importance of ensuring that scientific studies used to support regulatory and other policy decisions undergo appropriate levels of independent peer review, and it recognizes the role of FACs (see Section 2.3.6.) in providing transparent, external peer review.

1.4. Peer Review and Regulatory Development

1.4.1. What Role Does Peer Review Have in Regulatory Development?

Peer review of scientific and technical work products that support regulations is an important, fundamental step in policy setting and regulatory development processes. A regulation itself is not subject to the Peer Review Policy. If a regulation is supported by a scientific and technical work product(s), however, that underlying work product(s) should be peer reviewed if it does not meet exemption criteria outlined in Section 3.3.

Sometimes peer review leads to recommendations for new information and analyses that would alter the work product and thus modify the scientific/technical basis for the action or rule it supports. For this reason, a completed peer review is desirable before issuing any regulatory proposal for public comment. If that is not possible logistically because of court or statutory deadlines, or other appropriate reasons,

⁷ EPA. 2003. *A Summary of General Assessment Factors for Evaluating the Quality of Scientific and Technical Information*. EPA/100/B-03/001. <http://www2.epa.gov/sites/production/files/2015-01/documents/assess2.pdf>.

⁸ EPA. 2012. *Guidance for Evaluating and Documenting the Quality of Existing Scientific and Technical Information. Addendum to A Summary of General Assessment Factors for Evaluating the Quality of Scientific and Technical Information*. <http://www2.epa.gov/sites/production/files/2015-01/documents/assess3.pdf>.

⁹ EPA. 2010. *Scientific Integrity Policy*. http://www.epa.gov/osa/pdfs/epa_scientific_integrity_policy_20120115.pdf.

every effort should be made to complete the peer review before the close of the comment period. Because peer review comments on such work products could be of sufficient magnitude to warrant a revision to the proposed action or rule, every effort should be made to complete the peer review prior to the proposal stage.

1.4.2. What Is the EPA's Action Development Process (ADP), and How Does It Relate to Peer Review?

The EPA's ADP is a process designed to ensure that the Agency develops and issues high-quality rules, policy statements, guidance documents, reports to Congress and other regulatory and non-regulatory actions. It assists the Agency in achieving objectivity and transparency of information. It consists of steps for planning sound scientific and economic analyses to support the action, including peer review of any major scientific or technical work product that supports an Agency action.

1.4.3. How Does the Rulemaking Tier Affect Peer Review?

Tier 1 and Tier 2 rulemakings are, by definition, important Agency rulemakings. Therefore, work products supporting Tier 1 and Tier 2 rules should be scrutinized carefully to determine whether they should undergo peer review. In most cases, scientific and technical work products categorized as ISI or a HISA and supporting a Tier 1 or Tier 2 rulemaking should be externally peer reviewed if they do not meet exemption criteria outlined in Section 3.3.

Work products supporting Tier 3 rulemakings also may benefit from peer review. For work products supporting a Tier 3 rule, both internal and external peer review may be appropriate, depending on the nature of the product and other factors. For more information on the tiering process, see <http://intranet.epa.gov/actiondp/documents/adp03-00-11.pdf>. For more information on the differences between internal and external peer review, see Section 4.2.

1.4.4. Should Peer Review Be Discussed in the Analytic Blueprint for a Regulation?

Analytic blueprints are a critical part of the EPA's ADP (see Section 1.4.2). A blueprint, which is required for all Tier 1 and Tier 2 actions, spells out a workgroup's plans for the data collection and analyses that will support development of a specific action. The blueprint sets forth how this information will be collected, peer reviewed and used to craft the action within a specific budget and timeframe.

Workgroups should address peer review specifically in each analytic blueprint. For peer review purposes, development of the analytic blueprint is the process whereby the workgroup identifies supporting scientific and technical work products and recommends what kind of peer review is needed. The analytic blueprint should show the schedule of the peer review in the context of the schedule for the overall rulemaking. For more information, see <http://intranet.epa.gov/actiondp/documents/adp03-00-11.pdf>.

1.4.5. What Role Does Peer Review Have in Regulatory Negotiations?

As with other rules, a negotiated rulemaking itself is not subject to the Peer Review Policy. If the regulatory negotiation is supported by scientific and technical work product(s), however, that underlying work product(s) should be peer reviewed if it does not meet exemption criteria outlined in Section 3.3. This peer review should occur before the negotiation takes place, when possible.

1.4.6. Should the Peer Review Be Discussed in the Preamble of a Regulation?

For proposed and final regulations that rely on ISI and HISAs, the peer review report should be discussed in the preamble, as described in the OMB Peer Review Bulletin. The PRL should take steps to ensure that the rule writer and the regulatory workgroup are aware of this provision of the OMB Peer Review Bulletin. For peer review template language, see Appendix D, Sound Science and Peer Review in Rulemaking.

1.4.7. How Is Peer Review Documented in the Action Memorandum for Regulations?

For all rules requiring the Administrator's signature (proposed and final), the action memorandum should indicate the kind of peer review that took place. The current format for action memoranda accompanying regulatory packages is available at <http://intranet.epa.gov/actiondp/adp-templates/index.htm#adp>.

2. Peer Review Roles and Responsibilities

2.1. Overview

The roles defined in this chapter provide descriptions of responsibilities of key personnel involved in or conducting peer review at the Agency. These personnel are responsible for ensuring the scientific quality of work products that inform decisions.

The EPA Deputy Administrator (DA) is the senior Agency official for peer review. The DA is ultimately responsible for the performance of peer review for scientific and technical information that is intended to inform and support the EPA's environmental decisions.

The Science and Technology Policy Council (STPC), the Peer Review Advisory Group (PRAG) and the Office of the Science Advisor (OSA) oversee implementation of the Agency's Peer Review Policy. The Office of Research and Development (ORD) is responsible for maintaining the Agency's Peer Review Agenda.¹⁰ EPA Assistant Administrators (AAs) and Regional Administrators (RAs) are responsible for making peer review decisions that are specific to their EPA offices; they may delegate some responsibilities, however, to other Decision Makers (DMs) within their organizations for planning and managing the peer review process in accordance with the Handbook guidelines. The Office of General Counsel (OGC) and Office of Regional Counsel (ORC) provide legal advice to assist Agency personnel in carrying out their peer review-related responsibilities.

Specific roles and responsibilities of agency organizations and personnel associated with peer review are discussed below. EPA employees with assigned peer review responsibilities should be familiar with the Agency's Peer Review policy and receive the appropriate peer review training.

The PRAG develops and provides training on the Handbook for all employees with designated peer review responsibilities. See Section 1.2.6 for the roles and responsibilities of the peer reviewer.

Employees should be familiar with their roles and responsibilities for peer review.

2.2. Oversight Responsibilities for the EPA's Peer Review Policy

2.2.1. What Is the Role of the Deputy Administrator?

The DA has the authority to establish Agency-wide peer review policies and guidelines that enhance the credibility of EPA as a scientific agency. The DA is the final arbiter of conflicts and concerns about peer reviews conducted by the Agency.

2.2.2. What Is the Role of the Science and Technology Policy Council?

The STPC (formerly known as the Science Policy Council) is a senior Agency council chaired by the EPA Science Advisor. The STPC identifies critical science and technology policy issues and develops approaches that help advance the Administrator's environmental and public health priorities. The STPC is responsible for overseeing the implementation of the Agency's Peer Review Policy. The STPC meets its peer review responsibilities through oversight of the PRAG.

¹⁰ EPA. 2015. *Peer Review Agenda*. http://cfpub.epa.gov/si/si_public_pr_agenda.cfm.

2.2.3. What Is the Role of the Peer Review Advisory Group?

The PRAG assists the STPC in overseeing implementation of the Agency's Peer Review Policy and serves as a technical resource for the Agency. It is a workgroup of representatives from EPA program and regional offices that was established to develop and interpret peer review guidelines, address peer review issues and promote effective peer review practices across EPA. It also serves as a cross-Agency coordination workgroup to increase the quality and consistency of peer reviews at the Agency. The PRAG is charged to perform the following duties:

- Ensure that the *Peer Review Handbook* is updated periodically.
- Develop peer review training for the agency.
- Provide expert advice to the STPC regarding peer review issues.
- Develop products for internal and external release that advance peer review in the Agency.
- Serve as a forum for discussing issues or questions relating to peer review.

2.2.4. What Is the Role of the Office of the Science Advisor?

OSA, with assistance and cooperation from all EPA program and regional offices, is responsible for producing the Agency's annual report to Office of Management and Budget (OMB) that summarizes the peer reviews that were conducted during the previous fiscal year for Influential Scientific Information (ISI), including Highly Influential Scientific Assessments (HISAs). OSA also provides support to the STPC and PRAG on peer review activities.

2.2.5. What Is the Role of the Office of Research and Development?

ORD is responsible for maintaining the EPA Science Inventory (SI) database. In addition, ORD maintains the EPA Peer Review Agenda website¹¹ that meets the OMB Peer Review Bulletin guidelines for a publicly available, "web-accessible listing of forthcoming influential scientific disseminations ... that is regularly updated by the agency" (see Appendix B). For information on the SI and Peer Review Agenda, see Section 7.3.

2.3. Peer Review Roles and Responsibilities within EPA Offices

EPA program and regional offices are responsible for carrying out all aspects of peer review appropriate for their work products. This includes categorizing their work products as ISI, HISAs or "other," as well as determining the nature, scope and timing of the peer review and following the procedures outlined in this Handbook. For ensuring greater independence and transparency of peer reviews, it is important to separate the responsibilities for developing work products from conducting the peer review (see Figure 2), whenever possible. The roles of individuals with specific responsibilities for peer review within their organization are addressed in the following subsections.

¹¹ EPA. *Peer Review Agenda*. http://cfpub.epa.gov/si/si_public_pr_agenda.cfm.

2.3.1. What Is the Role of the Assistant and Regional Administrators?

The EPA's AAs and RAs are responsible for all peer review actions in their organizations. In many cases, the AA or RA may delegate these responsibilities to a DM (e.g., DAA, DRA, and Office/Division Director) within their organization. When more than one EPA office or other agencies are involved in the development of a work product, responsibility for conducting the peer review can be negotiated; often, the degree of involvement by any of the organizations and agencies and their ability to fund peer review will determine who assumes the lead for the peer review.

As part of the annual review process, AAs and RAs ensure that the peer review of influential scientific and technical work products in their program or regional office has been conducted and documented appropriately.

2.3.2. What Is the Role of the Decision Maker?

The DM should ensure that there are processes in place to determine—early in the planning stage of the product—whether the product is (or is likely to be) influential, and if influential, whether it is (or is likely to be) a HISA, and determine how the peer review is to be conducted. As noted in Section 2.3.1, the AA/RA may delegate these responsibilities to a manager within the organization, such as the ORD Laboratory or Center Director, Program Office Director, or Regional Division Director.

Specific responsibilities of the DM are the following:

- Determine which type of work products need to be peer reviewed and the nature of the peer review to be conducted for each type, and ensuring compliance with all applicable guidance (including the OMB Peer Review Bulletin).
- Identify the stages of product development for which peer review is appropriate and decide how the peer review is to be conducted.
- Document the categorization determination and other peer review planning decisions (see Roadmap Exhibit 3, Example EPA Peer Review Decision Summary Documentation), especially if the product is (or is likely to be) influential, and if influential, whether it is (or is likely to be) a HISA.
- Designate a Peer Review Coordinator (PRC) within the organization.
- Designate a Peer Review Leader (PRL) to plan, conduct and complete the peer review. The person in charge of producing the work product (Principal Investigator, Project Leader, or Project Manager (PM) – see Section 2.4.4) may serve as the PRL; however, for ISI and HISAs, the DM should consider the advantage of designating a different individual to serve as the PRL to enhance the independence of the peer review process.
- Ensure that sufficient funds are designated in the EPA office's budget to conduct the peer review and allocate adequate resources throughout the peer review process (e.g., contractor support for peer review).
- For HISAs, decide whether it is feasible and appropriate to make the draft scientific assessment available to the public for comment before or at the same time it is submitted for peer review,

and whether it is feasible and appropriate to sponsor a public meeting at which oral presentations on scientific issues can be made to the peer reviewers by interested members of the public.

- Ensure that all relevant issues and comments raised by the peer reviewer(s) are adequately addressed and documented for the record and, when appropriate, incorporated into the final work product.

2.3.3. What Is the Role of the Peer Review Coordinator?

The PRC is designated by the DM to coordinate and monitor all peer review activities related to EPA scientific and technical work products in an organization. This individual has access to senior management and all staff across the organization involved with peer review, and is the main contact with the PRAG, OSA and ORD for information about peer review activities and submissions to the SI.

Although some of the following functions might be performed by other personnel, specific responsibilities of the PRC are the following:

- Work closely with the DM and PRL to plan the peer review of the work product and ensure that peer review guidelines and procedures are appropriately applied.
- Provide advice, guidance and support to the PRL and, as determined by management, serve as the PRL for certain work products.
- Establish procedures to ensure that the peer review process is adequately documented in a peer review record (see Section 6.5) and that the record is filed and maintained in a manner consistent with Agency retention policies.
- For ISI and HISAs, ensure that information in the peer review record is consistent with OMB reporting guidelines by making key pieces publicly available on the Agency's Peer Review Agenda¹² via the SI.
- Deliver peer review training to management and staff.
- Function as the liaison with the PRAG, OSA and ORD by participating in PRAG workgroups as needed.
- Ensure that the list of work products and their associated peer review mechanisms are accurate and updated during the annual reporting (and, when necessary, at other times).
- Post or link other relevant peer review documents to the PRA from the SI.

2.3.4. What Is the Role of the Peer Review Leader for EPA-Managed Peer Reviews?

The PRL plans, conducts and completes the peer review for specific work products within an organization. The PRL is selected by the DM. To enhance the independence of the peer review process, the DM should consider the advantage of having separate individuals produce the work product and manage the peer review (see Section 2.3.2). The PRL should follow the Agency's peer review

¹² EPA. *Peer Review Agenda*. http://cfpub.epa.gov/si/si_public_pr_agenda.cfm.

procedures and guidelines and should receive training on the Handbook and other policies and guidelines applicable to peer review. For peer reviews conducted by outside organizations such as the National Academy of Sciences (NAS), the PRL should be thoroughly familiar with the ethics policies and requirements of the organization conducting the review (see Section 5.3.1).

Specific responsibilities of the PRL include:

- **Plan the peer review:** After considering the type of work product under development, the PRL (in consultation with the DM and PRC) should do the following:
 - Determine and document the categorization of the product (ISI, HISA or other) and when and how the peer review should occur.
 - Establish a plan for the peer review, including the peer review approach (e.g., letter, panel, journal, EPA- or contractor-managed peer review); the scope and timing of the peer review; and the approach to responding to peer review comments.
 - Obtain management approval of the plan, and ensure proper documentation of decisions as part of the peer review record.
 - Develop the charge for the peer reviewers, soliciting input from the project team developing the work product and the public, as appropriate. When the timing of panel selection does not allow for prior finalization of the charge, develop a preliminary version of the charge that provides enough detail about anticipated peer review scope and issue areas that requisite areas of peer review panel expertise can be identified.
 - Select peer reviewers with expertise appropriate for the charge after considering and resolving any ethics issues, including potential conflicts of interest (COIs).
 - Ensure that appropriate internal review, including clearance procedures, is completed before releasing the product for external peer review.
- **Conduct the peer review:** The PRL should:
 - Provide opportunities for public comment on the review materials, when applicable (usually for ISI or a HISA).
 - Provide the peer reviewers with materials relevant to the work product, including instructions; the charge questions; and significant scientific and technical comments, if public comment was sought. Particularly for HISA, include information about key studies or models used to support key findings or conclusions of the work product.
 - Advise peer reviewers of their responsibility to prepare their response to the charge, usually in the form of a report documenting the results of the peer review.
 - Document any changes to the charge, profile of peer reviewers or ethical conflicts that may develop, and keep the PRC informed throughout the process.

- **Complete the Peer Review:** To complete the peer review, the PRL should:
 - Ensure that peer review comments are incorporated, as appropriate, into the final work product.
 - Document the resolution in a “response to comments” or a “reconciliation memorandum,” clearly identifying comments that have not been addressed.
 - Obtain the DM’s approval on the resolution of peer review comments.
 - For ISI and HISAs, make the peer review report (see Table 1) and any Agency response to comments publicly available on the Agency’s Peer Review Agenda.¹³
 - For ISI and HISAs, inform the PRC when the peer review is completed and available for inclusion in the annual report to OMB (see note in Section 6.4).
 - Archive the peer review record in a manner consistent with the organization’s records management procedures.

2.3.5. What Are the Roles of the Peer Review Leader and Contractor in the Case of Contractor-Managed Peer Reviews?

Several responsibilities of the PRL will shift to a contractor when a contractor is managing the peer review, but the PRL still ensures the peer review is conducted and completed for a specific work product following Agency procedures. For example, consistent with the contract terms, the contractor is responsible for selecting peer reviewers with due consideration of ethics issues (such as potential COIs or an appearance of a loss of impartiality [see Section 4.6]) and the balance of expertise, providing review materials and instructions to the peer reviewers and compiling the peer reviewer comments. The PRL provides materials associated with the peer review to the Contracting Officer’s Representative (COR), who is the technical point of contact for the contract. In some cases, the PRL and the COR may be the same individual. The COR then provides the materials to the contractor, who distributes them to the peer reviewers. After the peer review, the contractor ensures that the reviewers have fulfilled their responsibilities under their agreement with the contractor. EPA should not alter the contractor’s peer review report. The contractor may have additional responsibilities, depending on the complexity of the peer review and public participation in the process. For more information on contractor-managed peer reviews, see Section 4.6.

2.3.6. What Is the Role of the Designated Federal Officer (DFO) in the Case of Federal Advisory Committee (FAC)-Conducted Peer Reviews?

When peer reviews are conducted through a FAC, some of the PRL responsibilities are assumed by the DFO. The DFO is an EPA employee who is responsible for managing the FAC and ensuring that the provisions of the Federal Advisory Committee Act (FACA) are met (see Section 4.7). Details of the duties and responsibilities of DFOs are available in the Agency’s *Federal Advisory Committee Handbook*.¹⁴ For example, when external peer review is conducted under the auspices of the Science Advisory Board (SAB) or the Clean Air Scientific Advisory Committee (CASAC), the SAB Staff Office

¹³ EPA. 2015. *Peer Review Agenda*. http://cfpub.epa.gov/si/si_public_pr_agenda.cfm.

¹⁴ EPA. 2013. *Federal Advisory Committee Handbook*. BiblioGov.

in the Office of the Administrator is responsible for selecting and vetting independent experts; planning, budgeting for and conducting peer review meetings; and maintaining peer review committee records.

The SAB Staff Office selects peer reviewers after a public nomination and comment process and after evaluating candidates for potential COIs or appearance of a loss of impartiality. The SAB Staff Office also announces committee meetings in the *Federal Register* and on the committee website, prepares detailed meeting minutes, transmits EPA charge and review materials to the committee and provides support to the committee in preparation of the advisory report to the EPA Administrator. To maintain the independence of the peer review process, the SAB Staff Office does not draft the EPA charge or prepare the Agency response to the peer review. The SAB Staff Office also does not enter data into the SI.

2.3.7. What Are the Roles and Responsibilities of EPA When Peer Reviews Are Conducted by the National Academy of Sciences?

The NAS is a private, nonprofit society of distinguished scientists established by Congress to provide independent, objective advice to the nation on science and technology matters. When agencies request an NAS peer review or sponsor an NAS study, a contract mechanism is used. The Agency works with NAS staff to develop a set of charge questions called a “statement of task” and also helps to define the timing and cost of the review. NAS reviews usually are conducted through the National Research Council (NRC). Once the statement of task and budget are approved by the NRC Governing Board, responsibilities for the peer review and products lie with the NAS and not EPA. The EPA contact with the NAS is a COR, and there can be more than one COR associated with an EPA-sponsored NAS review.

2.3.8. What Are the Roles and Responsibilities of EPA Authors and Managers Associated With Journal Peer Review?

The EPA considers peer review by a refereed scientific journal to be a satisfactory form of peer review to determine the scientific credibility and validity of the scientific and technical information presented in the article. Because journal peer review is an example of external review, the DM and PRL (typically one of the authors) have responsibilities for this type of peer review. The EPA authors of the article are responsible for complying with relevant organizational procedures associated with publications, such as internal review and clearance prior to submission to a journal; complying with pre-dissemination requirements, such as the use of an appropriate disclaimer; addressing peer review comments and responding to the editor; and maintaining a record of the peer review process. Peer-reviewed journal articles should be submitted to the SI as appropriate.

2.4. Other Agency Personnel Involved With Peer Review

2.4.1. What Are the Roles of the Offices of General and Regional Counsel?

OGC and ORC attorneys have specific areas of expertise, such as contracts and procurement, ethics and the FACA. They are consulted as needed to assist EPA staff with their oversight responsibilities. OGC/ORC attorney review and involvement helps ensure that Agency peer reviews meet legal standards, including those for integrity, transparency and openness.

2.4.2. What Are the Roles of the Quality Assurance Manager (QAM), Director of Quality Assurance (DQA) and Quality Assurance (QA) Staff?

The QAM, DQA and QA staff oversee implementation of the organization's Quality System pursuant to the EPA's Quality Policy for environmental data collection and use (see Section 1.3.4). QA processes and procedures are essential for developing scientifically sound, transparent and credible information supporting EPA's products and decisions. Typically, the QA staff conducts technical review of data quality and review of scientific and technical products for consistency, correctness, coherence, clarity and conformance. In planning the peer review, the PRL is encouraged to consult with the organization QA contact to determine documentation of QA requirements. If applicable, the PRL should ask the QAM to review the QA statement or QA section included in the draft or final work product.

2.4.3. What Is the Role of the Information Quality Guidelines (IQG) Officer?

The IQG Officer (or Coordinator) assists the organization in establishing pre-dissemination review procedures for the quality, objectivity, utility and integrity of the EPA's information products disseminated to the public. The PRL, PRC, QAM and DQA can collaborate with the IQG Officer to ensure compliance with the organization's established pre-dissemination procedures for the specific work products disseminated by EPA.

2.4.4. What Is the Role of the Principal Investigator (PI), Project Leader (PL) or Project Manager (PM)?

The PI, PL or PM is responsible for producing work products based on sound scientific principles and practices, and is responsible for working with the PRL to get their work products peer reviewed. The Agency's peer review procedures and guidelines, Quality Policy requirements for use of defensible data, the General Assessment Factors guidance and the Scientific Integrity Policy provide the framework for assuring the integrity and utility of the EPA's science. The PIs, PLs and PMs are expected to be familiar with these policies. The PI, PL and PM should work collaboratively with the PRC and PRL throughout the peer review process and should help develop charge questions specific to the work product. To enhance the independence of the peer review process for ISI/HISAs, a separate PRL, rather than the PI, PL or PM, should be considered to manage the peer review.

2.4.5. What Is the Role of the Contracting Officer's Representative (COR)?

For some peer reviews, a contractor takes on some of the roles of the PRL. The Contracting Officer (CO) can delegate some responsibilities to the COR. The COR is sometimes called the Project Officer, Task Order Project Officer or Work Assignment Manager. The COR provides oversight of the peer review process. In some instances, the PI, PL or PM can serve as the COR. When a contractor-managed peer review approach is used, the PRL works with and through the COR for some activities. The COR, together with the CO, is responsible for ensuring compliance with contracting requirements, developing a Statement of Work (SOW), coordinating with the contractor regarding COI and other administrative matters and overseeing contractor activities to ensure that the schedule and other contract requirements are met. Unless they also are the COR, the PI, PL or PM cannot supply materials directly to the contractor. Responsibilities of the CO also are described in Section 4.6, especially as they relate to the inclusion of COI solicitation provisions and contract clauses. In accordance with the EPA's peer review process for contractor-managed panels of ISI and HISAs, when consultation about COI is needed between the EPA Science Advisor and contractors, the CO and COR should participate in the consultation.

In some cases, the Agency may opt to obtain peer review services directly from individual peer reviewers, rather than through a contractor-managed peer review process. In such cases, the Agency generally would use a Purchase Order to compensate external peer reviewers, and the Agency contact would be the Purchasing Agent or the COR, if one is designated.

3. Categorize the Work Product and Determining the Need for Peer Review

3.1. Overview

The EPA produces or uses a variety of scientific and technical work products. Before a peer review approach can be selected, a determination first must be made and documented about whether the scientific or technical work product is influential scientific information (ISI) as defined by the Office of Management and Budget's (OMB) Peer Review Bulletin.¹⁵ Although other scientific work products may benefit from peer review, peer review should be conducted for those that are categorized as influential. Influential scientific and technical work products generally receive internal peer review, followed by external peer review. Other work products that do not meet the OMB definition of influential products may undergo internal peer review, external peer review or both.

This chapter of the Handbook describes products that might be subject to peer review, how EPA determines whether a scientific and technical work product is influential—including whether it is a Highly Influential Scientific Assessment (HISA), which is a subset of ISI—and the critical role of senior managers in that decision (Figure 4). The distinction between ISI and HISAs is important because there are additional peer review considerations for HISAs.

3.1.1. What Are Scientific and Technical Work Products?

The first step in determining which work products should be peer reviewed is to identify those that are scientific or technical in nature. The term “scientific and technical work products” is generally consistent with the term “scientific information” in the OMB Peer Review Bulletin. Scientific and technical work products are used to support a research agenda,

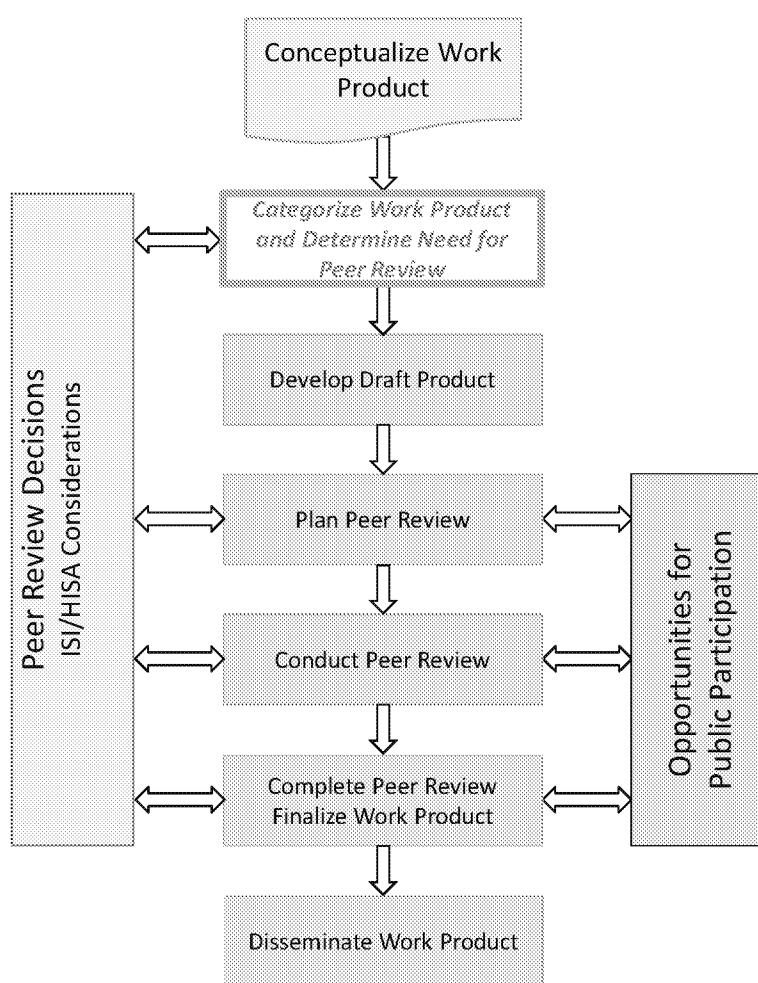


Figure 4. The Peer Review Process: Develop and Categorize Work Product/ Plan Peer Review

¹⁵ OMB defines “scientific information” as “factual inputs, data, models, analyses, technical information, or scientific assessments based on the behavioral and social sciences, public health and medical sciences, life and earth sciences, engineering, or physical sciences.” (OMB Peer Review Bulletin, Section I.5).

regulatory program, policy position, or other EPA position or action. Scientific and technical work products include economic and social science work products. Categories of work products include, for example, risk assessments, technical studies and guidance, analytical methods, scientific database designs, technical models, technical protocols, statistical surveys/studies, technical background materials, technical guidance (except for guidance providing policy decisions), research plans and research strategies.

Products that would not be considered scientific or technical work products can include the following:

- Products that address procedural matters (e.g., planning, reporting, coordination, notification).
- Primarily policy statements (e.g., relocation policy).
- Conference proceedings (unless the proceedings are used as the scientific basis for an Agency action or decision).
- Decision documents, such as an Environmental Impact Statement (EIS), Record of Decision (ROD), or an Economic Analysis reviewed through an interagency review process under E.O. 12866.
- Products that summarize a scientific and technical work product, including public affairs and communication materials (e.g., press releases, press kits, brochures, fact sheets); scientific abstracts, including posters and presentations at scientific meetings; or other summaries (e.g., summaries on Web pages).
- Strategic plans, Agency annual plans and budget documents, performance reports, analytical blueprints, and goals documents.

For any of these examples, the document itself is not subject to the Peer Review Policy, but the underlying scientific or technical models, data and/or work products upon which these documents are based are candidates for peer review. Scientific and technical work products that are referenced to provide context, history, or general background information and that do not materially influence or educe an agency policy or action generally need not undergo peer review.

3.1.2. Who Develops Scientific and Technical Work Products?

Scientific and technical work products may be generated by one or more EPA offices or in collaboration with external partners.¹⁶ Scientific and technical products also may be generated by third-party organizations and used by EPA. In general, third-party scientific and technical products should be evaluated for peer review if they will be used to support Agency decisions or actions.

¹⁶ Please note that generation of scientific or technical work products in collaboration with external partners may be subject to the Federal Advisory Committee Act (FACA).

3.1.3. What Scientific and Technical Work Products Need Peer Review?

According to the EPA's Peer Review Policy, "[p]eer review of all scientific and technical information that is intended to inform or support agency decisions is encouraged and expected." The OMB Peer Review Bulletin stipulates that all of the agency's ISI and HISAs should be peer reviewed unless they meet exemption criteria (see Section 3.3). Other scientific work products that do not rise to the level of influential also may be peer reviewed. These work products will have greater standing in the scientific community if an independent peer review is completed.

When in doubt about whether a work product merits peer review, decide to peer review it.

New applications or modifications of existing, adequately peer-reviewed methodologies or models that significantly depart from the situations for which they were originally designed may require additional peer review.

3.2. Assignment of Categories

3.2.1. What Is Influential Scientific Information (ISI)?

As defined by the OMB Peer Review Bulletin, the term "influential scientific information" means scientific information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private-sector decisions. The interpretation of the term "influential" is consistent with OMB's government-wide information quality guidelines (IQG)¹⁷ and the IQG of the Agency. (The Agency has linked its use of the term "influential" to the term "major" in its IQG).

At EPA, scientific and technical work products that will have or do have a clear and substantial impact on important public policies or private-sector decisions would be considered influential. Decision Makers (DMs) should consider the following factors when determining whether a product is likely to be influential:

- Establishes a significant precedent, model or methodology.
- Is likely to have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or state, tribal or local governments or communities.
- Addresses significant controversial issues.
- Focuses on significant emerging issues.
- Has significant cross-agency and/or interagency implications.
- Involves a significant investment of agency resources.

¹⁷ OMB. 2002. *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies; Republication*. Federal Register 6: 8,452. February 22.

- Considers an innovative approach for a previously defined problem, process, or methodology.
- Satisfies a statutory or other legal mandate for peer review.

3.2.2. How Are ISI Determinations Made and Documented?

The DM, in consultation with the Peer Review Leader (PRL), should make the judgment as to whether a work product is ISI and document the decision. Generally, determination of whether a scientific and technical work product is influential will occur on a case-by-case basis. The EPA's work products should be evaluated and assessed with respect to the factors defined in Section 3.2.1. The categorization determination and other peer review planning decisions should be documented (see Roadmap Exhibit 3: *Example EPA Peer Review Decision Summary Documentation*).

3.2.3. What Is a Highly Influential Scientific Assessment (HISA)?

HISAs are a subset of ISI for which the OMB Peer Review Bulletin specifies additional peer review considerations, including that peer reviewers be external, non-EPA experts. OMB has defined a HISA as ISI that “the agency or the Administrator determines to be a scientific assessment that:

- (i) could have a potential impact of more than \$500 million in any year, or
- (ii) is novel, controversial, or precedent-setting or has significant interagency interest.”

OMB defines a scientific assessment as “an evaluation of a body of scientific or technical knowledge, which typically synthesizes multiple factual inputs, data, models, assumptions, and/or applies best professional judgment to bridge uncertainties in the available information.”¹⁸ Examples given by OMB of assessments that may be considered HISAs include: state-of-science reports; technology assessments; weight-of-evidence analyses; meta-analyses; health, safety or ecological risk assessments;¹⁹ toxicological characterizations of substances; integrated assessment models; hazard determinations; or exposure assessments.

The more far-reaching or significant the impacts of a scientific assessment, the more appropriate it is to categorize the product as a HISA. If a work product is a scientific assessment that involves significant issues that truly are “cutting-edge,” it might be appropriate to designate it as a HISA. For examples of HISA products, see the Science Inventory or the Peer Review Agenda (http://cfpub.epa.gov/si/si_public_pr_agenda.cfm).

3.2.4. How Are HISA Determinations Made and Documented?

Once a scientific or technical assessment has been determined to be influential, the DM should determine whether the product meets OMB's definition of a HISA. As with the categorization of a work product as influential, the decision whether or not to elevate a scientific assessment to the highly influential category occurs on a case-by-case basis after considering the criteria discussed in Section 3.2.3. The DM should make the judgment as to whether an assessment is a HISA and the

¹⁸ OMB Peer Review Bulletin, Section I.7.

¹⁹ Influential scientific information regarding human health, safety or environmental risk assessments may be subject to quality principles articulated in Section 6.4 of the *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency* (2002, EPA/260R-02-008).

decision should be documented (see Roadmap Exhibit 3, Example EPA Peer Review Decision Summary Documentation).

3.2.5. What Work Products Are Categorized as “Other”?

Any scientific and technical work product that does not meet the OMB guidelines’ criteria for influential information is categorized as an “other” work product. Examples may include, but are not limited to, journal articles and some reports. The OMB Peer Review Bulletin does not apply to journal articles because such publications do not contain findings or conclusions that represent the official position of the Agency.

3.2.6. Are Work Products Categorized as “Other” Candidates for Peer Review?

Yes, the Agency may decide to use peer review for work products categorized as “other” because of a particular EPA office’s needs and goals. Peer review also may be warranted because it adds substantial value to the work product or if the work product will be used in an Agency decision-making process. Research papers submitted to peer-reviewed scientific journals are categorized as “other” yet still undergo peer review by the journal.

3.2.7. Can the Categorization of a Work Product Be Revised After the Peer Review Planning Phase?

Yes, the categorization can be revised after the peer review planning phase but before the product undergoes peer review. The nature of the work product—or its intended use—may change, so re-evaluation may be necessary to ensure an appropriate peer review is conducted.

Furthermore, the impact and interest in a peer-reviewed scientific product may change or may not be anticipated fully by the PRL or the DM. Under such circumstances, additional peer review may be necessary, including a change in the review mechanism. Any decision to modify the categorization of a work product should be documented in the peer review record (see Section 6.5.2).

3.3. Influential Work Products That Are Not Peer Reviewed

3.3.1. Under What Circumstances Are Influential Work Products Exempt From the Provisions of the OMB Peer Review Bulletin?

Per the OMB Peer Review Bulletin, the following information does not need to be peer reviewed, even if it might be considered ISI or a HISA:

- Information related to certain national security, foreign affairs or negotiations involving international trade or treaties for which peer review would interfere with the need for secrecy or promptness.
- Information disseminated in the course of an individual adjudication or permit proceeding (including a registration, approval, licensing or site-specific determination), unless the Agency determines that peer review is practical and appropriate and the influential information is scientifically or technically novel or likely to have precedent-setting influence on future adjudications and/or permit proceedings.

- Information involving a health or safety issue where the Agency determines that the dissemination is time-sensitive.
- A regulatory impact analysis or regulatory flexibility analysis subject to interagency review under Executive Order 12866, *Regulatory Planning and Review*,²⁰ except for underlying data and analytical models used.
- Routine statistical information (e.g., periodic demographic and economic statistics) and analyses of these data to compute standard indicators and trends.
- Accounting, budget, actuarial and financial information.
- Information disseminated in connection with routine rules that materially alter entitlements, grants, user fees or loan programs, or the rights and obligations of recipients thereof.

3.3.2. Are There Other Circumstances When Peer Review of Influential Products Is Not Necessary?

Yes, there are other circumstances when peer review of influential products may not be necessary. For example, peer review generally is not conducted:

- For work that has been reviewed previously in a manner consistent with the OMB Peer Review Bulletin and this Handbook (e.g., a cancer risk assessment methodology or an exposure modeling technique that was the subject of earlier peer review of appropriate technical merit would not generally undergo additional peer review even if the product supported a significant Agency decision).
- If an application of an adequately peer-reviewed work product does not depart significantly from its scientific or technical approach.
- When the scientific or technical methodologies or information being used are commonly accepted in the field of expertise and have the appropriate documentation to support the commonly held view (e.g., many products supporting Control Techniques Guidelines and Effluent Limitation Guidelines).
- When the product was developed by the National Academy of Sciences (NAS).

3.3.3. For Influential Information That Is Not Exempt, Can the Peer Review Provisions of the OMB Peer Review Bulletin Be Waived or Deferred?

The Administrator may waive or defer the peer review provisions of the OMB Peer Review Bulletin for ISI (including HISAs) if there is a compelling rationale for the waiver or deferral. The use of waivers is expected to be limited to unusual and compelling situations not otherwise covered by the exemptions, such as situations in which unavoidable legal deadlines prevent full implementation of the OMB Peer Review Bulletin's peer review provisions. According to the Bulletin, deadlines found in consent decrees ordinarily will not warrant waiver of the provisions because those deadlines should be negotiated to

²⁰ Executive Order No. 12866. October 4, 1993. *Federal Register*, 51:735. <http://www.archives.gov/federal-register/executive-orders/pdf/12866.pdf>.

permit time for conducting a peer review. Deferral of some or all of the peer review provisions may be an appropriate way to accommodate immovable deadlines. If any of the OMB Peer Review Bulletin provisions are deferred, peer review should be conducted as soon as practicable thereafter. Deferrals of peer review of ISI and HISAs should be approved by the Administrator.

If peer review of an influential work product is not planned, an explanation should be included in the product documentation and record for that work product in the Science Inventory (SI).

3.4. Work Products from Contracts, Grants and Agreements That May Require Peer Review

The Agency should not use scientific and technical work products from contracts, grants or cooperative agreements to support decision making unless the work products have undergone a peer review both for scientific and technical rigor and for applicability to the specific use to be made of the product. Products generated by contractors under the direct supervision of EPA and incorporated by the Agency in the development of EPA scientific and technical work products are not necessarily peer reviewed separately but as part of the final Agency product.

Contracts differ from grants and cooperative agreements and require special considerations when considering peer review of these work products (see Section 3.4.2). There are important legal restrictions on the direct use of work products developed under grants and cooperative agreements in the agency's decision-making process. See the EPA's Grants and Debarment Web page (<http://www.epa.gov/ogd/> or <http://intranet.epa.gov/OGD/policy/7.0-GPI-GPI-94-04.htm>) for additional information.

3.4.1. How Does the EPA's Peer Review Process Apply to Products Generated through EPA Contracts?

A work product generated through an EPA contract should undergo the same degree of peer review as if the work product was developed by an EPA employee. The peer review should be conducted independently from the contractor who developed the work product. EPA is responsible for arranging the peer review (see Section 4.6.1).

3.4.2. How Does the EPA's Peer Review Process Apply to Products Generated through EPA Assistance Agreements (e.g., Grants or Cooperative Agreements)?

Special considerations apply to the peer review of scientific and technical work products generated through EPA grants or cooperative agreements.

EPA provides financial assistance for research that is intended to stimulate or support development of scientific knowledge that is not primarily for EPA's direct use or benefit. The resulting work products might be widely disseminated either through publication in scientific journals or through other means, as opposed to a report tailored to the EPA's specific needs and requirements. EPA can consider these work products just as it does other published scientific works when formulating its programs and policies. EPA may determine that the recipient's work product is influential because (1) it will be used to support an EPA program or policy position; and (2) it meets the criteria for influential information. EPA should evaluate whether the peer review process undertaken by the assistance agreement recipient was acceptable for the purposes for which EPA plans to use the work product. EPA may accept the peer review if it determines that it is of appropriate quality and as defensible as if it were conducted by EPA.

itself. The work product may require additional peer review, however, in the context of its use or modification by the Agency.

The following are options for peer reviewing the product:

- EPA can have the product peer reviewed with the participation of the assistance agreement recipient/author(s). In this case, EPA could arrange for an independent peer review of the product within the context of the way(s) in which the Agency plans to use it. EPA may ask the recipient/author(s) to provide additional information or to revise the product in response to the peer review.
- EPA can have the product peer reviewed without the participation of the recipient/author. EPA could arrange for the peer review of the product within the context of the Agency's intended use. EPA then would receive the comments and prepare a statement that documents the EPA's own response to the comments.

3.4.3. Can the Recipient of a Grant or Cooperative Agreement Use Agreement Funds to Pay Peer Reviewers of Their Work Products?

Provided that EPA agrees that a peer review would further the public purpose of the assistance agreement, EPA may include funds for the peer review in the agreement. This is generally in the form of journal publication fees. If a work product is ISI or a HISA, the peer review of that product should follow the guidelines set out in the *Peer Review Handbook*, consistent with Agency use and review of the product.

3.4.4. How Should Peer Review Be Handled for Products Developed Under an Interagency Agreement?

Under an Interagency Agreement, EPA provides funds to another agency to be used for a specific purpose. The receiving agency's guidance for peer review is likely to be different from the EPA's Peer Review Policy, although the OMB Peer Review Bulletin establishes some minimum common guidance for the federal government. Regardless, if EPA plans to use any work products from that agreement, a determination should be made as to whether the work products are ISI, including whether they are HISAs, or do not qualify as influential (i.e., "other"). The EPA then should decide whether those documents need review under the EPA's Peer Review Policy and pursue the appropriate mechanism.

3.5. Other Types of Work Products That May Require Peer Review

3.5.1. Should Another Organization's Work Products That Have Been Submitted to the EPA for Use in Decision Making Be Peer Reviewed?

Any scientific or technical work product that is used in agency decision making and is considered influential becomes a candidate for peer review, regardless of whether the work product is developed by EPA or another organization. Therefore, all work products important to EPA decision making that are independently generated by other organizations (e.g., other federal agencies, interagency groups, state and tribal bodies, environmental groups, industry, educational institutions, international bodies) should be considered as candidates for peer review. The DM in the EPA office planning to use the product is responsible for the categorization and decision regarding peer review.

If possible, when EPA knows that a work product being generated by another organization may be of interest to EPA for future use, the appropriate EPA office(s) should work with that organization and others, as appropriate (e.g., state agencies, international organizations), to promote the use of peer review. Furthermore, when another agency's product is being considered for EPA use, the EPA office(s) planning to use the product should ascertain—in collaboration with other EPA offices as appropriate—the characteristics and sufficiency of any peer review process already conducted or planned for the candidate product.

Reports produced by certain outside organizations—such as the NAS, the EPA's Science Advisory Board (SAB) and the International Agency for Research on Cancer—are products of independent peer review by their nature. The OMB Peer Review Bulletin specifically notes that official NAS reports are generally presumed not to require additional peer review. The Agency's scientific work products which use and interpret those products' findings or results may be subject to peer review. Peer reviews conducted by stakeholders of their own products may be considered peer input but not independent peer review, unless principles and policies articulated in the EPA's *Peer Review Handbook* can be applied.

3.5.2. Is Additional Peer Review Necessary If a Paper Is Published in a Refereed Scientific Journal?

The extent to which additional peer review is needed for an article that has been peer reviewed by a credible refereed scientific journal depends upon EPA's use of the article. For example, EPA may determine that an additional and more rigorous or transparent review process is needed if a particular journal review process did not address questions that EPA determines should be addressed before using or disseminating the information.

3.5.3. Does an Agency Work Product Become a Candidate for Peer Review When Peer-Reviewed Journal Articles Are Used in Support of That Work Product?

Agency work products are candidates for peer review even when supported by peer-reviewed journal article(s). Although the use of articles that have been peer reviewed by a credible journal strengthens the scientific and technical credibility of any work product in which the article(s) appears or is referenced, it does not eliminate the need to consider whether the work product itself should be peer reviewed. In most cases, journal peer review may not cover issues and concerns that the Agency may want peer reviewed to support an EPA action. Under these circumstances, the scientific or technical work product in which the article(s) appears or is referenced becomes a candidate for peer review. A journal article authored by EPA employees should be used in the same manner as an article published by non-EPA authors in a credible, well-recognized journal.

Decisions to peer review a work product should be documented in the peer review record (see Section 6.5.2).

3.5.4. Should Site-Specific Decisions Be Subject to Peer Review?

A site-specific decision (e.g., for a permit or hazardous waste cleanup) itself is not subject to peer review under the EPA's Peer Review Policy. However, if a site-specific decision is supported by ISI or a HISA generated for that site-specific decision, then that work product should be peer reviewed. Generally speaking, the PRL should examine closely the ways in which the underlying scientific or technical work product is adapted to the site-specific circumstances.

3.5.5. Should National Environmental Policy Act (NEPA) Products Be Subject to Peer Review?

Although an EIS prepared under the requirements of the NEPA receives extensive review through the “scoping” and interagency and public review processes that are part of the NEPA, this usually is not considered peer review. If the underlying scientific or technical data, models, analyses or work products are categorized as ISI or a HISA, then these should be peer reviewed.

If EPA is developing the NEPA document as part of an EPA action/decision (i.e., EPA is the lead agency under NEPA), and supporting documents are ISI or HISAs, then the supporting documents should receive independent peer review. If the document is not categorized as influential, then peer input might be appropriate.

If EPA is reviewing an EIS from another agency (i.e., EPA is not the lead agency under NEPA), it is likely that it is being reviewed for conflicts with EPA policy and general environmental concerns. In such a case, EPA should ask whether the underlying scientific or technical work product that supports the EIS has been peer reviewed to avoid concerns about the full credibility and soundness of the EIS based on the science and technical support. The EPA should work with the other organization/agency to ensure that scientific and technical work products receive peer review adequate for EPA purposes.

3.5.6. Do Voluntary Consensus Standards Undergo Peer Review?

In general, the answer is no. The National Technology Transfer and Advancement Act of 1995 (NTTAA) directs EPA to use available voluntary consensus standards in its regulatory activities, unless to do so would be inconsistent with applicable laws or otherwise impractical. For purposes of the NTTAA, voluntary consensus standards are defined as technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus bodies (e.g., ASTM International). The general purpose of the NTTAA is to reduce private and governmental costs by avoiding having the government “reinvent the wheel” in the development of technical standards. Voluntary consensus standards normally would not undergo peer review because the underlying process used by issuing organizations to develop and approve these standards generally is considered adequate for purposes of the Agency’s Peer Review Policy.

3.5.7. What Economic Work Products Need Peer Review?

Economic work products are considered scientific and technical work products. As such, it may be appropriate to peer review them, and an ISI/HISA/other determination should be made. If an economic work product is determined to be influential, then it should be peer reviewed if it has not been subjected already to adequate peer review according to the relevant sections of this Handbook or is otherwise exempt (see Section 3.3).

Data and analytical models underlying an economic analysis, particularly those supporting economically significant rules, are candidates for peer review if the models and corresponding use of the data have not been subjected previously to adequate peer review. This also is true for work products that will serve as a principal method or protocol used to conduct economic analyses within a program.

The following economic work products generally should be peer reviewed:

- Internal Agency guidance for conducting economic and financial analysis that meets the definition of influential.
- Economic and financial methodologies that will serve as a principal method or protocol used to conduct economic analyses within a program.
- Unique or novel applications of existing economic and financial methodologies, particularly those that are recognized to be outside of mainstream economic practices.
- Broad-scale economic analyses of regulatory programs, such as those required by Congressional mandates (e.g., the Clean Air Act reports to Congress on benefits and costs).
- Stated preference (e.g., contingent valuation) and revealed preference surveys (e.g., recreational travel cost surveys) developed to assist in the economic analysis of a regulation or program.
- National surveys of costs and expenditures for environmental protection (e.g., financial needs surveys, pollution abatement expenditures surveys).
- Economic multiyear research plans developed to assess and advance the state-of-science in economic theory, methodologies or modeling (in particular, the technical feasibility of the plan's components).
- Meta-analyses (i.e., re-analyses of existing published literature and supporting data on the measurement of economic benefits, costs and impacts) developed to assist in the economic analysis of a regulation or program.

Other economic work products also might benefit from peer review, even though they do not exhibit a high degree of complexity or establish an innovative approach. For these, factors such as the potential significance of the analysis for cross-agency or interagency practices or the significance of the issue addressed may make peer review desirable. Examples include:

- Analyses measuring the economic impacts and effectiveness of adopting market-based or economic incentives as regulatory management instruments.
- Technical analyses supporting economic policies established under other government organizations (e.g., economic models used to study transportation, economic development and international trade policies).

External peer reviews can be provided by the SAB's Environmental Economics Advisory Committee, other appropriate outside organizations, or individual, non-EPA reviewers who have expertise in the technical economic issues raised in the economic work product.

3.5.8. Should Economic Analyses Prepared in Support of “Major” or “Economically Significant” Regulations Be Peer Reviewed?

If an Economic Analysis or Regulatory Impact Analysis²¹ uses accepted, previously peer-reviewed methods in a straightforward manner, it would not undergo additional peer review. The OMB Peer Review Bulletin specifically exempts Economic Analyses already reviewed through an interagency review process that involves application of the principles and methods defined in OMB Circular A-4.²² Furthermore, Economic Analyses prepared to support “major” or “economically significant” regulations²³ typically do not utilize innovative or untried economic methods. It is unnecessary to conduct peer reviews of straightforward applications or transfers of accepted, previously peer-reviewed economic methods or analyses (including those published in peer-reviewed journals). Therefore, Economic Analyses that are developed using these procedures do not normally undergo an additional peer review, even those Economic Analyses prepared in support of “major” and “economically significant” rules.

Even when peer review is not required, additional peer input can be beneficial in the development of economic work products for “major” and “economically significant” rules, and this input is encouraged by the OMB Peer Review Bulletin. At present, some peer input of these analyses already is likely to be included as part of the regulatory development process, including input received from other EPA offices represented on the workgroup for the rule, from the Agency’s Regulatory Steering Committee, and from the public as part of the public comment process for the rule. There may be, however, added benefit to employing additional peer input procedures, such as actively soliciting input from economists elsewhere in the Agency (through the Economics Forum Steering Committee or the National Center for Environmental Economics), as well as economists from other federal agencies, on the quality and completeness of the Economic Analysis. It is unnecessary to conduct peer reviews of straightforward applications or transfers of accepted, previously peer-reviewed economic methods or analyses, (including those published in peer-reviewed journals).

3.5.9. What Other Social Science Work Products Need Peer Review?

Typically, a social science work product is one that includes empirical, logic-based approaches to answer technical questions about human motivation, human behavior, social interactions and social processes that are relevant to the environmental issues being addressed. The term “behavior” includes overt actions; underlying psychological processes, such as cognition, emotion, temperament and motivation; and bio-behavioral interactions. The term “social” includes socio-cultural, socio-economic and socio-demographic status; bio-social interactions; and the various levels of social context, from small groups to complex cultural systems. Examples of social science work products include analyses

²¹ The OMB Peer Review Bulletin refers to Economic Analyses as Regulatory Impact Analyses.

²² OMB. 2003. *Circular A-4, Regulatory Analysis*. <http://www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf>. September 17.

²³ Under Section 3(f)(1) of Executive Order 12866 (58 *Fed. Reg.* 51,735 [Oct. 4, 1993]), “significant regulatory actions” rules are those that may have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or state, local or tribal governments or communities. The term “major,” as defined in the Congressional Review Act (5 U.S.C. § 804(2)), means a rule that has resulted in or is likely to result in: an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic and export markets.

and/or evaluations related to such topics as pollution prevention, risk communication, environmental information, environmental justice, quality of life, decision making and public participation.

The following social science work products normally should undergo external peer review:

- Internal Agency guidance for conducting social impact assessments and other community cultural assessments related to different environmental protection approaches, such as community-based watershed protection (heretofore referred to as social assessments).
- New social science methodologies that will serve as a principal method or protocol to conduct social assessments.
- Unique or novel applications of existing social science methods, such as surveys, focus groups, interviews, network analyses, comparative analyses and content analyses.
- New national surveys of values, perceptions and preferences related to environmental protection.
- Innovative research or analyses that address the human dimensions of environmental protection or environmental change in terms of social trends, future predictions and/or behavioral generalizations.
- Social science multiyear research plans developed to assess and advance the state-of-science in social science theory, methodologies or modeling (in particular, the technical feasibility of the plan's components).

3.5.10. Are Regulations Subject to Peer Review?

A regulation itself is not subject to the Peer Review Policy. However, all ISI and HISAs that support a regulatory action should be peer reviewed. The administrative record for the action should include a statement certifying how the peer review provisions have been met (see Appendix D). For discussion of the role of peer review in regulatory development, see Section 1.4.

3.5.11. Should Environmental Regulatory Models Be Peer Reviewed?

In general, the answer is yes. Guidelines for the peer review of environmental regulatory models have been published by the Agency. These can be found on the EPA website under <http://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P1003E4R.PDF>.

4. Peer Review Types and Mechanisms

4.1. Overview

After a planned work product has been categorized as Influential Scientific Information (ISI); a Highly Influential Scientific Assessment (HISA), which is a subset of ISI; or “other,” the selection of a peer review approach is needed and involves consideration of many aspects. This chapter outlines the steps for a range of peer review options and discusses the processes and considerations relevant to each (Figure 5). The EPA develops various scientific work products that may be used to support its analyses and decisions. These products vary widely in their complexity and levels of influence. Although much attention is given in this Handbook to influential information, selecting the appropriate type of review mechanism also is important for work products categorized as “other.” This chapter, therefore, applies to all products that warrant peer review, not only work products categorized as ISI or a HISA. In addition, although the peer review principles in this Handbook apply to both internal and external peer reviews, the emphasis of this chapter is on options for obtaining external reviews.

4.2. Choosing a Peer Review Mechanism

The preamble to the Office of Management and Budget’s (OMB) Peer Review Bulletin²⁴ notes that

“... different types of peer review are appropriate for different types of

information. Under this Bulletin, agencies are granted broad discretion to weigh the benefits and costs of using a particular peer review mechanism for a specific information product. The selection of an appropriate peer review mechanism for scientific information is left to the agency’s discretion.”

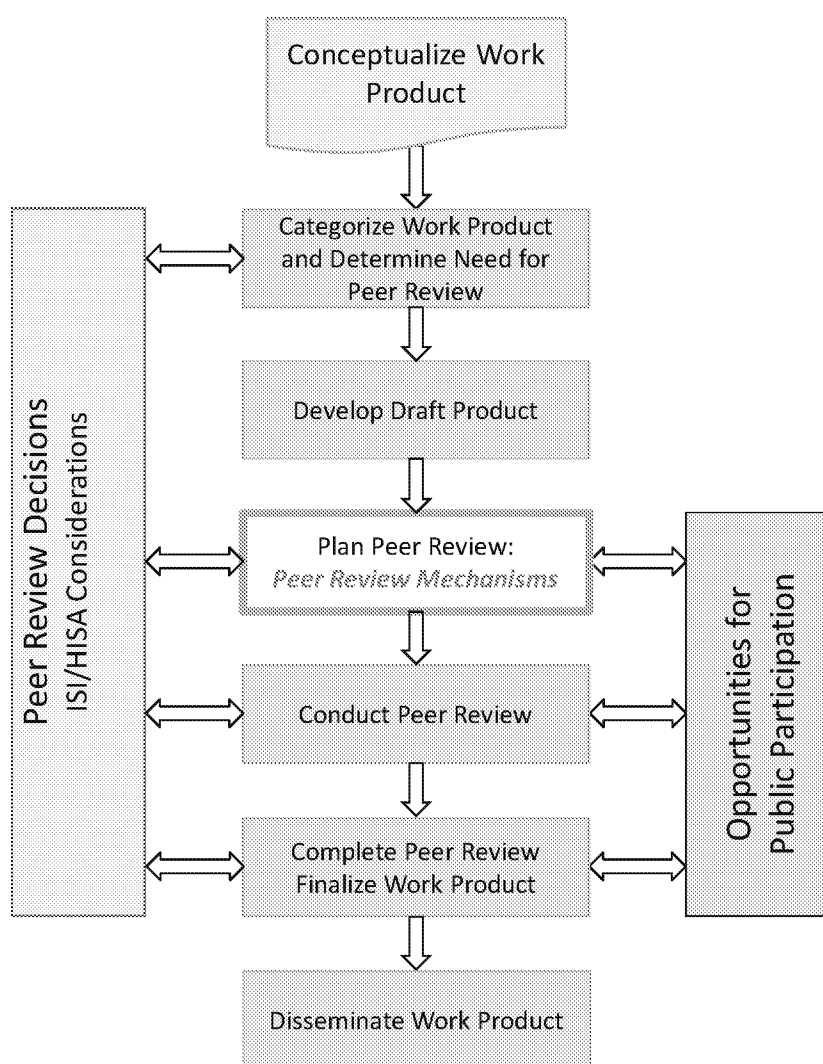


Figure 5. The Peer Review Process: Peer Review Mechanisms

²⁴ OMB. Dec. 16, 2004. Memorandum for Heads of Departments and Agencies, *Final Information Quality Bulletin for Peer Review*. <http://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2005/m05-03.pdf>.

4.2.1. How Is the Appropriate Peer Review Mechanism Determined?

During the planning of a peer review, the Decision Maker (DM), the Peer Review Coordinator (PRC) and the Peer Review Leader (PRL) may consider several mechanisms for the peer review of a scientific or technical work product. Options range from formal review by EPA colleagues not involved in developing the product (internal peer review or Agency review) to a large and formal panel of subject matter experts from outside EPA (external panel of independent peer reviewers) to a combination of internal and external peer reviews. The peer review effort might be a focused one-time evaluation, or it might encompass several examinations over the course of a product development. Peer review provides the greatest credibility for the EPA's scientific and technical work products when it involves qualified, external independent reviewers; is intensive in its examination; and operates through a formal and transparent process. Per the EPA's Peer Review Policy, external peer review is the approach of choice for all ISI and is the expected procedure for a HISA. Time and resource considerations, however, may impose limitations on the type of peer review performed. If only an internal peer review is planned for scientific and technical work product(s) categorized as ISI or HISAs, the rationale for doing this should be documented and approved by the DM.

Arranging for the most appropriate and feasible peer review will involve a judgment regarding the extent to which the peer review will improve the credibility of the product, as well as consideration of substance, time, resources, priorities and capacity of peer review mechanisms. The PRL should develop a peer review plan for early consideration by the DM (and PRC). For influential work products, including HISAs, public comments on the peer review plan posted on the Science Inventory (SI) (see Section 7.3.4) may lead the Agency to modify the peer review approach, for example, to employ a public panel review process rather than letter reviews.

The approach best suited to a specific work product will depend on the nature of the topic and the intended use of the final product. Generally, the more novel or complex the science or technology, the greater the cost implications of the impending decision or public policy, and the more

The mechanism of the peer review should match the importance and complexity of the work product.

controversial the issue, the stronger the indication is for a more extensive and involved peer review and for an external peer review in particular. Certain work products may lend themselves clearly to extensive external peer review; generally, these will be products with large impacts. Other work products may not need a large-scale external peer review and may utilize a less involved, less resource-intensive review.

It is important to make the choice of peer review mechanism at the time that the work is planned (for products supporting rulemakings, at the analytic blueprint stage) so that peer review costs and time can be budgeted into the work plan. Essentially, the level of peer review should match the impact and complexity of the work product. For example, a Tier 1 or Tier 2 rule under development carries considerable weight and deserves careful handling and attention; therefore, in cases where the Agency has determined that a supporting work product should be peer reviewed, that peer review deserves a commensurate level of care and attention.

Factors that should be considered in selecting a peer review approach include the categorization of the work product (ISI, HISA or other), the availability of internal or external qualified reviewers with the required expertise, whether individual or group advice is desired, and the provision for opportunities for the appropriate level of public participation. Timing and budgetary considerations also may be factors. No single peer review mechanism is likely to work best in all situations; the DM, PRC and PRL should consider, however, the following general guidance:

- For ISI and HISAs intended to support the most important decisions, or for work products that have special importance in their own right, the recommended approach is an internal review followed by an external peer review. Generally, the more complex, novel and/or controversial the product, or the higher impact it is likely to have, the more the DM should consider implementing a peer review involving external experts and providing opportunities for public participation.
- HISAs (a subset of ISI) are expected to undergo rigorous external peer review with opportunities for public participation. When time and resources allow, panels are preferable. External panels usually will be managed by a contractor or conducted by a federal advisory committee (FAC).
- Work products that are less complex, novel or controversial, or that have a lower impact, may be subject to less extensive, less resource-intensive review processes.
- Group discussion among peer reviewers (i.e., panel reviews) can be very helpful in the peer review process because it allows interaction among peer reviewers with different perspectives and expertise. Peer review panels to which the public is invited are more transparent than closed discussions.
- In general, more reviewers are necessary for complex projects (to ensure that expertise from more disciplines is represented) and for controversial topics (to represent differences in scientific perspective within a discipline).
- Strict time constraints, such as a court-ordered deadline, can make a less involved or less formal peer review mechanism imperative. DMs and PRLs should make maximum efforts to ensure that such a process is systematic and objective.
- Reviews of products from remediation and other programs may be tied to litigation; the Office of General Counsel (OGC) or the Office of Regional Counsel (ORC) should be consulted regarding any restrictions to be aware of before deciding what peer review mechanism to use.

4.2.2. What Are Some Examples of Internal Peer Review Mechanisms?

The following are examples of internal peer review mechanisms:

- Individual letter review by independent EPA experts (e.g., a review by Office of Research and Development [ORD] experts of a draft article on benchmark dose completed by a program office).
- *Ad hoc* panel of independent EPA experts (e.g., an independent internal workgroup convened to review the science supporting the possible classification of a chemical as a carcinogen).
- Technical review by scientists in an EPA laboratory, typically conducted by letter (e.g., an initial review of the risk assessment for a regional incinerator by agency scientists), prior to submission to a journal.

4.2.3. What Are Some Examples of External Peer Review Mechanisms?

Examples of external peer review mechanisms include the following:

- Review of a journal manuscript by a refereed scientific journal.
- Letter review by individual independent experts from outside the Agency.
- *Ad hoc* panel of independent non-EPA experts convened for review and discussion, with each panelist submitting his/her comments separately.
- Review by an established FAC (e.g., a review of an Integrated Scientific Assessment document for a criteria air pollutant by the Clean Air Scientific Advisory Committee [CASAC]).
- Agency-appointed special board or commission (e.g., a review of the risk assessment methodology prepared by the Clean Air Act Commission on Risk Assessment). OGC should be consulted to determine whether the Agency has specific statutory authority to establish and finance the activities of a board or commission that would perform governmental functions and whether the Federal Advisory Committee Act (FACA) would apply to the board or commission.
- Review by the National Academy of Sciences (NAS) under a contract with EPA.

There are other bodies that may provide external commentary on Agency work products but are not considered peer review mechanisms, such as the following:

- Interagency committees (e.g., a review of prospective research plans by the Committee on the Environment, Natural Resources, and Sustainability, coordinated by the White House).
- Committees convened by another federal agency or government organization (e.g., a review of the Dioxin Reassessment by the Health and Human Services Committee to Coordinate Environmentally Related Programs).
- Reviews initiated by nongovernmental groups (e.g., a Society for Risk Analysis review of cancer guidelines).

4.3. Mechanism: Journal Peer Review

Peer review of journal articles performed by a credible, refereed scientific journal contributes to the scientific and technical credibility of the reviewed product. Generally, EPA considers peer review by such journals as adequate for reviewing the scientific credibility and validity of the findings (or data) in that article and, therefore, a satisfactory form of peer review.

Prior to submitting an article to a journal for peer review, EPA employees are encouraged to have the article internally peer reviewed. Articles also may need examination in accordance with any organizational clearance procedures, especially when the author includes EPA as their affiliation. For EPA employees, Conflict of Interest (COI) law and policy also will apply.

The OMB Peer Review Bulletin does not apply to journal articles because such publications do not contain findings or conclusions that represent the official position of the Agency (i.e., they are categorized by the Agency as “other”). Therefore journal articles must have the appropriate disclaimer

that the work represents the views of the author(s) and not those of the Agency (e.g., “The views expressed in this paper are those of the authors and do not necessarily reflect the views or policies of the U.S. Environmental Protection Agency”).

4.4. Mechanism: Letter Reviews

Generally, letter reviews by several experts will be more expeditious and less expensive than convening a panel. Letter reviews by individual experts are more appropriate when a work product is not controversial, covers only a few disciplines, or when premature disclosure of a sensitive report to a public panel could cause harm to government or private interests. The letter review process may include a public comment period on the draft Agency document, with comments received from the public being shared with the peer reviewers. There also are multistage processes in which letter reviews may be conducted prior to the release of a work product for public notice and comment, followed by a formal panel review. These multistage processes are particularly valuable for highly complex and multidisciplinary products, especially those that are novel or precedent-setting.

Letter peer reviewers are selected primarily according to their areas of expertise, knowledge, skills and experience. They are evaluated for independence, potential COI and appearance of a loss of impartiality (see Chapter 5) before being selected for a letter review. If letter peer reviewers will be compensated using a purchase order or contract mechanism, the PRL should work with the Contracting Officer (CO) to develop an appropriate task statement or scope of work. Guidance is provided in Section 4.6. If letter peer reviewers are not to be compensated, they will need to sign a Gratuitous Services Agreement for Peer Review, as discussed in Section 4.6.7.

4.5. Mechanism: Panel Reviews

When time and resources permit, panels are preferable for influential products because they tend to be more deliberative than individual letter reviews and the reviewers can help inform one another. Panels are valuable when the work product is complex and multidisciplinary. Panel peer review meetings may be open to the public, with opportunities for public comment. Peer review panels that include EPA experts do not constitute external peer review.

The Agency may organize internal peer review panels composed of independent EPA experts or a mix of EPA experts and experts from other federal agencies. If Agency-organized panels include nonfederal experts, the provisions of the FACA may apply (see Section 4.7.5).

External peer review panels, in most cases, will be managed under a peer review contract (see Section 4.6) or conducted by a chartered FAC (see Section 4.7). Another option for obtaining external panel peer review is for the Agency to contract with the NAS (see Section 4.8).

4.6. Peer Review by Contractors

4.6.1. Can the Agency Use a Contractor to Obtain Peer Review Services?

Yes, the Agency can use a contractor to obtain peer review services.²⁵ Peer review services are “advisory and assistance services,” as defined in Federal Acquisition Regulation (FAR) 2.101. It should be noted that these types of services require special approvals and management oversight. Approval

²⁵ If EPA manages or controls a group convened by a contractor, the FACA may apply.

levels for advisory and assistance services are located in the in Subsection 1.6.1 of the EPA Acquisition Guide (EPAAG) available at <http://oamintra.epa.gov/node/521>.

Typically, peer review services would be available under a “mission contract,” that is, a contract with a broad scope covering a variety of services. It also is possible to have a contract or purchase order solely for peer reviews (see Section 3.4). A contractor assisting the Agency in the development of a work product, however, should not be used to provide peer review services for that same work product.

The Agency may obtain peer review services through a contract or purchase order. Contracts or purchase orders may be used to obtain both letter and panel review services, and this guidance applies to both. A contract is awarded if the cost is more than the simplified acquisition threshold (\$150,000 in fiscal year 2015). If the cost is \$150,000 or lower, then a purchase order typically is issued. For assistance in preparing the necessary pre-award contract documents, Chapter 7 of the EPAAG and the appropriate contracting office should be consulted.

For assistance in preparing simplified acquisition packages for purchase orders, the Office of Acquisition Management has a guide called *SAME: Simplified Acquisition Made Easy*, which is available on the intranet at <http://oamintra.epa.gov/files/OAM/sapsEasy.pdf>.

4.6.2. How Does the Peer Review Leader Write a Statement of Work (SOW) for Peer Review Contracts?

The SOW should specify clearly that the contractor is responsible for preparing peer review evaluations and should set forth guidelines for the peer review of scientific or technical documents. The contractor may perform the peer review with appropriate contractor staff, subcontractors or consultants. Any guidelines needed to ensure the soundness and defensibility of peer reviews should be developed by the EPA office and made part of the contract. The contractor then would ensure that the peer reviews adhere to the guidelines.

Contracts may be used to obtain both letter and panel review services.

If the charge questions are known prior to the issuance of a solicitation for a contract, or prior to the issuance of a tasking document under an awarded contract, the CO can incorporate the charge questions directly into the SOW for the contract or tasking document. Otherwise, the charge questions would be provided to the contractor in a separate tasking document or technical directive.

The SOW must specify the full range of desired services. Unless the prime contractor is clearly tasked with responsibility for performing peer reviews and delivering peer review comments or a peer review report, individual peer reviewers’ fees and associated travel expenses are not payable under the contract. If the SOW calls for the preparation and delivery of comments or an evaluation, as well as specifying a meeting with the Agency and other peer reviewers as part of the peer review, payment is appropriate. The peer reviewer’s attendance at the meeting then would be part of contract performance. The prime contractor, rather than EPA, must select the peer reviewers, although the terms of the contract may specify qualifications for peer reviewers and EPA may review the qualifications of peer reviewers the contractor proposes to hire to ensure they meet the established qualifications. Example SOWs are presented in Appendix E.

4.6.3. Can the Agency Select Peer Reviewers When Using a Contractor-Managed Peer Review?

When using a contractor-managed peer review, the Agency cannot select peer reviewers.²⁶ When a contractor is managing a peer review (either by panel or letter) for the Agency, the prime contractor is responsible for selecting who will perform the peer review. Interfering in this process may be a violation of federal and Agency acquisition regulations. Specifically, it may constitute directed subcontracting.

The EPA can establish qualifications for peer reviewers. The Agency should not be involved, however, in the selection of individual peer reviewers and should avoid commenting on the contractor's selection of peer reviewers other than to determine whether the reviewers, once selected, meet the qualifications established, including compliance with contract requirements pertaining to COI. The EPA may identify, however, a pool of qualified peer reviewers for the prime contractor to consider. The candidates should be listed in alphabetical order and, to avoid directed subcontracting issues, the list generally should include more individuals than the number required for the review.

If a list is provided, it should be noted on the list that it is a suggested list and other qualified candidates may exist who are not on the list. This is to prevent the impression that the prime contractor can choose only someone on the list. The prime contractor is required to include several COI clauses substantially similar to the COI clauses included in the primary contract in its subcontracts with the peer reviewers.

4.6.4. How Is the Panel Formed When a Contractor Manages a Panel Peer Review for ISI or HISAs?

In March 2013, the Science and Technology Policy Council (STPC) approved a process to enhance the transparency and the EPA's oversight of panel peer reviews of ISI and HISAs when the reviews are managed by contractors (see the EPA's *Conflicts of Interest Review Process for Contractor-Managed Peer Reviews of EPA HISA and ISI Documents*, <http://www2.epa.gov/osa/conflicts-interest-review-process-contractor-managed-peer-reviews-epa-highly-influential>). Under this process, EPA will publish a "Call for Experts" in the *Federal Register* to identify the types of expertise needed, announce the availability of the document to be reviewed or provide a brief synopsis of the document, direct the public and stakeholders to submit nominations of potential peer reviewers to the contractor, and allow a minimum of 3 weeks for the public to nominate expert candidates. At the same time, the contractor will use traditional techniques to identify additional qualified candidates in the disciplines identified by EPA. The contractor will screen all nominees (including those submitted by the Agency and the public) for expertise and potential COI. Based on the information collected by the contractor, the contractor will develop a list of potential peer reviewers. This list of potential peer reviewers will be published for public review and comment.

The process for contractor-managed panels also provides for more direct interaction between EPA and the contractor in addressing actual or potential COIs. All prospective reviewers for contractor-managed panel reviews are evaluated for independence, COI and an appearance of a loss of impartiality and are required to complete COI disclosure forms. Among other things, these forms require prospective reviewers to disclose to the contractor certain financial interests and answer questions regarding connections to the work product being reviewed. An example COI Statement form is included in Appendix J. In addition, the CO and the Contracting Officer's Representative (COR), in consultation

²⁶ If EPA were to select the reviewers for a contractor peer review involving group advice of the peer review panel, FACA may apply because EPA would be exerting control over the panel.

with the EPA Science Advisor (or his or her designee), will discuss with the contractor the process used by the contractor to identify and address COI, ensure that the contractor and prospective reviewers are in compliance with COI requirements in the contract, and provide input on any issues concerning potential conflicts.

4.6.5. What Are Some Management Controls for Peer Review Contracts?

Contract management controls are designed to ensure the following:

- (1) The contractor does not perform inherently governmental activities (IGA).
- (2) The contractor and the contractor's work is free from COIs or conflicts can be appropriately avoided, neutralized or mitigated.
- (3) If provided to the contractor, confidential business information (CBI) or other confidential/sensitive information is appropriately safeguarded.
- (4) Improper relationships with contractor employees and subcontractors are avoided.

Each of these concepts is discussed in the sections that follow.

4.6.5.1. What Are Inherently Governmental Activities and What Management Controls Prevent Contractors from Performing Them?

Agency regulations and FAR prohibit contractors from performing IGA. OMB Policy Letter 11-01 (76 *Fed. Reg.* 56,227, Sept. 12, 2011) defines "inherently governmental activities" as activities that are so intimately related to the public interest as to mandate performance by government personnel. These activities require the exercise of substantial official discretion in the application of government authority and/or in making decisions for the government.

With contracts for peer review services, the Agency is seeking only a contractor's recommendations, advice or analysis of a document, not a determination of whether the document is acceptable for the EPA's purposes or what the policy that the document supports should be. Determining Agency policy is an IGA. EPA officials make the official Agency decision regarding acceptability and/or quality of the document. To ensure that Agency officials are not influenced improperly by the recommendations in the peer review, the contract should include management controls. One possible control would be to direct the peer reviewers to submit with their evaluations or comments a description of the procedures used to arrive at their recommendations, a summary of their findings, a list of sources relied upon and clear and substantiated identification of the methods and considerations upon which their recommendations are based. To the extent possible, the contract should set forth any guidelines or criteria for performance of the peer review. Agency officials should document their evaluations of the quality and validity of the peer review, including a clear record of their review of the contractor's work and documentation that Agency personnel made the final decisions. Such records of review could include notes from reviews of draft and final documents by EPA personnel and minutes from progress meetings with contractors.

4.6.5.2. What Are Management Controls for Conflict of Interest?

To identify and avoid, neutralize or mitigate actual or potential COI, the contract should include controls. Inclusion of Agency-developed personal and organizational COI clauses in the contract or purchase order is critical when procuring peer review services. Usually, the CO will include COI

solicitation provisions and contract clauses as a matter of course without involvement by the EPA Project Officer. As a safeguard, the COR should:

- Section 9.5 of the EPAAG, which provides guidance and procedures for addressing and documenting organizational COI. Project Officers also should review the Office of Acquisition Management's News Flash Notice titled "Evaluating Conflict of Interest Issues Pre-Award" (August 11, 2006) (available at <http://oamintra.epa.gov/node/47?q=node/80>).
- Highlight the COI requirements in the SOW for the procurement of the peer review services. In particular, the COR should ensure that the peer review "COI Evaluation for Task Orders/Work Assignments" clause is included in the contract (see Appendix J for the text of the clause). Responses to the questions included in the clause are considered confidential in accordance with applicable laws and regulations, and they are used to identify any potential COI.
- Review the solicitation/contract to ensure that other appropriate COI clauses have been included, particularly EPA Acquisition Regulation clauses 1552.209-70, Organizational Conflict of Interest Notification; 1552.209-71, Organizational Conflict of Interest; 1552.209-72, Organizational Conflict of Interest Certification; and 1552.209-73, Notification of Conflicts of Interest Regarding Personnel.
- Work with the CO to develop contract-specific language regarding the peer review to assist the contractor in identifying actual or potential COI that might impair the objectivity of peer reviewers. For example, the peer review COI Evaluation clause advises contractors to consider the questions and issues listed in Exhibit 4 when determining if a proposed peer reviewer may have an actual or potential COI or bias.

Peer reviewers appointed through a contract mechanism, either by contracting directly with EPA or by being selected by a peer review contractor, are not government employees. Accordingly, the COI statutes and ethics regulations that apply to Regular Government Employees (RGEs) and Special Government Employees (SGEs) do not apply to them. "Appearance" issues with respect to experts hired through a contract mechanism, however, are addressed under the FAR definition of "organizational conflict of interest" (FAR 2.101). Among other things, the definition includes situations in which "because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government" (FAR 2.101).

In addition, FAR 3.101 advises that COs should strictly avoid even the appearance of a COI in government-contractor relationships. When evaluating "appearance" issues with respect to experts hired under a contract mechanism, the CO may consider facts and circumstances similar to those that a PRL might consider when evaluating "appearance" issues for SGEs and RGEs. These include: the nature of the relationships involved, financial considerations, prior statements, testimony, work related to the subject matter of the peer review and other factors bearing on an expert's impartiality (see Section 5.3.7).

Exhibit 4. Questions and Issues Contractors Should Consider When Determining if a Proposed Peer Reviewer May Have an Actual or Potential COI or Bias

- The sources and nature of any compensated and uncompensated employment of the panel member and their spouse (obtained from a brief description of the work), including any government service, for the preceding 2 years.
- The sources of research support and project funding, including from any government source, for which the panel member served as the Principal Investigator (PI), Significant Collaborator, Project Manager (PM) or Director during the preceding 2 years. For the panel member's spouse, a general description of research and project activities in the preceding 2 years.
- The compensated consulting activities of the panel member during the preceding 2 years, including the names of clients if the compensation provided 15 percent or more of the member's annual compensation. For the panel member's spouse, a general description of consulting activities for the preceding 2 years.
- The sources of compensated expert witness activities of the panel member and a brief description of the issue and testimony during the preceding 2 years. For the panel member's spouse, a general description of expert testimony provided in the preceding 2 years.
- The assets—including stocks, bonds, real estate, business, patents, trademarks and royalties—of the panel member, their spouse and dependent children. Specifically, the financial holdings that collectively had a fair market value greater than \$15,000 at any time during the preceding 2-year period (excluding, for example, well-diversified mutual funds, money market funds, treasury bonds and personal residences).
- The liabilities more than \$10,000 owed by the panel member, their spouse and dependent children at any time in the preceding 1 year (excluding, for example, a mortgage on a personal residence, home equity loans and automobile and consumer loans).
- A brief description of any public statements and/or positions of the panel member on, or closely related to, the matter under review.
- A brief description of any previous involvement of the panel member with the development of the document (or review materials) that the individual has been asked to review (including previous peer reviews).
- A brief description of any other information that might reasonably raise a question about an actual or potential personal COI or bias, including any financial benefit that might be gained by the panel member (or anyone whose interests are imputed to the panel member) as a result of the outcome of the review.

The CO, not the contractor, has the authority under the FAR and EPA Acquisition Regulations to determine whether “appearance” or other COI issues exist. When evaluating “appearance” and other COI issues, however, the CO may seek the advice or expertise of others, such as the Project Officer, CORs, Agency technical and subject matter experts, the EPA Science Advisor or his/her designee and

OGC. The CO also has the authority to determine whether “appearance” and other COI issues can be appropriately avoided, neutralized or mitigated.

4.6.5.3. What Management Controls Protect Confidential Business Information/Privacy Act-Protected Information and Other Privileged/Sensitive Information?

When peer reviewers are not employees or contractors/subcontractors of the U.S. Government, it is unlikely that EPA will have authority to give reviewers access to CBI or other protected or sensitive information in the absence of consent for such disclosure by the CBI submitter or other interested parties. Therefore, all documents provided to nonfederal reviewers must be screened for information claimed as CBI or other protected information.

Even where business information has not been explicitly claimed as CBI, if it is of a kind that the submitter might be expected to object to its release, prior to release the submitter must be asked whether it wants to assert a claim, unless the submitter previously has been informed that failure to assert a CBI claim may result in disclosure without notice, as consistent with 40 C.F.R. § 2.203. If the contractor should have access to CBI for the peer review, the CO must be notified so that the appropriate clauses can be included in the contract or purchase order. These clauses will identify clearly any required procedures or processes prior to release of any protected information, including any requirements for confidentiality agreements, as well as limits on use and disclosure of the data by contractor personnel.

In general, materials provided by EPA to the contractor, or generated by the contractor or subcontractors during performance of the contract, should be protected from release until EPA determines the information is not entitled to confidential treatment. Appropriate contract clauses (e.g., EPA Acquisition Regulation §1552.227-76, “Project Employee Confidentiality Agreement”; FAR 52.227-17, “Rights in Data—Special Works”) should be included in the contract and subcontracts with individual reviewers to ensure that such materials are not copied, shared or otherwise distributed or forwarded to others, except as provided for in the contract or as authorized in writing by the CO. The contractor is free to consult with colleagues (unless otherwise directed) on technical issues raised in the draft report but not to share the draft report itself (see Section 6.2.5).

4.6.5.4. What Management Controls Prevent Improper Personal Services?

Contractor employees must not be treated as EPA employees unless statutory authority exists to engage the contractor employee in personal services contracts. For additional information, program officials should consult EPA Order 1901.1A, *Use of Contractor Services to Avoid Improper Contracting Relationships* (<http://intranet.epa.gov/ohr/rmpolicy/ads/orders/1900-1achg2.pdf>).

To avoid these improper relationships, the SOW should be well-defined and should set forth a detailed description of the work to be performed independently, including the manner in which it will be evaluated. The SOW should state what work is to be performed, not how the work is to be performed. Technical direction may be used to clarify ambiguous provisions to ensure efficient and effective contractor performance and is not considered supervision or assignment of tasks.

4.6.6. How Is Peer Reviewer Travel Handled With Contracts or Purchase Orders?

Funds obligated on a contract or purchase order are available to pay for the costs of producing the peer review, including the travel costs and fees of the peer reviewer, provided that the SOW contains language that ensures that the agreement is for providing a service or product rather than simply paying for peer reviews’ travel.

The EPA may acquire peer review services through purchase orders issued directly to peer reviewers or through contracts with companies that manage and provide the peer review services. By issuing a purchase order or awarding a contract for peer review services, EPA may pay not only for the peer review services/comments, but also for travel necessary for the peer reviewer's participation in a meeting with the Agency and other reviewers to discuss comments. The scope of work of the contract, however, must require the contractor or individual peer reviewer, as appropriate, to perform the peer reviews and produce peer review comments or a peer review report, and to discuss a specific peer review work product with the Agency and/or with other peer reviewers in person. Participation in a meeting to discuss a peer review work product then would be part of the contractor's performance. While EPA may use GSA's per diem and meals and incidental allowances as a basis for negotiating travel costs, the terms of the contract or purchase order should not imply that peer reviewers receive travel reimbursement under the federal travel regulations. Under these circumstances, the contract may serve as the mechanism to pay for peer review services and associated travel expenses to provide comments to EPA.

4.6.7. What Are Gratuitous Services Agreements for Peer Review (GSAPR)?

A Gratuitous Services Agreement for Peer Review (GSAPR) is a written agreement between an authorized EPA official (PRL) and a nonfederal peer reviewer under which the peer reviewer agrees to provide EPA with a report, analysis or similar work product without charge to the Agency. GSAPRs are used when EPA has not appointed a peer reviewer as an unpaid expert or consultant under 5 U.S.C. § 3109 and EPA Order 3110.4A4 "Employment of Experts and Consultants."

The Antideficiency Act (31 U.S.C. § 1342) prohibits the Agency from accepting uncompensated "voluntary" services unless specifically authorized by law.

Generally, improper voluntary services are those provided "for free" to the EPA either for work that must be performed by a federal employee or another individual entitled to statutory compensation or without a written agreement in advance that protects the EPA from future claims for compensation for services rendered. In contrast, under appropriate circumstances, the Agency may accept "gratuitous" services. Gratuitous services are services rendered without compensation under a formal written agreement in which the service provider explicitly agrees that the services will be provided free of charge to the government and that no future claim related to the services will be made. Such agreements must be signed by the service provider before the services are performed. For situations concerning state employees, see Section 5.2.9.

A proper GSAPR must be signed and include a compensation/claim waiver and appropriate terms and conditions that address deliverables, schedules, COI, CBI and other issues relevant to the peer review services provided. It must also include a statement that the peer reviewer understands that he or she will not be considered an employee of the Government for any purpose. The PRL should consult OGC for appropriate compensation/claim waiver language and to ensure that appropriate provisions are included in the agreement to protect the agency's interests.

GSAPRs also are subject to competition requirements, although if EPA's estimate of the value of the services is less than the prevailing micro purchase limit (e.g., \$3,000 for Fiscal Year 2014), the competition requirements are relaxed substantially. The PRL should consult a CO when the use of GSAPRs is being considered.

4.7. Peer Review by Federal Advisory Committees

4.7.1. What Is the Role of Federal Advisory Committees in Peer Review?

EPA has a number of scientific and technical advisory committees composed of non-EPA experts who provide advice and peer review to the Agency. The FACA (5 U.S.C. § App. 2) requires that these groups of advisors be fairly balanced in terms of points of view represented for the function to be performed by the committee. Meetings are announced in advance and are open to the public except under limited circumstances (i.e., if the meeting falls within exceptions under the Government in the Sunshine Act, 5 U.S.C. § 552b). All materials presented to and prepared for or by the committees are available to the public, usually on committee Web pages on EPA website. In addition, the FACA requires that the public have an opportunity to provide written comments, and in most cases, advisory committees schedule time at meetings to hear oral public comments on the technical work at hand.

The EPA has more than 20 formally established FACs, but not all are set up to conduct scientific peer review (e.g., some committees are established to provide policy advice to the Agency, rather than scientific and technical review). The scope of work of each advisory committee is set out in its charter, a formal document filed with Congress when the committee is established and renewed every 2 years. Scientific and technical advisory committees are composed of members who are appointed because of their expertise, rather than as a representative of an organization or interest group. Committee members on scientific and technical FACs serve as SGEs or non-EPA RGEs and are subject to ethics laws and regulations that apply to employees of the Executive Branch (see Section 5.3). If no existing FAC has the appropriate expertise, a new FAC could be established to conduct the peer review.

Because of FACA requirements for open meetings, transparent deliberations, formal opportunities for public participation and publicly available records, scientific FACs provide an external peer review mechanism that meets the provisions in the OMB Peer Review Bulletin for peer review of HISAs.

The Science Advisory Board (SAB) Staff Office, in the Office of the Administrator, provides administrative and technical support to two scientific advisory committees: the EPA SAB and the CASAC. When either of these committees is the mechanism for obtaining external peer review, the SAB Staff Office budgets for, plans and manages the peer review meetings. The SAB Staff Office selects peer

When external peer review is conducted by the SAB or the CASAC, the SAB Staff Office performs many—but not all—of the functions of the Peer Review Leader.

reviewers after a public nomination and comment process and after screening for ethics issues such as potential COI or an appearance of a loss of impartiality. The SAB Staff Office also announces committee meetings in the *Federal Register* and on EPA committee websites, prepares detailed meeting minutes, transmits the EPA's charge and review materials to the committee and provides support to the committee in preparation of the advisory report to the EPA Administrator. To maintain the independence of the peer review process, the SAB Staff Office does not draft the EPA charge or prepare the Agency response to the peer review. The SAB Staff Office also does not enter data into the SI.

4.7.2. When Is It Appropriate to Seek Peer Review from EPA's Science Advisory Board?

The EPA's SAB is a statutorily established committee with a broad mandate to provide advice and recommendations to the Agency on scientific and technical matters. The SAB considers requests for advice and peer review from across the Agency as part of an annual process, initiated by a request from the Deputy Administrator (DA) to the EPA's senior leadership to identify requests for review by EPA

FACs in the coming year. In a complementary semiannual process coordinated by the EPA Office of Policy, the SAB also considers review of science supporting major planned Agency actions (Tier 1 and Tier 2 actions) that are in the pre-proposal stage.

HISAs or other scientific work products associated with highly visible or controversial environmental issues, or products that include novel scientific methods or approaches, are most suited to review by the SAB.

Much of the SAB's peer review work is done using *ad hoc* panels formed to review specific EPA draft technical products. All SAB panels provide advice through the chartered SAB, which is composed of approximately 50 nationally renowned scientists, engineers and economists. The SAB reports directly to the EPA Administrator. For more information on the SAB, see <http://www.epa.gov/sab>. Information on the process to request peer review and advice from the SAB is provided in Appendix F.

4.7.3. What Other Federal Advisory Committees Can Provide Peer Review?

In addition to the SAB, EPA has other scientific advisory committees that provide advice and peer review for specific EPA offices. For example, the Board of Scientific Counselors advises ORD on the operation and management of its research programs; the CASAC provides advice on the scientific and technical aspects of air quality criteria and standards; and the Federal Insecticide, Fungicide and Rodenticide Act Scientific Advisory Panel (SAP) provides advice on science issues associated with the EPA's pesticide-related regulatory actions. For a full list of EPA scientific and technical advisory committees, see Appendix G.

4.7.4. How Is Travel Handled for Advisory Committee Members?

Members of the SAB, SAP and other scientific or technical FACs usually are appointed as SGEs. The term "Special Government Employee" is defined in 18 U.S.C. § 202(a) as an officer or employee of an agency who performs temporary duties, with or without compensation, for not more than 130 days in a period of 365 days, either on a full-time or intermittent basis.

Travel and per diem expenses of experts hired as SGEs for peer review may be paid only through the issuance of invitational travel orders (5 U.S.C. § 5703). These invitational travel and per diem expenses should be charged to an appropriate EPA travel account. The Federal Travel Regulations govern the invited traveler's reimbursement. It is not appropriate to reimburse travel or per diem expenses of advisory committee members (SGEs) through a contract.

4.7.5. When Does the Federal Advisory Committee Act Apply to Other Peer Review Mechanisms?

In addition to formally established (chartered) FACs, other groups of peer reviewers may become subject to FACA requirements if they meet all the following criteria:

- Are established, controlled or managed by EPA;
- Include one or more individuals who are not full-time or permanent part-time federal employees; and
- Are intended to, or do, provide group or collective, rather than individual, advice.

EPA-run peer reviews that were not intended originally to be subject to FACA requirements may become subject to them if they exhibit all of the above characteristics. Similarly, if EPA personnel begin to manage or control a contractor-managed peer review, the process may become subject to FACA (see Section 4.7.7). Questions concerning the applicability of the FACA to peer review meetings should be addressed to FACA experts in the Cross-Cutting Issues Law Office of OGC or the appropriate ORC.

4.7.6. When Are EPA-Run Peer Reviews Not Subject to FACA Requirements?

If EPA conducts a peer review by obtaining advice from individual peer reviewers and not for the purpose of obtaining a peer review product from the group as a collective or consensus body, the peer review, in most cases, would not be subject to FACA requirements. When peer review participants provide only their own views or

As a general matter, letter reviews that seek individual views or comments are not subject to the requirements of the FACA.

recommendations and do not vote, develop consensus recommendations to EPA, or use any other means of developing group advice, the FACA does not apply. When referring to the recommendations of the individual reviewers, EPA should **not** characterize these recommendations using such phrases as “the peer reviewers all agreed” or such terms as “collective” or “consensus.” As a general matter, letter reviews that seek individual views or comments are not subject to FACA requirements.

In addition to ensuring that peer reviewers only provide comments as individuals, EPA officials can lessen the potential for a challenge under the FACA by conducting the peer review in an open transparent manner (e.g., by seeking a balance of points of view among the peer review participants, allowing interested members of the public to attend peer review meetings, allowing public comment, and ensuring that the public has access to all the peer review materials).

Non-FACA peer review meetings may be advertised publicly through the *Federal Register* and/or other avenues (e.g., the Web, local newspapers and mailing lists). These notifications should provide the public with useful information and a point of contact concerning the peer review. Notice of such meetings, however, should make clear that the meeting is not subject to FACA requirements.

4.7.7. How Does the Agency Ensure That Contractor-Managed Peer Reviews Do Not Inadvertently Invoke FACA Requirements?

Under the current case law, committees (or other peer review groups) established, controlled and managed by an outside organization (such as by an EPA contractor) to provide that outside organization with advice and recommendations (that will be submitted eventually to EPA as a contractor report) are not subject to FACA requirements. Although the FACA should not apply to contractor-managed peer reviews, EPA personnel can do things that might invoke the FACA inadvertently.

The following are considerations that EPA personnel should be aware of when a contractor manages a peer review (e.g., letter review or panel) for EPA:

- The outside party’s peer review may be subject to FACA requirements if EPA establishes, manages or controls the peer review group (e.g., EPA selects or rejects peer reviewers, sets the agenda, runs the meeting, or provides funds directly to the peer reviewers). The EPA can make suggestions to the contractor but to avoid triggering the FACA, the contractor must be free to accept or reject these suggestions.

- EPA should not provide contractors with a draft agenda or suggested format for meetings. EPA contractors should manage and control the process, including running any meetings.
- At the request of the EPA contractor, EPA may provide a briefing to the peer reviewers (e.g., in a conference call with the contractor on the line) on the history or background of the development of the document. EPA should provide only technical or background information and not use the call to manage the contractor's peer review group. Not only should the contractor be on the line, but it should be very clear to all participants that the contractor is in charge of the call. The contractor, not EPA, should invite individuals to participate, make all administrative arrangements, conduct the meeting and control the agenda.
- EPA employees may attend the peer review panel meetings, but they may not control the meeting. The contractor may call on them to speak when appropriate, but EPA personnel should limit their participation to answering questions to provide technical and/or background information.
- Because the FACA does not apply when a contractor establishes, controls and manages a peer review, the contractor does not need to avoid terms such as "collective" or "consensus" when reporting agreement among its peer reviewers.
- EPA may provide comments to the contractor on the contractor's peer review report only to the extent that the Agency is verifying that the contractor has satisfactorily completed the report in accordance with the work assignment. EPA should not attempt to make changes in the contractor's conclusions; this would compromise the independence of the peer review conducted by the contractor.

4.8. Peer Review by the National Academy of Sciences

The NAS is a private, nonprofit society of distinguished scientists established by Congress to provide independent, objective advice to the Nation on science and technology matters. NAS review of an Agency work product may be most suitable for significantly controversial or high-visibility products or when required by legislation.

When EPA wishes to obtain peer review services from the NAS, usually through the National Research Council (NRC), the Agency works with NAS staff to develop a set of charge questions (the "statement of task") and to define the duration and cost of the study. Once the statement of task and budget are approved by the NRC Governing Board, the Agency has no control over the conduct of the peer review. Members of the peer review committee are selected by the NAS to provide the appropriate range of expertise and a balance of perspectives. All members are screened for COI in keeping with the NAS Policy on Committee Composition and Balance and COIs.²⁷

Like FACs, NAS/NRC committees seek public nominations and comment on peer reviewers and seek to ensure that committees are fairly balanced for the functions to be performed. Unlike FACs, however, NAS/NRC committees conduct fact-finding in public, but deliberate in private.

Official reports from the NAS are generally presumed not to require additional peer review.

²⁷ National Academy of Sciences. 2003. *Policy on Committee Composition and Balance and Conflicts of Interest for Committees Used in the Development of Reports*. Washington, D.C.: The National Academies Press. http://www.nationalacademies.org/coi/bi-coi_form-0.pdf.

5. Peer Reviewer Qualifications and Selection

5.1. Overview

As part of the peer review process, the Agency (or the contractor managing the peer review) must select peer reviewers who have technical expertise in the subject matter that is needed to answer specific charge questions (Figure 6). For this reason, it is important to have a draft or final charge before selecting peer reviewers. These reviewers must not only be subject matter experts, but also must be independent and free from ethics issues such as potential conflicts of interest (COIs) or an appearance of a loss of impartiality (see Sections 5.3.4 and 5.3.7) so that the integrity of the peer review is not brought into question. The rules for evaluating ethics issues of peer reviewers vary depending on the peer review mechanism, but in all cases, adherence to ethical standards is important to ensure that the Agency receives objective, informed and relevant advice through peer review of its work products. Depending on the peer review mechanism chosen, the peer reviewers may be contractors, subcontractors or permanent or intermittent federal employees.

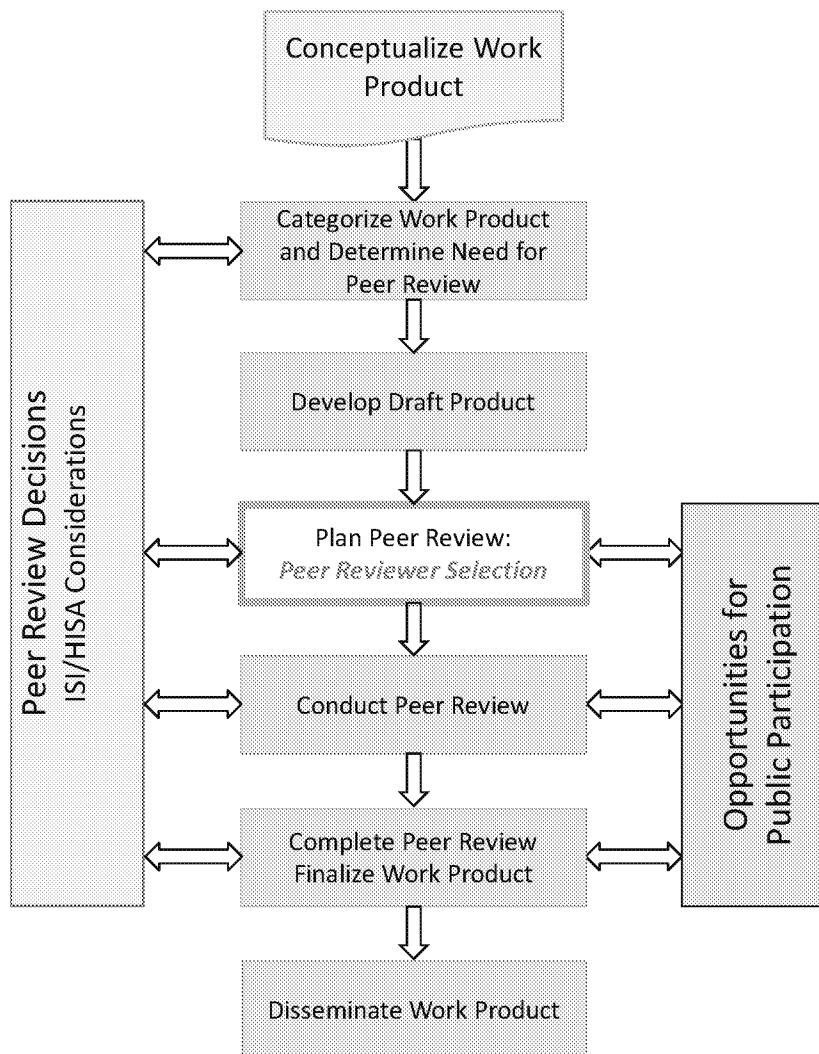


Figure 6. The Peer Review Process: Peer Reviewer Selection

Internal peer reviews can be conducted by independent experts from within EPA, either individually or as *ad hoc* peer review panels.

External peer reviews can be conducted by individual experts or panels of experts who are Regular Government Employees (RGEs) at Executive Branch departments or agencies other than EPA, experts appointed to EPA as Special Government Employees (SGEs) pursuant to 18 U.S.C. § 202(a), or experts hired through a contract mechanism. External peer review panels can be convened through a contract mechanism under which EPA uses a contractor who selects the peer reviewers or by a federal advisory committee (FAC) organized pursuant to the Federal Advisory Committee Act (FACA). Lastly, peer reviews may be conducted by outside organizations such as the National Academy of Sciences (NAS).

5.2. Finding Peer Reviewers

5.2.1. What Are the Important Qualifications for Peer Reviewers?

The first consideration in selecting peer reviewers is expertise (i.e., whether the candidates have the knowledge, skills and experience necessary to perform the review). Peer reviewers should be independent, which is necessary for an objective and impartial evaluation of the work product. To be independent, the peer reviewer should not be associated with the generation of the specific work product, either directly by substantial contribution to its development or indirectly by significant consultation during the development of the product. In addition to being independent, peer reviewers should be impartial and free from financial COIs or other ethics issues. Disclosure of potential COIs or other ethics issues such as an appearance of a loss of impartiality—and appropriate resolution of these issues—is necessary to ensure a credible peer review.

Finally, the group of peer reviewers—whether serving on a panel or as a set of individual reviewers—should be sufficiently broad and diverse to represent fairly the scientific and technical perspectives and fields of knowledge relevant to the peer review charge. Naturally, experts whose understanding of the specific technical area(s) being evaluated are necessary; nevertheless, it also is important to include a broad enough spectrum of other related experts to consider wider dimensions of the issue(s). Although individuals who are familiar with and have a substantial reputation in the field often are called upon repeatedly to be reviewers, it is important to keep a balance by considering new individuals who bring fresh perspectives to the review of a work product. The principle is to avoid the repeated use of the same reviewer on multiple assessments unless his/her participation is essential and the expertise cannot be obtained elsewhere.

5.2.2. How Are Potential Peer Reviewers Identified?

How potential reviewers are identified depends primarily upon the peer review mechanism. Recommendations for potential peer reviewers for letter reviews or panels can be identified by a number of organizations. These include external groups, such as affected parties, special interest groups, public interest groups, environmental groups, professional societies, trade or business associations, state organizations or agencies, Native American tribes, colleges and universities, the National Research Council (NRC) and other federal agencies with an involvement in or familiarity with the issue. Recommendations for peer reviewers also may come from Agency staff, including Designated Federal Officers (DFOs) for scientific FACs—such as the Science Advisory Board (SAB), Scientific Advisory Panel (SAP) or Board of Scientific Counselors—and relevant scientific and technical experts from EPA offices.

Another method that might be used to find peer reviewers is public solicitation. The peer review plans found on the EPA Peer Review Agenda website,²⁸ for example, can indicate opportunities for the public to nominate peer reviewers.

If the peer review will be conducted by a contractor-managed panel, the process for identifying peer reviewers for Influential Scientific Information (ISI), including Highly Influential Scientific Assessments (HISAs), includes opportunities for the public to nominate experts and to comment on the list of candidates (See Section 4.6). In addition, the contractor may have its own pool of scientific and

²⁸ EPA. 2015. *Peer Review Agenda*. http://cfpub.epa.gov/si/si_public_pr_agenda.cfm.

technical experts for peer review. EPA may provide contractors with information on potential peer reviewers for conducting a peer review, including names if such a listing is prepared in alphabetical order. EPA should not require that the contractor select from a prepared list, nor require that the contractor receive EPA approval before selecting any given peer reviewer (sometimes known as a “subcontractor”). EPA should review the list of peer reviewers, however, for conformance to work assignment specifications (including balance of expertise) and adherence to ethics requirements before the peer reviewers are subcontracted (see Section 4.6.3). When the NAS is used to conduct a peer review, additional procedures may need to be followed (see Section 4.8).

If the peer review will be conducted using an existing EPA FAC, the DFO for the committee will take the lead for identifying peer reviewers, using a process that usually includes opportunities for public nomination and comment on candidates. An EPA office that decides to use a FAC should coordinate directly with the DFO for the FAC. For example, the SAB Staff Office publishes *Federal Register* notices to solicit names for both *ad hoc* panels and standing advisory committees. Recommendations from the EPA office requesting the peer review are considered along with public nominations and experts individually identified by the DFO. The names of candidates, along with short biographical sketches, also are posted so that the public may not only nominate, but also comment on potential advisory committee members. More information is available in the report titled *Advisory Committee Meetings and Report Development: Process for Public Involvement*, which is available from the SAB’s website²⁹ and in Appendix F, *Guidance on Requesting a Review by the Science Advisory Board*.

In rare instances, a member of the scientific community will offer his/her services for peer review during an ongoing peer review. These offers may be at no cost or based on an expectation that reimbursement will be made. Disposition of these unsolicited offers should be handled on a case-by-case basis by the Peer Review Leader (PRL) and, as necessary, in consultation with the Peer Review Coordinator (PRC), the Office of General Counsel (OGC), Office of Regional Counsel (ORC) and appropriate Decision Makers (DMs).

For an internal peer review, the PRL will have a lead role in identifying potential EPA reviewers who have the appropriate expertise and are independent from the development of the work product. Internal reviewers should come from a different organizational unit than the one in which the work originates.

5.2.3. When Are External Peer Reviewers Preferred?

External peer reviewers are preferred for all ISI and are expected for HISAs. For some work products, such as those reviewed at various stages of product development, both internal and external peer review may be appropriate. Peer reviewers, whether external or internal, should have appropriate technical expertise, available time, and should not have been involved in the development of the work product. It should be noted that for work products categorized as HISAs, the use of internal peer reviewers is inconsistent with the guidance provided by the Office of Management and Budget’s (OMB) Peer Review Bulletin. External peer reviewers could include individuals from other federal and state agencies, academic institutions and private research organizations, who possess unique or indispensable expertise.

²⁹ EPA. 2004. *Advisory Committee Meetings and Report Development: Process for Public Involvement*. http://www.epa.gov/sab/pdf/sabso_04_001.pdf. September.

5.2.4. What Should be Considered When Compiling a List of Peer Reviewers?

Usually, there is a continuum of scientific views on any issue. To the extent practicable, selected experts should include a range of technically legitimate points of view that fall along the continuum. The list of peer reviewers should include experts who are considered “mainstream” (nearer the center of the continuum), as well as those further to either side of the continuum. This will help ensure that a broad range of views will be expressed and discussed on the specific work product being reviewed, whether the objective of the peer review is to reach consensus or to provide a spectrum of views for the Agency to evaluate.

Scientific FACs are required to be balanced in terms of scientific points of view for the charge to be addressed. For example, the SAB Staff Office considers a balanced list of peer reviewers to be one characterized by inclusion of candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation) and the collective breadth of experience to adequately address the charge to the peer reviewers.

For peer reviews conducted by nonfederal experts (e.g., contractors), the OMB Peer Review Bulletin directs that the evaluation of peer reviewer composition and balance be guided by NAS policies.³⁰

5.2.5. Can a Foreign National Be a Peer Reviewer?

In some cases, the foremost expert in a subject area may be a citizen of another country, and the Agency may wish to obtain his or her peer review comments.

However, there are complicated legal restrictions on using foreign nationals as peer reviewers depending on whether the peer reviewer will be compensated as a Special Government Employee or an expert or consultant under 5 U.S.C. 3109, an uncompensated consultant or expert under that statute who only receives invitational travel orders, a direct contractor under a purchase order or letter contract, or a subcontractor to a prime contractor. If this issue comes up, EPA’s PRL should consult with OGC and the Office of Human Resources (OHR).

5.2.6. Are There Other Constraints to Selecting Peer Reviewers?

5.2.6.1. Timing

Sometimes the schedule for a peer review is accelerated because of a court-ordered deadline or other time-sensitive requirement. In these cases, there may be constraints in selecting peer reviewers and conducting a peer review in a timely manner. Processes should be developed for identifying and using a small number of peer reviewers to ensure that quick, effective peer review can be included for even the most rapidly moving products.

5.2.6.2. Confidential Business Information (CBI)

Another possible constraint involves CBI. There are different definitions and types of CBI, depending on the statute that governs the action. To evaluate certain Agency-generated studies properly, some peer reviewers may need access to CBI. If the reviewers are federal employees or contractors/subcontractors with CBI clearance, the Agency does release CBI to them. Therefore, whenever contemplating the use

³⁰ National Academy of Sciences. 2003. *Policy on Committee Composition and Balance and Conflicts of Interest for Committees Used in the Development of Reports*. Washington, D.C.: The National Academies Press. http://www.nationalacademies.org/doi/bi-coi_form-0.pdf

of outside peer reviewers, Agency staff should determine whether the reviewers will need access to CBI. If they do not have CBI clearance, OGC should be consulted on whether it is practical to obtain the consent of affected CBI submitters to disclose the information to peer reviewers.

5.2.6.3. Lobbyists

In accordance with a 2010 Presidential Memorandum and OMB revised guidance to implement the policy (79 FR 47482, August 13, 2014), no RGE or SGE member of a FAC appointed to serve in an individual, expert capacity may be a federally registered lobbyist. This prohibition does not apply to FAC members who are appointed to serve in a representative capacity on behalf of an interest group or constituency.

5.2.7. Can Someone Who Provided Peer Input Become an Independent Peer Reviewer for the Same Work Product Later in the Process?

Generally, the answer is no, because that expert is no longer independent but rather is a contributor to the work product. There may be special circumstances under which the expertise is so narrow that another peer reviewer is not available. The PRL normally will be responsible for making this determination and documenting the decision in the peer review record.

5.2.8. Can a Peer Reviewer Be Used to Review the Same Product More Than Once or to Review Multiple Products?

There is no prohibition against using the same peer reviewer more than once on the same product or for multiple products of the same EPA office. It is preferable, however, to use different individuals each time the product is sent back for peer review to provide a broader perspective. It is particularly important to rotate peer reviewers across the pool of qualified reviewers in the case of multiple HISAs. In the case of sequential reviews of one product, it can be beneficial to seek review from the same individuals where the review is focused on revisions made to address the peer reviewers' comments. Even in such cases, it may be helpful to include reviewers who were not involved in the previous review of the product to ensure that the product gets a fresh look.

When using a contractor to provide peer review services, it should be considered that contractors may have a "pool" of reviewers that they use regularly. If the same peer reviewers are used repeatedly, they may lose their impartiality (or the appearance of impartiality) relative to the work product(s). In addition, there may be competition or directed subcontracting issues when seeking subsequent reviews of a work product by the same peer reviewers if they were appointed under a contract mechanism. If there is a possibility that the same peer reviewers may be needed to conduct subsequent peer reviews of work products, the Contracting Officer (CO) must be informed when the contract for the initial review is being planned. In most cases, competition or other contracting issues that might complicate or preclude the use of the same peer reviewers for subsequent reviews of the same work product can be addressed with a properly drafted Statement of Work (SOW) and appropriate contract clauses.

When seeking the same peer reviewers for additional rounds of peer review, the peer reviewers should be reevaluated for independence, COI and appearance of a loss of impartiality before they serve as a repeat panel member. The appropriate peer review COI form should be used to identify any potential COI that may have arisen since completion of the previous round of peer review (see Appendix J).

5.2.9. If State or Tribal Employees Are Used as Peer Reviewers, Can EPA Pay Them for This Service?

In some cases, this may be possible. However, the PRL should ensure that the state or tribal employee has received the necessary approvals since providing a state or tribal employee with compensation as an expert or consultant under 5 U.S.C. 3109 or as a direct EPA contractor may conflict with the state or tribe's ethics or personnel laws or policies. Similarly, the PRL should ensure that peer review prime contractors verify that state and tribal employees may work as subcontracted consultants before hiring them.

EPA would be able to pay travel expenses under a 5 U.S.C. 5703 invitational travel order since the "consult with or otherwise provide a direct service to EPA" requirement would be met and most states and tribes allow their employees to accept invitational travel orders. If the state or tribal employee will not be paid for their peer review services, the letter or email inviting them to the peer review meeting should make it clear that EPA is only providing travel support; the letter or email must also clearly indicate that the state or tribal employee will provide peer review services to EPA without compensation and that the state or tribal employee will make no future claim for compensation for the peer review services.

Please note that because peer reviewers provide services for EPA's direct use or benefit, states and tribes may not charge federal grants/cooperative agreements for their employees' time or travel while working on a peer review due to the Federal Grant and Cooperative Agreement Act.

If the state or tribal expert is not being paid for his/her peer review services, or reimbursed for travel expenses, he/she must sign an agreement stating that he/she does not expect payment. See Section 4.6.7 for information on gratuitous services agreements.

5.2.10. Can the Identity of Peer Reviewers Be Kept Anonymous by EPA?

No, the identity of peer reviewers cannot be kept anonymous by EPA. However, the attribution of specific comments to any given peer reviewer is not necessary. Peer reviewers should be informed in advance of EPA plans for releasing their names and credentials, as well as the extent of attribution of comments to specific reviewers. If a peer reviewer requests anonymity at the outset of the peer review, the PRL should inform the peer reviewer that there is no guarantee of anonymity. Although this may be a deterrent to possible peer reviewers, EPA is committed to working with the fullest possible transparency to the public (except where statutorily constrained, such as with CBI).

The reviewers' names and affiliations may be made available to the public before the review begins depending on the peer review process used. For all ISI and HISAs, the names and affiliations of peer reviewers should be listed in the peer review reports. Release of any reviewer information retrieved by a personal identifier must be performed in accordance with the Privacy Act of 1974 (5 U.S.C. § 552(a), as amended), as interpreted in OMB implementing guidance, 40 *Fed. Reg.* 28,948 (Jul. 9, 1975).

For other types of peer reviews that do not qualify as ISI or HISA, such as the peer review of extramural grant applications, reviewer names can be held in anonymity to the public, unless, in some circumstances, they are requested under the Freedom of Information Act (FOIA). If a request for peer review documents is received under the FOIA, the requestor may be able to view any comments attributed to specific reviewers.

5.3. Ensuring a Credible Peer Review Process – Ethics Considerations

5.3.1. What Are the Relevant Ethical Standards for Different Categories of Peer Reviewers?

To ensure a credible peer review process, PRLs must ensure that the appropriate and relevant ethical standards are applied to each of the peer review mechanisms. When a peer review panel is used, ethical standards must be adhered to not only during the panel formation process, but also during and after the peer review itself has been completed. These ethical standards are embodied in the various laws, implementing regulations and other requirements that apply to peer reviewers who are RGEs, SGEs, contractors and those who are selected by outside organizations (e.g., the NAS) (see Table 2). For peer reviews conducted by outside organizations, the PRL should be thoroughly familiar with the ethics

Table 2. The Applicable Rules for Conflict of Interest and Impartiality of Peer Reviewers Depends on the Status of the Peer Reviewers

Peer Review Approach	Status of Peer Reviewer	Applicable Conflict of Interest/Ethics Rules and Policies	Handbook Section
Internal	RGE	18 U.S.C. § 201, 203, 205, 207, 208 and 209; Standards of Ethical Conduct in the Executive Branch	<u>5.3.3</u> , <u>5.3.6–5.3.9</u>
External: Publication in Refereed Journal	Independent experts selected by the journal	COI/ethics rules of the journal	n/a
External: Letter Reviews	Contractor, Subcontractor	FAR, EPA Acquisition Regulations, contract terms and conditions	<u>4.6</u>
	Gratuitous Services Peer Reviewer	Gratuitous services agreement terms	<u>4.6.7</u>
External: Contractor Panel	Contractor, Subcontractor	EPA process on contractor-managed peer review panels for review of ISI/HISAs, FAR, EPA Acquisition Regulations, contract terms and conditions	<u>4.6</u>
External: FACA Panel	SGE, non-EPA RGE	18 U.S.C. § 201, 203, 205, 207, 208 and 209; Standards of Ethical Conduct in the Executive Branch; Presidential Memorandum <i>Lobbyists on Agency Boards and Commissions</i> (June 18, 2010)	<u>5.2.6</u> , <u>5.3.3–5.3.9</u>
External: NAS/NRC	Independent experts selected by the NAS/NRC	NAS <i>Policy on Committee Composition and Balance and Conflicts of Interest</i> ³¹	<u>4.8</u>

policies and requirements of the organization conducting the review. For example, if a peer review is to be conducted by the NAS, the PRL would need to be familiar with the NAS *Policy on Committee*

³¹ National Academy of Sciences. 2003. *Policy on Committee Composition and Balance and Conflicts of Interest for Committees Used in the Development of Reports*. Washington, D.C.: The National Academies Press, 2003. http://www.nationalacademies.org/doi/bi-coi_form-0.pdf.

*Composition and Balance and Conflicts of Interest.*³² For work products that are peer reviewed through publication as journal articles, the ethics standards and processes are set by the specific journal.

Specific regulations have set forth ethics considerations for contractor personnel and government employees. An overview of these requirements as they relate to peer review is provided in the sections that follow. This chapter focuses primarily on ethics issues such as potential COIs or an appearance of a loss of impartiality for government employees, including SGEs. See Chapter 4 for a discussion of COI for peer reviews obtained by contract.

5.3.2. How Are Ethics Issues Evaluated for Peer Reviewers Under Contractor-Managed Peer Reviews?

As noted in Section 4.6, contracts to obtain peer review services should include COI clauses, and COI requirements should be included in the SOW. Information necessary to ensure that peer reviewers are free from ethics issues such as potential COIs or an appearance of a loss of impartiality is collected by the contractor managing the peer review using a confidential peer review COI questionnaire pursuant to the peer review “Conflict of Interest Evaluation for Task Orders/Work Assignments” clause and other COI requirements included in the contract. The PRL should work with the CO to assist the contractor with identifying actual or potential COI that might impair the objectivity of peer reviewers. In the case of a contractor-managed panel review of ISI or HISAs, oversight by the CO of the contractor’s identification and proposed resolution of COI issues should include consultation with the EPA Science Advisor or his or her designee.

5.3.3. How Are Ethics Issues Evaluated for Peer Reviewers Who Are Government Employees?

The PRL (and appropriate EPA ethics officials) will typically consider five COI statutes: 18 U.S.C. §§ 203, 205, 207, 208 and 209. In addition to these COI statutes, all government employees, including SGEs, must adhere to the Standards of Ethical Conduct for Employees of the Executive Branch (5 C.F.R. 2635). Although responsibility for compliance rests with the individual government employee, PRLs and appropriate ethics officials must work together to ensure that all applicable ethics laws and implementing regulations are followed when government employees are peer reviewers (e.g., internal peer review by EPA experts, external peer review by SGE or non-EPA RGEs).

5.3.4. What Constitutes a Conflict of Interest for a Special Government Employee on a Federal Advisory Committee?

SGEs typically have outside (i.e., non-EPA) employment as well as other financial interests, which may potentially present COI issues under 18 U.S.C. § 208 (a criminal COI statute). According to this law, government employees (including SGEs) are prohibited from participating personally and substantially in any particular matter that has a direct and predictable effect on their own financial interests or the financial interests of others whose interests are imputed to them. For a COI to be present, all of these elements must be present. If an element is missing, there is no COI.

³² National Academy of Sciences. 2003. *Policy on Committee Composition and Balance and Conflicts of Interest for Committees Used in the Development of Reports*. Washington, D.C.: The National Academies Press. http://www.nationalacademies.org/coi/bi-coi_form-0.pdf.

For example, ownership of stock is not a COI absent personal and substantial participation by an SGE in a particular matter that will have a direct and predictable effect on this interest.

To apply ethics regulations to FAC members properly, it is important to know whether the charge to a committee is a “matter,” a “particular matter of general applicability” or a “particular matter concerning specific parties.” A matter is something that is directed to the interests of a large and diverse group of persons. A particular matter of general applicability is focused on the interests of a discrete and identifiable class of persons (e.g., a certain industrial sector). A particular matter concerning specific parties is focused on the legal rights of parties or transactions (e.g., grants, contracts, investigations, litigation). When a charge is not a particular matter, then 18 U.S.C. § 208 does not apply, and a COI cannot arise. Furthermore, particular matters of general applicability and particular matters concerning specific parties are treated somewhat differently in the ethics regulations, as explained in Section 5.3.7.

5.3.5. Can a Recipient of EPA Contracts or Grants Be a Peer Reviewer?

EPA frequently issues contracts to develop scientific and technical work products for the direct benefit of or use by the Agency. Contractors who help develop those work products are not independent of the work product and cannot serve as peer reviewers of the same work product. Even if a contractor is not involved in the development of a work product being reviewed, the nature and extent of his or her contractual relationships with the Agency or with the EPA office sponsoring a peer review should be considered when selecting reviewers to ensure that the contractor is sufficiently independent from the Agency or EPA office as a general matter.

EPA also provides grant money through competitive processes to further the investigation of science matters it believes would benefit its mission. As noted in the OMB Bulletin, when a scientist is awarded an EPA research grant through an investigator-initiated, peer-reviewed competition, there generally should be no question as to that scientist’s ability to offer independent scientific advice to the Agency on other projects. Those grantees are independent of Agency direction, and can serve as peer reviewers for scientific or technical work products (or portions thereof) that are not solely a product of their own research conducted under the Agency grant. For example, a grantee may review a work product that synthesizes a body of literature, such as an integrated science assessment, that happens to incorporate agency funded work conducted by the grantee. The grantee must, however, still be free from financial COI or the appearance of a loss of impartiality (see Sections 5.3.4 and 5.3.7).

PRLs may question whether experts who currently receive funding from EPA (e.g., grants, contracts, assistance agreements) have, by definition, an inherent financial COI and therefore cannot be peer reviewers. If an expert previously received funding, but does not currently, then there is no financial COI. If an expert is currently receiving funding through an EPA grant, the PRL should examine how the grant was awarded. If EPA awarded the grant through a competitive, peer-reviewed process, then the Agency’s ability or potential to influence the expert’s research is limited. Consequently, there is little likelihood that the expert’s ability to offer scientific advice is subject to any financial COI.

Alternately, if an expert has an existing consulting or contractual arrangement with the Agency, then the expert is beholden directly to EPA on closely-related matters. Consequently, this situation presents a greater concern about appearance of a financial COI.

5.3.6. Are There Any Exemptions or Remedies from a Conflict of Interest for Regular and Special Government Employees?

5.3.6.1. Conflict of Interest Exemptions for Special Government Employees

SGEs serving on FACs specifically are exempted by regulation from certain provisions of the financial COI statute (18 U.S.C. § 208). An exemption (5 C.F.R. 2640.203(g)) permits SGEs serving on FACs to participate in particular matters of general applicability when the disqualifying interest arises from the SGE's nonfederal employment or prospective employment. Whenever there are questions about COIs, the PRL should contact the appropriate Deputy Ethics Official (DEO) and/or OGC/Ethics, who in turn may consult with the U.S. Office of Government Ethics (OGE) for assistance (<http://intranet.epa.gov/ogc/ethics/deos.htm>).

It is important to note that the exemption does not extend to the SGE's financial holdings or consultancies. Furthermore, this exemption is subject to several limitations:

- The matter cannot have a “special or distinct” effect on either the SGE or the SGE's nonfederal employer, other than as part of a class;
- The exemption does not cover interest arising from ownership of stock in the employer; and
- The nonfederal employment must involve an actual employer-employee relationship, as opposed to an independent contractor relationship.

5.3.6.2. Conflict of Interest Remedies

COI may be remedied through nonparticipation in the matter (also known as “recusal” or “disqualification”), divestiture from the disqualifying interest, or the granting of a waiver pursuant to provisions under 18 U.S.C. § 208(b). Whenever there are questions about COIs, the PRL should contact the appropriate DEO and/or OGC, who in turn may consult with the OGE for assistance (<http://intranet.epa.gov/ogc/ethics/deos.htm>).

- **Nonparticipation.** COI may be remedied by nonparticipation in a particular matter. Nonparticipation means that the employee does not participate personally and substantially in the particular matter. When a panel considers more than one particular matter, it is possible for an employee to recuse himself/herself from only those particular matters for which he or she has a COI.
- **Divestiture.** COIs may be remedied by divestiture from the disqualifying interest to below certain *de minimis* exemption levels. These exemption levels vary depending upon the type of particular matter being considered (see 5 C.F.R. § 2640.201 for more information on exemptions available for RGEs and SGEs). When divestiture from a disqualifying interest is sought as a remedy for a potential COI, it should be noted that SGEs (as opposed to RGEs) are not eligible for a “certificate of divestiture” that allows for deferral of capital gains in the divested asset.
- **Statutory Waivers from COI.** An SGE who serves on a FAC may seek a waiver from OGC to participate under the provisions of 18 U.S.C. § 208(b)(3). Only the EPA's Designated Agency Ethics Official (DAEO) can grant such a waiver, and only if he/she certifies in writing (in consultation with OGE) that the need for the SGE's services outweighs the potential for a COI posed by the financial interest involved. SGEs not serving on FAC (and all RGEs) may be

considered for waivers only in accordance with the more restrictive standard under 18 U.S.C. § 208(b)(1), which requires a determination by the DAEO that the financial interest is not so substantial as to be deemed likely to affect the integrity of the employee's services. Further guidance on waivers may be found in OGE DO-07-006 ("Waivers under 18 U.S.C. § 208").³³

5.3.7. What Is an Appearance of a Loss of Impartiality for Regular and Special Government Employees?

When forming peer review panels with RGEs/SGEs, another common ethics issue that may arise is an "appearance of a loss of impartiality" as defined by 5 C.F.R. Part 2635, Subpart E. PRLs must be alert not only to COI issues (which tend to be easier to recognize), but also to "appearance" issues, which can be more subtle. Unlike COI issues, appearance issues do not violate any criminal statute. An appearance of a loss of impartiality may occur when an employee's participation in a particular matter involving specific parties (e.g., a contract, an enforcement action) might cause a reasonable individual with knowledge of the relevant facts to question that employee's impartiality. Appearance issues arise if the peer review activity is likely to have a direct and predictable effect on the financial interests of a member of a peer reviewer's household, or if the peer reviewer has a "covered relationship" (as defined in 5 C.F.R. 2635.502(b)) with someone who is (or represents) a specific party or parties involved in the matter.

For example, if a member of an employee's household (e.g., a relative with whom the employee has a close personal relationship) has a contract with a company to conduct all of the marketing for a pesticide that has a pending registration before the Agency, and the Agency is convening a peer review panel to evaluate a study that will be pivotal in determining whether to grant the registration (a specific party matter), then a reasonable individual would question the employee's ability to participate impartially in the peer review.

If an employee's participation in a peer review would cause a reasonable individual to question the employee's impartiality, the appropriate DEO in the organization conducting the peer review may authorize the employee to participate in the review based on a determination, made in light of all relevant circumstances, that the interest of the government in the employee's participation outweighs the concern that a reasonable individual might question the integrity of the Agency's programs and operations. For discussion of factors that should be considered when deciding whether to authorize participation, see 5 C.F.R. 2635.502(d). After considering these factors, the appropriate DEO may decide to authorize the employee's participation or, conversely, to prohibit it. Regardless of the outcome, OGC strongly recommends that the DEO issue a written determination that documents the final decision.

5.3.8. How Should Peer Review Leaders Address Ethics Issues for Regular and Special Government Employees during Peer Reviewer Selection?

The peer reviewer selection process is the step in the peer review process when the PRL is most likely to initially encounter ethics issues such as potential COIs or an appearance of a loss of impartiality. To evaluate potential issues, financial disclosure forms are obtained and evaluated by the appropriate ethics

³³ Cusick, Robert I., Director, Office of Government Ethics, 2007. Memorandum to Designated Agency Ethics Officials. *Waivers Under 18 U.S.C. § 208*. DO-07-006. [http://www.oge.gov/OGA-Advisories/Legal-Advisories/DO-07-006---Waivers-under-18-U-S-C---%C2%A7%C2%A7-208\(b\)\(1\)-and-\(b\)\(3\)](http://www.oge.gov/OGA-Advisories/Legal-Advisories/DO-07-006---Waivers-under-18-U-S-C---%C2%A7%C2%A7-208(b)(1)-and-(b)(3).). February 23.

official (usually the responsible DEO in the EPA office where the peer review takes place). For RGEs, either OGE Form 450 (Confidential Financial Disclosure Form) or OGE Form 278 (Public Financial Disclosure Form) is collected and evaluated. For SGEs, EPA Form 3110-48 (Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency) is typically filed with the DFO's own DEO. In rare instances, however, an SGE or an RGE may be required to file the OGE-278 (Public Financial Disclosure Report). This report is filed with OGC, along with any necessary OGE-278T (Periodic Financial Transaction) forms. In all instances, financial disclosure forms are filed and reviewed, both annually (with some exceptions) and prior to any new matter.

Before finalizing the selection of reviewers, the PRL should ascertain whether each potential peer reviewer's involvement in certain activities could pose an ethics issue such as potential COIs or an appearance of a loss of impartiality. Each matter should be treated on a case-by-case basis and can involve a number of factors. Employment and professional affiliations of the participants, as well as their financial interests, should be considered. Some actions that should be taken in evaluating ethics issues include, but are not limited to, the following:

- Discussing ethics issues with each participant before the review process takes place.
- Disclosing publicly at the beginning of meetings any previous involvement with the matter.
- Obtaining appropriate and up-to-date financial disclosure forms.
- Collecting additional information through public comment and other appropriate means.

5.3.9. What Other Ethics Issues Might Arise for Regular and Special Government Employees During or After a Peer Review?

Peer reviewers who are government employees, including SGEs, are subject to ethics requirements in addition to those regarding COI under 18 U.S.C. § 208 or an appearance of a loss of impartiality during panel operation and even after a panel has completed its work. Therefore, it is prudent to inform SGEs both prior to and during their service that ethics requirements such as postemployment restrictions may apply to them, dependent on the type of particular matter they worked on as well as the level of compensation they received during the time of service. These issues are discussed in-depth in EPA Ethics Advisory 08-02; some of the more typical restrictions are summarized below:

- **Representational Activities Directed Toward the United States.** Two companion ethics laws (18 U.S.C. §§ 203, 205) prohibit an employee from representing outside organizations and individuals on any particular matter in which the United States is a party or has a direct and substantial interest, before any department, Agency or other specified entity, whether for compensation or not. For SGEs, these statutes apply only with respect to particular matters involving specific parties (e.g., contracts, grants, enforcement actions), and their application depends on the number of days that the SGE worked for the federal government in the preceding 365-day period.
- **Compensation for Teaching, Speaking or Writing on Matters Related to Official Duties.** In certain cases, SGEs are prohibited from receiving outside compensation for teaching, speaking or writing when the activity is undertaken as part of their official EPA duties. SGEs also are subject

to the criminal bribery and illegal gratuity statute, which prohibits, under certain circumstances, the receipt of anything of value in connection with official acts.

- **Hatch Act Political Activity Restrictions (5 U.S.C. §§ 7321 – 7328).** The Hatch Act places some restrictions on federal government employees, including SGEs, when they engage in partisan political activity. During the time that SGEs are actually performing government business, they are prohibited from any fundraising for any partisan political group, candidate or campaign. They cannot engage in partisan political activity while on duty or while using a government vehicle, or in any room or building used for government business, and cannot use their SGA affiliation in connection with such political activity.
- **Seeking Other Employment (5 C.F.R. Part 2635, Subpart F).** SGEs may be interested in seeking other nonfederal employment while serving as government employees. SGEs may not participate in any particular matter that directly and predictably affects the financial interest of any individual or organization with whom/which they are seeking future employment, contracts or consultancies unless authorized by the appropriate DEO (who is required to consult with OGC) or, if the COI restriction at 18 U.S.C. § 208(a) applies, they have been granted a waiver under 18 U.S.C. § 208(b)(1). Such waivers are rarely, if ever, granted by OGC. It also is noted that under a provision of the Stop Trading on Congressional Knowledge Act, SGEs filing a public financial disclosure form (OGE-278) must report any postemployment negotiations to OGC within 3 business days. More information on Stop Trading on Congressional Knowledge Act requirements (including periodic financial transaction reporting) is available from OGC.
- **Service as an Expert Witness (5 C.F.R. § 2635.805).** On occasion, the PRL may find that an SGE wants to serve as an expert witness for an outside organization. Government employees cannot serve (other than on behalf of the United States) as an expert witness before a court or agency of the United States in which the United States is a party or has a direct and substantial interest, unless authorized by the agency's DAEO. For SGEs, the number of days of service affects the ban on serving as an expert witness.
- **Postemployment Restrictions.** Former employees (including SGEs) are prohibited by federal law (18 U.S.C. § 207) from making representations on behalf of another back to the federal government with the intent to influence a federal official with respect to any particular matter involving specific parties in which the United States is a party or has a direct and substantial interest. Thus, for example, a former SGE who served on a FAC cannot represent an outside individual or organization back to the federal government (not just this Agency) concerning the same specific party matter that was the subject of the FAC. SGEs working more than 60 days in any 365-day period who file an OGE-278 public financial disclosure report are subject to a 1-year “cooling off” period and cannot make representations on behalf of another back to EPA with the intent to influence any official action regardless of whether the SGE participated in it personally and substantially and regardless of whether the matter involves specific parties or not.

6. Conducting and Completing the Peer Review

6.1. Overview

For a peer review to be successful, peer reviewers should receive several documents at the beginning of the process (Figure 7). The specific documentation to be provided is based on the type and mechanism of peer review to be conducted, as discussed in Chapter 4. In each case, peer reviewers should be given what is necessary to complete their task; however, they should not be overburdened, with excess material. Needed documentation includes, but is not limited to, the work product to be reviewed, a clear charge and logistical details.

6.2. The Peer Review Charge and Instructions to Peer Reviewers

6.2.1. What Is a Charge?

A charge is a set of focused questions that identifies the scientific and technical issues on which the Agency would like feedback and invites suggestions for improving the document as a whole. The charge should be developed prior to the selection of the peer reviewers to ensure availability of appropriate scientific and technical expertise and skills for reviewing the specific work product. Preparing a good charge is time well-spent, as the charge is crucial for an effective peer review. A good charge will direct the reviewers to give advice on issues relevant to the Agency and will lead to a greater understanding of the reviewer's reasoning, which is pivotal to the Agency's ability to address the reviewers' concerns and to craft specific improvements to the work product (see Appendix H).

Generally, the charge to peer reviewers includes two types of questions. The first type identifies specific technical and scientific issues about which the Agency would like feedback. These focused charge questions should be explicit enough to encourage constructive comments, but not so narrow that they

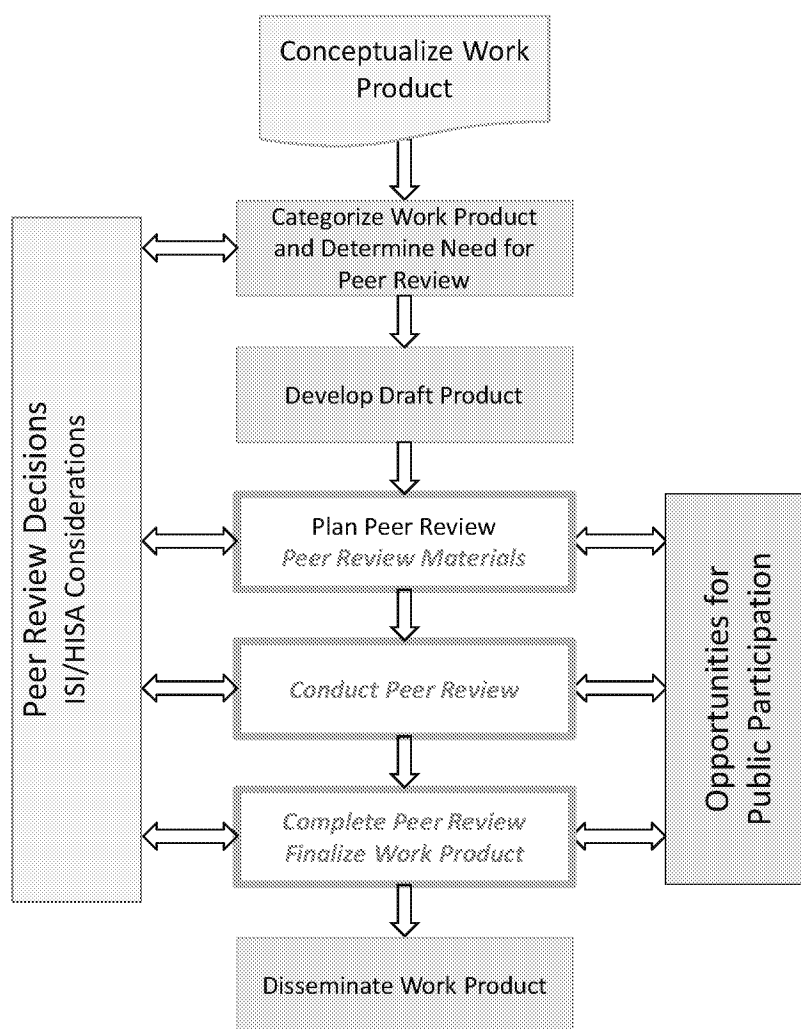


Figure 7. The Peer Review Process: Conduct and Complete Peer Review

preclude or limit informative responses that the reviewer may consider important to provide. The second type of question typically invites a broad evaluation of the overall work product. It is important to remember, however, that the peer review is not conducted for the purpose of evaluating a potential Agency action, decision or policy. Reviewers should not be asked to advise the Agency on policy.

Time is well-spent preparing a good charge, as the charge is crucial for an effective peer review.

6.2.2. What Are the Essential Elements of a Charge?

A well-prepared charge includes:

- A concise overview or introduction describing the work product, its development and its intended use.
- Issues to be addressed and areas of concern or specific advice sought (in the form of charge questions), such as:
 - The soundness of the method(s) used or proposed.
 - The scientific support for the assumptions employed.
 - The identification of scientific uncertainties and the potential implications of those uncertainties for the stated conclusions and for influential scientific information (ISI) and highly influential scientific assessments (HISAs), that scientific uncertainties are clearly identified and characterized.
 - Recommendations for research that would reduce key uncertainties.
 - The sensitivity of the results to alternative assumptions (i.e., sensitivity analysis).
 - The comprehensiveness and utility of the literature reviewed.

In addition, a request may be made for the reviewers to raise issues that might not have been considered by the authors in their charge questions. Examples of peer review charges that have been used successfully by the Agency and cover a variety of issues are provided in Appendix H.

6.2.3. Can the Public, Including Stakeholders, Provide Input to the Charge to the Peer Reviewers?

Yes, depending on the type of peer review (e.g., letter review versus panel review), availability of a public version of the draft work product, resources and other factors (e.g., timing), EPA may obtain public input regarding the charge to the peer reviewers. (Note that this would require releasing the draft work product.) The Agency makes the final determination, however, on what elements to include in the charge to ensure that it meets the EPA's needs for the peer review. The following considerations should be taken into account:

- The Agency can obtain public input regarding the charge via a notice on the EPA Web page or through a *Federal Register* notice.

- If stakeholder input is sought, interested parties should be included to the extent feasible given statutory, regulatory, budgetary and/or time constraints. Input should not be limited to a single stakeholder or to one side of a controversial issue (e.g., a responsible party or environmental group).
- If a group is formed to help develop the charge, care should be taken to ensure that the group does not become subject to the requirements of the Federal Advisory Committee Act (FACA).
- If an annotated outline or draft of the work product can be shared with the public, this will facilitate public input on the charge.

6.2.4. Who Writes the Charge When the Agency Hires a Contractor to Conduct the Peer Review?

In general, if EPA uses a contractor to manage the peer review, EPA should allow the contractor independence in conducting it. However, to ensure that the peer review meets the EPA's needs, EPA personnel are responsible for providing the list of charge questions to the contractor managing the peer review for distribution to the peer reviewers. If the charge questions are known prior to the issuance of a solicitation for a contract, or prior to the issuance of a tasking document under an awarded contract, the Contracting Officer's Representative (COR) can incorporate the charge questions directly into the Statement of Work (SOW).

EPA may task the contractor with providing advice and assistance in developing some elements of the charge, such as the overview or introduction. In such cases, however, EPA personnel are still responsible for providing the contractor with the list of questions to be included. Whenever the contractor assists EPA in developing the charge, EPA must review and comment on a draft of the charge and approve any revisions to it.

The EPA cannot submit the charge or the charge questions directly to the peer reviewers when the review is being managed by a contractor. Rather, the contractor is responsible for submitting the charge to the reviewers along with other review materials.

For details on peer reviews conducted by the National Academy of Sciences (NAS), see Section 2.3.7.

6.2.5. What Additional Instructions and Information Does the Agency Give Peer Reviewers, including Preparation of a Peer Review Report?

6.2.5.1. General Instructions

The Peer Review Leader (PRL), or contractor (in the case of a contractor-managed peer review), provides the peer reviewers with a peer review package that includes the draft work product, charge and other pertinent material. For HISAs, the peer reviewers should be given background information about studies or models that support the key findings and conclusions of the Agency's draft assessment.

The Agency (or the contractor managing the peer review) should instruct peer reviewers as follows:

- Peer reviewers are to advise the Agency or contractor (in the case of a contractor-managed peer review) of ethics issues, including actual or potential organizational or personal conflicts of interest (COI) or other matters that would create the appearance of a loss of impartiality, guidance on which is provided in Section 5.3.

- Peer reviewers are to provide written comments (if a letter review) or a peer review report (if a panel review) (see Table 1) responsive to the charge in a specified format by a specified deadline.
- Peer reviewers are to comply with requests for confidentiality, if any, regarding the release of draft Agency products, positions or other materials provided to the reviewer. Unless the peer review is being conducted by a federal advisory committee (FAC), material provided as part of the review should be kept confidential and should not be discussed outside the designated panel discussion times or shared outside the panel.
- From the time they accept the invitation to review the work product, peer reviewers should avoid interactions—including with Agency representatives or members of the interested public—that might create a perception of COI regarding the work product under review.
- Members of peer review panels, either Agency-led or contractor-managed, should immediately inform the PRL or contractor if they are contacted regarding the peer review or work product by anyone other than another panel member. The contractor will immediately inform the COR of any reports by panel members of pre-meeting contacts to guard against inappropriate influence from outside the panel.

Finally, peer reviewers should receive logistical details regarding the review, such as:

- The due date for comments (for a letter review) or peer review report (for a panel review).
- Times and locations of meetings, if applicable.
- The planned extent of disclosure of reviewers' names and attribution of comments.
- The point of contact. When reviewers are selected by a peer review contractor, the point of contact should be an employee of the contractor, not an employee of the Agency.
- Type of peer review report and mode of delivery.

6.2.5.2. Further Instructions to Peer Reviewers of ISI and HISAs

For work products categorized as ISI or a HISA, peer reviewers should be instructed to prepare comments or a peer review report that describes the nature of their review, findings and conclusions. The peer review report either should: (1) include a verbatim copy of the individual reviewers' comments (with or without specific attributions); or (2) represent the views of the group as a whole, including any disparate and dissenting views, for contractor-managed panel peer reviews or FACs (although attribution of comments to names is not necessary). The peer review report should include the names of the reviewers and their organizational affiliations. For HISAs, the peer review report also should include a copy of the charge to the reviewers and a short paragraph on the credentials and relevant experience of each reviewer. The format and level of detail should be consistent across reviewers. Peer reviewers' written comments may be made publicly available via the EPA website, and peer reviewers should be informed of this possibility.

6.2.6. How May EPA Interact With External Peer Reviewers During the Review?

6.2.6.1. When EPA Conducts an External Peer Review

The PRL normally has administrative contacts with the reviewers during the development and conduct of the peer review. In some cases (e.g., a Science Advisory Board [SAB] peer review), peer reviewers also may receive a briefing from Agency personnel on the product to be peer reviewed. For external peer reviews conducted by FAC panels, the Designated Federal Officer (DFO) serves as the liaison between the peer reviewers and the EPA office requesting the review, as well as between the peer reviewers and members of the public. Otherwise, the PRL and other EPA office staff should not contact the reviewers during the course of the review. Such contact can lead to perceived inappropriate direction that could compromise the independence of the review.

6.2.6.2. When a Contractor Conducts an External Peer Review

If peer review is conducted via a contract under which the contractor manages the peer review(s), EPA should limit direct contact to the prime contractor's designated representative and should not have general contact with, or provide direction to, the contractor's staff or peer reviewers (subcontractors). Contact with the contractor should only be through the Contracting Officer (CO) or COR.

6.2.7. When May the Public Provide Comment During the Peer Review?

Whenever feasible, EPA offices should make drafts of work products categorized as ISI and HISAs available to the public for comment, as well as a draft peer review charge, at the same time they are submitted for peer review. For work products that are not influential, a public comment period still may be beneficial. Accepting public comments before peer review has two benefits: (1) the Agency can consider public comments on the scope of the charge before the selection of peer reviewers so that appropriate expertise is included to address all charge questions; and (2) the Agency's public comment process is kept distinct from the peer review panel's comment process. When employing a public comment process prior to the peer review, EPA offices should provide peer reviewers with access to public comments that address significant scientific or technical issues whenever practical.

When peer review of a HISA is conducted by a panel (either contractor-managed or by a FAC), the process should include a public meeting, whenever feasible and appropriate. During this public meeting, interested members of the public can make oral presentations on scientific issues relevant to the topic under review. To ensure that public participation does not delay activities unduly, EPA offices should specify time limits for public participation throughout the peer review process. It is recommended that the EPA Docket (available at <http://www.regulations.gov>) be used as the repository for public comments. To establish a docket, see <http://intranet.epa.gov/fdmsinfo>.

6.3. Responding to Peer Review Comments

6.3.1. How Does the Agency Evaluate and Incorporate Peer Reviewers' Comments?

Although the Agency is not obligated to take all recommendations provided by peer reviewers, all reviewer comments should be considered and incorporated where relevant and appropriate. For letter and panel peer reviews, the Agency evaluates the comments and prepares the response. The PRL and/or Project Manager (PM) should evaluate and analyze all peer review comments and recommendations carefully. As discussed earlier, a carefully crafted charge to the peer reviewers simplifies the

organization and analysis of comments. The appropriateness and objectivity of the comments should be evaluated. Analyses may include consultation with other personnel within EPA.

The PRL and/or PM should brief the Decision Maker (DM), as appropriate, as well as all appropriate managers in their chain of command, on the peer review comments, and should provide a proposal on how to address the peer review comments. The PRL and/or PM should identify clearly for the DM any key peer review comments, including significant comments that will not be accepted and why, as well as any controversial comments that need resolving. Comments that may lead to allocation of additional resources or a revised schedule for the completion of the work product are particularly important and should be evaluated in consultation with management.

Adequate documentation is needed to show whether comments were accepted or rejected. The documentation may be brief, but it should address all relevant and appropriate comments. The peer review record should contain a document describing the Agency's response to the peer review comments.

When peer review is conducted through a journal, the individual authors of the article evaluate and respond to the peer review comments.

6.3.2. How Does the Agency Address Comments from Peer Review Reports?

Reviewers of work products categorized as ISI and HISAs are asked to produce and submit the peer review report describing the nature of their review, and their findings and conclusions. EPA offices are expected to make these reports publicly available to implement the provisions of the Office of Management and Budget's (OMB) Peer Review Bulletin. The EPA posts or provides a link to the peer review reports, along with all materials related to the peer review, on its publicly accessible EPA Peer Review Agenda website (Science Inventory [SI] website [<http://epa.gov/si/>]).

The credibility of the final influential work product is likely to be enhanced if the public understands how the Agency addressed the specific concerns raised by the peer reviewers. Therefore, for HISAs, EPA offices should prepare a written response to comments in the peer review report explaining (1) the Agency's agreement or disagreement with the views expressed in the report; (2) the actions that have been or will be taken to respond to the report; and (3) the reasons that the EPA office believes those actions satisfy any key concerns or recommendations in the report. Any responses also should be posted in the SI website database. When peer reviews are conducted by FACs, the peer review report and the Agency's response to the committee also are posted on the advisory committee's website.

For products that are not considered "influential" (those categorized as "other"), the Agency may disclose the peer review report and Agency's response to the report (if prepared). Information on the peer review of products not considered influential are not posted on EPA's Peer Review Agenda website.

6.3.3. How Might Peer Review Comments Impact the Work Product?

Peer review comments, when appropriate, enhance the quality of the information EPA disseminates by ensuring that the information that the Agency uses to support and carry out its mission is reliable, accurate and unbiased (i.e., is objective) and that it is appropriate for its intended use (i.e., has utility). A variety of changes to a work product may result from the comments provided during peer review:

- Peer review comments and recommendations may entail significant impacts on the planned project schedule, budget or other resource needs. Management decisions to adjust one or more of these areas may be appropriate.
- The substantive issues or concerns expressed by peer reviewers may suggest that wider scientific and technical consultation is needed to ensure the adequacy of the work product relative to its intended use. If the Agency agrees with the reviewers, additional resources and an extended delivery schedule may be necessary.
- Peer review comments may lead to a better or more thorough analysis, a different interpretation of the results or a different perspective on a topic.
- The peer review comments and recommendations on a draft final product may provide a basis for bringing the associated project to closure.

6.3.4. What Should the Final Work Product Say About the Peer Review Process?

A final peer-reviewed work product *may* include a brief description of the peer review process (e.g., a statement regarding public participation and names/affiliations of the peer reviewers). Frequently, this will be part of a description of the process of developing the product, which can be included in an introduction, preamble or appendix. For ISI and HISAs that support rulemaking, the peer review should be discussed in the preamble of the rule.

When there are significant peer review comments, particularly if they are not accepted, a discussion of the issues and reasons for the Agency's choices should be included in the work product. The level of detail provided is a matter of judgment and should reflect the significance and degree of controversy surrounding the issue.

If ISI or a HISA has not been peer reviewed, this fact should be noted in the document, perhaps in an introduction or description of its scope. This section should briefly indicate the reasons that peer review was not conducted.

6.4. Finalizing the Work Product: When Is the Peer Review of a Work Product Complete?

Performance of the formal peer review is not the final stage in the product's development. Rather, it is an important stage in its development, with the final version (addressing comments) representing the true end of the peer review. The peer review process closes with three major activities:

1. Evaluating peer review comments and recommendations.
2. Utilizing peer review comments for completing the final document or conducting another review, if appropriate.
3. Completing the peer review record (for ISI and HISAs, this includes completing the entry in the SI).

Careful attention to all of these elements, singly and together, ensures a credible and transparent peer review process. Conversely, inattention to detail can nullify the peer review effort. A well-planned peer

review applied to a quality draft work product and followed by responsible employment of peer review suggestions in the final product ensures a credible and defensible product for use in Agency decision making. Sometimes the draft work product may not be finalized after the peer review. In these cases, the Agency may decide not to disseminate the Peer Review Report and/or the EPA Response to the Peer Review Report (if any).

Note: For the purposes of the EPA Annual Peer Review Report to OMB, peer review of an influential work product (ISI or HISA) is considered complete when the Agency receives the peer reviewers' final comments (e.g., the peer review report) and the comments are publicly available through the SI.

6.5. The Peer Review Record

6.5.1. What Is the Peer Review Record?

The peer review record is the PRL's formal record (file) of decision on the conduct of the peer review (either internal or external). It includes sufficient documentation (electronic and/or paper) for an uninvolved individual to understand the review process and the outcome. It is the responsibility of the PRL to create a separate review record that may be kept within the overall file for the development of the work product. Once the peer review is completed, it is the responsibility of the PRL to ensure that the peer review record is maintained in accordance with the organization's document retention procedures.

If ISI or a HISA has not been peer reviewed, a record should be created explaining why the product was not peer reviewed, including documentation signed by the DM during the peer review planning process (see Exhibit 2). Some Agency documents, such as strategic plans or analytic blueprints, are not subject to the EPA's Peer Review Policy and do not require peer review; in these cases, no record explaining why the product was not peer reviewed is necessary (see Section 3.3 to determine which work products do not require peer review).

For ISI and HISAs, some of the information from the PRL's official peer review record (e.g., the charge and the draft work product) is entered into the SI database that serves as the primary public interface for these records (see Sections 7.3.2 and 7.3.4). The resulting SI database entry is publicly accessible on the Agency's Peer Review Agenda website³⁴ through a link to the SI. Since the record in the SI does not contain all the information regarding the peer review, it is not the official peer review record.

6.5.2. What Should Be in the Peer Review Record?

Contents of the peer review record may vary, depending on the type of review undertaken. Documentation should be commensurate with the type of work product and its intended use. Such materials typically include:

- An approved plan specifying the type of peer review;
- Peer review documentation/checklist(s) that contain the rationale for the work product categorization and the signature of the DM approving the categorization (see Exhibit 1);

³⁴ EPA. 2015. *Peer Review Agenda*. http://cfpub.epa.gov/si/si_public_pr_agenda.cfm.

- The draft work product submitted for peer review;
- The materials and information (including the charge) given to the peer reviewers;
- Information about the peer reviewers (e.g., names, affiliations, signed COI forms for each reviewer or a statement concerning potential COIs and their resolution, relevant correspondence);
- Logistical information about the conduct of the peer review (such as times and locations of meetings, if applicable);
- The peer review report, which include reviewers' comments and responses to charge questions;
- A memorandum or other written record, approved by the DM or DM designee, responding to the peer review comments and specifying either acceptance or rebuttal and non-acceptance (when prepared);
- The final work product, including any revisions resulting from the peer review;
- Documentation of any opportunities for public comment, including docket information, if applicable; and
- For ISI and HISAs, SI reference information (e.g., record number).

When deciding if particular materials should be included in the record, the PRL should consider whether the materials would help reconstruct the peer review process and outcome at a later time. If the materials might be helpful, they should be part of the peer review record.

The peer review record is considered complete when it contains a copy of the final work product (when there is one) that addresses the peer review comments, as well as a copy of the Agency's response to the comments (when there is one), including any that were not incorporated.

6.5.3. When Should the Peer Review Record-Building Process Begin?

An early start to developing and maintaining a peer review record will help ensure that the record is complete and helpful. Preferably, the record should begin at the start of the planning stage, once the decision to peer review the work product is made and the product categorization (ISI, HISA or other) is determined and documented.

6.5.4. What Types of Documentation Should Be Maintained When Categorizing Work Products and Determining the Peer Review Mechanism?

When making the determination if a work product is influential and what type of peer review mechanism should be used, these decisions should be documented and include the following: work product peer review categorization, the rationale for the categorization, the peer review mechanism selected and approval by the DM. The flowcharts and checklists found in the Roadmap at the front of this Handbook are tools for assisting the PRLs in evaluating what decisions are needed and how they should be documented. Other tools and products to enhance the transparency and reporting of peer

reviews are summarized in Table 1. Individual EPA offices maintain decision documentation for their scientific and technical work products categorized as influential.

6.5.5. How Can the Peer Review Record Improve the Peer Review Process?

A good peer review record supports the planning process and ensures that appropriate peer review is conducted. Also, it permits a retrospective examination of the peer review, and it helps the Agency make appropriate use of peer review comments. In addition, a good record helps ensure that the EPA's Peer Review Policy is implemented. The PRL is responsible for ensuring that the documentation for the peer review record for individual work products is collected and maintained.

6.5.6. What Happens to a Peer Review Record That Pertains to a Rulemaking Action?

The PRL should coordinate with the Federal Docket Management System to ensure that proper docketing procedures are followed for a peer review of a work product supporting a rule. If EPA relies on ISI or a HISA to support a regulatory action, the preamble should include a discussion of how EPA implemented the provisions of the OMB Peer Review Bulletin. See Appendix D, Sound Science and Peer Review in Rulemaking Policy, for a template to use for this purpose.

6.5.7. Are there Differences in Record-Keeping between a Review by Individuals and One by a Panel?

Generally, the content of the two peer review records would be similar. In the case of a review by individuals, such as a letter review, the peer review record typically would contain each individual's comments. For a panel review, the record typically contains a summary or other synthesis of the panel's peer review comments and recommendations (i.e., their peer review report).

6.5.8. Are Internal Peer Review Comments Included in the Peer Review Record?

Comments from formally conducted internal EPA peer reviews should be documented and included in the peer review record. This process does not substitute for Agency clearance. Informal input from EPA colleagues and input from Agency personnel helping to develop the work product need not be included.

Note: An internal EPA peer review may be followed by a separate external peer review. In such a case, the external peer review will stand as the official peer review record, because it is viewed as more independent in nature, may have broader fields of available expertise which can be brought to bear on the issues, and often includes greater depth for specific disciplines.

6.5.9. Where Should the Peer Review Record Be Kept and for How Long?

During the active conduct of the peer review, the PRL is responsible for maintaining the onsite record until the peer review is complete. Once completed, the peer review record should be maintained onsite by the PRL until at least 1 year after the completed peer review is reported in the next annual reporting cycle. The location of the record should be readily identifiable so that interested parties can locate and obtain materials easily and quickly. The peer review record may be kept with other records relating to the overall project as long as it is easily and separately identifiable.

Establishment and maintenance of the archive where the peer review records ultimately reside are an organization's responsibility (i.e., not that of an individual PM or PRL). The PRL should collect the

applicable materials and submit them for archiving in accordance with the applicable records-retention schedule(s).

PRLs should consult with their EPA Records Liaison Officer or the EPA's National Records Management Program (<http://www.epa.gov/records>) to determine the appropriate retention schedule for a peer review record, whether in electronic or paper form. A peer review record may be covered by one or more of the EPA's records-retention schedules. Some peer review records are permanent (e.g., records created by FACs, Integrated Risk Information System [IRIS] peer reviews and Health and Environment Assessment Program Files).

The peer review of products that meet OMB's definitions for ISI or HISAs must be reported and tracked in the EPA's SI (<http://cfpub.epa.gov/si/>). The SI database entry for such work products should be completed and updated in accordance with the appropriate Agency procedures. When peer review is provided by a FAC, such as the SAB, committee records are created and maintained by the EPA DFO and made available to the public on advisory committee Web pages.^{35, 36}

Public dockets serve as the repository for peer review information related to rulemaking (regulatory dockets) or other non-rulemaking actions (general dockets). The appropriate peer review information, however, also should be entered in the SI. There are specific procedures regarding the establishment and use of public dockets for retaining records associated with federal rulemaking and other Agency actions. If a peer review record is included in an EPA docket to support a rulemaking or other Agency action, the Federal Records Act record-retention schedule for dockets must be followed. For details on the EPA's record-retention schedule for dockets, see <http://www.epa.gov/records/policy/schedule/>.

³⁵ EPA. 2015. *Science Advisory Board*. www.epa.gov/sab.

³⁶ EPA. 2015. *EPA Clean Air Scientific Advisory Committee (CASAC)*. www.epa.gov/casac.

7. Transparency in Peer Review: Public Participation and Reporting

7.1. Overview

The EPA is committed to the independent review of the Agency's scientific products and consistent implementation of its Peer Review Policy across the Agency. Transparency and openness are key objectives of its peer review process (Figure 8). To ensure transparency, the Agency often provides opportunities for participation by the general public, stakeholders and the larger scientific community in the peer review of influential scientific information (ISI). In addition, EPA makes peer review materials (e.g., the peer review plan, the peer review report) for Highly Influential Scientific Assessments (HISAs) and ISI publicly available at the EPA Peer Review Agenda³³ website. Through *Federal Register* notices, website postings and other means, EPA keeps the public informed of its peer review activities. The EPA also submits annual reports on the peer review of influential work products to the Office of Management and Budget (OMB).

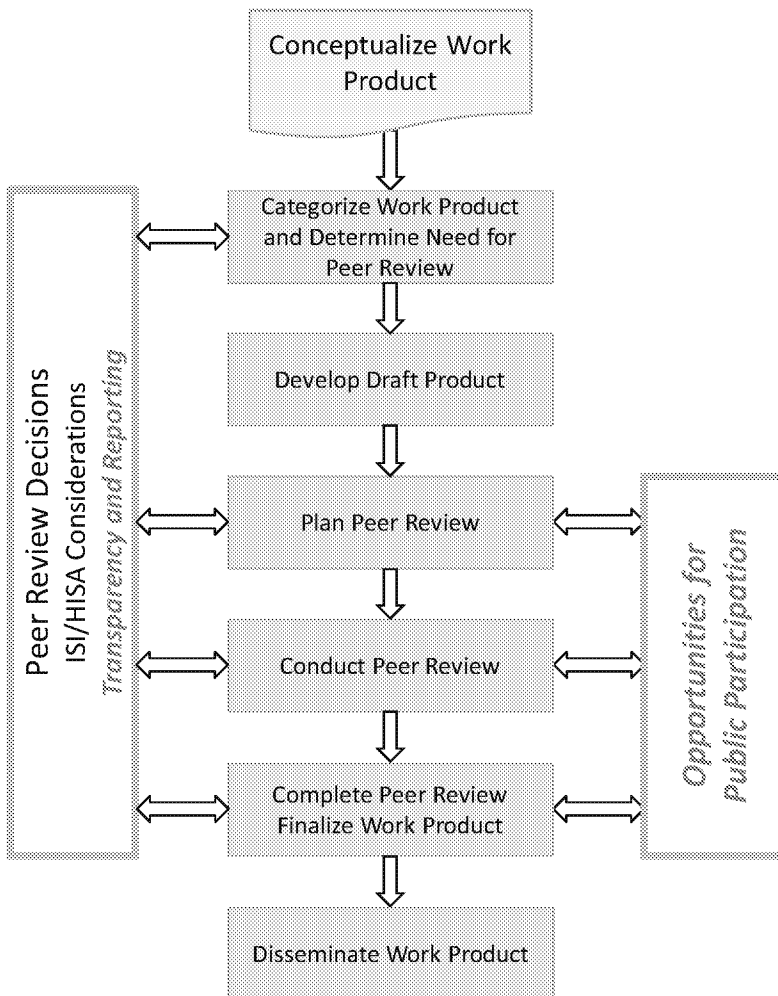


Figure 8. The Peer Review Process: Public Participation and Reporting

7.2. Opportunities for Public Participation

7.2.1. What Are the Opportunities for Public Participation in Peer Review?

The Agency provides opportunities for public participation in its peer review whenever feasible and appropriate. Opportunities are communicated by several means, including the EPA Peer Review

Agenda,³⁷ relevant Agency websites and *Federal Register* notices. Public comments may be submitted to the Agency in writing, as oral statements during public meetings when panels are convened, or both.

Peer review plans for work products categorized as ISI and HISAs are publicly available on the EPA Peer Review Agenda, and the public may comment on the adequacy of those plans. The Agency indicates in each plan whether the public will have the opportunity to comment on the work product (and if so, how and when opportunities will be provided) and whether the public will be asked to nominate peer reviewers. Sometimes the charge to the peer reviewers is posted for public comment, and for HISAs, the draft work product is posted whenever feasible and appropriate.

For peer reviews conducted by panels selected and managed by an independent contractor, the public may nominate experts and later provide feedback on potential panel members (see Section 4.6.4). These opportunities are announced in *the Federal Register* and EPA may utilize a public docket (at www.regulations.gov) for submission of the comments.

7.2.2. What Are the Opportunities for Public Participation for Peer Reviews Conducted by Federal Advisory Committees (FACs)?

The Federal Advisory Committee Act (FACA) requires that the public have an opportunity to provide written comments to FACs and, in most cases, FACs also provide opportunities for oral comments.³⁸ Public comments provided to FACs have a different purpose than public comment provided to EPA offices because they inform the deliberations of the FAC as it reviews the draft EPA work product. Members of the public can submit relevant comments pertaining to the group providing advice, the EPA's charge questions, EPA review or background documents, and draft advisory reports prepared by a FAC or its panels.

7.2.3. Is Information Regarding a Peer Review Subject to Release Under the Freedom of Information Act (FOIA)?

Information regarding a peer review is subject to release if EPA receives a FOIA request unless the peer review information meets the criteria for an exemption under the FOIA 5 U.S.C. § 552(b). It should be noted, however, that many documents relating to Agency peer reviews are available to the public on the EPA website.

7.3. Reporting on Peer Reviews

7.3.1. What Are the EPA's Reporting Practices?

As part of the EPA's systematic planning process, EPA publicly posts information on the peer review activities of EPA's forthcoming influential (HISA and ISI) scientific product disseminations on the EPA's Peer Review Agenda (PRA) website.³⁹ Pursuant to the OMB Peer Review Bulletin, for each entry on the PRA, the Agency provides a link to the peer review plan, the charge to the reviewers, the peer review report, the names and affiliations of the peer reviewers (in the peer review report or as a

³⁷ EPA. 2015. *Peer Review Agenda*. http://cfpub.epa.gov/si/si_public_pr_agenda.cfm.

³⁸ 5 U.S.C. App. 2 Section 10(a)(3) and § 102–3.140(c) and (d) of the U.S. General Services Administration FAC Management final rule.

³⁹ EPA. 2015. *Peer Review Agenda*. http://cfpub.epa.gov/si/si_public_pr_agenda.cfm.

separate file), any Agency response to comments, and, whenever feasible and appropriate, the draft work product for HISAs.

The PRA is a component of the EPA Science Inventory (SI), a searchable database of scientific and technical work products developed by EPA and accessible at www.epa.gov/si. Product metadata including peer review information and related documents, are entered into the SI and then published to the Agency PRA, which is also linked to the U.S. Government's official web portal FirstGov at <http://www.FirstGov.gov>.

In addition to reporting on peer review through the PRA, the Agency officially submits an annual report on peer review to OMB that summarizes all the external peer reviews of HISA and ISI products that were completed during the fiscal year. For the purposes of reporting to OMB, "completed" is defined as having received the peer review report (see Sections 6.4.1 and 7.4). The Agency response to the peer reviewer comments is also reported to OMB in the annual report, among other information.

EPA offices also communicate their peer review activities through press releases, website postings, dockets and *Federal Register* notices (see Appendix I for example notices).

7.3.2. What Information Should Be Provided in the Science Inventory Peer Review Plan Regarding ISI and HISAs?

Since EPA allows the public to view and comment on the Agency's peer review plans for activities or products categorized as ISI or HISAs, the following information should be provided for each activity or product into the SI:

- A paragraph including the title, subject and purpose of the activity or product.
- An Agency contact to whom inquiries may be directed to learn the specifics of the peer review plan.
- The categorization of the work product (e.g., ISI, HISA).
- The timing of the review (including any deferrals).
- The process by which the review will be conducted (e.g., a panel or individual letter review, an alternative procedure).
- Opportunities for the public to comment on the work product to be peer reviewed, including how and when these opportunities will be provided, if applicable.
- Any significant and relevant public comments that EPA will provide to the peer reviewers before they conduct their review.
- A succinct description of the primary disciplines or expertise needed in the peer review.
- The number of peer reviewers expected.
- The organization that will select the reviewers (e.g., EPA, a designated outside organization).

- Opportunities for the public, including scientific or professional societies, to nominate peer reviewers, if applicable.

After new or updated product and peer review information is entered into the SI, the SI Product Coordinator or his/her designee generates (from within the SI) a public peer review plan and posts the plan to the Peer Review Agenda website. The SI Product Coordinator should also post or link other relevant peer review documents to the PRA from the SI.

EPA offices are expected to keep this information current by updating agenda entries of influential work products at least every 6 months. Real-time updates occasionally may be necessary, for example, when there is an imminent change in the timing for the peer review of a high-visibility work product or a change in the timing of the public availability of a draft of a HISA.

7.3.3. Which Products Generated Under EPA Grants or Cooperative Agreements Should Be Reported in the Science Inventory?

As a matter of practice, EPA organizations are encouraged, but not required, to include in the SI those scientific and technical work products that are produced under grants and cooperative agreements so that EPA staff and the public are aware of the ongoing work. If a grant or cooperative agreement product is likely to be used in Agency decision making (assuming this use is incidental to the principal purpose of the agreement), it generally should be considered a candidate for peer review and noted as such in the SI by the Peer Review Coordinator (PRC).

7.3.4. Does the Agency Report on Peer Review of Scientific and Technical Work Products That Are Not ISI or HISAs?

Each EPA office is responsible for reporting peer-reviewed work products categorized as “other” upon request. For example, a list of these work products may be requested from each EPA office for inclusion in annual reports (e.g., for the Agency’s Annual Report on Scientific Integrity) and for the purposes of monitoring compliance with the EPA’s Peer Review Policy and this Handbook. Offices are encouraged to include information in the SI on the peer review of these other work products not categorized as ISI or HISAs but are not required to do so.

7.4. Annual Report to OMB on EPA Peer Reviews

The EPA submits an annual report to OMB that summarizes the peer reviews of all of the ISI and HISAs that were conducted during the previous fiscal year. Release of any reviewer information retrieved by a personal identifier will be performed in accordance with the Privacy Act of 1974 (5 U.S.C. § 552a, as amended), as interpreted in OMB implementing guidance, 40 *Fed. Reg.* 28,948 (Jul. 9, 1975). The OMB Peer Review Bulletin states that the annual report should include the following:

- The number of peer reviews conducted subject to the OMB Peer Review Bulletin.
- The number of times alternative procedures were invoked (see Section IV of the OMB Peer Review Bulletin).
- The number of times waivers or deferrals were invoked and, in the case of deferrals, the length of time elapsed between the deferral and the peer review.

- Any decision to appoint a peer reviewer pursuant to any exception to the applicable independence or conflict of interest (COI) standards of the OMB Peer Review Bulletin.
- The number of peer review panels that were conducted in public and the number that included public comment.
- The number of public comments provided on the peer review plans.
- The number of peer reviewers used who were recommended by professional societies.

APPENDIX A. EPA PEER REVIEW POLICY



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 31 2006

THE ADMINISTRATOR

MEMORANDUM

SUBJECT: Peer Review Program

TO: Assistant Administrators
General Counsel
Inspector General
Associate Administrators
Regional Administrators
Staff Office Directors

We have made tremendous strides in improving our peer review program at EPA since the Agency's Peer Review Policy was reaffirmed in 1994. Today I am updating the Peer Review Policy to emphasize the critical role that peer review plays in our efforts to ensure that EPA's decisions rest on sound, credible science and data (see attached policy statement).

Peer review at EPA takes several different forms, ranging from informal consultations with Agency colleagues who were not involved in developing the product to the formal, public processes of the Science Advisory Board (SAB) and the FIFRA Scientific Advisory Panel (SAP). In any form, peer review assists EPA's work by bringing independent expert experience and judgment to bear on issues before the Agency to the benefit of the final product.

In 1994 the Science Policy Council (SPC) and its Steering Committee were asked to undertake an initiative to ensure that EPA has a comprehensive Agency-wide program for implementing its Peer Review Policy. I commend the SPC for its diligence and success in meeting this objective. The SPC has made substantial improvements in the Peer Review Handbook, sponsored training of Agency managers and staff in peer review procedures, identified scientific and technical work products that merit peer review, and developed a publicly available data base of the peer review activities across the Agency. EPA has a strong and well-recognized peer review program as a direct result of these efforts.

In 2004 the Office of Management and Budget (OMB) issued a "Final Information Quality Bulletin for Peer Review" that contains provisions for peer review at all federal agencies. The OMB Bulletin applies to influential scientific information and highly influential scientific assessments. The SPC has updated the Agency's Peer Review Handbook, in part to incorporate the provisions of the OMB Bulletin, and to reflect the experience gained from implementing the program over the last decade.

I ask that you continue to implement fully the provisions of our Peer Review Policy, and I expect the Science Policy Council to continue its role in overseeing and strengthening EPA's peer review program. We must ensure that our decisions are based on the highest quality, peer-reviewed scientific and technical information.



Stephen L. Johnson

Attachment

cc: Science Policy Council
Science Policy Council Steering Committee

PEER REVIEW AND PEER INVOLVEMENT AT THE U.S. ENVIRONMENTAL PROTECTION AGENCY

This document establishes the policy of the United States Environmental Protection Agency (EPA) for peer review of scientifically and technically based work products, including economic and social science products, that are intended to inform Agency decisions. Peer review, a form of *peer involvement*, is one process through which EPA staff augment their capabilities by inviting independent subject-matter experts to provide objective evaluation of the work product.

PEER REVIEW

EPA strives to ensure that the scientific and technical bases of its decisions meet two important criteria: (1) they are based upon the best current knowledge from science, engineering, and other domains of technical expertise; and (2) they are credible. Peer review, a process based on the principles of obtaining the best technical and scientific expertise with appropriate independence, is central to sound science and helps the Agency meet these important criteria. Peer review occurs when scientifically and technically based work products are evaluated by relevant experts who were not involved in creating the product. Properly applied, peer review not only enriches the quality of work products but also adds a degree of credibility that cannot be achieved in any other way. Furthermore, peer review early in the development of work products in some cases may conserve future resources by steering the development along the most efficacious course.

Peer review generally takes one of two approaches:

- Internal, in which the reviewers are independent experts from inside EPA.
- External, in which the reviewers are independent experts from outside EPA.

POLICY STATEMENT

Peer review of all scientific and technical information that is intended to inform or support Agency decisions is encouraged and expected. Influential scientific information, including highly influential scientific assessments, should be peer reviewed in accordance with the Agency's Peer Review Handbook. All Agency managers are accountable for ensuring that Agency policy and guidance are appropriately applied in determining if their work products are influential or highly influential, and for deciding the nature, scope, and timing of their peer review. For highly influential scientific assessments, external peer review is the expected procedure. For influential scientific information intended to support important decisions, or for work products that have special importance in their own right, external peer review is the approach of choice. Peer review is not restricted to the nearly final version of work products; in fact, peer review at the planning stage can often be extremely beneficial.

LEGAL EFFECT

This policy statement does not establish or affect legal rights or obligations. Rather, it confirms the importance of peer review where appropriate, outlines relevant principles, and identifies factors Agency staff should consider in implementing the policy. On a continuing basis, Agency management is expected to evaluate the policy as well as the results of its application throughout the Agency and undertake revisions as necessary. Therefore, the policy does not stand alone; nor does it establish a binding norm that is finally determinative of the issues addressed.

IMPLEMENTATION

The Science Policy Council is responsible for overseeing Agency-wide implementation of this policy, including: promoting consistent interpretation; assessing Agency-wide progress; developing recommendations for revisions of the policy as necessary; and issuing the *Peer Review Handbook*, which provides additional information and procedures on implementing this policy. Assistant Administrators, Regional Administrators, and other senior managers remain ultimately responsible for ensuring the appropriate application of Agency policy and guidance in identifying work products subject to peer review, determining the type and timing of such review, documenting the process and outcome of each peer review, ensuring that the Science Inventory is kept current, and otherwise implementing the policy within their organizational units.

The policy is effective immediately.

APPROVED:  DATE: JAN 31 2006
STEPHEN L. JOHNSON, ADMINISTRATOR

APPENDIX B. OMB INFORMATION QUALITY BULLETIN FOR PEER REVIEW

This appendix contains the text of the OMB Information Quality Bulletin for Peer Review.

December 15, 2004

OFFICE OF MANAGEMENT AND BUDGET
Final Information Quality Bulletin for Peer Review

INTRODUCTION

This Bulletin establishes that important scientific information shall be peer reviewed by qualified specialists before it is disseminated by the federal government. We published a proposed Bulletin on September 15, 2003. Based on public comments, we published a revised proposal for additional comment on April 28, 2004. We are now finalizing the April version, with minor revisions responsive to the public's comments.

The purpose of the Bulletin is to enhance the quality and credibility of the government's scientific information. We recognize that different types of peer review are appropriate for different types of information. Under this Bulletin, agencies are granted broad discretion to weigh the benefits and costs of using a particular peer review mechanism for a specific information product. The selection of an appropriate peer review mechanism for scientific information is left to the agency's discretion. Various types of information are exempted from the requirements of this Bulletin, including time-sensitive health and safety determinations, in order to ensure that peer review does not unduly delay the release of urgent findings.

This Bulletin also applies stricter minimum requirements for the peer review of highly influential scientific assessments, which are a subset of influential scientific information. A scientific assessment is an evaluation of a body of scientific or technical knowledge that typically synthesizes multiple factual inputs, data, models, assumptions, and/or applies best professional judgment to bridge uncertainties in the available information. To ensure that the Bulletin is not too costly or rigid, these requirements for more intensive peer review apply only to the more important scientific assessments disseminated by the federal government.

Even for these highly influential scientific assessments, the Bulletin leaves significant discretion to the agency formulating the peer review plan. In general, an agency

conducting a peer review of a highly influential scientific assessment must ensure that the peer review process is transparent by making available to the public the written charge to the peer reviewers, the peer reviewers' names, the peer reviewers' report(s), and the agency's response to the peer reviewers' report(s). The agency selecting peer reviewers must ensure that the reviewers possess the necessary expertise. In addition, the agency must address reviewers' potential conflicts of interest (including those stemming from ties to regulated businesses and other stakeholders) and independence from the agency. This Bulletin requires agencies to adopt or adapt the committee selection policies employed by the National Academy of Sciences (NAS)¹ when selecting peer reviewers who are not government employees. Those that are government employees are subject to federal ethics requirements. The use of a transparent process, coupled with the selection of qualified and independent peer reviewers, should improve the quality of government science while promoting public confidence in the integrity of the government's scientific products.

PEER REVIEW

Peer review is one of the important procedures used to ensure that the quality of published information meets the standards of the scientific and technical community. It is a form of deliberation involving an exchange of judgments about the appropriateness of methods and the strength of the author's inferences.² Peer review involves the review of a draft product for quality by specialists in the field who were not involved in producing the draft.

The peer reviewer's report is an evaluation or critique that is used by the authors of the draft to improve the product. Peer review typically evaluates the clarity of hypotheses, the validity of the research design, the quality of data collection procedures, the robustness of the methods employed, the appropriateness of the methods for the

¹ National Academy of Sciences, "Policy and Procedures on Committee Composition and Balance and Conflicts of Interest for Committees Used in the Development of Reports," May 2003: Available at: <http://www.nationalacademies.org/doi/index.html>.

² Carnegie Commission on Science, Technology, and Government, Risk and the Environment: Improving Regulatory Decision Making, Carnegie Commission, New York, 1993: 75.

hypotheses being tested, the extent to which the conclusions follow from the analysis, and the strengths and limitations of the overall product.

Peer review has diverse purposes. Editors of scientific journals use reviewer comments to help determine whether a draft scientific article is of sufficient quality, importance, and interest to a field of study to justify publication. Research funding organizations often use peer review to evaluate research proposals. In addition, some federal agencies make use of peer review to obtain evaluations of draft information that contains important scientific determinations.

Peer review should not be confused with public comment and other stakeholder processes. The selection of participants in a peer review is based on expertise, with due consideration of independence and conflict of interest. Furthermore, notice-and-comment procedures for agency rulemaking do not provide an adequate substitute for peer review, as some experts -- especially those most knowledgeable in a field -- may not file public comments with federal agencies.

The critique provided by a peer review often suggests ways to clarify assumptions, findings, and conclusions. For instance, peer reviews can filter out biases and identify oversights, omissions, and inconsistencies.³ Peer review also may encourage authors to more fully acknowledge limitations and uncertainties. In some cases, reviewers might recommend major changes to the draft, such as refinement of hypotheses, reconsideration of research design, modifications of data collection or analysis methods, or alternative conclusions. However, peer review does not always lead to specific modifications in the draft product. In some cases, a draft is in excellent shape prior to being submitted for review. In others, the authors do not concur with changes suggested by one or more reviewers.

³ William W. Lowrance, Modern Science and Human Values, Oxford University Press, New York, NY 1985: 85.

Peer review may take a variety of forms, depending upon the nature and importance of the product. For example, the reviewers may represent one scientific discipline or a variety of disciplines; the number of reviewers may range from a few to more than a dozen; the names of each reviewer may be disclosed publicly or may remain anonymous (e.g., to encourage candor); the reviewers may be blinded to the authors of the report or the names of the authors may be disclosed to the reviewers; the reviewers may prepare individual reports or a panel of reviewers may be constituted to produce a collaborative report; panels may do their work electronically or they may meet together in person to discuss and prepare their evaluations; and reviewers may be compensated for their work or they may donate their time as a contribution to science or public service.

For large, complex reports, different reviewers may be assigned to different chapters or topics. Such reports may be reviewed in stages, sometimes with confidential reviews that precede a public process of panel review. As part of government-sponsored peer review, there may be opportunity for written and/or oral public comments on the draft product.

The results of peer review are often only one of the criteria used to make decisions about journal publication, grant funding, and information dissemination. For instance, the editors of scientific journals (rather than the peer reviewers) make final decisions about a manuscript's appropriateness for publication based on a variety of considerations. In research-funding decisions, the reports of peer reviewers often play an important role, but the final decisions about funding are often made by accountable officials based on a variety of considerations. Similarly, when a government agency sponsors peer review of its own draft documents, the peer review reports are an important factor in information dissemination decisions but rarely are the sole consideration. Agencies are not expected to cede their discretion with regard to dissemination or use of information to peer reviewers; accountable agency officials must make the final decisions.

There are a multiplicity of science advisory procedures used at federal agencies and across the wide variety of scientific products prepared by agencies.⁴ In response to congressional inquiry, the U.S. General Accounting Office (now the Government Accountability Office) documented the variability in both the definition and implementation of peer review across agencies.⁵ The Carnegie Commission on Science, Technology and Government⁶ has highlighted the importance of “internal” scientific advice (within the agency) and “external” advice (through scientific advisory boards and other mechanisms).

A wide variety of authorities have argued that peer review practices at federal agencies need to be strengthened.⁷ Some arguments focus on specific types of scientific products (e.g., assessments of health, safety and environmental hazards).⁸ The Congressional/Presidential Commission on Risk Assessment and Risk Management suggests that “peer review of economic and social science information should have as high a priority as peer review of health, ecological, and engineering information.”⁹

⁴ Sheila Jasanoff, The Fifth Branch: Science Advisors as Policy Makers, Harvard University Press, Boston, 1990.

⁵ U.S. General Accounting Office, Federal Research: Peer Review Practices at Federal Agencies Vary, GAO/RCED-99-99, Washington, D.C., 1999.

⁶ Carnegie Commission on Science, Technology, and Government, Risk and the Environment: Improving Regulatory Decision Making, Carnegie Commission, New York, 1993: 90.

⁷ National Academy of Sciences, Peer Review in the Department of Energy – Office of Science and Technology, Interim Report, National Academy Press, Washington, D.C., 1997; National Academy of Sciences, Peer Review in Environmental Technology Development: The Department of Energy – Office of Science and Technology, National Academy Press, Washington, D.C., 1998; National Academy of Sciences, Strengthening Science at the U.S. Environmental Protection Agency: Research-Management and Peer-Review Practices, National Academy Press, Washington, D.C. 2000; U.S. General Accounting Office, EPA’s Science Advisory Board Panels: Improved Policies and Procedures Needed to Ensure Independence and Balance, GAO-01-536, Washington, D.C., 2001; U. S. Environmental Protection Agency, Office of Inspector General, Pilot Study: Science in Support of Rulemaking 2003-P-00003, Washington, D.C., 2002; Carnegie Commission on Science, Technology, and Government, In the National Interest: The Federal Government in the Reform of K-12 Math and Science Education, Carnegie Commission, New York, 1991; U.S. General Accounting Office, Endangered Species Program: Information on How Funds Are Allocated and What Activities are Emphasized, GAO-02-581, Washington, D.C. 2002.

⁸ National Research Council, Science and Judgment in Risk Assessment, National Academy Press, Washington, D.C., 1994.

⁹ Presidential/Congressional Commission on Risk Assessment and Risk Management, Risk Commission Report, Volume 2, Risk Assessment and Risk Management in Regulatory Decision-Making, 1997:103.

Some agencies have formal peer review policies, while others do not. Even agencies that have such policies do not always follow them prior to the release of important scientific products.

Prior to the development of this Bulletin, there were no government-wide standards concerning when peer review is required and, if required, what type of peer review processes are appropriate. No formal interagency mechanism existed to foster cross-agency sharing of experiences with peer review practices and policies. Despite the importance of peer review for the credibility of agency scientific products, the public lacked a consistent way to determine when an important scientific information product is being developed by an agency, the type of peer review planned for that product, or whether there would be an opportunity to provide comments and data to the reviewers.

This Bulletin establishes minimum standards for when peer review is required for scientific information and the types of peer review that should be considered by agencies in different circumstances. It also establishes a transparent process for public disclosure of peer review planning, including a web-accessible description of the peer review plan that the agency has developed for each of its forthcoming influential scientific disseminations.

LEGAL AUTHORITY FOR THE BULLETIN

This Bulletin is issued under the Information Quality Act and OMB's general authorities to oversee the quality of agency information, analyses, and regulatory actions. In the Information Quality Act, Congress directed OMB to issue guidelines to "provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility and integrity of information" disseminated by Federal agencies. Pub. L. No. 106-554, § 515(a). The Information Quality Act was developed as a supplement to the Paperwork Reduction Act, 44 U.S.C. § 3501 et seq., which requires OMB, among

other things, to “develop and oversee the implementation of policies, principles, standards, and guidelines to apply to Federal agency dissemination of public information.” In addition, Executive Order 12866, 58 Fed. Reg. 51,735 (Oct. 4, 1993), establishes that OIRA is “the repository of expertise concerning regulatory issues,” and it directs OMB to provide guidance to the agencies on regulatory planning. E.O. 12866, § 2(b). The Order also requires that “[e]ach agency shall base its decisions on the best reasonably obtainable scientific, technical, economic, or other information.” E.O. 12866, § 1(b)(7). Finally, OMB has authority in certain circumstances to manage the agencies under the purview of the President’s Constitutional authority to supervise the unitary Executive Branch. All of these authorities support this Bulletin.

THE REQUIREMENTS OF THIS BULLETIN

This Bulletin addresses peer review of scientific information disseminations that contain findings or conclusions that represent the official position of one or more agencies of the federal government.

Section I: Definitions

Section I provides definitions that are central to this Bulletin. Several terms are identical to or based on those used in OMB’s government-wide information quality guidelines, 67 Fed. Reg. 8452 (Feb. 22, 2002), and the Paperwork Reduction Act, 44 U.S.C. § 3501 et seq.

The term “Administrator” means the Administrator of the Office of Information and Regulatory Affairs in the Office of Management and Budget (OIRA).

The term “agency” has the same meaning as in the Paperwork Reduction Act, 44 U.S.C. § 3502(1).

The term “Information Quality Act” means Section 515 of Public Law 106-554 Pub. L. No. 106-554, § 515, 114 Stat. 2763, 2763A-153-154 (2000)).

The term “dissemination” means agency initiated or sponsored distribution of information to the public. Dissemination does not include distribution limited to government employees or agency contractors or grantees; intra- or inter-agency use or sharing of government information; or responses to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act, the Government Performance and Results Act, or similar laws. This definition also excludes distribution limited to correspondence with individuals or persons, press releases, archival records, public filings, subpoenas and adjudicative processes. In the context of this Bulletin, the definition of “dissemination” modifies the definition in OMB’s government-wide information quality guidelines to address the need for peer review prior to official dissemination of the information product. Accordingly, under this Bulletin, “dissemination” also excludes information distributed for peer review in compliance with this Bulletin or shared confidentially with scientific colleagues, provided that the distributing agency includes an appropriate and clear disclaimer on the information, as explained more fully below. Finally, the Bulletin does not directly cover information supplied to the government by third parties (e.g., studies by private consultants, companies and private, non-profit organizations, or research institutions such as universities). However, if an agency plans to disseminate information supplied by a third party (e.g., using this information as the basis for an agency’s factual determination that a particular behavior causes a disease), the requirements of the Bulletin apply, if the dissemination is “influential”.

In cases where a draft report or other information is released by an agency solely for purposes of peer review, a question may arise as to whether the draft report constitutes an official “dissemination” under information-quality guidelines. Section I instructs agencies to make this clear by presenting the following disclaimer in the report:

“THIS INFORMATION IS DISTRIBUTED SOLELY FOR THE PURPOSE OF
PRE- DISSEMINATION PEER REVIEW UNDER APPLICABLE INFORMATION
QUALITY GUIDELINES. IT HAS NOT BEEN FORMALLY DISSEMINATED BY

[THE AGENCY]. IT DOES NOT REPRESENT AND SHOULD NOT BE
CONSTRUED TO REPRESENT ANY AGENCY DETERMINATION OR POLICY.”

In cases where the information is highly relevant to specific policy or regulatory deliberations, this disclaimer shall appear on each page of a draft report. Agencies also shall discourage state, local, international and private organizations from using information in draft reports that are undergoing peer review. Draft influential scientific information presented at scientific meetings or shared confidentially with colleagues for scientific input prior to peer review shall include the disclaimer: “THE FINDINGS AND CONCLUSIONS IN THIS REPORT (PRESENTATION) HAVE NOT BEEN FORMALLY DISSEMINATED BY [THE AGENCY] AND SHOULD NOT BE CONSTRUED TO REPRESENT ANY AGENCY DETERMINATION OR POLICY.”

An information product is not covered by the Bulletin unless it represents an official view of one or more departments or agencies of the federal government. Accordingly, for the purposes of this Bulletin, “dissemination” excludes research produced by government- funded scientists (e.g., those supported extramurally or intramurally by federal agencies or those working in state or local governments with federal support) if that information is not represented as the views of a department or agency (i.e., they are not official government disseminations). For influential scientific information that does not have the imprimatur of the federal government, scientists employed by the federal government are required to include in their information product a clear disclaimer that “the findings and conclusions in this report are those of the author(s) and do not necessarily represent the views of the funding agency.” A similar disclaimer is advised for non-government employees who publish government-funded research.

For the purposes of the peer review Bulletin, the term “scientific information” means factual inputs, data, models, analyses, technical information, or scientific assessments related to such disciplines as the behavioral and social sciences, public health and medical sciences, life and earth sciences, engineering, or physical sciences. This includes any communication or representation of knowledge such as facts or data, in any medium

or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms. This definition includes information that an agency disseminates from a web page, but does not include the provision of hyperlinks on a web page to information that others disseminate. This definition excludes opinions, where the agency's presentation makes clear that an individual's opinion, rather than a statement of fact or of the agency's findings and conclusions, is being offered.

The term "influential scientific information" means scientific information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions. In the term "influential scientific information," the term "influential" should be interpreted consistently with OMB's government-wide information quality guidelines and the information quality guidelines of the agency. Information dissemination can have a significant economic impact even if it is not part of a rulemaking. For instance, the economic viability of a technology can be influenced by the government's characterization of its attributes. Alternatively, the federal government's assessment of risk can directly or indirectly influence the response actions of state and local agencies or international bodies.

One type of scientific information is a scientific assessment. For the purposes of this Bulletin, the term "scientific assessment" means an evaluation of a body of scientific or technical knowledge, which typically synthesizes multiple factual inputs, data, models, assumptions, and/or applies best professional judgment to bridge uncertainties in the available information. These assessments include, but are not limited to, state-of-science reports; technology assessments; weight-of-evidence analyses; meta-analyses; health, safety, or ecological risk assessments; toxicological characterizations of substances; integrated assessment models; hazard determinations; or exposure assessments. Such assessments often draw upon knowledge from multiple disciplines. Typically, the data and models used in scientific assessments have already been subject to some form of peer review (e.g., refereed journal peer review or peer review under Section II of this Bulletin).

Section II: Peer Review of Influential Scientific Information

Section II requires each agency to subject “influential” scientific information to peer review prior to dissemination. For dissemination of influential scientific information, Section II provides agencies broad discretion in determining what type of peer review is appropriate and what procedures should be employed to select appropriate reviewers. Agencies are directed to choose a peer review mechanism that is adequate, giving due consideration to the novelty and complexity of the science to be reviewed, the relevance of the information to decision making, the extent of prior peer reviews, and the expected benefits and costs of additional review.

The National Academy of Public Administration suggests that the intensity of peer review should be commensurate with the significance of the information being disseminated and the likely implications for policy decisions.¹⁰ Furthermore, agencies need to consider tradeoffs between depth of peer review and timeliness.¹¹ More rigorous peer review is necessary for information that is based on novel methods or presents complex challenges for interpretation. Furthermore, the need for rigorous peer review is greater when the information contains precedent-setting methods or models, presents conclusions that are likely to change prevailing practices, or is likely to affect policy decisions that have a significant impact.

This tradeoff can be considered in a benefit-cost framework. The costs of peer review include both the direct costs of the peer review activity and those stemming from potential delay in government and private actions that can result from peer review. The benefits of peer review are equally clear: the insights offered by peer reviewers may lead to policy with more benefits and/or fewer costs. In addition to contributing to strong science, peer review, if performed fairly and rigorously, can build consensus among stakeholders and reduce the temptation for courts and legislators to second-guess or

¹⁰ National Academy of Public Administration, Setting Priorities, Getting Results: A New Direction for EPA, National Academy Press, Washington, D.C., 1995:23.

¹¹ Presidential/Congressional Commission on Risk Assessment and Risk Management, Risk Commission Report, 1997.

overturn agency actions.¹² While it will not always be easy for agencies to quantify the benefits and costs of peer review, agencies are encouraged to approach peer review from a benefit-cost perspective.

Regardless of the peer review mechanism chosen, agencies should strive to ensure that their peer review practices are characterized by both scientific integrity and process integrity. “Scientific integrity,” in the context of peer review, refers to such issues as “expertise and balance of the panel members; the identification of the scientific issues and clarity of the charge to the panel; the quality, focus and depth of the discussion of the issues by the panel; the rationale and supportability of the panel’s findings; and the accuracy and clarity of the panel report.” “Process integrity” includes such issues as “transparency and openness, avoidance of real or perceived conflicts of interest, a workable process for public comment and involvement,” and adherence to defined procedures.¹³

When deciding what type of peer review mechanism is appropriate for a specific information product, agencies will need to consider at least the following issues: individual versus panel review; timing; scope of the review; selection of reviewers; disclosure and attribution; public participation; disposition of reviewer comments; and adequacy of prior peer review.

Individual versus Panel Review

Letter reviews by several experts generally will be more expeditious than convening a panel of experts. Individual letter reviews are more appropriate when a draft document covers only one discipline or when premature disclosure of a sensitive report to a public panel could cause harm to government or private interests. When time and resources

¹² Mark R. Powell, *Science at EPA: Information in the Regulatory Process, Resources for the Future*, Washington, D.C., 1999: 148, 176; Sheila Jasanoff, *The Fifth Branch: Science Advisors as Policy Makers*, Harvard University Press, Boston, 1990: 242.

¹³ ILSI Risk Sciences Institute, “Policies and Procedures: Model Peer Review Center of Excellence,” 2002: Available at <http://rsi.ilsi.org/file/Policies&Procedures.pdf>.

warrant, panels are preferable, as they tend to be more deliberative than individual letter reviews and the reviewers can learn from each other. There are also multi-stage processes in which confidential letter reviews are conducted prior to release of a draft document for public notice and comment, followed by a formal panel review. These more rigorous and expensive processes are particularly valuable for highly complex, multidisciplinary, and more important documents, especially those that are novel or precedent-setting.

Timing of Peer Review

As a general rule, it is most useful to consult with peers early in the process of producing information. For example, in the context of risk assessments, it is valuable to have the choice of input data and the specification of the model reviewed by peers before the agency invests time and resources in implementing the model and interpreting the results. “Early” peer review occurs in time to “focus attention on data inadequacies in time for corrections.

When an information product is a critical component of rule-making, it is important to obtain peer review before the agency announces its regulatory options so that any technical corrections can be made before the agency becomes invested in a specific approach or the positions of interest groups have hardened. If review occurs too late, it is unlikely to contribute to the course of a rulemaking. Furthermore, investing in a more rigorous peer review early in the process “may provide net benefit by reducing the prospect of challenges to a regulation that later may trigger time consuming and resource-draining litigation.”¹⁴

¹⁴ Fred Anderson, Mary Ann Chirba Martin, E Donald Elliott, Cynthia Farina, Ernest Gellhorn, John D. Graham, C. Boyden Gray, Jeffrey Holmstead, Ronald M. Levin, Lars Noah, Katherine Rhyne, Jonathan Baert Wiener, “Regulatory Improvement Legislation: Risk Assessment, Cost-Benefit Analysis, and Judicial Review,” Duke Environmental Law and Policy Forum, Fall 2000, vol. XI (1): 132.

Scope of the Review

The “charge” contains the instructions to the peer reviewers regarding the objective of the peer review and the specific advice sought. The importance of the information, which shapes the goal of the peer review, influences the charge. For instance, the goal of the review might be to determine the utility of a body of literature for drawing certain conclusions about the feasibility of a technology or the safety of a product. In this context, an agency might ask reviewers to determine the relevance of conclusions drawn in one context for other contexts (e.g., different exposure conditions or patient populations).

The charge to the reviewers should be determined in advance of the selection of the reviewers. In drafting the charge, it is important to remember the strengths and limitations of peer review. Peer review is most powerful when the charge is specific and steers the reviewers to specific technical questions while also directing reviewers to offer a broad evaluation of the overall product.

Uncertainty is inherent in science, and in many cases individual studies do not produce conclusive evidence. Thus, when an agency generates a scientific assessment, it is presenting its scientific judgment about the accumulated evidence rather than scientific fact.¹⁵ Specialists attempt to reach a consensus by weighing the accumulated evidence. Peer reviewers can make an important contribution by distinguishing scientific facts from professional judgments. Furthermore, where appropriate, reviewers should be asked to provide advice on the reasonableness of judgments made from the scientific evidence.

However, the charge should make clear that the reviewers are not to provide advice on the policy (e.g., the amount of uncertainty that is acceptable or the amount of precaution that should be embedded in an analysis). Such considerations are the purview of the government.¹⁶

¹⁵ Mark R. Powell, *Science at EPA: Information in the Regulatory Process*, Resources for the Future, Washington, D.C., 1999: 139. http://intranet.epa.gov/ocem/faca/guidance/2012_03_epa_faca_handbook.pdf.

¹⁶ . Ibid.

The charge should ask that peer reviewers ensure that scientific uncertainties are clearly identified and characterized. Since not all uncertainties have an equal effect on the conclusions drawn, reviewers should be asked to ensure that the potential implications of the uncertainties for the technical conclusions drawn are clear. In addition, peer reviewers might be asked to consider value-of-information analyses that identify whether more research is likely to decrease key uncertainties.¹⁷ Value-of-information analysis was suggested for this purpose in the report of the Presidential/Congressional Commission on Risk Assessment and Risk Management.¹⁸ A description of additional research that would appreciably influence the conclusions of the assessment can help an agency assess and target subsequent efforts.

Selection of Reviewers

Expertise. The most important factor in selecting reviewers is expertise: ensuring that the selected reviewer has the knowledge, experience, and skills necessary to perform the review. Agencies shall ensure that, in cases where the document being reviewed spans a variety of scientific disciplines or areas of technical expertise, reviewers who represent the necessary spectrum of knowledge are chosen. For instance, expertise in applied mathematics and statistics is essential in the review of models, thereby allowing an audit of calculations and claims of significance and robustness based on the numeric data.¹⁹

For some reviews, evaluation of biological plausibility is as important as statistical modeling. Agencies shall consider requesting that the public, including scientific and professional societies, nominate potential reviewers.

¹⁷ Granger Morgan and Max Henrion, "The Value of Knowing How Little You Know," Uncertainty: A Guide to Dealing with Uncertainty in Quantitative Risk and Policy Analysis, Cambridge University Press, 1990: 307.

¹⁸ Presidential/Congressional Commission on Risk Assessment and Risk Management, Risk Commission Report, 1997, Volume 1: 39, Volume 2: 91.

¹⁹ William W. Lowrance, Modern Science and Human Values, Oxford University Press, New York, NY 1985: 86.

Balance. While expertise is the primary consideration, reviewers should also be selected to represent a diversity of scientific perspectives relevant to the subject. On most controversial issues, there exists a range of respected scientific viewpoints regarding interpretation of the available literature. Inviting reviewers with competing views on the science may lead to a sharper, more focused peer review. Indeed, as a final layer of review, some organizations (e.g., the National Academy of Sciences) specifically recruit reviewers with strong opinions to test the scientific strength and balance of their reports. The NAS policy on committee composition and balance²⁰ highlights important considerations associated with perspective, bias, and objectivity.

Independence. In its narrowest sense, independence in a reviewer means that the reviewer was not involved in producing the draft document to be reviewed. However, for peer review of some documents, a broader view of independence is necessary to assure credibility of the process. Reviewers are generally not employed by the agency or office producing the document. As the National Academy of Sciences has stated, “external experts often can be more open, frank, and challenging to the status quo than internal reviewers, who may feel constrained by organizational concerns.”²¹ The Carnegie Commission on Science, Technology, and Government notes that “external science advisory boards serve a critically important function in providing regulatory agencies with expert advice on a range of issues.”²² However, the choice of reviewers requires a case-by-case analysis. Reviewers employed by other federal and state agencies may possess unique or indispensable expertise.

A related issue is whether government-funded scientists in universities and consulting firms have sufficient independence from the federal agencies that support their work to

²⁰ National Academy of Sciences, “Policy and Procedures on Committee Composition and Balance and Conflicts of Interest for Committees Used in the Development of Reports,” May 2003: Available at: <http://www.nationalacademies.org/coi/index.html>.

²¹ National Research Council, Peer Review in Environmental Technology Development Programs: The Department of Energy’s Office of Science and Technology, National Academy Press, Washington, D.C., 1998: 3.

²² Carnegie Commission on Science, Technology, and Government, Risk and the Environment: Improving Regulatory Decision Making, Carnegie Commission, New York, 1993: 90.

be appropriate peer reviewers for those agencies.²³ This concern can be mitigated in situations where the scientist initiates the hypothesis to be tested or the method to be developed, which effectively creates a buffer between the scientist and the agency. When an agency awards grants through a competitive process that includes peer review, the agency's potential to influence the scientist's research is limited. As such, when a scientist is awarded a government research grant through an investigator-initiated, peer-reviewed competition, there generally should be no question as to that scientist's ability to offer independent scientific advice to the agency on other projects. This contrasts, for example, to a situation in which a scientist has a consulting or contractual arrangement with the agency or office sponsoring a peer review. Likewise, when the agency and a researcher work together (e.g., through a cooperative agreement) to design or implement a study, there is less independence from the agency. Furthermore, if a scientist has repeatedly served as a reviewer for the same agency, some may question whether that scientist is sufficiently independent from the agency to be employed as a peer reviewer on agency-sponsored projects.

As the foregoing suggests, independence poses a complex set of questions that must be considered by agencies when peer reviewers are selected. In general, agencies shall make an effort to rotate peer review responsibilities across the available pool of qualified reviewers, recognizing that in some cases repeated service by the same reviewer is needed because of essential expertise.

Some agencies have built entire organizations to provide independent scientific advice while other agencies tend to employ ad hoc scientific panels on specific issues.

Respect for the independence of reviewers may be enhanced if an agency collects names of potential reviewers (based on considerations of expertise and reputation for objectivity) from the public, including scientific or professional societies. The Department of Energy's use of the American Society of Mechanical Engineers to identify potential peer reviewers from a variety of different scientific societies provides an example of how

²³ Lars Noah, "Scientific 'Republicanism': Expert Peer Review and the Quest for Regulatory Deliberation, Emory Law Journal, Atlanta, Fall 2000:1066.

professional societies can assist in the development of an independent peer review panel.²⁴

Conflict of Interest. The National Academy of Sciences defines “conflict of interest” as any financial or other interest that conflicts with the service of an individual on the review panel because it could impair the individual’s objectivity or could create an unfair competitive advantage for a person or organization.²⁵ This standard provides a useful benchmark for agencies to consider in selecting peer reviewers. Agencies shall make a special effort to examine prospective reviewers’ potential financial conflicts, including significant investments, consulting arrangements, employer affiliations and grants/contracts. Financial ties of potential reviewers to regulated entities (e.g., businesses), other stakeholders, and regulatory agencies shall be scrutinized when the information being reviewed is likely to be relevant to regulatory policy. The inquiry into potential conflicts goes beyond financial investments and business relationships and includes work as an expert witness, consulting arrangements, honoraria and sources of grants and contracts. To evaluate any real or perceived conflicts of interest with potential reviewers and questions regarding the independence of reviewers, agencies are referred to federal ethics requirements, applicable standards issued by the Office of Government Ethics, and the prevailing practices of the National Academy of Sciences. Specifically, peer reviewers who are federal employees (including special government employees) are subject to federal requirements governing conflicts of interest. See, e.g., 18 U.S.C. § 208; 5 C.F.R. Part 2635 (2004). With respect to reviewers who are not federal employees, agencies shall adopt or adapt the NAS policy for committee selection with respect to evaluating conflicts of interest.²⁶ Both the NAS and the federal government recognize that under certain circumstances some conflict may be unavoidable in order to obtain the necessary expertise. See, e.g., 18 U.S.C. § 208(b)(3); 5 U.S.C. App. § 15 (governing NAS committees). To improve the transparency of the process, when an agency

²⁴ American Society for Mechanical Engineers, Assessment of Technologies Supported by the Office of Science and Technology, Department of Energy: Results of the Peer Review for Fiscal Year 2002, ASME Technical Publishing, Danvers, MA, 2003.

²⁵ National Academy of Sciences, “Policy and Procedures on Committee Composition and Balance and Conflicts of Interest for Committees Used in the Development of Reports,” May 2003: Available at: <http://www.nationalacademies.org/doi/index.html>.

determines that it is necessary to use a reviewer with a real or perceived conflict of interest, the agency should consider publicly disclosing those conflicts. In such situations, the agency shall inform potential reviewers of such disclosure at the time they are recruited.

Disclosure and Attribution: Anonymous versus Identified

Peer reviewers must have a clear understanding of how their comments will be conveyed to the authors of the document and to the public. When peer review of government reports is considered, the case for transparency is stronger, particularly when the report addresses an issue with significant ramifications for the public and private sectors. The public may not have confidence in the peer review process when the names and affiliations of the peer reviewers are unknown. Without access to the comments of reviewers, the public is incapable of determining whether the government has seriously considered the comments of reviewers and made appropriate revisions. Disclosure of the slate of reviewers and the substance of their comments can strengthen public confidence in the peer review process. It is common at many journals and research funding agencies to disclose annually the slate of reviewers. Moreover, the National Academy of Sciences now discloses the names of its peer reviewers, without disclosing the substance of their comments. The science advisory committees to regulatory agencies typically disclose at least a summary of the comments of reviewers as well as their names and affiliations.

For agency-sponsored peer review conducted under Sections II and III, this Bulletin strikes a compromise by requiring disclosure of the identity of the reviewers, but not public attribution of specific comments to specific reviewers. The agency has considerable discretion in the implementation of this compromise (e.g., summarizing the

²⁶ Ibid.

views of reviewers as a group or disclosing individual reviewer comments without attribution). Whatever approach is employed, the agency must inform reviewers in advance of how it intends to address this issue. Information about a reviewer retrieved from a record filed by the reviewer's name or other identifier may be disclosed only as permitted by the conditions of disclosure enumerated in the Privacy Act, 5 U.S.C. § 552a as amended, and as interpreted in OMB implementing guidance, 40 Fed. Reg. 28,948 (July 9, 1975).

Public Participation

Public comments can be important in shaping expert deliberations. Agencies may decide that peer review should precede an opportunity for public comment to ensure that the public receives the most scientifically strong product (rather than one that may change substantially as a result of peer reviewer suggestions). However, there are situations in which public participation in peer review is an important aspect of obtaining a high- quality product through a credible process. Agencies, however, should avoid open- ended comment periods, which may delay completion of peer reviews and complicate the completion of the final work product.

Public participation can take a variety of forms, including opportunities to provide oral comments before a peer review panel or requests to provide written comments to the peer reviewers. Another option is for agencies to publish a "request for comment" or other notice in which they solicit public comment before a panel of peer reviewers performs its work.

Disposition of Reviewer Comments

A peer review is considered completed once the agency considers and addresses the reviewers' comments. All reviewer comments should be given consideration and be incorporated where relevant and valid. For instance, in the context of risk assessments, the National Academy of Sciences recommends that peer review include a written evaluation made available for public inspection.²⁷ In cases where there is a public panel,

²⁷ National Research Council, Risk Assessment in the Federal Government: Managing the Process, National Academy Press, Washington, D.C., 1983.

the agency should plan publication of the peer review report(s) and the agency's response to peer reviewer comments.

In addition, the credibility of the final scientific report is likely to be enhanced if the public understands how the agency addressed the specific concerns raised by the peer reviewers. Accordingly, agencies should consider preparing a written response to the peer review report explaining: the agency's agreement or disagreement, the actions the agency has undertaken or will undertake in response to the report, and (if applicable) the reasons the agency believes those actions satisfy any key concerns or recommendations in the report.

Adequacy of Prior Peer Review

In light of the broad range of information covered by Section II, agencies are directed to choose a peer review mechanism that is adequate, giving due consideration to the novelty and complexity of the science to be reviewed, the relevance of the information to decision making, the extent of prior peer reviews, and the expected benefits and costs of additional review.

Publication in a refereed scientific journal may mean that adequate peer review has been performed. However, the intensity of peer review is highly variable across journals. There will be cases in which an agency determines that a more rigorous or transparent review process is necessary. For instance, an agency may determine a particular journal review process did not address questions (e.g., the extent of uncertainty inherent in a finding) that the agency determines should be addressed before disseminating that information. As such, prior peer review and publication is not by itself sufficient grounds for determining that no further review is necessary.

Section III: Peer Review of Highly Influential Scientific Assessments

Whereas Section II leaves most of the considerations regarding the form of the peer review to the agency's discretion, Section III requires a more rigorous form of peer review for highly influential scientific assessments. The requirements of Section II of this Bulletin apply to Section III, but Section III has some additional requirements, which are discussed below. In planning a peer review under Section III, agencies typically will have to devote greater resources and attention to the issues discussed in Section II, i.e., individual versus panel review; timing; scope of the review; selection of reviewers; disclosure and attribution; public participation; and disposition of reviewer comments.

A scientific assessment is considered "highly influential" if the agency or the OIRA Administrator determines that the dissemination could have a potential impact of more than \$500 million in any one year on either the public or private sector or that the dissemination is novel, controversial, or precedent-setting, or has significant interagency interest. One of the ways information can exert economic impact is through the costs or benefits of a regulation based on the disseminated information. The qualitative aspect of this definition may be most useful in cases where it is difficult for an agency to predict the potential economic effect of dissemination. In the context of this Bulletin, it may be either the approach used in the assessment or the interpretation of the information itself that is novel or precedent-setting. Peer review can be valuable in establishing the bounds of the scientific debate when methods or interpretations are a source of controversy among interested parties. If information is covered by Section III, an agency is required to adhere to the peer review procedures specified in Section III.

Section III (2) clarifies that the principal findings, conclusions and recommendations in official reports of the National Academy of Sciences that fall under this Section are generally presumed not to require additional peer review. All other highly influential scientific assessments require a review that meets the requirements of Section III of this Bulletin.

With regard to the selection of reviewers, Section III(3)(a) emphasizes consideration of expertise and balance. As discussed in Section II, expertise refers to the required knowledge, experience and skills required to perform the review whereas balance refers to the need for diversity in scientific perspective and disciplines. We emphasize that the term “balance” here refers not to balancing of stakeholder or political interests but rather to a broad and diverse representation of respected perspectives and intellectual traditions within the scientific community, as discussed in the NAS policy on committee composition and balance.²⁸

Section III (3)(b) instructs agencies to consider barring participation by scientists with a conflict of interest. The conflict of interest standards for Sections II and III of the Bulletin are identical. As discussed under Section II, those peer reviewers who are federal employees, including Special Government Employees, are subject to applicable statutory and regulatory standards for federal employees. For non-government employees, agencies shall adopt or adapt the NAS policy for committee member selection with respect to evaluating conflicts of interest.

Section III (3)(c) instructs agencies to ensure that reviewers are independent of the agency sponsoring the review. Scientists employed by the sponsoring agency are not permitted to serve as reviewers for highly influential scientific assessments. This does not preclude Special Government Employees, such as academics appointed to advisory committees, from serving as peer reviewers. The only exception to this ban would be the rare situation in which a scientist from a different agency of a Cabinet-level department than the agency that is disseminating the scientific assessment has expertise, experience and skills that are essential but cannot be obtained elsewhere. In evaluating the need for this exception, agencies shall use the NAS criteria for assessing the appropriateness of using employees of sponsors (e.g., the government scientist must not have had any part in the development or prior review of the scientific information and must not hold a position of managerial or policy responsibility).

²⁸ National Academy of Sciences, “Policy and Procedures on Committee Composition and Balance and Conflicts of Interest for Committees Used in the Development of Reports,” May 2003: Available at: <http://www.nationalacademies.org/coi/index.html>.

We also considered whether a reviewer can be independent of the agency if that reviewer receives a substantial amount of research funding from the agency sponsoring the review. Research grants that were awarded to the scientist based on investigator-initiated, competitive, peer-reviewed proposals do not generally raise issues of independence. However, significant consulting and contractual relationships with the agency may raise issues of independence or conflict, depending upon the situation.

Section III (3)(d) addresses concerns regarding repeated use of the same reviewer in multiple assessments. Such repeated use should be avoided unless a particular reviewer's expertise is essential. Agencies should rotate membership across the available pool of qualified reviewers. Similarly, when using standing panels of scientific advisors, it is suggested that the agency rotate membership among qualified scientists in order to obtain fresh perspectives and reinforce the reality and perception of independence from the agency.

Section III (4) requires agencies to provide reviewers with sufficient background information, including access to key studies, data and models, to perform their role as peer reviewers. In this respect, the peer review envisioned in Section III is more rigorous than some forms of journal peer review, where the reviewer is often not provided access to underlying data or models. Reviewers shall be informed of applicable access, objectivity, reproducibility and other quality standards under federal information quality laws.

Section III (5) addresses opportunity for public participation in peer review, and provides that the agency shall, wherever possible, provide for public participation. In some cases, an assessment may be so sensitive that it is critical that the agency's assessment achieve a high level of quality before it is publicized. In those situations, a rigorous yet confidential peer review process may be appropriate, prior to public release of the assessment. If an agency decides to make a draft assessment publicly available at the

onset of a peer review process, the agency shall, whenever possible, provide a vehicle for the public to provide written comments, make an oral presentation before the peer reviewers, or both. When written public comments are received, the agency shall ensure that peer reviewers receive copies of comments that address significant scientific issues with ample time to consider them in their review. To avoid undue delay of agency activities, the agency shall specify time limits for public participation throughout the peer review process.

Section III (6) requires that agencies instruct reviewers to prepare a peer review report that describes the nature and scope of their review and their findings and conclusions. The report shall disclose the name of each peer reviewer and a brief description of his or her organizational affiliation, credentials and relevant experiences. The peer review report should either summarize the views of the group as a whole (including any dissenting views) or include a verbatim copy of the comments of the individual reviewers (with or without attribution of specific views to specific names). The agency shall also prepare a written response to the peer review report, indicating whether the agency agrees with the reviewers and what actions the agency has taken or plans to take to address the points made by reviewers. The agency is required to disseminate the peer review report and the agency's response to the report on the agency's website, including all the materials related to the peer review such as the charge statement, peer review report, and agency response to the review. If the scientific information is used to support a final rule then, where practicable, the peer review report shall be made available to the public with enough time for the public to consider the implications of the peer review report for the rule being considered.

Section III (7) authorizes but does not require an agency to commission an entity independent of the agency to select peer reviewers and/or manage the peer review process in accordance with this Bulletin. The entity may be a scientific or professional society, a firm specializing in peer review, or a non-profit organization with experience in peer review.

Section IV: Alternative Procedures

Peer review as described in this Bulletin is only one of many procedures that agencies can employ to ensure an appropriate degree of pre-dissemination quality of influential scientific information. For example, Congress has assigned the NAS a special role in advising the federal government on scientific and technical issues. The procedures of the NAS are generally quite rigorous, and thus agencies should presume that major findings, conclusions, and recommendations of NAS reports meet the performance standards of this Bulletin.

As an alternative to complying with Sections II and III of this Bulletin, an agency may instead (1) rely on scientific information produced by the National Academy of Sciences, (2) commission the National Academy of Sciences to peer review an agency draft scientific information product, or (3) employ an alternative procedure or set of procedures, specifically approved by the OIRA Administrator in consultation with the Office of Science and Technology Policy (OSTP), that ensures that the scientific information product meets applicable information-quality standards.

An example of an alternative procedure is to commission a respected third party other than the NAS (e.g., the Health Effects Institute or the National Commission on Radiation Protection and Measurement) to conduct an assessment or series of related assessments. Another example of an alternative set of procedures is the three-part process used by the National Institutes of Health (NIH) to generate scientific guidance. Under that process, a scientific proposal or white paper is generated by a working group composed of external, independent scientific experts; that paper is then forwarded to a separate external scientific council, which then makes recommendations to the agency. The agency, in turn, decides whether to adopt and/or modify the proposal. For large science agencies that have diverse research portfolios and do not have significant regulatory responsibilities, such as NIH, an acceptable alternative would be to allow scientists from one part of the agency (for example, an NIH institute) to participate in the review of documents prepared by another part of the agency, as long as the head of the agency

confirms in writing that each of the reviewers meets the NAS criteria relating to the appropriateness of using employees of sponsors (e.g., the government scientist must not have had any part in the development or prior review of the scientific information and must not hold a position of managerial or policy responsibility). The purpose of Section IV is to encourage these types of innovation in the methods used to ensure pre- dissemination quality control of influential scientific information.

The mere existence of a public comment process (e.g., notice-and-comment procedures under the Administrative Procedure Act) does not constitute adequate peer review or an “alternative process,” because it does not assure that qualified, impartial specialists in relevant fields have performed a critical evaluation of the agency’s draft product.²⁹

Section V: Peer Review Planning

Section V requires agencies to begin a systematic process of peer review planning for influential scientific information (including highly influential scientific assessments) that the agency plans to disseminate in the foreseeable future. A key feature of this planning process is a web-accessible listing of forthcoming influential scientific disseminations (i.e., an agenda) that is regularly updated by the agency. By making these plans publicly available, agencies will be able to gauge the extent of public interest in the peer review process for influential scientific information, including highly influential scientific assessments. These web-accessible agendas can also be used by the public to monitor agency compliance with this Bulletin.

Each entry on the agenda shall include a preliminary title of the planned report, a short paragraph describing the subject and purpose of the planned report, and an agency contact person. The agency shall provide its prediction regarding whether the dissemination will be “influential scientific information” or a “highly influential scientific assessment,” as the designation can influence the type of peer review to be undertaken.

²⁹ William W. Lowrance, *Modern Science and Human Values*, Oxford University Press, New York, NY 1985: 86.

The agency shall discuss the timing of the peer review, as well as the use of any deferrals. Agencies shall include entries in the agenda for influential scientific information, including highly influential scientific assessments, for which the Bulletin's requirements have been deferred or waived. If the agency, in consultation with the OIRA Administrator, has determined that it is appropriate to use a Section IV "alternative procedure" for a specific dissemination, a description of that alternative procedure shall be included in the agenda.

Furthermore, for each entry on the agenda, the agency shall describe the peer review plan. Each peer review plan shall include: (i) a paragraph including the title, subject and purpose of the planned report, as well as an agency contact to whom inquiries may be directed to learn the specifics of the plan; (ii) whether the dissemination is likely to be influential scientific information or a highly influential scientific assessment; (iii) the timing of the review (including deferrals); (iv) whether the review will be conducted through a panel or individual letters (or whether an alternative procedure will be exercised); (v) whether there will be opportunities for the public to comment on the work product to be peer reviewed, and if so, how and when these opportunities will be provided; (vi) whether the agency will provide significant and relevant public comments to the peer reviewers before they conduct their review; (vii) the anticipated number of reviewers (3 or fewer; 4-10; or more than 10); (viii) a succinct description of the primary disciplines or expertise needed in the review; (ix) whether reviewers will be selected by the agency or by a designated outside organization; and (x) whether the public, including scientific or professional societies, will be asked to nominate potential peer reviewers.

The agency shall provide a link from the agenda to each document made public pursuant to this Bulletin. Agencies shall link their peer review agendas to the U.S. Government's official web portal: firstgov at <http://www.FirstGov.gov>

Agencies should update their peer review agendas at least every six months. However, in some cases -- particularly for highly influential scientific assessments and other particularly important information -- more frequent updates of existing entries on the agenda, or the addition of new entries to the agenda, may be warranted. When new

entries are added to the agenda of forthcoming reports and other information, the public should be provided with sufficient time to comment on the agency's peer review plan for that report or product. Agencies shall consider public comments on the peer review plan. Agencies are encouraged to offer a listserve or similar mechanism for members of the public who would like to be notified by email each time an agency's peer review agenda has been updated.

The peer review planning requirements of this Bulletin are designed to be implemented in phases. Specifically, the planning requirements of the Bulletin will go into effect for documents subject to Section III of the Bulletin (highly influential scientific assessments) six months after publication. However, the planning requirements for documents subject to Section II of the Bulletin do not go into effect until one year after publication. It is expected that agency experience with the planning requirements of the Bulletin for the smaller scope of documents encompassed in Section III will be used to inform implementation of these planning requirements for the larger scope of documents covered under Section II.

Section VI: Annual Report

Each agency shall prepare an annual report that summarizes key decisions made pursuant to this Bulletin. In particular, each agency should provide to OIRA the following: 1) the number of peer reviews conducted subject to the Bulletin (i.e., for influential scientific information and highly influential scientific assessments); 2) the number of times alternative procedures were invoked; 3) the number of times waivers or deferrals were invoked (and in the case of deferrals, the length of time elapsed between the deferral and the peer review); 4) any decision to appoint a reviewer pursuant to any exception to the applicable independence or conflict of interest standards of the Bulletin, including determinations by the Secretary or Deputy Secretary pursuant to Section III (3) (c); 5) the number of peer review panels that were conducted in public and the number that allowed public comment; 6) the number of public comments provided on the agency's peer

review plans; and 7) the number of peer reviewers that the agency used that were recommended by professional societies.

Section VII: Certification in the Administrative Record

If an agency relies on influential scientific information or a highly influential scientific assessment subject to the requirements of this Bulletin in support of a regulatory action, the agency shall include in the administrative record for that action a certification that explains how the agency has complied with the requirements of this Bulletin and the Information Quality Act. Relevant materials are to be placed in the administrative record.

Section VIII: Safeguards, Deferrals, and Waivers

Section VIII recognizes that individuals serving as peer reviewers have a privacy interest in information about themselves that the government maintains and retrieves by name or identifier from a system of records. To the extent information about a reviewer (name, credential, affiliation) will be disclosed along with his/her comments or analysis, the agency must comply with the requirements of the Privacy Act, 5 U.S.C. 552a, as amended, and OMB Circular A-130, Appendix I, 61 Fed. Reg. 6428 (February 20, 1996) to establish appropriate routine uses in a published System of Records Notice. Furthermore, the peer review must be conducted in a manner that respects confidential business information as well as intellectual property.

Section VIII also allows for a deferral or waiver of the requirements of the Bulletin where necessary. Specifically, the agency head may waive or defer some or all of the peer review requirements of Sections II or III of this Bulletin if there is a compelling rationale for waiver or deferral. Waivers will seldom be warranted under this provision because the Bulletin already provides significant safety valves, such as: the exemptions provided in Section IX, including the exemption for time-sensitive health and safety information;

the authorization for alternative procedures in Section IV; and the overall flexibility provided for peer reviews of influential scientific information under Section II. Nonetheless, we have included this waiver and deferral provision to ensure needed flexibility in unusual and compelling situations not otherwise covered by the exemptions to the Bulletin, such as situations where unavoidable legal deadlines prevent full compliance with the Bulletin before information is disseminated. Deadlines found in consent decrees agreed to by agencies after the Bulletin is issued will not ordinarily warrant waiver of the Bulletin's requirements because those deadlines should be negotiated to permit time for all required procedures, including peer review. In addition, when an agency is unavoidably up against a deadline, deferral of some or all requirements of the Bulletin (as opposed to outright waiver of all of them) is the most appropriate accommodation between the need to satisfy immovable deadlines and the need to undertake proper peer review. If the agency head defers any of the peer review requirements prior to dissemination, peer review should be conducted as soon as practicable thereafter.

Section IX: Exemptions

There are a variety of situations where agencies need not conduct peer review under this Bulletin. These include, for example, disseminations of sensitive information related to certain national security, foreign affairs, or negotiations involving international treaties and trade where compliance with this Bulletin would interfere with the need for secrecy or promptness.

This Bulletin does not cover official disseminations that arise in adjudications and permit proceedings, unless the agency determines that peer review is practical and appropriate and that the influential dissemination is scientifically or technically novel (i.e., a major change in accepted practice) or likely to have precedent-setting influence on future adjudications or permit proceedings. This exclusion is intended to cover, among other things, licensing, approval and registration processes for specific product development activities as well as site-specific activities. The determination as to whether peer review

is practical and appropriate is left to the discretion of the agency. While this Bulletin is not broadly applicable to adjudications, agencies are encouraged to hold peer reviews of scientific assessments supporting adjudications to the same technical standards as peer reviews covered by the Bulletin, including transparency and disclosure of the data and models underlying the assessments. Protections apply to confidential business information.

The Bulletin does not cover time-sensitive health and safety disseminations, for example, a dissemination based primarily on data from a recent clinical trial that was adequately peer reviewed before the trial began. For this purpose, “health” includes public health, or plant or animal infectious diseases.

This Bulletin covers original data and formal analytic models used by agencies in Regulatory Impact Analyses (RIAs). However, the RIA documents themselves are already reviewed through an interagency review process under E.O. 12866 that involves application of the principles and methods defined in OMB Circular A-4. In that respect, RIAs are excluded from coverage by this Bulletin, although agencies are encouraged to have RIAs reviewed by peers within the government for adequacy and completeness.

The Bulletin does not cover accounting, budget, actuarial, and financial information including that which is generated or used by agencies that focus on interest rates, banking, currency, securities, commodities, futures, or taxes.

Routine statistical information released by federal statistical agencies (e.g., periodic demographic and economic statistics) and analyses of these data to compute standard indicators and trends (e.g., unemployment and poverty rates) is excluded from this Bulletin.

The Bulletin does not cover information disseminated in connection with routine rules that materially alter entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof.

If information is disseminated pursuant to an exemption to this Bulletin, subsequent disseminations are not automatically exempted. For example, if influential scientific information is first disseminated in the course of an exempt agency adjudication, but is later disseminated in the context of a non-exempt rulemaking, the subsequent dissemination will be subject to the requirements of this Bulletin even though the first dissemination was not.

Section X: OIRA and OSTP Responsibilities

OIRA, in consultation with OSTP, is responsible for overseeing agency implementation of this Bulletin. In order to foster learning about peer review practices across agencies, OIRA and OSTP shall form an interagency workgroup on peer review that meets regularly, discusses progress and challenges, and recommends improvements to peer review practices.

Section XI: Effective Date and Existing Law

The requirements of this Bulletin, with the exception of Section V, apply to information disseminated on or after six months after publication of this Bulletin. However, the Bulletin does not apply to information that is already being addressed by an agency- initiated peer review process (e.g., a draft is already being reviewed by a formal scientific advisory committee established by the agency). An existing peer review mechanism mandated by law should be implemented by the agency in a manner as consistent as possible with the practices and procedures outlined in this Bulletin. The requirements of Section V apply to “highly influential scientific assessments,” as designated in Section III of the Bulletin, within six months of publication of the final Bulletin. The requirements in Section V apply to documents subject to Section II of the Bulletin one year after publication of the final Bulletin.

Section XII: Judicial Review

This Bulletin is intended to improve the internal management of the Executive Branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its agencies or other entities, its officers or employees, or any other person.

Bulletin for Peer Review

I. Definitions.

For purposes of this Bulletin --

1. the term “Administrator” means the Administrator of the Office of Information and Regulatory Affairs in the Office of Management and Budget (OIRA);
2. the term “agency” has the same meaning as in the Paperwork Reduction Act, 44 U.S.C. § 3502(1);
3. the term “dissemination” means agency initiated or sponsored distribution of information to the public (see 5 C.F.R. 1320.3(d) (definition of “Conduct or Sponsor”)).

Dissemination does not include distribution limited to government employees or agency contractors or grantees; intra- or inter-agency use or sharing of government information; or responses to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act, the Government Performance and Results Act or similar law. This definition also excludes distribution limited to correspondence with individuals or persons, press releases, archival records, public filings, subpoenas and adjudicative processes. The term “dissemination” also excludes information distributed for peer review in compliance with this Bulletin, provided that the distributing agency includes a clear disclaimer on the information as follows: “THIS INFORMATION IS DISTRIBUTED SOLELY FOR THE PURPOSE OF PRE-DISSEMINATION PEER REVIEW UNDER APPLICABLE INFORMATION

QUALITY GUIDELINES. IT HAS NOT BEEN FORMALLY DISSEMINATED BY [THE AGENCY]. IT DOES NOT REPRESENT AND SHOULD NOT BE CONSTRUED TO REPRESENT ANY AGENCY DETERMINATION OR POLICY.”

For the purposes of this Bulletin, “dissemination” excludes research produced by government-funded scientists (e.g., those supported extramurally or intramurally by federal agencies or those working in state or local governments with federal support) if that information does not represent the views of an agency. To qualify for this exemption, the information should display a clear disclaimer that “the findings and conclusions in this report are those of the author(s) and do not necessarily represent the views of the funding agency”;

4. the term “Information Quality Act” means Section 515 of Public Law 106-554 (Pub. L. No. 106-554, § 515, 114 Stat. 2763, 2763A-153-154 (2000));
5. the term “scientific information” means factual inputs, data, models, analyses, technical information, or scientific assessments based on the behavioral and social sciences, public health and medical sciences, life and earth sciences, engineering, or physical sciences. This includes any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms. This definition includes information that an agency disseminates from a web page, but does not include the provision of hyperlinks to information that others disseminate. This definition does not include opinions, where the agency’s presentation makes clear that what is being offered is someone’s opinion rather than fact or the agency’s views;
6. the term “influential scientific information” means scientific information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions; and
7. the term “scientific assessment” means an evaluation of a body of scientific or technical knowledge, which typically synthesizes multiple factual inputs, data, models, assumptions, and/or applies best professional judgment to bridge uncertainties in the available information. These assessments include, but are not limited to, state-of-science reports; technology assessments; weight-of-evidence analyses; meta-analyses; health,

safety, or ecological risk assessments; toxicological characterizations of substances; integrated assessment models; hazard determinations; or exposure assessments.

II. Peer Review of Influential Scientific Information.

1. In General: To the extent permitted by law, each agency shall conduct a peer review on all influential scientific information that the agency intends to disseminate. Peer reviewers shall be charged with reviewing scientific and technical matters, leaving policy determinations for the agency. Reviewers shall be informed of applicable access, objectivity, reproducibility and other quality standards under the federal laws governing information access and quality.
2. Adequacy of Prior Peer Review: For information subject to this section of the Bulletin, agencies need not have further peer review conducted on information that has already been subjected to adequate peer review. In determining whether prior peer review is adequate, agencies shall give due consideration to the novelty and complexity of the science to be reviewed, the importance of the information to decision making, the extent of prior peer reviews, and the expected benefits and costs of additional review. Principal findings, conclusions and recommendations in official reports of the National Academy of Sciences are generally presumed to have been adequately peer reviewed.
3. Selection of Reviewers:
 - (a) Expertise and Balance: Peer reviewers shall be selected based on expertise, experience and skills, including specialists from multiple disciplines, as necessary. The group of reviewers shall be sufficiently broad and diverse to fairly represent the relevant scientific and technical perspectives and fields of knowledge. Agencies shall consider requesting that the public, including scientific and professional societies, nominate potential reviewers.
 - (b) Conflicts: The agency – or the entity selecting the peer reviewers – shall (i) ensure that those reviewers serving as federal employees (including special government employees) comply with applicable federal ethics requirements; (ii) in selecting peer reviewers who are not government employees, adopt or adapt the National Academy of Sciences policy for committee selection with respect to evaluating the potential for

conflicts (e.g., those arising from investments; agency, employer, and business affiliations; grants, contracts and consulting income). For scientific information relevant to specific regulations, the agency shall examine a reviewer's financial ties to regulated entities (e.g., businesses), other stakeholders, and the agency.

(c) Independence: Peer reviewers shall not have participated in development of the work product. Agencies are encouraged to rotate membership on standing panels across the pool of qualified reviewers. Research grants that were awarded to scientists based on investigator-initiated, competitive, peer-reviewed proposals generally do not raise issues as to independence or conflicts.

4. Choice of Peer Review Mechanism: The choice of a peer review mechanism (for example, letter reviews or ad hoc panels) for influential scientific information shall be based on the novelty and complexity of the information to be reviewed, the importance of the information to decision making, the extent of prior peer review, and the expected benefits and costs of review, as well as the factors regarding transparency described in II(5).
5. Transparency: The agency -- or entity managing the peer review -- shall instruct peer reviewers to prepare a report that describes the nature of their review and their findings and conclusions. The peer review report shall either (a) include a verbatim copy of each reviewer's comments (either with or without specific attributions) or (b) represent the views of the group as a whole, including any disparate and dissenting views. The agency shall disclose the names of the reviewers and their organizational affiliations in the report. Reviewers shall be notified in advance regarding the extent of disclosure and attribution planned by the agency. The agency shall disseminate the final peer review report on the agency's website along with all materials related to the peer review (any charge statement, the peer review report, and any agency response). The peer review report shall be discussed in the preamble to any related rulemaking and included in the administrative record for any related agency action.
6. Management of Peer Review Process and Reviewer Selection: The agency may commission independent entities to manage the peer review process, including the selection of peer reviewers, in accordance with this Bulletin.

III. Additional Peer Review Requirements for Highly Influential Scientific Assessments.

1. Applicability: This section applies to influential scientific information that the agency or the Administrator determines to be a scientific assessment that:
 - (i) could have a potential impact of more than \$500 million in any year, or
 - (ii) is novel, controversial, or precedent-setting or has significant interagency interest.
2. In General: To the extent permitted by law, each agency shall conduct peer reviews on all information subject to this section. The peer reviews shall satisfy the requirements of Section II of this Bulletin, as well as the additional requirements found in this section. Principal findings, conclusions and recommendations in official reports of the National Academy of Sciences that fall under this section are generally presumed not to require additional peer review.
3. Selection of Reviewers:
 - (a) Expertise and Balance: Peer reviewers shall be selected based on expertise, experience and skills, including specialists from multiple disciplines, as necessary. The group of reviewers shall be sufficiently broad and diverse to fairly represent the relevant scientific and technical perspectives and fields of knowledge. Agencies shall consider requesting that the public, including scientific and professional societies, nominate potential reviewers.
 - (b) Conflicts: The agency – or the entity selecting the peer reviewers – shall (i) ensure that those reviewers serving as federal employees (including special government employees) comply with applicable federal ethics requirements; (ii) in selecting peer reviewers who are not government employees, adopt or adapt the National Academy of Sciences’ policy for committee selection with respect to evaluating the potential for conflicts (e.g., those arising from investments; agency, employer, and business affiliations; grants, contracts and consulting income). For scientific assessments relevant

to specific regulations, a reviewer's financial ties to regulated entities (e.g., businesses), other stakeholders, and the agency shall be examined.

(c) Independence: In addition to the requirements of Section II (3)(c), which shall apply to all reviews conducted under Section III, the agency -- or entity selecting the reviewers -- shall bar participation of scientists employed by the sponsoring agency unless the reviewer is employed only for the purpose of conducting the peer review (i.e., special government employees). The only exception to this bar would be the rare case where the agency determines, using the criteria developed by NAS for evaluating use of "employees of sponsors," that a premier government scientist is (a) not in a position of management or policy responsibility and (b) possesses essential expertise that cannot be obtained elsewhere. Furthermore, to be eligible for this exception, the scientist must be employed by a different agency of the Cabinet-level department than the agency that is disseminating the scientific information. The agency's determination shall be documented in writing and approved, on a non-delegable basis, by the Secretary or Deputy Secretary of the department prior to the scientist's appointment.

(d) Rotation: Agencies shall avoid repeated use of the same reviewer on multiple assessments unless his or her participation is essential and cannot be obtained elsewhere.

4. Information Access: The agency -- or entity managing the peer review -- shall provide the reviewers with sufficient information -- including background information about key studies or models -- to enable them to understand the data, analytic procedures, and assumptions used to support the key findings or conclusions of the draft assessment.
5. Opportunity for Public Participation: Whenever feasible and appropriate, the agency shall make the draft scientific assessment available to the public for comment at the same time it is submitted for peer review (or during the peer review process) and sponsor a public meeting where oral presentations on scientific issues can be made to the peer reviewers by interested members of the public. When employing a public comment process as part of the peer review, the agency shall, whenever practical, provide peer reviewers with access to public comments that address significant scientific or technical issues. To ensure that public participation does not unduly delay agency activities, the agency shall clearly specify time limits for public participation throughout the peer review process.

6. Transparency: In addition to the requirements specified in II(5), which shall apply to all reviews conducted under Section III, the peer review report shall include the charge to the reviewers and a short paragraph on both the credentials and relevant experiences of each peer reviewer. The agency shall prepare a written response to the peer review report explaining (a) the agency's agreement or disagreement with the views expressed in the report, (b) the actions the agency has undertaken or will undertake in response to the report, and (c) the reasons the agency believes those actions satisfy the key concerns stated in the report (if applicable). The agency shall disseminate its response to the peer review report on the agency's website with the related material specified in Section II(5).
7. Management of Peer Review Process and Reviewer Selection: The agency may commission independent entities to manage the peer review process, including the selection of peer reviewers, in accordance with this Bulletin.

IV. Alternative Procedures.

As an alternative to complying with Sections II and III of this Bulletin, an agency may instead: (i) rely on the principal findings, conclusions and recommendations of a report produced by the National Academy of Sciences; (ii) commission the National Academy of Sciences to peer review an agency's draft scientific information; or (iii) employ an alternative scientific procedure or process, specifically approved by the Administrator in consultation with the Office of Science and Technology Policy (OSTP), that ensures the agency's scientific information satisfies applicable information quality standards. The alternative procedure(s) may be applied to a designated report or group of reports.

V. Peer Review Planning.

1. Peer Review Agenda: Each agency shall post on its website, and update at least every six months, an agenda of peer review plans. The agenda shall describe all planned and ongoing influential scientific information subject to this Bulletin. The agency shall provide a link from the agenda to each document that has been made public pursuant to

this Bulletin. Agencies are encouraged to offer a listserve or similar mechanism to alert interested members of the public when entries are added or updated.

2. Peer Review Plans: For each entry on the agenda the agency shall describe the peer review plan. Each peer review plan shall include: (i) a paragraph including the title, subject and purpose of the planned report, as well as an agency contact to whom inquiries may be directed to learn the specifics of the plan; (ii) whether the dissemination is likely to be influential scientific information or a highly influential scientific assessment; (iii) the timing of the review (including deferrals); (iv) whether the review will be conducted through a panel or individual letters (or whether an alternative procedure will be employed); (v) whether there will be opportunities for the public to comment on the work product to be peer reviewed, and if so, how and when these opportunities will be provided; (vi) whether the agency will provide significant and relevant public comments to the peer reviewers before they conduct their review; (vii) the anticipated number of reviewers (3 or fewer; 4-10; or more than 10); (viii) a succinct description of the primary disciplines or expertise needed in the review; (ix) whether reviewers will be selected by the agency or by a designated outside organization; and (x) whether the public, including scientific or professional societies, will be asked to nominate potential peer reviewers.
3. Public Comment: Agencies shall establish a mechanism for allowing the public to comment on the adequacy of the peer review plans. Agencies shall consider public comments on peer review plans.

VI. Annual Reports.

Each agency shall provide to OIRA, by December 15 of each year, a summary of the peer reviews conducted by the agency during the fiscal year. The report should include the following: 1) the number of peer reviews conducted subject to the Bulletin (i.e., for influential scientific information and highly influential scientific assessments); 2) the number of times alternative procedures were invoked; 3) the number of times waivers or deferrals were invoked (and in the case of deferrals, the length of time elapsed between the deferral and the peer review); 4) any decision to appoint a reviewer pursuant to any exception to the applicable independence or conflict of interest standards of the Bulletin,

including determinations by the Secretary pursuant to Section III(3)(c); 5) the number of peer review panels that were conducted in public and the number that allowed public comment; 6) the number of public comments provided on the agency's peer review plans; and 7) the number of peer reviewers that the agency used that were recommended by professional societies.

VII. Certification in the Administrative Record.

If an agency relies on influential scientific information or a highly influential scientific assessment subject to this Bulletin to support a regulatory action, it shall include in the administrative record for that action a certification explaining how the agency has complied with the requirements of this Bulletin and the applicable information quality guidelines. Relevant materials shall be placed in the administrative record.

XIII. Safeguards, Deferrals, and Waivers.

1. Privacy: To the extent information about a reviewer (name, credentials, affiliation) will be disclosed along with his/her comments or analysis, the agency shall comply with the requirements of the Privacy Act, 5 U.S.C. § 522a as amended, and OMB Circular A-130, Appendix I, 61 Fed. Reg. 6428 (February 20, 1996) to establish appropriate routine uses in a published System of Records Notice.
2. Confidentiality: Peer review shall be conducted in a manner that respects (i) confidential business information and (ii) intellectual property.
3. Deferral and Waiver: The agency head may waive or defer some or all of the peer review requirements of Sections II and III of this Bulletin where warranted by a compelling rationale. If the agency head defers the peer review requirements prior to dissemination, peer review shall be conducted as soon as practicable.

IX. Exemptions.

Agencies need not have peer review conducted on information that is:

1. related to certain national security, foreign affairs, or negotiations involving international trade or treaties where compliance with this Bulletin would interfere with the need for secrecy or promptness;
2. disseminated in the course of an individual agency adjudication or permit proceeding (including a registration, approval, licensing, site-specific determination), unless the agency determines that peer review is practical and appropriate and that the influential dissemination is scientifically or technically novel or likely to have precedent-setting influence on future adjudications and/or permit proceedings;
3. a health or safety dissemination where the agency determines that the dissemination is time-sensitive (e.g., findings based primarily on data from a recent clinical trial that was adequately peer reviewed before the trial began);
4. an agency regulatory impact analysis or regulatory flexibility analysis subject to interagency review under Executive Order 12866, except for underlying data and analytical models used;
5. routine statistical information released by federal statistical agencies (e.g., periodic demographic and economic statistics) and analyses of these data to compute standard indicators and trends (e.g., unemployment and poverty rates);
6. accounting, budget, actuarial, and financial information, including that which is generated or used by agencies that focus on interest rates, banking, currency, securities, commodities, futures, or taxes; or
7. information disseminated in connection with routine rules that materially alter entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof.

X. Responsibilities of OIRA and OSTP.

OIRA, in consultation with OSTP, shall be responsible for overseeing implementation of this Bulletin. An interagency group, chaired by OSTP and OIRA, shall meet periodically to foster better understanding about peer review practices and to assess progress in implementing this Bulletin.

XI. Effective Date and Existing Law.

The requirements of this Bulletin, with the exception of those in Section V (Peer Review Planning), apply to information disseminated on or after six months following publication of this Bulletin, except that they do not apply to information for which an agency has already provided a draft report and an associated charge to peer reviewers. Any existing peer review mechanisms mandated by law shall be employed in a manner as consistent as possible with the practices and procedures laid out herein. The requirements in Section V apply to “highly influential scientific assessments,” as designated in Section III of this Bulletin, within six months of publication of this Bulletin. The requirements in Section V apply to documents subject to Section II of this Bulletin one year after publication of this Bulletin.

XII. Judicial Review.

This Bulletin is intended to improve the internal management of the executive branch, and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its agencies or other entities, its officers or employees, or any other person.

APPENDIX C. OVERVIEW OF THE AGENCY'S GENERAL ASSESSMENT FACTORS

In 2003, the Agency published, *A Summary of General Assessment Factors for Evaluating the Quality of Scientific and Technical Information*, in an effort to enhance the transparency about EPA's quality expectations for information that is voluntarily submitted to, or gathered, or generated, by the Agency for various purposes. The *Assessment Factors* document is intended to inform information-generating scientists about quality issues that should appropriately be taken into consideration at the time information is generated. It is also an additional resource for Agency staff as they evaluate the quality and relevance of information, regardless of source. The general assessment factors are drawn from the Agency's existing information quality systems, practices and guidelines that describe the types of considerations EPA takes into account when evaluating the quality and relevance of scientific and technical information used in support of Agency actions. The document is intended to raise the awareness of the information-generating public about EPA's ongoing interest in ensuring and enhancing the quality of information available for Agency use.

When evaluating the quality and relevance of scientific and technical information, the considerations that the Agency typically takes into account can be characterized by five general assessment factors:

- **Soundness** -The extent to which the scientific and technical procedures, measures, methods or models employed to generate the information are reasonable for, and consistent with, the intended application.
- **Applicability and Utility** -The extent to which the information is relevant for the Agency's intended use.
- **Clarity and Completeness** -The degree of clarity and completeness with which the data, assumptions, methods, quality assurance, sponsoring organizations and analyses employed to generate the information are documented.
- **Uncertainty and Variability** -The extent to which the variability and uncertainty (quantitative and qualitative) in the information or in the procedures, measures, methods or models are evaluated and characterized.
- **Evaluation and Review** -The extent of independent verification, validation and peer review of the information or of the procedures, measures, methods or models.

These assessment factors reflect the most salient features of EPA's existing information quality policies and guidelines.

For further information, please visit <http://www2.epa.gov/osa/summary-general-assessment-factors-evaluating-quality-scientific-and-technical-information>.

APPENDIX D. SOUND SCIENCE AND PEER REVIEW IN RULEMAKING POLICY

In response to several provisions of the December 2004, OMB Bulletin Final Information Quality Bulletin for Peer Review, the Office of Policy (formerly known as the Office of Policy, Economics, and Innovation [OPEI]) created conditional peer review template language for the preambles to proposed and final rules (Attachment A). This language should be used by rulewriters in the preamble of regulations that rely on influential scientific information or a highly influential scientific assessment, which are two categories of information defined in Section 3.2 of this Handbook.

For proposed and final regulations that rely on influential scientific information or a highly influential scientific assessment, rulewriters should use the template as a model to discuss peer review in the preamble where appropriate. In addition, peer review leaders should communicate with rulewriters and workgroup chairs to ensure that all appropriate peer review material is included in the docket, and that template language is included in the preamble.

The Office of Policy also revised the Action Memorandum Framework to include a discussion of peer review for influential scientific information or a highly influential scientific assessment (Attachment B).

Peer Review (Conditional Template)

Read this first (but **DO NOT** insert it in your preamble):

The OMB Final Information Quality Bulletin for Peer Review directs EPA to include a discussion of the peer review report and how the Agency complied with the provisions of the Bulletin in the preamble of rulemakings that are supported by influential scientific information or highly influential scientific assessments. Peer review reports should either (a) include a verbatim copy of each reviewer's comments (either with or without specific attributions) or (b) represent the views of the group as a whole, including any disparate and dissenting views. The Agency should disclose the names of the reviewers and their organizational affiliations in the report and should notify the reviewers in advance regarding the extent of the disclosure and attribution planned by the Agency. You should ensure that the peer review report is placed in the docket to comply with the OMB Bulletin.

Use this template if your proposed or final rule is based on a work product containing influential scientific information or a highly influential scientific assessment. This language should appear in the Supplementary Information section of regulatory preambles under General Information. You may want to include the language under the heading:

Did EPA conduct a peer review before issuing this notice?

II PROPOSED & FINAL ACTIONS: If you used a highly influential scientific assessment or influential scientific information to support this rulemaking, insert this into the preamble of your proposed or final rule, advanced notice of proposed rulemaking, or other substantive action:

This regulatory action was supported by **[influential scientific information or a highly influential scientific assessment]**. Therefore, EPA conducted a peer review in accordance with OMB's Final Information Quality Bulletin for Peer Review. **[Insert a brief description of the peer review process along with any other relevant information.]** The peer review report is located in the docket for this action. According to the report, **[insert a brief discussion of the peer review report. For more information about the peer review report, see the Peer Review Handbook.]**

ATTACHMENT B

Guidelines and Template for Action Memoranda Accompanying Regulatory Packages

(Updated 10/05/2011)

Background

This guidance and template focuses only on those action memoranda prepared for the Administrator. You may or may not be asked by your program office to produce similar memos for actions signed by a delegated official other than the Administrator, but this guidance and template do not cover such instances. Speak with your program or regional office's Regulatory Steering Committee (RSC) member to learn what office-specific procedures may exist.

An action memorandum should be included with all regulatory packages brought to the Administrator for signature. Also, a copy of the draft memorandum should be included as part of 1) the Final Agency Review (FAR) package that is circulated to participating offices for final review and 2) the package that is submitted to the Office of Policy (OP) to initiate review by the Office of Management and Budget (OMB). The action memorandum provides a formal communication between the recommending official and the Administrator. It also offers a succinct rationale for the action, and provides a plain English explanation of the action in order to inform the Administrator's decision and help in future communications of the rule to the public and Congress. The memo should be signed by the recommending official [usually the Assistant Administrator (AA)] and should receive the personal attention of the recommending official.

Guidelines for Using This Template

Instructions for each section of an action memorandum are provided within the template below. The template is already formatted according to the *Correspondence Manual's* guidance, and you should be able to copy and paste the entire template into a new Microsoft Word document to begin creating your action memorandum. Please be aware that formatting may or may not be altered when you copy the template into another document. Carefully read the tips below to understand how your memo should be formatted.

As with other Action Development Process (ADP) guidance and templates, template text provided herein that appears in regular font and black ink should be inserted into your document without significant changes. Instructions on additional text to insert appear as bolded blue text in square brackets [like this]. Text that appears within blue curly brackets {like this} is optional to include and may be omitted without further consultation. Once you insert the appropriate text, please remove the brackets, instructions, color and unnecessary formatting from your document.

As indicated by the use of non-mandatory language such as "should," "recommend" and "may," this document provides recommendations and does not impose any legally binding requirements. Programs may include information on additional topics if they are relevant to a given action (e.g., information quality issues).

While preparing your action memorandum, you should follow these tips:

- Keep your memo to 4 pages; use attachments if you need to include longer descriptions.

- Use plain English. Provide a clear understanding of the action being taken and its impact; you should refrain from copying technical language from your action’s preamble or regulatory text.
- In the header or footer of each page, insert this reminder: Internal, Deliberative Document – Do Not Cite, Quote or Distribute.
- Follow EPA’s *Correspondence Manual* (<http://intranet.epa.gov/agcyintr/manual/>) guidance on:
 - Usage of “agency” and “EPA”: Use “U.S. Environmental Protection Agency” as the first reference and “EPA” as the second reference. Use a lowercase “agency” in such references when it is not used as part of the full formal name of the agency.
 - Contractions: Do not use them.
 - Printing: Double-sided.
 - Ink: Print in black ink when printing. Signing officials may sign in blue or black ink. No other colors for official correspondence, aside from whatever colors may be on your letterhead.
 - Typeface:
 - Font: 12 point, Times New Roman.
 - Spacing:
 - Lines should be single spaced, but leave one blank line between each paragraph. For headings, one blank line should be above the heading and zero blank lines should be below the heading.
 - One space between each sentence and all punctuation marks.
 - Indentation: Do not indent the first line of a paragraph.
 - Margins:
 - 0.75-inch on all four sides.
 - Align left for normal text. Do not center, justify or right-align. You may deviate from left justification when formatting bulleted or numbered lists, quotes or other special passages.
 - Seven or eight hard returns should align the first line of text on the first page of the document, so that the first line is just below the office name that appears on the right-hand side of standard letterhead.
 - Page numbers:
 - Use them only for memos consisting of four or more pages, and then begin numbering with page 3. For example, most action memos are likely to be four pages long. You would place page numbers on pages 3 and 4.
 - Note: You will need to use a “section break” rather than a “page break” in Microsoft Word to accomplish this formatting. Also, you must remove the “Link to Previous Section” feature for the section in which you are inserting page 3, *et seq.* The way this guidance/template is formatted should achieve this formatting for you, as long as you copy and paste the template portion (the portion starting on pg. 4 of this document) into a new Word document.

- Use the format “Page # of ##” (e.g., Page 3 of 4).
- Center the page number in the footer.
- Do not enclose in quotes, dashes or parentheses.
- Acronyms: Spell out acronyms or abbreviations in the Subject line, and wherever they are first-used.
- Attachments:
 - Each document that accompanies your memo (e.g., a document that will be published in the *Federal Register*, a regulatory impact analysis, an economic analysis) is considered an attachment.
 - If attachments are referenced in the body of the text of your memo, type the word “Attachment” or “Attachments (#)” three lines below the body of the memo. For more than one attachment, indicate the number in parentheses.
 - If attachments are not identified in the text, type *Attachment* or *Attachments* three lines below the last line of the memorandum body, flush with the left margin. Number and list each attachment on a separate line. If more than one line is needed for any listed attachment, continue the information on a succeeding line aligned with the first character of the name of the attachment.

MEMORANDUM

SUBJECT: [Stage (e.g., Advance Notice of Proposed Rulemaking, Proposed Rule, or Final Rule): Title of Action] (Tier [insert number]; SAN [insert number]; RIN [insert number]) – **ACTION MEMORANDUM**

[Here is an example:

Proposed Rule: CERCLA/EPCRA Administrative Reporting Exemption for Air Releases of Hazardous Substances from Animal Waste (Tier 2; SAN 5117; RIN 2050-AG37) – **ACTION MEMORANDUM**]

FROM: [Insert the name of your Assistant or Regional Administrator]
[Insert “Assistant” or “Regional”] Administrator

THRU: Office of Policy (1806A)
Office of Executive Secretariat (1105A)

TO: [Insert the name of the Administrator]
EPA Administrator (1101A)

[This action memorandum should not exceed four pages, but you may use attachments to provide longer descriptions if necessary. Use plain language throughout. Write this memo so that the Administrator’s Office, as well as any future officials who refer to this action’s record, can clearly understand the action being taken and its impact. Refrain from copying technical language from your action’s preamble or regulatory text.]

PURPOSE

Attached for your signature is a [insert stage (e.g., Advance Notice of Proposed Rulemaking (ANPRM), proposed rule, final rule)]. [In three to five sentences, explain the action and why it was needed. This section should provide some context (i.e., how the rule fits into an overall strategy, agency priority/initiative, or suite of related actions).]

DEADLINE

[Indicate whether any signature or publication deadlines apply. Include this section even if your action does not have a deadline. If there is a deadline, indicate what it is and the type of deadline. It may be a legal deadline (e.g., imposed by a court or by law), an Administration deadline (e.g., identified as a priority action or fulfilling an external commitment), or an internal management deadline (e.g., timed with an event or speech). If no deadline exists, simply state: “No deadlines apply to this action.”]

OVERVIEW

[Briefly describe the action, the relevant statute that provides authority for the action and, as appropriate, cover the following points:

- Describe the specific environmental issue(s), public health problem(s) and/or statutory requirements being addressed, and the goal of this action;

- Describe how the regulated community is affected (e.g., performance standards, specific requirements);
- Describe implementation flexibilities, particularly for states and regulated entities;
- Describe key issues, such as any environmental justice concerns or Limited English Proficiency (LEP) concerns related to this action, and how they were addressed;
- Identify other actions underway that will affect this particular program or sector;
- Identify whether the action amends the *Code of Federal Regulations* and, if so, explain what kind of amendment (e.g., procedural); and
- Briefly summarize the history of the action.]

{Many programs elect to use subheadings in this section (e.g., *Authority, Background, Actions Proposed, Key Issues*).}

ANTICIPATED PUBLIC AND STAKEHOLDER RESPONSE

[Describe the type of response anticipated from the various audiences interested or impacted by the action. Identify both the involved stakeholders and the nature of their expected response. Characterize the likely reaction to the action by all interested parties including industry; environmental groups; Congress; state, local and tribal governments; and OMB. Explain what the agency has done to mitigate anticipated adverse reactions.]

INTERNAL DEVELOPMENT AND REVIEW PROCESS

[Identify whether the action was developed under Tier 1, 2 or 3. If the action was Tier 1 or 2, present, in an attachment if preferred, a brief chronology of the development and review process, noting specifically when the workgroup was formed. Note at what stages and for what specific objectives at each stage the workgroup was substantially engaged, including prior to seeking Early Guidance. (The Office of Policy will attach the summary memo from Final Agency Review (FAR).) Describe any noteworthy or innovative collaborative development and review process(es) used internally, and identify those that would be appropriate “best practices” to advance One EPA.]

[Identify program offices or Regions that participated in the development of the action, along with any outstanding issues from the development process and why they cannot be resolved or accommodated. Also, provide the basis for any decision made to not address an identified cross-media impact.]

OMB TRANSACTION

[Identify the determination by the Office of Management and Budget (OMB) (e.g., significant, non-significant, waived) and whether the action went to OMB for review under Executive Order (EO) 12866. If the action went to OMB for review, highlight significant issues resulting from EO 12866 review, including any significant issues raised by other agencies participating in the review. Explain any substantive changes made to the action as a result of recommendations from OMB or the other agencies.]

[If the action is subject to EO 12866 review but OMB waived review (e.g., OMB determined the action was significant but decided not to review it), please indicate whether OMB was otherwise involved with the action (e.g., was briefed) and describe the results of this interaction.]

[If the action is not subject to EO 12866 review, please indicate if OMB was briefed or otherwise involved. Describe the results of this interaction.]

[Note that you will not be able to complete this section until after OMB completes its review of the action; therefore, this section generally will not be complete when you circulate the draft Action Memorandum with the FAR package and the EO 12866 review package to OMB. Do your best to provide what detail you can when circulating the draft memo, however (e.g., it is likely that you can list the OMB determination in this section, even at the draft stage.)]

IMPACTS

[Summarize the costs and benefits of the action – including a discussion of any non-monetized benefits and/or non-quantified benefits – and the results of any economic analyses. As appropriate under individual statutes, explain how cost-benefit analyses helped to shape the approach chosen.]

{Use an attachment to provide any additional economic impact detail and to summarize, as applicable, the regulatory flexibility analysis and Small Business Advocacy Review (SBAR) Panel recommendations. Also, this attachment may describe impacts on affected entities, such as other federal agencies, states, local governments, tribes, paperwork burdens, children’s health, environmental justice populations, climate change, etc., that you are likely to discuss in the “Statutory and Executive Order” section of your rule’s preamble or in other contexts. Consider using a table to display estimates (i.e., use the Circular A-4 table for economically significant rules.) Reference the attachment in the Impacts section and list the impacts described in the attachment.}

{This attachment should be succinct and focused on salient issues that senior decision-makers in the Office of the Administrator need to know. You may wish to use subheadings in this attachment (e.g., *Environmental Justice*, *Limited English Proficiency*, *Small Business Impacts*, *Federalism Impacts*). Guidance for describing the impacts related to applicable statutes and executive orders can be found in the ADP Library (<http://intranet.epa.gov/adplibrary/>).}

STAKEHOLDER INVOLVEMENT

[Briefly discuss the role of state, local and tribal government entities and private sector stakeholders (e.g., regulated entities, NGOs, academia) in the development of the action. Summarize the concerns they have raised and what the agency has done to address them, or explain why the agency cannot address them. If applicable, refer to the discussion above or in the attachment on impacts related to EJ concerns, children’s health concerns, or other issues described in the Impacts section.]

PEER REVIEW

[If you did not use influential scientific information or a highly influential scientific assessment as defined by the EPA's *Peer Review Handbook* (<http://www.epa.gov/peerreview/pdfs/prhandbk.pdf>) to support the action, include the following statement in the Action Memorandum: There were no influential or highly influential products supporting this action as defined by the agency's *Peer Review Handbook*.]

[If you did use influential scientific information or a highly influential scientific assessment to support the action, include the following statement: [Insert Name of AAship] has followed the agency's Peer Review Policy with respect to the underlying [influential scientific information or highly influential scientific assessment] supporting this action.]

[You may add any details you think are important, but you generally should not modify this compliance statement. If you used influential scientific information or a highly influential scientific assessment, but were not fully able to meet the Peer Review Policy, explain why.]

RECOMMENDATION

[Recommend an action the Administrator should take (i.e., sign the rule or other document). Here is an example: I recommend that you sign the attached rulemaking.]

[Three lines below the body of the memo, indicate that you have attached a rule for signature, and other documents as appropriate. If your attachment(s) are referenced in the body of the memo, insert either the word "Attachment" or "Attachments (#)," indicating the number of attachments in parentheses. If you have referenced the attachments in the body of your memo, you need not list the names of them here. On the other hand, if attachments are not identified in the body, type "Attachment" or "Attachments" three lines below the last line of the memorandum body, flush with the left margin. Number and list each attachment on a separate line. If more than one line is needed for any listed attachment, continue the information on a succeeding line aligned with the first character of the name of the attachment.]

[NOTE: Where an Action Memorandum accompanies another document (e.g., a rule or *Federal Register* document) to be signed by the Administrator, you should not include a concurrence line at the bottom of the Action Memorandum or anything else that might cause the Action Memorandum to be misinterpreted to be a Decision Memo, which it is not. After signature, the *Federal Register* notice (or other document such as an order) will contain the agency's decision or action (if any). The Action Memorandum is only a pre-decisional briefing document.]

{You may wish to add a "cc" line if you are sending a copy of the action memorandum to others. Do not include a courtesy title such as Mr. or Mrs. The "cc" line should be flush left and two lines below your text or the "Attachment/Attachments" line. Two spaces follow the colon after "cc." If a courtesy copy list is too long to fit in a single column at the bottom of the memorandum, a separate distribution list is permitted and should be referenced in the Attachments.}

APPENDIX E. EXAMPLES OF PEER REVIEW STATEMENTS OF WORK

Note: The examples are provided for reference purposes only. Development of new Statements of Work should reflect current agency policies and procedures, including the “Conflict of Interest Review Process for Contractor-Managed Peer Reviews of EPA HISA and ISI Documents.”

Statement of Work: Letter Review

**External Peer Review of the EPA's
Markov Chain Nest Productivity Model (MCnest)**

STATEMENT OF WORK AND CHARGE TO REVIEWERS

Background

A challenge in the regulation of pesticides is to improve methods for quantifying ecological risk projections in higher-tier risk assessments that can address the “so what” questions about potential changes to wildlife populations. The United States Environmental Protection Agency’s (USEPA) Office of Pesticide Programs (OPP) has developed a Terrestrial Investigation Model (TIM) for quantifying the magnitude of acute mortality in birds exposed to a pesticide, but has not adopted a method for quantifying effects to reproductive success. In the current pesticide risk assessment process, results from a pair of laboratory avian reproduction tests are used in calculating risk quotients (RQ) by comparing the reported no-observed-adverse-effect concentration (NOAEC) for the most sensitive measured endpoint(s) with estimates of the maximum dietary exposure expected for a given application rate. As a screening tool, RQs are compared to an established regulatory level-of-concern to categorize the potential for unacceptable risk. Because of the high degree of uncertainty in these simple tools for characterizing risk, RQs typically incorporate conservative or worse-case assumptions about exposure and toxicity to reduce the chances of concluding a chemical has an acceptable level of risk when in fact it does not (i.e., false negative conclusion). Consequently, risk quotients can be used to identify the environmental concentration above which adverse effects to avian reproduction may occur, but they cannot determine the probability or magnitude of potential reproductive effects.

An alternative conceptual framework for interpreting the results of avian reproduction tests was proposed by Bennett et al. (2005). Briefly, it involves linking the types of effects that may occur during each phase of a bird’s reproductive cycle (e.g., pair formation, egg laying, incubation, nestling rearing) to selected surrogate endpoints from all three standard avian toxicity tests and relates those effects to the estimated exposure during each phase under a given pesticide-use scenario. Because the great majority of avian reproduction tests do not provide quantitative dose-response information for surrogate endpoints, by necessity the alternative approach is based on a series of phase-specific deterministic decision points – essentially RQs for specific surrogate endpoints at each breeding phase – for determining whether the nest attempt fails or continues. If the estimated exposure during the critical exposure period is less than the established toxicity threshold (e.g., the no-observed-adverse-effect level or NOAEL) for surrogate endpoints at each phase, the nest continues without disruption. However, if exposure exceeds the toxicity threshold for a surrogate endpoint, the nest attempt is assumed to have failed and the female may be able to renest if conditions permit and sufficient time remains in the breeding season. Also, for those species that can produce multiple broods in a single breeding season, females may renest after successful nesting attempts if conditions permit. The simulated performance of a population of females in relation to the timing of pesticide applications is modeled over the course of a full breeding season. Consequently, using this framework, the effects of a pesticide on annual reproductive success are not only a function of the results of avian toxicity tests, but also are quite sensitive to the timing of pesticide applications relative to a species’ breeding season and to differences in life history characteristics among species.

A flexible mathematical model, known as the Markov chain nest productivity model or MCnest, has been developed for implementing the conceptual framework of Bennett et al. (2005). It projects estimates of pesticide effects on reproductive success for a broad range of species and can be modified to incorporate either sparse or abundant life-history data. MCnest builds on over 40 years of avian nest-survival modeling in the ornithological literature. This Markov chain model is equivalent to the well-known Mayfield nest-survival model when similar assumptions are. Although the basic version of MCnest was developed to use data from the standardized avian toxicity tests required by OPP, it could

be applied to contaminant effects questions in other USEPA Program Offices, though at present the model is not designed to adequately estimate the effects of bioaccumulative chemicals where effects on hatchability and hatchling survival may result from chemical residues accumulated prior to the egg formation period.

Most of the data used in MCnest are in the form of input parameters provided by the model user and represent three categories of input parameters: toxicity threshold values for surrogate endpoints, pesticide application scenarios, and species life history parameters. MCnest uses information for parameterizing toxicity threshold values and application scenarios that is currently available in the risk assessment process. The model user may use default life history parameters from a library of avian species available to MCnest or create new or modified species parameter profiles.

The primary output of MCnest is an estimate of the potential magnitude of pesticide effects to annual reproductive success by calculating the relative difference between scenarios with and without pesticide exposure. It also provides information on which species are at greatest risk under a specific pesticide-use scenario or which application dates have the greatest impact throughout a breeding season. This quantitative estimate of pesticide effects on annual reproductive success is needed for use in population modeling or probabilistic risk assessments.

Scope of Review/Objective Statement

The focus of this review is the MCnest model and its accompanying user's and technical manuals with the objective of providing a written, independent review of the MCnest model and commenting on its ease of use and utility in estimating risk.

The enclosed CD contains a copy of:

- the MCnest model
- an Excel file named 'SpeciesLibrary'
- the MCR Installer
- a User's Manual
- a Technical Manual
- a Species Life History Profiles Manual
- the Bennett et al. (2005) Ecotoxicology publication

The basic version of MCnest focuses on the pesticide risk assessment process of USEPA's Office of Pesticide Programs, though the model could be modified in future versions for application in other USEPA program offices or other regulatory bodies. The document on avian life history profiles is included for background purposes, but is not the focus of this review; once the MCnest model is finalized, the species profiles will be expanded and peer-reviewed separately for use in MCnest. Also, since the purpose of MCnest is to implement the conceptual approach first described by Bennett et al. (2005), that paper is included for background.

Contacts

If you have questions regarding installation or operation of the model, please feel free to contact [Name] at [Phone] or [Email].

If you have questions regarding the review or providing answers to the charge questions, please contact [Name of Peer Review Coordinator] at [Phone] or [Email].

Task Description

1. The contractor shall install the draft MCnest model (including the MCR Installer and the “SpeciesLibrary” excel file) on their computer.
2. The contractor shall perform an independent review of MCnest model and the user’s and technical manuals.
3. The contractor shall provide a written evaluation addressing the charge questions, with recommendations, in a report submitted to [the Peer Review Coordinator] no later than [Date].

Government Responsibilities

1. Provide a Statement of Work outlining expectations.
2. Request a conflict of interest statement.
3. Provide a professional services fee (honorarium) if appropriate.
4. Provide a CD including all necessary files.

Milestones/Deliverables and Schedule

The reviewer shall review the MCnest model and the accompanying user’s and technical manuals and provide written comments addressing the charge questions to [the Peer Review Coordinator] no later than [Date].

Acceptance Criteria

An independent and unbiased professional review is provided in written form.

Charge Questions

In your written review, please address the following questions. Additional comments and recommendations for improving the model and associated methodology are welcome.

1. The user’s manual is intended to introduce all of the currently available features of the MCnest model and allow the model user to start running model simulations. Did you have problems or questions during the installation or operation of the MCnest model? Did you encounter issues that were not explained sufficiently in the user’s manual? Do you have any suggestions for improving the user’s manual?
2. The technical manual provides background material on the details for how the model operates and how calculations are performed; however, it does not provide guidance on policy-related issues that will need to be addressed for use in a regulatory context. Does the technical manual provide sufficient technical background information for how the model operates and how decisions are made? Are there additional technical issues that should be discussed in the technical manual?
3. The intent of the basic version of MCnest is to implement a breeding phase-specific approach for quantifying pesticide effects on avian reproductive success that is general enough to be applied to a broad range of species life history strategies. Does the technical manual adequately explain the selection and use of surrogate endpoints? Do the manuals

adequately explain how choices made for input parameters might affect the model results?

4. Despite the limitations of both toxicity test data and life history information, does the model provide a basis for quantifying the magnitude of change to reproductive success from pesticide exposure that adds value beyond the current use of risk quotients? Does the model adequately implement the breeding phase-specific approach for quantifying pesticide effects on reproductive success?
5. Beyond the basic model outputs provided, are there additional outputs (e.g., graphs, data summaries) that would be useful for understanding the simulation results or interpreting differences among simulations?
6. Work is underway to include more detailed exposure estimation and improved methods for defining the length of a breeding season in future versions of MCnest. Are there additional features or issues that you believe should be addressed in MCnest?

Reporting Requirements

Please provide your written comments to [the Peer Review Coordinator] by [Date], answering the questions specified above. The review may be sent by regular mail to the address below, by email to [Email] or by FAX to [Number].

We sincerely thank you for your input to our peer review process.

Peer Review Coordinator

Address

Phone

Email

Statement of Work: Contractor-Managed Peer Review

STATEMENT OF WORK

U.S. EPA Environmental Economics Peer Review

BACKGROUND INFORMATION:

The National Center for Environmental Economics (NCEE) is located in the Office of Policy, Economics and Innovation and serves as a center of expertise for cutting-edge research and analysis in environmental economics. NCEE's primary function is to assist the Environmental Protection Agency's (EPA's) program and staff offices in applying sound economic science in the development of analyses that support the Agency's actions. NCEE conducts and supervises a wide array of research and development on economic analytic methods, and provides guidance and support for performing economic analyses throughout the Agency. NCEE serves as an information resource for EPA, other government departments and agencies, and the public on benefit-cost analyses, economic impact models and measurement, and economic incentive measures.

Peer review is an important component of the scientific process. It provides a focused, objective evaluation of work products, and the criticism, suggestions and new ideas provided by the peer reviewers stimulate creative thought, strengthens the reviewed document and confer credibility on the product. Comprehensive, objective peer reviews leads to good science and product acceptance within the scientific community.

PURPOSE:

NCEE (and economists throughout the Agency) routinely create work products that require peer review. The purpose of this contract is to procure peer review services from a contractor that is able to perform peer review of a variety of environmental economic work products. The economic work products for peer review required under this contract, as described in EPA's *Peer Review Handbook*, 3rd Edition (http://www.epa.gov/peerreview/pdfs/peer_review_handbook_2006.pdf) are as follows:

1. Economic and financial methodologies that will serve as a principal method or protocol used to conduct economic analyses within a program;
2. Unique or novel applications of existing economic and financial methodologies , particularly those that are recognized to be outside of mainstream economic practices;
3. Stated preference (e.g., contingent valuation) and revealed preference surveys (e.g., recreational travel cost surveys) developed to assist in the economic analysis of a regulation or program ;
4. National surveys of costs and expenditures for environmental protection (e.g., financial needs surveys, pollution abatement expenditures surveys);
5. Meta-analyses (i.e., re-analyses of existing published literature and supporting data on the measurement of economic benefits, costs and impacts);
6. Data and analytical models underlying economic analyses, particularly those

supporting economically significant rules, if the models and corresponding use of the data have not been previously subject to adequate peer review; and

7. Applications for research grants.

Note that the above list omits two (2) kinds of economic work products described in the Peer Review Handbook that are typically peer reviewed: internal Agency guidance for conducting economic and financial analysis; and broad-scale economic assessments of regulatory programs, such as those required by Congressional mandates (e.g., the Clean Air Act reports to Congress on benefits and costs). These major work products would usually be reviewed by EPA's Science Advisory Board Environmental Economics Advisory Committee or an equivalent body, and are not in the scope of this Statement of Work (SOW).

Examples of current and/or previous work products produced by NCEE in need of peer review are as follows:

1. NCEE recently published the Handbook on the Benefits, Costs, and Impacts of Land Cleanup and Reuse (<http://yosemite.epa.gov/ee/epa/eed.nsf/pages/LandHandbook.html>), which is 126 pages and which was peer reviewed by a panel of seven (7) environmental economists.
2. NCEE is also leading a large effort to value the benefits of the Chesapeake Bay Total Maximum Daily Load, including a stated preference survey, a hedonic analysis, commercial and recreational fishing benefits, protecting drinking water in groundwater wells, other ancillary benefits, and a benefit transfer exercise. NCEE expects that each component of this analysis will result in a report of approximately 50 pages that would need to be peer reviewed by three (3) outside economists.
3. NCEE routinely issues proposals for research grant applications; these proposals are usually 10-15 pages in length with some supporting information. All research grant proposals must be externally peer-reviewed and NCEE prefers three (3) external reviewers per proposal.

The purpose of this contract is to provide peer review for the whole variety of environmental economics work products from NCEE and EPA. Several offices within EPA will utilize this contract, for in-scope work, based upon NCEE projections and future requirements.

TECHNICAL SUPPORT REQUIREMENTS:

The contractor shall perform the following tasks in support of this contract:

A. Peer Review Services

The contractor shall perform scientific/technical peer reviews of documents and materials related to the full breadth of Agency work products and grant/cooperative agreement proposals pertaining to environmental economics. The peer reviews may occur by mail or email; via telephone or video conferences; or during in-person meetings.

When conducting peer reviews, the contractor shall follow EPA's *Peer Review Handbook*, 3rd edition (EPA 100/B-06/002, January 2006, which is provided at the following website:

http://www.epa.gov/peerreview/pdfs/peer_review_handbook_2006.pdf, and *Addendum* (2009) at the following link: http://www.epa.gov/peerreview/pdfs/spc_peer_rvw_handbook_addendum.pdf or the most recent rendition of that Handbook, to the extent that the subject of the review is covered by EPA's *Peer Review Handbook*, 3rd Edition and the *Addendum*.

1. Identify and Recruit Qualified Reviewers

The number of reviewers required and their qualifications will be determined during contract performance and will be provided by the Contracting Officer's Representative (COR); the reviewer(s) qualifications may vary depending upon the technical nature of the work product. The minimum qualifications for a peer reviewer of the products encompassed in this contract are a Ph.D. in economics, environmental economics, agricultural economics, or a related field. Interdisciplinary projects may, in some cases, require expertise (as demonstrated by a Ph.D.) in a different field; any such cases will be indicated by the COR.

The appropriate expertise, knowledge, and experience necessary for individual peer reviewers will be indicated by the COR according to the following:

Level 1 reviewers will have engaged in relevant research as evidenced by at least one peer-reviewed journal publication in the subject of the review.

Level 2 reviewers will have engaged in relevant research as evidenced by at least three peer-reviewed journal publications in the subject of the review; or by at least one peer-reviewed journal publication in the subject of the review and by serving as the principal investigator for a research project comparable to the product being reviewed.

Level 3 reviewers will have engaged in relevant research and achieved standing in the field as evidenced by at least four peer-reviewed journal publications in the subject of the review; by serving as the principal investigator for at least one research project comparable to the product being reviewed; and by achieving recognition in the field as reflected by awards, and other honors received from scientific and professional organizations (e.g., an AERE or AAAS Fellow), distinguished or named professorships, journal editorships, or appointment to high-level review committees (such as the National Research Council or Science Advisory Board).

Prior to the performance of a peer review, the contractor shall submit to the COR and the CO a Statement of Conflict of Interest for each reviewer in addition to a complete list of all prospective reviewers within two (2) weeks of the contractors receipt of the number of reviewers and their qualifications from the COR. For each prospective reviewer, the submission shall include: (1) a short academic and professional biography, and a brief paragraph concerning the reviewer's technical expertise in support of the reviewer's selection; and (2) information concerning the reviewer's availability and willingness to provide the review within the specified time frame. The CO will verify that the list of reviewers conforms to the number and qualifications of reviewers provided to the contractor and required for the review. The contractor will be notified by the CO with a determination of consent with regard to the list of proposed reviewers. NCEE will not be involved in the selection of individual peer reviewers.

Within three (3) working days of receiving the CO's consent that the contractor's proposed list of reviewers conforms to the peer review's specifications and Statement of Conflict of Interest, the contractor shall select and enlist the services of reviewers.

It is the responsibility of the contractor to ensure that all peer reviews are conducted in a manner to avoid all actual or potential, substantial conflicts of interest, or the appearance of substantial conflicts to the maximum extent possible. Prior to conducting a peer review, the contractor shall ensure that each reviewer is free of any actual or potential conflict of interest (COI), or the appearance of any substantial conflict that are direct and substantial enough as to rule out a particular reviewer. Any particular COI, or appearance of loss of impartiality (see Chapter 5), must be disclosed by the contractor with a description of the actions the contractor has taken, or proposes to take, to avoid, mitigate, or neutralize the COI or appearance of loss of impartiality. Assurance of impartiality of each reviewer must be provided by the contractor to EPA.

2. Submission of Written Comments

Each review will be directed by a charge (including general and specific questions, evaluation criteria, or similar instructions to peer reviewers) that will be provided by the COR. (See Section 3.2 of the Peer Review Handbook for a description of charges.)

After completing the review, the contractor shall submit the peer review panel's written comments in final form, along with all supporting materials, such as additional references or suggested approaches, to the appropriate EPA personnel. Review packages submitted by the contractor to EPA shall include: (1) written general comments; (2) specific changes or revisions required to improve clarity; (3) scientific changes or revisions required to improve the clarity and/or the scientific accuracy of the documents or products; (4) any new data that might contribute to the derivation of improved processes and procedures; (5) other scientific and technical materials that may be pertinent; and (6) any other materials necessary to complete the peer review record. The contractor shall also be readily available to clarify any peer review comments and recommendations the EPA poses within a week of submission of the review package.

The contractor shall submit these documents to the COR in final form. All final peer reviews submitted shall include copies of the literature cited or make reference to the citations in the document for the COR to verify and approve.

3. Submission of Panel Recommendations

For reports that include peer review panel recommendations, the contractor shall: (1) explain and rank the policy or action alternatives; (2) describe the procedures used to arrive at the recommendations; (3) summarize the substance of the peer review panel's deliberations; (4) summarize any peer review panel dissenting views; (5) list the sources relied upon; and (6) provide any other information necessary clarify the methods and considerations upon which the recommendations are based.

The contractor shall submit these documents to the COR in final form. All final peer reviews submitted shall include copies of the literature cited or make reference to the citations in the document for the COR to verify and approve.

B. Workshop and Meeting Support Requirements

The contractor shall perform the following activities relative to peer review meetings, meetings that are not explicitly peer review, as well as for scientific workshop/workshop support, in support of this contract:

1. Pre-Workshop/Meeting Support

The contractor shall:

- a) Identify attendees. Organize and provide support in arranging workshops, meetings, and presentations by individuals to address issues and concerns raised by the peer review and/or as requested;
- b) Arrange for workshops and meetings to be held at EPA office locations or other geographical sites, as specified during contract performance;
- c) Arrange for facilities necessary to support required equipment, agenda development, and other logistical support, including: tape recording, audiovisual, computer, photo-copying, and operation of audiovisual equipment, microphones, and lighted pointers (all photocopying shall adhere to the clause Printing, (EPAAR 1552.208-70) (DEC 2005));
- d) Select hotel and arrange for rooms for workshop participants, as necessary;
- e) Develop the registration process and the materials needed for pre- workshop/meeting and onsite activities, e.g., registration and distribution of workshop/meeting materials, agendas, literature, information pamphlets, etc. to participants;
- f) Inspect meeting and workshop site with site personnel, checking all facilities, furniture, equipment, and signs to ensure facilities are appropriate and sufficient to handle meeting/workshop and attendees' requirements; and
- g) Provide identification badges for workshop and meeting attendees.
- h) The contractor shall clearly identify itself as an EPA contractor. When in attendance at meetings, contractor personnel shall wear identification that is different than the badges used by seminar attendees or Agency personnel attending or speaking at the meeting. Contractor personnel shall identify themselves as such when placing calls in conjunction with the SOW.
- i) Arrange teleconferences for planning purposes, peer review panels, or similar purposes.

2. Post-Workshop/Meeting Support

The contractor shall:

- a) Obtain all post-meeting/workshop comments, collect and compile all comments and suggested document revisions, transcribe meeting proceedings where required, and obtain all new hard copy references with distribution of copies as specified during contract performance; and
- b) Distribute draft proceedings summaries to the peer reviewers and/or participants for comment. Distribute revised proceedings summaries to the COR for review to ensure completeness and clarity before development of final document(s).

DELIVERABLES AND SERVICES

1. The contractor shall deliver complete comments, as specified during contract

performance, to assure rapid assimilation and timely action by EPA. Deliverables will be used to improve the quality of planned and current research projects and to assess the scientific and technical accuracy of completed and current work before dissemination outside EPA. Specific deliverables will be specified during contract performance. In providing deliverables, the contractor shall: provide high quality peer reviews and workshops in the research areas specified during contract performance;

2. Maintain the capability to provide such peer reviews and workshops as needed, document qualifications of personnel, and ensure performance of the work in accordance with EPA guidance;
3. Disseminate existing EPA supplied and specified documents, as referenced during contract performance;
4. Arrive at firm conclusions and/or recommendations, and provide supporting documentation and/or analyses to EPA;
5. Coordinate peer review findings with EPA and other selected individuals through teleconferences, workshops, and/or meetings involving the COR and any other specified EPA personnel, to clarify specific scientific points made by a peer review panel, and to document views and scientific judgments made by peer reviewers;
6. Provide a full and accurate accounting of all work ordered, as required;
7. Document the procedures used to ensure that all specifications required for a given review are met;
8. Maintain a record of ongoing and completed peer reviews, and devise a system for documenting all peer reviews conducted; an electronic copy of a progress report shall be sent to the COR and the CO.
9. Provide follow-up information to peer reviewers, to the COR and the CO;
10. Certify that, to the best of the contractor's knowledge and belief, no actual or potential conflicts of interest, or appearance of substantial conflicts exist, in accordance with contract requirements; and
11. Provide pre-meeting, meeting, and post-meeting workshop support, including planning, arranging, administering, and conducting required workshops and/or meetings.

Copies of all deliverables shall be sent to the COR in an electronic format (i.e., MS Word or MS Excel, MS Office 97 or a later version), along with a portable document file (.pdf) copy. The deliverable must include, but not be limited to, the peer review or workshop title. In all matters, the contractor shall perform in a manner that will ensure consistency of procedure and practice in support of the requirements of this SOW, and shall ensure consistent completion of all deliverables in accordance with the contract.

APPENDIX F. GUIDANCE ON REQUESTING A REVIEW BY THE SCIENCE ADVISORY BOARD

Introduction

Each year, the Deputy Administrator invites the EPA's senior leadership to identify requests for advice and peer review from the agency's independent Science Advisory Board (SAB), Clean Air Scientific Advisory Committee (CASAC), and other advisory committees. Significant scientific and technical issues related to the Administrator's priorities are topics most appropriate for consideration by these science advisory committees, which are supported by the SAB Staff Office in the Office of the Administrator. This appendix provides guidance for identifying and nominating requests for SAB and CASAC review. More detailed information about the functions and advisory process for the committees is available at <http://www.epa.gov/sab>.

Background

The SAB and CASAC provide mechanisms for the EPA to receive external peer review and other advice designed to make a positive difference in producing and using science at the agency.

The SAB has a broad congressional mandate to provide independent advice and peer review to the EPA Administrator on the scientific and technical aspects of environmental issues. Section (c)(1) of the Environmental Research, Development, and Demonstration Authorization Act ([ERDDAA], 42 U.S.C. § 4365] states that "at the time any proposed criteria document, standard, limitation, or regulation ... under any ... authority of the Administrator, is provided to any other Federal agency for formal review and comment, shall make available to the Board such proposed criteria document, standard, limitation, or regulation, together with relevant scientific and technical information in the possession of the Environmental Protection Agency on which the proposed action is based."

The CASAC provides independent advice to the EPA Administrator on the technical bases for the EPA's national ambient air quality standards program, including peer review of Integrated Science Assessments, Risk and Exposure Assessments, and Policy Assessments for criteria air pollutants.

These advisory committees generally provide advice on high-priority scientific and technical issues in written form, either as peer reviews of final draft technical reports (e.g., guidelines, assessments, research strategies) or work products (e.g., analytical methods, models, databases) or advisories (written advice on works in progress). In some cases, where the EPA is committed to interact with the SAB iteratively in developing a scientific product or activity, advisory members may provide an initial consultation to provide advice at an early stage in a science activity. Such a consultation will be followed at a later stage by an advisory or peer review report. The SAB also may provide oral rapid consultative advice in the event of an emergency, such as a natural disaster, and may conduct *de novo* studies on emerging science issues or overarching topics of importance to the EPA.

Because resources are always limiting, the SAB Staff Office uses several criteria for selecting project proposals proposed by the agency. Advisory project proposals best suited for consideration by the SAB and CASAC are those that meet several of the following criteria:

- General Criterion:
 - Provides an opportunity to make a difference in the science that supports the agency's mission.
- Client-Related Criteria:
 - Supports major regulatory or risk management initiatives.
 - Serves leadership interests (e.g., the Administrator, Congress).
 - Supports EPA strategic priorities.
- Science-Driven Criteria:
 - Involves scientific approaches that are new to the EPA.
 - Addresses areas of substantial uncertainties.
- Problem-Driven Criteria:
 - Involves major environmental risks.
 - Relates to emerging environmental issues.
 - Exhibits a long-term outlook.
- Organizational Criteria:
 - Serves as a model for future agency methods.
 - Requires the commitment of substantial resources to scientific or technological development.
 - Transcends organizational boundaries, within or outside the EPA (includes international boundaries).
 - Strengthens the agency's basic capabilities.

In addition, the SAB Staff Office considers the overall mix of the nominated project proposals for a specific fiscal year, as well as the time and available resources needed to take on the projects.

Process for Submitting Nominations

Any office desiring to take a product, activity or issue to the SAB for a peer review, advisory project nomination or consultation is requested to complete the two-step process described below.

Step 1 – Project Identification and Nomination. Each year, the Assistant Administrators and Regional Administrators are asked to send the SAB Staff Office Director a memorandum that lists all advisory project nominations, with the highest priority nominations for the next fiscal year identified

Step 2 – Electronic Project Sheet. Nominators are asked to submit an electronic project sheet for each individual project to be considered for SAB or CASAC attention. The project sheets are created after establishing or updating the related Peer Review Project or Science Activity in the agency’s Science Inventory. The Science Inventory entries must be approved by their Peer Review Coordinator or Science Activity Coordinator for the specific program or regional office. Project sheets should be filled out for all desired projects, including previously submitted projects for which no project planning meeting has occurred between the program or regional office and the SAB Staff Office Director. The electronic Project sheet may be accessed and completed through the SAB Product Database; contact the SAB Staff Office for information about how to access the database to create a project sheet. The information fields required for the electronic project sheet are provided in Table E-1.

Process for Keeping Informed About the Decisions Made

After receiving project nominations, the SAB Staff Office will discuss project priorities with each EPA program and regional office. The Staff Office also discusses project priorities with the chartered SAB, which includes the chair of the CASAC. The SAB Staff Office will consult with the EPA Administrator, Deputy Administrator and Science Advisor to the Administrator to develop an annual operating plan that includes the highest priority projects. Additionally, projects may be added or deleted at any time during the fiscal year, as requested by EPA senior management, Congress and the SAB.

The SAB Staff Office will identify a point of contact for each advisory request and keep requesting offices informed about the status of advisory activities. The SAB website (www.epa.gov/sab) provides current information about advisory activities once they are announced to the public. This information includes the *Federal Register* notice announcing the advisory activity, information about panel formation, public meetings, draft reports, quality review by the chartered SAB (which reviews and approves all advisory reports), final reports to the Administrator, and the Administrator’s responses to final reports.

The SAB and CASAC are federal advisory committees subject to the Federal Advisory Committee Act. For more information about how these advisory committees operate and the roles of the public and the agency in that process, please see *Advisory Committee Meetings and Report Development: Process for Public Involvement* (EPA-SABSO-04-001).

EPA Staff with questions about the SAB Product Database or the process for submitting nominations to the EPA SAB may contact the SAB Staff Office.

Table F-1. Information Fields for Science Advisory Board (SAB) Project Sheet

1. Project Title
2. Project Short Title
3. Fiscal Year SAB Activity Desired to Begin
4. Quarter SAB Activity Desired to Begin
5. Requesting Assistant Administrator/Regional Administrator
6. Requesting Office
7. Requesting Official (Division Director or above)
8. Requesting Official's Title
9. Program Contact
10. Program Contact's Phone
11. Program Contact's Mail Code
12. Background for This Advisory Activity
13. Tentative Charge
14. Applicable GPRA Goal and Objective
15. Description of and Citation for Any Legal Obligation/Directive for SAB Review:
16. Principal Interested and Affected Parties
17. Type of SAB Advice Requested
18. Why Should the SAB Advise on This Project?
19. Disciplinary Expertise
20. Budget:
 - FY
 - Extramural Budget
 - FTE
21. Past Peer Reviews
22. Quality Management/Quality Assurance:

APPENDIX G. EPA FEDERAL ADVISORY COMMITTEES THAT PERFORM SCIENTIFIC PEER REVIEW

The Federal Advisory Committee Act (FACA; 5 U.S.C., App. 2) is a statute designed to ensure that the Congress and the public are kept informed of the activities of advisory committees that report to the executive branch of the federal government. Key provisions of the law are that committees must have balanced membership in terms of points of view for the tasks to be performed, meetings are to be announced ahead of time and open to interested members of the public, detailed meeting minutes are to be kept, and all materials presented to or prepared by or for the committees are to be made available to the public. In addition, all federal advisory committees must have a formal charter filed with the head of the agency and the Congress. For more information on Federal Advisory Committees at the EPA, see <http://www.epa.gov/ocem/faca/>.

The following scientific advisory committees have been established at the EPA to provide scientific advice and peer review:

- **EPA Science Advisory Board (SAB):** a statutory committee established under the Environmental Research, Development, and Demonstration Authorization Act (ERDDAA, codified at 42 U.S.C. § 4365) to provide independent advice and peer review to the EPA's Administrator on the scientific and technical aspects of environmental issues, including the adequacy and scientific basis of any EPA proposed criteria document, standard, limitation or regulation. The SAB reports directly to the EPA Administrator. For more information on the SAB, see <http://www.epa.gov/sab>.
- **EPA Clean Air Scientific Advisory Committee (CASAC):** a statutory committee established under the Clean Air Act (42 U.S.C. § 7409(c)(2)) to provide independent advice on the scientific and technical aspects of air quality criteria and standards, research related to air quality, sources of air pollution, and strategies to attain and maintain air quality standards and prevent significant deterioration of air quality. The CASAC reports directly to the EPA Administrator. For more information on the CASAC, see <http://www.epa.gov/casac>.
- **FIFRA Scientific Advisory Panel (SAP):** a statutory committee established under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 U.S.C. § 136w) that provides advice, evaluations and recommendations on pesticides and pesticide-related issues relating to the impact on health and the environment of the EPA's pesticide-related regulatory actions. The FIFRA SAP reports to the EPA Administrator through EPA's Assistant Administrator for the Office of Chemical Safety and Pollution Prevention (OCSPP). For more information on the FIFRA SAP, see <http://www.epa.gov/scipoly/sap>.
- **EPA Board of Scientific Counselors (BOSC):** a discretionary committee established by the EPA to provide advice and recommendations on technical and management issues relating to the Office of Research and Development's (ORD) research program. As appropriate, the BOSC coordinates its work with the SAB. The BOSC reports to the EPA Administrator through the Assistant Administrator for the Office of Research and Development, in consultation with the Administrator's Science Advisor. For more information on the BOSC, see <http://www.epa.gov/OSP/bosc>.

- **Human Studies Review Board (HSRB):** a statutory committee that provides scientific or policy advice to the EPA on the scientific and ethical aspects of human subjects research. The HSRB reports to the EPA Administrator through the EPA's Science Advisor. For more information about the HSRB, see <http://www.epa.gov/osa/hsrb>.

APPENDIX H. EXAMPLES OF PEER REVIEW CHARGES

It should be noted that certain questions posed in charges can be responded to with a yes or no answer. Clearly, this is not the type of response the agency generally wants; therefore, it is important to phrase charge questions carefully to ensure a fully satisfactory and thoughtful response. Where a yes or no answer might be expected, charge questions should ask for a full explanation supporting the yes or no answer.

Charges can run the gamut from rather simplistic to highly complex, depending on the nature of the review. The examples shown here cover a variety of types. Examples 1 through 3 have less complex questions and are looking for the overall quality of the efforts. Examples 4 and 5 have numerous technical questions that need to be addressed and are, therefore, more complex in their nature.

Other charges that have been used can be found on the Science Advisory Board (SAB) website at <http://www.epa.gov/sab> and the Scientific Advisory Panel (SAP) website at <http://www.epa.gov/scipoly/sap/index.htm>.

Charge Example 1: HISA Example

**US ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF RESEARCH AND DEVELOPMENT
*National Coastal Condition Report IV***

Charge to the Peer Reviewers

This document represents a collaborative effort among EPA's Office of Water and Office of Research and Development, NOAA, and US Fish and Wildlife Service. Our objective is to provide regional and national assessments of the condition of coastal waters of the U.S.

Background:

The National Coastal Condition Reports represent collaboration among EPA (OW and ORD), NOAA, USFWS, and coastal state agencies. The first National Coastal Condition Report (NCCR I), published in 2001, reported that the nation's coastal resources were in fair condition. The NCCR I used available data from 1990 to 1996 to characterize approximately 70% of the nation's coastal resources. The second National Coastal Condition Report (NCCR II) was based on data from 1997 to 2000 representative of 100% of coastal area in the contiguous 48 states and Puerto Rico, and showed that the nation's coastal waters continued to be in fair condition. The 3rd National Coastal Condition Report (NCCR III) assessed condition of the nation's coastal waters, including Alaska and Hawaii, based primarily on NCA data collected in 2001 and 2002, and indicated that the condition remained fair. For the first time, NCCR III also included comparison of changes in condition from 1990 to 2002, presented for the nation's coastal waters and by region.

The National Coastal Condition Report IV (NCCR IV) is the fourth in a series of environmental assessments of U.S. coastal waters and the Great Lakes. The report includes assessments of all the nation's coastal waters in the contiguous 48 states and Puerto Rico, south-eastern Alaska, Hawaii, the U.S. Virgin Islands, Guam, and American Samoa. The NCCR IV presents four main types of data: (1) coastal monitoring data, (2) coastal ocean/offshore monitoring data, (3) offshore fisheries data, and (4) beach assessment and fish advisory data. The NCCR IV relies heavily on coastal monitoring data from EPA's National Coastal Assessment (NCA) to assess coastal condition by evaluating five indices of condition—water quality, sediment quality, benthic community condition, coastal habitat loss, and fish tissue contaminants. Coastal waters are valuable from both an environmental and economic perspective. These waters are vulnerable to pollution from diverse sources. EPA expects that this report on the condition of coastal waters will support more informed decisions concerning protection of this resource and will increase public awareness about the extent and seriousness of pollution in these waters.

The overall condition of the nation's coastal waters is fair, using five key indices of ecological health [water quality index (including dissolved oxygen, chlorophyll a, nitrogen, phosphorus, and water clarity), sediment quality index (including sediment toxicity, sediment contaminants, and sediment total organic carbon), benthic index, coastal habitat index, and a fish tissue contaminants index]. For each of these five key indices, a score of good, fair, or poor was assigned to each coastal region of the U.S. These ratings were then averaged to create overall regional and national scores illustrated using "traffic light" color scoring.

Purpose:

The purpose of this review is to obtain expert feedback and comments on the draft "*National Coastal Condition Report IV*." In your review, please provide written responses to the questions below. Additional comments and recommendations for improving the report and associated methodology are also welcome.

Charge Questions:

- 1) Are the methods used to assess coastal condition supported by sound scientific principles?

- 2) Selection and use of coastal monitoring indicators are described in Chapter 1 (the Introduction). Do the coastal monitoring indicators used to assess coastal condition nationally and regionally and do the criteria for ranking condition as good, fair, or poor reflect the primary environmental concerns of state, regional, and national resource managers?
- 3) Are the report's conclusions supported by the analyses and results?
- 4) Are the conclusions regarding changes in coastal condition over time supported by the data and analyses presented?
- 5) Does this report represent an important contribution to the state of the science for assessment of coastal waters?
- 6) Do the four approaches to assessing coastal condition (i.e., coastal monitoring data, coastal ocean/offshore monitoring data, offshore fisheries, and assessment and advisory data) clearly represent aspects of coastal condition that are informative and not redundant?
- 7) Are the shortcomings of available data and assessment approaches clearly articulated?
- 8) This report is quite lengthy. For those reviewing the entire document or individual chapters, do you have any recommendations for omitting parts of this report to shorten the length?
- 9) Please discuss any controversies that may be raised by the conclusions presented in this report.

Please provide written comments to EPA's Peer Review Coordinator, [name], by [date]. Your review may be sent by regular mail to the address below, by e-mail to [email] or by fax to [fax number].

If you have any questions concerning the draft report or the charge, please contact me at [phone number] or [email]. We sincerely thank you for your input to this important peer review.

Charge Example 2: Charge for a Letter Review for an Economic Analysis

Letter Reviews of Chapter 10 of the EPA Economic Analysis Guidelines

Document: Chapter 10 entitled “Environmental Justice, Children’s Environmental Health, and Other Distributional Considerations” -- approximately 37 pages total

Task: A letter peer review of this report by three (3) external economists with Level 3 expertise.

- At least one (1) economist will have specific expertise with environmental justice analysis.
- At least one (1) economist will have specific expertise with public health and distributional analysis.
- At least one (1) economist will have familiarity with environmental regulatory impact analysis and how risk assessment information is used to inform regulatory impact analysis.

Deliverable: Written review comments from each reviewer

Deadline: 4 weeks from receipt of document for review

Charge Questions for External Peer Review of Chapter 10: Environmental Justice, Children’s Environmental Health, and Other Distributional Considerations

1. Please provide your overall impressions of the clarity and technical accuracy of the discussion in the chapter for analyzing and presenting quantitative information about the distributional effects of environmental regulations with regard to race and income.
2. A brief overview of the environmental justice literature from the economics field is provided. Are there any pertinent citations that should be added to the discussion?
3. The chapter presents a suite of methods to describe the distributional effects of environmental regulations. Please comment on the technical accuracy and clarity with which each method is described. Are there any methods or relevant literature that should be added to the discussion or deleted?
4. The chapter primarily describes the use of Census data for conducting analyses. Are there additional data sources that should be included?
5. Does the text box on Social Welfare Functions and Inequality Indices provide a reasonable discussion of the available literature and challenges in using these indices in the context of measuring changes in the distribution of environmental quality? Are the conclusions regarding the use of SWFs and inequality indices in this context technically accurate and scientifically grounded?
6. The chapter recommends that all economically significant rules include summary statistics on EJ, with supplemental methods for measuring and estimating EJ impacts as appropriate for the action. Please comment on whether this is a reasonable approach for presenting the analytic

results, and if there are other recommended ways to present the analytic results to inform decision-making?

7. Please provide your overall impressions of the clarity and technical accuracy of the discussion of elderly, children and intergenerational equity. Should other methods or considerations be added to this discussion?
8. Are there additional equity dimensions that should be considered in this chapter?

Charge Example 3: ISI (Panel Review)

Charge to External Reviewers for the IRIS Toxicological Review of Biphenyl

September 2011

Introduction

The U.S. Environmental Protection Agency (EPA) is seeking an external peer review of the draft Toxicological Review of Biphenyl that will appear on the Agency's online database, the Integrated Risk Information System (IRIS). IRIS is prepared and maintained by the EPA's National Center for Environmental Assessment (NCEA) within the Office of Research and Development (ORD). The existing IRIS assessment for biphenyl includes a chronic reference dose (RfD) posted in 1989 and a cancer weight-of-evidence descriptor posted in 1991. The external review draft Toxicological Review of Biphenyl includes an RfD and a cancer assessment.

Charge Questions

Below is a set of charge questions that address scientific issues in the draft Toxicological Review of Biphenyl. Please provide detailed explanations for responses to the charge questions. EPA will also consider reviewer comments on other major scientific issues specific to the hazard identification and dose-response assessment of biphenyl. Please identify and provide the rationale for approaches to resolve the issues where possible. Please consider the accuracy, objectivity, and transparency of EPA's analyses and conclusions in your review.

General Charge Questions:

1. Is the Toxicological Review logical, clear and concise? Has EPA clearly presented and synthesized the scientific evidence for noncancer and cancer health effects of biphenyl?
2. Please identify any additional peer-reviewed studies from the primary literature that should be considered in the assessment of noncancer and cancer health effects of biphenyl.

Chemical-Specific Charge Questions:

(A) Oral reference dose (RfD) for biphenyl

1. A developmental toxicity study of biphenyl in Wistar rats (Khera et al., 1979) was selected as the basis for the derivation of the RfD. Please comment on whether the selection of this study is scientifically supported and clearly described. If a different study is recommended as the basis for the RfD, please identify this study and provide scientific support for this choice.
2. A developmental effect in Wistar rats (i.e., fetal skeletal anomalies) was concluded by EPA to be an adverse effect and was selected as the critical effect for the derivation of the RfD. Please comment on whether the selection of this critical effect and its characterization is scientifically supported and clearly described. If a different endpoint is recommended as the critical effect for deriving the RfD, please identify this effect and provide scientific support for this choice.
3. Benchmark dose (BMD) modeling was conducted using the incidence of litters with fetal skeletal anomalies to estimate the point of departure (POD) for derivation of the RfD. Has the modeling been appropriately conducted and clearly described based on EPA's draft *Benchmark Dose Technical Guidance Document* (U.S. EPA, 2000)? Is the choice of the benchmark response (BMR) for use in

deriving the POD (i.e., a BMR of 10% extra risk of the incidence of litters with any fetal skeletal anomalies) supported and clearly described?

4. Please comment on the rationale for the selection of the uncertainty factors (UFs) applied to the POD for the derivation of the RfD. Are the UFs appropriate based on the recommendations described in *A Review of the Reference Dose and Reference Concentration Processes* (U.S. EPA, 2002; Section 4.4.5) and clearly described? If changes to the selected UFs are proposed, please identify and provide scientific support for the proposed changes.

(B) Inhalation reference concentration (RfC) for biphenyl

1. The draft Toxicological Review of Biphenyl did not derive an RfC. Has the justification for not deriving an RfC been clearly described in the document? Are there available data to support the derivation of an RfC for biphenyl? If so, please identify these data.

(C) Carcinogenicity of biphenyl

1. Under EPA's *Guidelines for Carcinogen Risk Assessment* (U.S. EPA, 2005; www.epa.gov/iris/backgrd.html), the draft Toxicological Review of Biphenyl concludes that the database for biphenyl provides "suggestive evidence of carcinogenic potential" by all routes of exposure. Please comment on whether this characterization of the human cancer potential of biphenyl is scientifically supported and clearly described.
2. EPA has concluded that biphenyl-induced urinary bladder tumors in male rats is a high-dose phenomenon involving sustained occurrence of calculi in the urinary bladder leading to transitional cell damage, sustained regenerative cell proliferation, and eventual promotion of spontaneously initiated tumor cells in the urinary bladder epithelium. Please comment on whether this determination is scientifically supported and clearly described. Please comment on data available that may support an alternative mode of action for biphenyl-induced urinary bladder tumors.
3. EPA has concluded that there is insufficient information to identify the mode(s) of carcinogenic action for biphenyl-induced liver tumors in mice. Please comment on whether this determination is appropriate and clearly described. If it is judged that a mode of action can be established for biphenyl-induced mouse liver tumors, please identify the mode of action and its scientific support (i.e., studies that support the key events, and specific data available to inform the shape of the exposure-response curve at low doses). *Oral Slope Factor (OSF)*
4. A two-year cancer bioassay of biphenyl in B6F1 mice (Umeda et al., 2005) was selected as the basis for the derivation of the OSF. Please comment on whether the selection of this study is scientifically supported and clearly described. If a different study is recommended as the basis for the OSF, please identify this study and provide scientific support for this choice.
5. The incidence of liver tumors (i.e., adenomas or carcinomas) in female mice was selected to serve as the basis for the derivation of the OSF. Please comment on whether this selection is scientifically supported and clearly described. If a different cancer endpoint is recommended for deriving the OSF, please identify this endpoint and provide scientific support for this choice.
6. Benchmark dose (BMD) modeling was conducted using the incidence of liver tumors in female mice in conjunction with dosimetric adjustments for calculating the human equivalent dose (HED) to estimate the point of departure (POD). A linear low-dose extrapolation from this POD was

performed to derive the OSF. Has the modeling been appropriately conducted and clearly described based on EPA's draft *Benchmark Dose Technical Guidance Document* (U.S. EPA, 2000)? Has the choice of the benchmark response (BMR) for use in deriving the POD (i.e., a BMR of 10% extra risk of the incidence of liver tumors in female mice) been supported and clearly described?

7. EPA has concluded that a nonlinear approach is appropriate for extrapolating cancer risk from male rats to humans because the mode of action analysis suggests that rat bladder tumors occur only after a series of events that begin with calculi formation. At exposure levels below the RfD (i.e., below exposure levels needed to form calculi), no increased risk of cancer is expected. Please comment on whether this approach is scientifically supported and clearly described. Please identify and provide the rationale for any other extrapolation approaches that should be selected.

Inhalation Unit Risk (IUR)

8. The draft Toxicological Review of Biphenyl did not derive an IUR due to the lack of available studies. Are there available data to support the derivation of an IUR for biphenyl? If so, please identify these data.

Charge Example 4: Integrated Science Assessment for a National Ambient Air Quality Standards HISA



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
NATIONAL CENTER FOR ENVIRONMENTAL ASSESSMENT
WASHINGTON, DC 20460

December 6, 2013

MEMORANDUM

OFFICE OF
RESEARCH AND DEVELOPMENT

SUBJECT: CASAC Review of First External Review Draft Integrated Science Assessment for Oxides of Nitrogen - Health Criteria

FROM: John Vandenberg, Ph.D.
Director
National Center for Environmental Assessment
Research Triangle Park Division (B243-01)

TO: Aaron Yeow, M.P.H.
Designated Federal Officer
Clean Air Scientific Advisory Committee
EPA Science Advisory Board Staff Office (1400R)

The First *External Review Draft Integrated Science Assessment (ISA)* for *Oxides of Nitrogen – Health Criteria* prepared by the Environmental Protection Agency's (EPA) National Center for Environmental Assessment - Research Triangle Park Division (NCEA-RTP) as part of EPA's ongoing review of the primary (health-based) national ambient air quality standards (NAAQS) for nitrogen dioxide (NO₂) was released on November 22, 2013. Electronic copies are available for download at <http://www.epa.gov/ncea>. The draft ISA will be reviewed by the Clean Air Scientific Advisory Committee (CASAC) 02 Primary NAAQS Review Panel at a public meeting to be held March 12-13, 2014. We are in the process of distributing the draft ISA for Oxides of Nitrogen to the CASAC Oxides of Nitrogen Panel. I am requesting that you forward our charge to the CASAC Oxides of Nitrogen Panel.

The purpose of the draft ISA is to identify, evaluate, and summarize scientific information on the health effects associated with gaseous oxides of nitrogen. The ISA is intended to "accurately reflect the latest scientific knowledge useful in indicating the kind and extent of identifiable effects on public health which may be expected from the presence of [a] pollutant in ambient air" (Clean Air Act, Section 108; 42 U.S.C. 7408). This first external review draft ISA integrates the scientific evidence for review of the primary (health-based) NAAQS for NO₂ and provides draft findings, conclusions, and judgments on the strength, coherence, and plausibility of the evidence. The Preamble presents the process for ISA development, including aspects considered in judging the overall weight of evidence and framework for causal determination. Criteria used to identify relevant studies for inclusion in the ISA are also described in the Preamble. Chapter I provides an integrative summary and conclusions of this assessment. This chapter is supported by detailed information on the relevant evidence available from the multiple disciplines and approaches related to the causal framework (Preamble to the ISA); atmospheric chemistry, ambient concentrations, and exposure to oxides of nitrogen (Chapter 2); dosimetry and modes of action (Chapter 3); health effects of short-term exposure to oxides of nitrogen (Chapter 4); health effects of long-term exposure to oxides of nitrogen (Chapter 5); and lifestages and populations potentially at increased risk for health effects related to oxides of nitrogen (Chapter 6). The final ISA for Oxides of Nitrogen, in conjunction with additional technical assessments, will provide the scientific basis for EPA's decision regarding the adequacy of the primary NAAQS for NO₂ to protect human health.

The purpose of this memo is to provide charge questions related to a number of important topics addressed in the ISA. Following the CASAC and public review of the draft ISA, NCEA-RTP will produce a second draft ISA, which will be released the summer of 2014.

Charge to the CASAC Oxides of Nitrogen Panel

EPA has aimed to succinctly present and integrate the policy-relevant scientific evidence for the review of the NO₂ NAAQS while also sufficiently describing how scientific information was evaluated in forming the conclusions presented. Previous panels have emphasized the importance of older studies and concluded that if older studies are open to reinterpretation in light of newer data and/or they remain the definitive works available in the literature, they should be discussed in detail to reinforce key concepts and conclusions. In considering subsequent charge questions and recognizing an overall goal of producing a clear and concise document, are there topics that should be added or receive additional discussion? Similarly, are there topics for which discussion should be shortened or removed? Does the Panel have opinions on how the document can be shortened without eliminating important and necessary content?

In addition, we ask the Panel to focus on the following specific questions in their review:

1. The Executive Summary is intended to provide a concise synopsis of the key findings and conclusions of the ISA for a broad range of audiences. Please comment on the clarity with which the Executive Summary communicates the key information from the ISA. Please provide recommendation on information that should be added or information that should be left for discussion in the subsequent chapters of the ISA.
2. Chapter 1 summarizes key information from the Preamble about the process for developing an ISA. Chapter 1 also presents the integrative summary and conclusions from the subsequent detailed chapters of the ISA for Oxides of Nitrogen and characterizes available scientific information on policy-relevant issues.
 - a. Please comment on the usefulness and effectiveness of the summary presentation. Please provide recommendations on approaches that may improve the communication of key ISA findings to varied audiences and the synthesis of available information across subject areas.
 - b. What are the Panel's thoughts on the application of the Health and Environmental Research Online (HERO) system to support a more transparent assessment process?
 - c. To what extent does Chapter 1 communicate the key scientific information on sources, atmospheric chemistry, ambient concentrations, exposure, and health effects of oxides of nitrogen as well as at-risk lifestyles and populations? What information should be added or is more appropriate to leave for discussion in the subsequent detailed chapters?
 - d. What are the Panel's thoughts on the rationale presented for forming causal determinations for NO₂ exposure only and considering epidemiologic results for associations between NO_x and health effects in causal determinations for NO₂ (Sections 1.4.1 and 1.4.3)?

- e. Based on individual Panel member recommendations from June 2013¹ on the *Draft Plan for the Development of the Integrated Science Assessment for Nitrogen Oxides – Health Criteria* (May 2013)², Chapter 1 presents an integrated evaluation of various epidemiologic lines of evidence that inform the independent effects of NO₂ exposure (Section 1.5). This section discusses available information that is not necessarily included in the health effect chapters on potential confounding by copollutants and other factors as well as the potential for NO₂ to serve primarily as an indicator of traffic-related pollutants and traffic proximity. This discussion is in Chapter 1 because it integrates information across Chapters 2, 4, and 5. Please comment on the extent to which this discussion is informative in describing how the evidence of independent effects of NO₂ is evaluated in this ISA. Does the discussion accurately reflect the available evidence? If this discussion is informative, what information could be added or removed to improve the discussion. Should the discussion remain in Chapter 1 or should it be moved to another part of the ISA?
 - f. Please comment on the extent to which the discussion of various policy-relevant considerations is clearly described and integrates relevant information (Section 1.6). Please identify any other relevant information that would be useful to include.
3. Chapter 2 describes scientific information on sources, atmospheric chemistry, air quality characterization, and human exposure of oxides of nitrogen.
 - a. To what extent is the information presented regarding characteristics of sources, chemistry, monitoring concentrations, and human exposure accurate, complete, and relevant to the review of the NO₂ NAAQS?
 - b. To what extent are the analyses of air quality presented clearly conveyed, appropriately characterized, and relevant to the review of the NO₂ NAAQS?
 - c. How effective are the source category groupings and the discussion of source emissions in understanding the importance and impacts of oxides of nitrogen from different sources on both national and local scales?
 - d. Please comment on the extent to which available information on the spatial and temporal trends of ambient oxides of nitrogen at various scales has been adequately and accurately described.
 - e. Please comment on the accuracy, level of detail, and completeness of the discussion regarding exposure assessment and the influence of exposure error on effect estimates in epidemiologic studies of the health effects of NO₂.
 4. Chapter 3 characterizes scientific evidence on the dosimetry and modes of action for NO₂ and nitric oxide (NO). Dosimetry and modes of action are bridged by reactions of NO₂ with components of the extracellular lining fluid and by reactions of NO with heme proteins, processes that play roles in both uptake and biological responses.
 - a. Given the ubiquity of reactive substrates and reaction rate of NO₂ with these substrates, it appears unlikely NO₂ itself will penetrate through the lung lining fluid to the epithelium (see Table 3-1). Please comment of the adequacy of the discussion of NO₂ uptake and reactivity in the respiratory tract.

¹ The individual panel member comments are available at [http://yosemite.epa.gov/sab/sabproduct.nsf/08EF0A3789CDB13A85257B8E006A496E/\\$File/EPA-CASAC-13-006+unsigned.pdf](http://yosemite.epa.gov/sab/sabproduct.nsf/08EF0A3789CDB13A85257B8E006A496E/$File/EPA-CASAC-13-006+unsigned.pdf)

²The draft plan for development of the ISA is available at <http://yosemite.epa.gov/sab/sabproduct.nsf/4620a620d0120f93852572410080d786/bc264e65792e015f85257b4a007128c6!OpenDocument>

- b. Since existing dosimetric models for NO₂ do not consider the probability of oxidants/cytotoxic products reaching target sites, it was concluded that these models are inadequate for within or cross species comparisons. Please comment on the validity of this conclusion and identify and comment on the validity of any alternative conclusions.
 - c. Please comment on the adequacy of the discussion of endogenously occurring NO₂ and NO and their reaction products in comparison to that derived from ambient inhalation.
 - d. To what extent are the discussion and integration of the potential modes of action underlying the health effects of exposure to oxides of nitrogen presented accurately and in sufficient detail? Are there additional modes of action that should be included in order to characterize fully the underlying mechanisms of oxides of nitrogen?
5. Chapters 4 and 5 present assessments of the health effects associated with short-term and long-term exposure to oxides of nitrogen, respectively. The discussion is organized by health effect category, outcome, and scientific discipline.
- a. To what extent do the discussions in this chapter accurately reflect the body of evidence from epidemiologic, controlled human exposure and toxicological studies?
 - b. Please comment on the balance of discussion of evidence from previous and recent studies in informing the causal determinations.
 - c. Please comment on the adequacy of the discussion of the strengths and limitations of the evidence in the text and tables within Chapters 4 and 5 and in the evaluation of the evidence in the causal determinations.
 - d. What are the views of the panel on the integration of epidemiologic, controlled human exposure, and toxicological evidence, in particular, on the balance of emphasis placed on each source of evidence? Please comment on the adequacy with which issues related to exposure assessment and mode of action are integrated in the health effects discussion. Please provide recommendations on information in other chapters of the ISA that would be useful to integrate with the health effects discussions in these chapters.
 - e. Please comment on the appropriateness of using experimental and epidemiologic evidence for morbidity effects to inform the biological plausibility of total mortality associated with short-term (Section 4.4) and long-term (Section 5.5) NO₂ exposure and in turn, to inform causal determinations.
 - f. Section 4.2.2 discusses the effect of short-term NO₂ exposure on airways responsiveness. This section focuses primarily on an EPA meta-analysis developed for this ISA of airway responsiveness data for individuals with asthma and secondarily on the potential of various factors to affect airways hyperresponsiveness independently or in conjunction with NO₂ exposure in controlled human exposure studies. This material presently is unpublished and we ask the Panel to provide the peer review for the analysis, in particular, to comment on the appropriateness of the methodology utilized for the meta-analysis, the conclusions reached based this analysis, and its use in the draft ISA. With regard to factors potentially affecting airways responsiveness, please comment on the adequacy of this discussion. Are there other modifying factors that should be considered?

- g. The 2008 ISA for Oxides of Nitrogen stated that one of the largest uncertainties was the potential for health effects observed in association with NO₂ exposure to be confounded by correlated copollutants. To what extent has evidence that informs independent effects of NO₂ been adequately discussed in Chapters 4 and 5 and appropriately interpreted as reducing uncertainty (for example, evaluation of copollutant model results)? Has the current draft ISA appropriately considered recent epidemiologic findings regarding potential copollutant confounding in causal determinations? Please provide comments specifically for respiratory effects, cardiovascular effects, and total mortality of short-term NO₂ exposure.
 - h. To what extent is the causal framework transparently applied to evidence for each of the health effect categories evaluated to form causal determinations? How consistently was the causal framework applied across the health effect categories? Do the text and tables in the summaries and causal determinations clearly communicate how the evidence was considered to form causal determinations?
 - i. What are the views of the panel regarding the clarity and effectiveness of figures and tables in conveying information about the consistency of evidence for a given health endpoint? In particular, was the use of the tables and figures in both the text and online in the HERO database effective in providing additional information on the studies evaluated? Are there tables and figures in the ISA that would be more appropriate to include as a resource in the HERO database?
6. Chapter 6 evaluates scientific information and presents conclusions on factors that may modify exposure to NO₂, physiological responses to NO₂ exposure, or risk of health effects associated with NO₂ exposure. Consistent with the ISAs for ozone and lead, conclusions on these at-risk factors inform at-risk lifestages and populations.
 - a. How effective are the categories of at-risk factors in providing information on potential at-risk lifestages and populations? Is there information available on other key at-risk factors that is not included in the first draft ISA and should be added?
 - b. To what extent do the discussions in this chapter accurately reflect the body of available evidence from epidemiologic, controlled human exposure, and toxicological studies, including the extent to which evidence indicates that the effects of NO₂ exposure are independent of other traffic-related copollutants?
 - c. Please comment on the consistency and transparency with which the framework for drawing conclusions about at-risk factors has been applied in this ISA.
 - d. To what extent is available scientific evidence on factors that modify exposure to NO₂ discussed in the chapter and adequately considered in conclusions for at-risk lifestages or populations?

We look forward to discussing these issues with the CASAC Oxides of Nitrogen Panel at our upcoming meeting. Should you have any questions regarding the draft ISA for Oxides of Nitrogen, please feel free to contact Dr. Steven Dutton (919-541-5035, dutton.steven@epa.gov) or Dr. Molini Patel (919-541-1492, patel.molini@epa.gov).

cc: Aaron Yeow, SAB, OA
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Charge Example 5: Science Advisory Board Example

**Animal Feeding Operations Air Emissions Estimating Methodologies
From the National Air Emissions Monitoring Study**

MEMORANDUM

This memorandum requests that the Science Advisory Board (SAB) review and comment on the draft emissions estimating methodologies (EEMs) for animal feeding operations (AFOs). In preparation for this review, the SAB has formed the *Animal Feeding Operations Emission Review Panel*. We envision conducting multiple meetings of this panel to cover the material we are requesting to be reviewed. This memorandum contains background material and charge questions for review by the expert SAB Panel at the initial meeting. We request that these materials be forwarded to the SAB Panel for their review.

As the attachment and associated documents illustrate, the EPA staff has carefully considered the data collected as part of the National Air Emissions Monitoring Study (NAEMS) and now ask the Panel to refine and comment upon our work thus far to create EEMs. To bound and define the discussion, the attachment offers charge questions for the Panel to consider.

By way of background, in 2005, the EPA entered a voluntary consent agreement with the AFO industry in which AFOs that chose to sign the Air Compliance Agreement (Agreement) shared responsibility for funding a nationwide emissions monitoring study. The NAEMS monitoring protocol was developed through a collaborative effort of AFO industry experts, university scientists, U.S. Department of Agriculture and EPA scientists and other stakeholders. The monitoring study was designed to gather data for developing methodologies for estimating emissions from AFOs and to help AFOs determine and comply with their regulatory responsibilities under the Clean Air Act (CAA), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), and the Emergency Planning and Community Right-To-Know Act (EPCRA). Once the EPA publishes the applicable EEMs, the Agreement requires each participating AFO to certify that it is in compliance with all relevant requirements of the CAA, CERCLA and EPCRA.

We appreciate your efforts and those of the Panel to prepare for the upcoming meeting and look forward to discussing this project in detail. Questions regarding the attached materials should be directed to [name], EPA-OAQPS ([telephone]; [email]).

Attachment

ATTACHMENT

Regulatory Background

In 2005, the EPA entered a voluntary consent agreement with the animal feeding operations (AFO) industry in which AFOs that chose to sign the Air Compliance Agreement (Agreement) shared responsibility for funding the National Air Emissions Monitoring Study (NAEMS). Approximately 2,600 AFOs, representing nearly 14,000 facilities that include broiler, dairy, egg layer and swine operations, received the EPA's approval to participate in the Agreement.

To provide a framework for the NAEMS, AFO industry experts, university and government scientists and other stakeholders collaborated to develop a comprehensive monitoring plan. The study was designed to generate scientifically credible data to characterize emissions from the participating animal sectors.

Consistent with the Agreement, the Agriculture Air Research Council (AARC), a nonprofit entity comprised of participating AFO industry representatives, administered the monitoring study. The AARC was responsible for selecting the Independent Monitoring Contractor (IMC) and the study's Science Advisor with EPA approval. The Agreement outlined the roles and responsibilities of the AARC, the IMC and the Science Advisor.

The monitoring plan specified the general geographic location of the farms to be monitored, animal production phase, ventilation type, manure management/handling system and other pertinent information for each animal sector.

- For broilers, two sites were to be monitored - one on the West Coast and the other in the Southeast. Both were to be mechanically ventilated and have litter on the floor.
- For the swine industry, the sites were to be located in the Southeast (sow and finisher), Midwest (sow and finisher), and West (sow). Mechanically-ventilated buildings, a deep pit building, lagoons and basin manure storage types were to be monitored.
- For dairy, both naturally- and mechanically-ventilated buildings, lagoons and basins were monitored. Five dairies were monitored, one dairy in each of the following geographical areas: Northeast, Midwest, Northwest, West and South.

For confinement sources, the IMC monitored for ammonia (NH₃), particulate matter (PM₁₀, PM_{2.5}, TSP), volatile organic compounds (VOCs) and hydrogen sulfide (H₂S). For lagoons and basins, H₂S, NH₃ and VOC were to be monitored. Accordingly, the EPA is then responsible for developing EEMs for each of these pollutants.

Charge to the Science Advisory Board (SAB) AFO Air Emissions Review Panel

In preparation for the first and second meeting, the EPA has analyzed the NAEMS data for two broiler sites and nine swine and dairy lagoons/basins. For the purpose of this study, the EPA used the description of a lagoon and basin as provided in the MidWest Plan Service "Manure Storages" (MWPS-18 Section 2) document. According to MWPS, "A lagoon is a biological treatment system designed and operated for biodegradation of organic matter in animal manure to a more stable end product. A basin, while similar to but smaller than a lagoon, is designed to store manure only and is not a treatment system."

For a broiler confinement house, the EPA has developed draft EEMs for NH₃, PM₁₀, PM_{2.5}, TSP, VOC and H₂S. For swine and dairy lagoons/basins, the EPA has only developed a draft EEM for NH₃. The documents provided to the SAB describe the sites monitored; the data submitted to the EPA; and a detailed discussion of the statistical methodology used to develop the draft EEMs. This material is provided to inform the SAB panel of the EEM development process used by the agency. In subsequent meetings, the EPA will address draft EEMs for egg-layers, swine and dairy confinement houses and other pollutants for swine and dairy lagoons/basins.

Issue 1: Statistical Methodology used to develop draft EEMs

The EPA seeks the SAB's input on the statistical methodology used by the EPA to develop the draft EEMs. Section 7.0 and 8.0 of the broiler document and Section 5.0 of the swine and dairy lagoon/basin document provide an overview of the statistical methodology used to develop the draft EEMs. A flow diagram of the statistical methodology is provided in Figure 7-1 in the broiler document and Figure 5-1 in the swine and dairy lagoon/basin document. The EPA considers this statistical methodology to be the best approach for analyzing the data and intends to use this same approach to develop draft EEMs for the egg-layers, swine and dairy confinement houses.

Using the process described in the sections listed above, we developed a mean trend function that provides a point prediction of emissions under a given set of conditions. We chose an appropriate mean trend function to quantify the relationship between predictor variables and pollutant emissions by analyzing the emissions data and incorporating knowledge of the emissions generating processes. The EEM development process also involves choosing a probability distribution and covariance function to appropriately quantify other contributions to variability in emissions, and thereby to accurately quantify methods at all stages. If necessary, we will adjust the statistical methodology based on our review of the SAB's input.

Question 1: Please comment on the statistical approach used by the EPA for developing the draft EEMs for broiler confinement houses and swine and dairy lagoons/basins. In addition, please comment on using this approach for developing draft EEMs for egg-layers, swine and dairy confinement houses.

Issue 2: Statistical Methodology used to develop swine and dairy lagoon/basin draft EEMs

After conducting an initial analysis of the NAEMS data submitted for swine and dairy lagoons/basins, the EPA decided to focus on developing a draft EEM for NH₃. The EPA's review of current literature indicates that lagoon/basin emissions are influenced by several factors, one of these being lagoon/basin temperature. To ensure that the dataset used to develop the draft EEM represented all seasonal meteorological conditions for the entire two year monitoring period, the EPA decided to combine the swine and dairy data. Combining the swine and dairy lagoon/basin dataset also resulted in combining lagoon and basin emissions data.

To maximize the number of NH₃ emissions measurements used to develop the draft EEM, the EPA used static predictor variables (SPVs) as surrogates for data on lagoon/basin conditions (i.e., nitrogen content of lagoon liquid, lagoon pH, oxidation reduction potential and temperature). The static variables of animal type, total live mass of animal capacity on the farm and the surface area of the lagoon were used to represent NH₃ precursor loading and the potential for release to the air. Consistent with operating parameters associated with statistical degrees-of-freedom, we concluded that two degrees of freedom was the maximum that the data would credibly allow for inclusion in the developing the draft EEM. As a result, the EPA developed three sets of draft EEMs, using the paired combinations of these static variables (i.e., animal type, surface area, farm size) and the continuous variables representing

meteorological conditions (i.e., temperature, atmospheric pressure, humidity, wind speed, solar radiation).

Question 2: Please comment on the agency's decision to combine the swine and dairy dataset to ensure that all seasonal meteorological conditions are represented. In addition, the agency also seeks the SAB's comments on whether the agency should combine lagoon and basin data.

Question 3: Please comment on the agency's decision to use SPVs as surrogates for data on lagoon/basin conditions. Given the uncertainties in that approach, does the SAB recommend that the EPA consider specific alternative approaches for statistically analyzing the data that would allow for the site-specific lagoon liquid characteristics to be used as predictor variables?

Question 4: Does the SAB recommend that EPA consider alternative approaches for developing the draft NH₃ EEM that balances the competing needs for a large dataset (to reflect seasonal meteorological conditions) versus incorporating additional site-specific factors that directly affect lagoon emissions. If so, what specific alternative approaches would be appropriate to consider?

Issue 3: Negative and Zero Data

Some emissions measurements were reported to the EPA as either negative or zero emissions values. When developing the draft EEMs, the EPA used the following general approach regarding inclusion of negative and zero emissions values in the data.

- The EPA evaluated whether the negative or zero values represent the variability in emissions measurements due to the means of obtaining the measurements. For example, negative values for a pollutant concentration might result when the concentration of the pollutant falls below the minimum detection limit of a monitor. For all EEM datasets, the EPA included zero values because these values potentially represent instances where the emissions from the source were zero (e.g., a frozen lagoon), or the background and pollutant concentrations from the source were the same. Regarding negative values, in cases where the dataset available to develop draft EEMs was relatively large and the emissions were significantly greater than zero, the EPA excluded negative emissions values from the EEM datasets. The EPA used this approach to develop the entire broiler confinement house draft EEMs and swine and dairy lagoon/basin NH₃ draft EEMs.
- The EPA reviewed the data to see if the data quality measures were properly performed according to the Quality Assurance Project Plan.
- If the EPA identified data where the quality assurance measures were not followed, we contacted the science advisor to determine if the corrected data could be submitted to the EPA.

The EPA has conducted a preliminary analysis of the swine and dairy lagoon/basin H₂S emissions data. Our analysis indicates that we may need to modify our approach for handling negative and zero data in order to develop a draft H₂S EEM for swine and dairy lagoons/basins. A modification may be needed due to the limited number of H₂S emissions values, the presence of a greater percentage of negative emissions values and emissions values that are closer to zero than the NH₃ emissions for swine and dairy lagoons/basins. The EPA's concern is that failure to include the negative measurements in the dataset, or setting them equal to zero, would result in an EEM that fails to fully quantify uncertainty around the point prediction of emissions attributable to measurement error.

Question 5: Please comment on the EPA's approach for handling negative or zero emission measurements.

Question 6: In the interest of maximizing the number of available data values for development of the draft H2S EEMs for swine and dairy lagoons/basins, does SAB recommend any alternative approaches for handling negative and zero data other than the approach used by the agency.

Issue 4: Volatile Organic Compounds (VOC) Data

The EPA reviewed the VOC data submitted for the California and Kentucky broiler sites. The two sites used different VOC measurement techniques. Based on our analysis of the measurement and analytical techniques and the VOC data, the EPA decided to use only the VOC data from the Kentucky sites when developing the draft VOC EEM.

Question 7: Please comment on the approach EPA used to develop the draft broiler VOC EEM.

APPENDIX I. EXAMPLES OF *FEDERAL REGISTER* NOTICES REQUESTING PUBLIC COMMENT

***Federal Register* Notice: Announcement of Public Comment Period for Draft Document**

Federal Register, Volume 77 Issue 102 (Friday, May 25, 2012)

[Federal Register Volume 77, Number 102 (Friday, May 25, 2012)]

[Notices]

[Pages 31353-31355]

From the Federal Register Online via the Government Printing Office [<http://www.gpo.gov/>]

[FR Doc No: 2012-12808]

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9678-3; Docket ID No. EPA-HQ-ORD-2012-0276]

An Assessment of Potential Mining Impacts on Salmon Ecosystems of
Bristol Bay, AK

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing a public comment period for the draft document titled, “An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska” (EPA-910-R-12-004a-d). The document was prepared by the EPA’s Region 10 (Pacific Northwest and Alaska), EPA’s Office of Water, and EPA’s Office of Research and Development. The EPA conducted this assessment to determine the significance of Bristol Bay’s ecological resources and evaluate the potential impacts of large-scale mining on these resources. EPA will use the results of this assessment to inform the consideration of options consistent with its role under the Clean Water Act. The assessment is intended to provide a scientific and technical foundation for future decision making; EPA will not address use of its regulatory authority until the assessment becomes final and has made no judgment about whether and how to use that authority at this time.

DATES: The public comment period began Friday, May 18, 2012, and ends Monday, July 23, 2012. Technical comments should be in writing and must be received by EPA by Monday, July 23, 2012.

ADDRESSES: The draft “An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska” is available primarily via the Internet on the EPA Region 10 Bristol Bay Web site at www.epa.gov/bristolbay as well as on the National Center for Environmental Assessment’s Web site under the Recent Additions and the Data and Publications menus at www.epa.gov/ncea. A printed copy of the assessment will be placed at public locations in Bristol Bay and in Anchorage, AK. These locations are listed on the Region 10 Web site. A limited number of paper copies are available from the Information Management Team, NCEA; telephone: 703-347-8561; facsimile: 703-347-8691. If you are requesting a paper copy, please provide your name, your mailing address, and the document title, “An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska.” Please also indicate if a paper copy of the full set of appendices is needed.

Comments on the report may be submitted electronically via <http://www.regulations.gov/>, by email, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the SUPPLEMENTARY INFORMATION section of this notice.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the Office of Environmental Information Docket; telephone: 202-566-1752; facsimile: 202-566-1753; or email: ORD.Docket@epa.gov.

For technical information concerning the report, contact Judy Smith; telephone: 503-326-6994; facsimile: 503-326-3399; or email: r10bristolbay@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Information About the Project/Document

The U.S. Environmental Protection Agency (EPA) conducted this assessment to determine the significance of Bristol Bay’s ecological resources and evaluate the potential impacts of large-scale mining on these resources. The EPA will use the results of this assessment to inform the consideration of options consistent with its role under the Clean Water Act. The assessment is intended to provide a scientific and technical foundation for future decision making. The Web site that describes the project is www.epa.gov/bristolbay. This draft document addresses potential impacts to water quality and the salmon fishery that may result from large-scale mining in the Nushagak and Kvichak watersheds of southwest Alaska.

EPA is releasing this draft assessment for the purposes of public comment and peer review. This draft assessment is not final as described in EPA’s information quality guidelines, and it does not represent and should not be construed to represent Agency policy or

views. EPA utilizes public comments as one means to ensure that science products are complete and accurate. EPA is seeking comments from the public on all aspects of the report, including the scientific and technical information presented in the report, the hypothetical mining scenario used, the data and information used to inform assumptions about mining activities and the evaluations of risk to the fishery, and the potential mitigation measures considered (and effectiveness of those measures). EPA is also specifically seeking any additional data or scientific or technical information about Bristol Bay resources or large-scale mining that should be considered in our evaluation.

EPA will consider any public comments submitted in accordance with this notice when revising the document. After public review and comment, EPA's independent contractor, Versar, Inc., will convene an expert panel for independent external peer review of this draft assessment. The public comment period and external peer review meeting are separate processes that provide opportunities for all interested parties to comment on the assessment. The preferred method to submit comments is through the docket, which is described below. Public meetings will be held in Anchorage, Dillingham, Newhalen, Naknek, Nondalton, and New Stuyahok, AK during the week of June 4-8, 2012. Spoken comments will be accepted at these meetings. The external peer review panel meeting is scheduled to be held in Anchorage, AK on August 7, 8, and 9, 2012. The public will be invited to attend on August 7 and 8, 2012. Further information regarding the external peer review panel meeting will be announced at a later date in the Federal Register.

II. How To Submit Technical Comments to the Docket at

<http://www.regulations.gov/>

Submit your comments, identified by Docket ID No. EPA-HQ-ORD-2012-0276, by one of the following methods:

<http://www.regulations.gov/>: Follow the on-line instructions for submitting comments.

Email: ORD.Docket@epa.gov. Include the docket number EPA-HQ-ORD-2012-0276 in the subject line of the message.

Fax: 202-566-1753.

Mail: Office of Environmental Information (OEI) Docket (Mail Code: 2822T), Docket EPA-HQ-ORD-2012-0276, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460. The phone number is 202-566-1752. If you provide comments by mail, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Hand Delivery: The OEI Docket is located in the EPA Headquarters Docket Center, Room 3334, EPA West Building, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public

Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202-566-1744. Deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. If you provide comments by hand delivery, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Comment at a public meeting: Spoken comments will be taken at public meetings during June 4-8, 2012. A court reporter will provide a transcription of comments received at the Anchorage and Dillingham meetings for the docket. Audio recording and written notes will be taken for the docket for comments spoken at Naknek, Newhalen, New Stuyahok, and Nondalton.

Instructions: Direct your comments to Docket ID No. EPA-HQ-ORD-2012-0276. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked "late," and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available on-line at <http://www.regulations.gov/>, including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov/> or email. The <http://www.regulations.gov/> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through <http://www.regulations.gov/>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comments due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comments. Electronic files should avoid the use of special characters and any form of encryption and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at www.epa.gov/epahome/dockets.htm.

Docket: Documents in the docket are listed in the <http://www.regulations.gov/--index>. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy.

Publicly available docket materials are available either electronically at <http://www.regulations.gov/> or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: May 21, 2012.

Darrell Winner,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 2012-12808 Filed 5-24-12; 8:45 am]

BILLING CODE 6560-50-P

***Federal Register* Notice: Announcement of Peer Review Panel Members and Public Comment Period for Draft Charge Questions**

Federal Register, Volume 77 Issue 108 (Tuesday, June 5, 2012)

[Federal Register Volume 77, Number 108 (Tuesday, June 5, 2012)]

[Notices]

[Pages 33213-33215]

From the Federal Register Online via the Government Printing Office [<http://www.gpo.gov/>]

[FR Doc No: 2012-13431]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL-9681-3; EPA-HQ-ORD-2012-0358]

An Assessment of Potential Mining Impacts on Salmon Ecosystems of
Bristol Bay, Alaska--Peer Review Panel Members and Charge Questions

AGENCY: Environmental Protection Agency (EPA).

[[Page 33214]]

ACTION: Notice of availability and public comment period.

SUMMARY: EPA is announcing the peer review panel members assembled by an independent contractor to evaluate the draft document titled, "An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska" (EPA-910-R-12-004a-c). EPA is also announcing a three week public comment period for the draft charge questions to be provided to the peer review panel. The assessment was prepared by the U.S. EPA's Region 10 Office (Pacific Northwest and Alaska), EPA's Office of Water, and EPA's Office of Research and Development. The U.S. EPA conducted this assessment to determine the significance of Bristol Bay's ecological resources and evaluate the potential impacts of large-scale mining on these resources.

DATES: The public comment period begins June 5, 2012, and ends June 26, 2012. Comments should be in writing and must be received by EPA by June 26, 2012.

Availability: Draft charge questions are provided below. Copies of the draft charge questions are also available via the Internet on the EPA Region 10 Bristol Bay Web site at www.epa.gov/bristolbay. The draft document “An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska” is also available on the Internet on the EPA Region 10 Bristol Bay Web site at www.epa.gov/bristolbay. A limited number of paper copies of the draft charge questions are available from the Information Management Team, NCEA; telephone: 703-347-8561; facsimile: 703-347-8691. If you are requesting a paper copy, please provide your name, your mailing address, and title, “Peer Review Charge Questions on An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska.”

Comments on the draft charge questions may be submitted electronically via <http://www.regulations.gov/>, by email, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the SUPPLEMENTARY INFORMATION section of this notice.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the Office of Environmental Information Docket; telephone: 202-566-1752; facsimile: 202-566-9744; or email: ORD.Docket@epa.gov.

For technical information concerning the report, contact Judy Smith; telephone: 503-326-6994; facsimile: 503-326-3399; or email: r10bristolbay@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Information About the Project

The U.S. EPA conducted this assessment to determine the significance of Bristol Bay’s ecological resources and evaluate the potential impacts of large-scale mining on these resources. The U.S. EPA will use the results of this assessment to inform the consideration of options consistent with its role under the Clean Water Act. The assessment is intended to provide a scientific and technical foundation for future decision making. The Web site that describes the project is www.epa.gov/bristolbay.

EPA released the draft assessment for the purposes of public comment and peer review on May 18, 2012. Consistent with guidelines for the peer review of highly influential scientific assessments, EPA asked a contractor (Versar, Inc.) to assemble a panel of experts to evaluate the draft report. Versar evaluated the 86 candidates nominated during a previous public comment period (February 24, 2012 to March 16, 2012) and sought other experts to complete this peer review panel. The twelve peer review panel members are as follows:

Mr. David Atkins, Watershed Environmental, LLC.--Expertise in mining and hydrology.
Mr. Steve Buckley, WHPacific/NANA Alaska--Expertise in mining and seismology.
Dr. Courtney Carothers--Expertise in indigenous Alaskan cultures.
Dr. Dennis Dauble, Washington State University--Expertise in fisheries biology and wildlife ecology.
Dr. Gordon Reeves, USDA Pacific NW Research Station--Expertise in fisheries biology and aquatic biology.
Dr. Charles Slaughter, University of Idaho--Expertise in hydrology.
Dr. John Stednick, Colorado State University--Expertise in hydrology and biogeochemistry.
Dr. Roy Stein, Ohio State University--Expertise in fisheries and aquatic biology.
Dr. William Stubblefield, Oregon State University--Expertise in aquatic biology and ecotoxicology.
Dr. Dirk van Zyl, University of British Columbia--Expertise in mining and biogeochemistry.
Dr. Phyllis Weber Scannel--Expertise in aquatic ecology and ecotoxicology.
Dr. Paul Whitney--Expertise in wildlife ecology and ecotoxicology.

The peer review panel will be provided with draft charge questions to guide their evaluation of the draft assessment. These draft charge questions are designed to focus reviewers on specific aspects of the report. EPA is seeking comments from the public on the draft charge questions and welcome input on additional charge questions consistent with the objectives of the assessment. The draft charge questions are as follows:

(1) The assessment brought together information to characterize the ecological, geological, and cultural resources of the Nushagak and Kvichak watersheds. Was this characterization accurate? Was any significant literature missed that would be useful to complete this characterization?

(2) A formal mine plan or application is not available for the porphyry copper deposits in the Bristol Bay watershed. EPA developed a hypothetical mine scenario for its risk assessment. Given the type and location of copper deposits in the watershed, was this hypothetical mine scenario realistic? Has EPA appropriately bounded the magnitude of potential mine activities with the minimum and maximum mine sizes used in the scenario? Is there significant literature not referenced that would be useful to refine the mine scenario?

(3) EPA assumed two potential modes for mining operations: A no-failure mode of operation and a mode outlining one or more types of failures. The no-failure operation mode assumes best practical engineering and mitigation practices are in place and in optimal operating condition. Is the no-failure mode of operation adequately described? Is the choice of engineering and mitigation practices reasonable and consistent with current practices?

(4) Are the potential risks to salmonid fish due to habitat loss and modification and water quantity/quality changes appropriately characterized and described for the no-failure mode of operation? Does the assessment appropriately describe the risks to salmonid fish due to

operation of a transportation corridor under the no-failure mode of operation?

(5) Do the failures outlined in the assessment reasonably represent potential system failures that could occur at a mine of the type and size outlined in the mine scenario? Is there a significant type of failure that is not described? Are the assumed risks of failures appropriate?

(6) Does the assessment appropriately characterize risks to salmonid fish due to a potential failure of water and leachate collection and treatment from the mine site? If not, what suggestions do you have for improving this part of the assessment?

(7) Does the assessment appropriately characterize risks to salmonid fish due to culvert failures along the transportation corridor? If not, what suggestions do you have for improving this part of the assessment?

(8) Does the assessment appropriately characterize risks to salmonid fish due to pipeline failures? If not, what suggestions do you have for improving this part of the assessment?

(9) Does the assessment appropriately characterize risks to salmonid fish due to a potential tailings dam failure? If not, what suggestions do you have for improving this part of the assessment?

(10) Does the assessment appropriately characterize risks to wildlife and human cultures due to risks to fish? If not, what suggestions do you have for improving this part of the assessment?

(11) Does the assessment appropriately describe the potential for cumulative risk from multiple mines?

(12) Does the assessment identify the uncertainties and limitations associated with the mine scenario and the identified risks?

The preferred method to submit comments on the draft peer review charge is through the docket, which is described below. This docket is separate from the docket collecting public comments on the draft assessment itself. The EPA will evaluate comments received on these draft charge questions. Charge questions will be finalized and provided to EPA's independent contractor, Versar, Inc., who will convene the expert panel for independent external peer review.

The external peer review panel meeting is scheduled to be held in Anchorage, AK on August 7, 8, and 9, 2012. The public will be invited to attend on August 7 and 8, 2012. Further information regarding the external peer review panel meeting will be announced at a later date in the Federal Register.

II. How to Submit Technical Comments to the Docket at <http://www.regulations.gov/>

Submit your comments, identified by Docket ID No. EPA-HQ-ORD-2012-0358, by one of the following methods:

<http://www.regulations.gov/>: Follow the on-line instructions for

submitting comments.

Email: ORDDocket@epa.gov. Include the docket number EPA-HQ-ORD-2012-0358 in the subject line of the message.

Fax: 202-566-9744.

Mail: Office of Environmental Information (OEI) Docket (Mail Code: 28221T), Docket EPA-HQ-ORD-2012-0358, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460. The phone number is 202-566-1752. If you provide comments by mail, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Hand Delivery: The OEI Docket is located in the EPA Headquarters Docket Center, Room 3334, EPA West Building, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202-566-1744. Deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. If you provide comments by hand delivery, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA-HQ-ORD-2012-0358. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked "late," and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at <http://www.regulations.gov/>, including any personal information provided, unless a comment includes information claimed to be Confidential

Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov/> or email. The <http://www.regulations.gov/> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through <http://www.regulations.gov/>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comments due to technical difficulties and cannot contact you for

clarification, EPA may not be able to consider your comments. Electronic files should avoid the use of special characters and any form of encryption and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at www.epa.gov/epahome/dockets.htm.

Docket: Documents in the docket are listed in the <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: May 30, 2012.
Darrel A. Winner,
Acting Director, National Center for Environmental Assessment.
[FR Doc. 2012-13431 Filed 6-4-12; 8:45 am]
BILLING CODE 6560-50-P

Federal Register Notice: Peer Review Meeting Announcement and Invitation to Public to Attend and Offer Testimony

Federal Register, Volume 77 Issue 130 (Friday, July 6, 2012)

[Federal Register Volume 77, Number 130 (Friday, July 6, 2012)]

[Notices]

[Pages 40037-40039]

From the Federal Register Online via the Government Printing Office [<http://www.gpo.gov/>]

[FR Doc No: 2012-16441]

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9697-3]

Notice of the Peer Review Meeting for EPA's Draft Report Entitled
An Assessment of Potential Mining Impacts on Salmon Ecosystems of
Bristol Bay, AK

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of external peer review meeting.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing that Versar, Inc., an EPA contractor for external peer review, has convened a panel of experts and will organize and conduct an independent expert external peer review meeting on August 7-9, 2012, to review the draft report entitled An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska. Versar, Inc. invites the public to register to attend the first two days of this meeting as observers. In addition, Versar, Inc. invites the public to register to provide oral testimony during Day 1 (August 7, 2012) of the external peer review meeting. The panel will meet privately on Day 3 (August 9, 2012) of the meeting. The expert panel is charged with reviewing the scientific and technical merit of the draft assessment. The panel will not be making recommendations to the EPA concerning any potential future actions or policies. Therefore, the peer review meeting will focus on issues of science relevant to the assessment, rather than its policy implications. The panel will have access to public comments received in

the official public docket (docket ID number EPA-HQ-ORD-2012-0276) during the assessment's public comment period, as well as oral comments made on Day 1 of the peer review meeting. The draft assessment is available through <http://www.regulations.gov/> and at www.epa.gov/bristolbay. In preparing the final assessment, EPA will consider Versar, Inc.'s report of the comments and recommendations from the external peer review meeting, as well as written public comments received through the official public docket. The final peer review report prepared by Versar, Inc. will be made available to the public. EPA has released this draft assessment for the purposes of public comment and peer review. This draft assessment is not final as described in EPA's information quality guidelines, and it does not represent and should not be construed to represent Agency policy or views.

DATES: The public peer review panel meeting will be held on August 7-8, 2012, beginning and ending at approximately 8:30 a.m. and 5:00 p.m. (AKDT) on both days.

ADDRESSES: The independent expert external peer review meeting will be held at the Dena'ina Civic & Convention Center, located at 600 West Seventh Avenue, Anchorage, Alaska.

Meeting Background: As part of the peer review process for the EPA's draft assessment report, the public portion of the peer review meeting will be held on August 7-8, 2012 at the Dena'ina Civic & Convention Center in Anchorage, Alaska. On both days, the meeting will begin at 8:30 a.m. (AKDT) and will end at approximately 5:00 p.m. (AKDT). Members of the public and any other interested parties may register to attend both days of the meeting as observers, and to offer oral testimony on the first day of the meeting.

The focus of this peer review meeting is the scientific content and merit of the EPA's draft assessment. Public speakers are encouraged to focus on issues directly relevant to science-based aspects of the assessment, and to address specific scientific points in their oral testimony. The peer review process is separate from the EPA public comment meetings held in early June that enabled members of the public to provide comments and voice opinions concerning the EPA's draft assessment report and its potential policy implications for the public docket.

Day 1 of the meeting (August 7, 2012) will be dedicated to hearing oral comments on the draft assessment. Members of the public who have registered in advance to provide oral comments will have the opportunity to speak during the observer comment session. Each speaker will be allowed between 3-5 minutes, depending on number of speakers registered. Given time constraints, a maximum of 100 speakers will be allowed to offer testimony. If more than 100 speakers register to provide oral comments, speakers will be selected by Versar in a manner designed to optimize representation from all organizations,

affiliations, and present a balance of science issues relevant to the Agency's science assessment. Additional information on selection of speakers and speaking times will be sent out by August 3, to all individuals who register to speak.

To accommodate as many speakers as possible, registered speakers will present oral comments only, without visual aids or written material. All members of the public, including registered observers and speakers, are encouraged to submit written comments and materials to the official public docket for the draft assessment (docket ID number EPA-HQ-ORD- 2012-0276) by the close of the public comment period on July 23, 2012. Panel members will have access to any written comments and materials submitted to the official public docket by this deadline. Registered observers and speakers will not be allowed to distribute any written materials directly to the peer review panel. To submit written comments, please follow one of the methods outlined in the previous Federal Register notice, issued on May 25, 2012, initiating the assessment's public comment period: Federal Register Volume 77, Number 102 (<http://www.gpo.gov/fdsys/pkg/FR-2012-05-25/html/2012-12808.htm>).

Day 2 of the meeting (August 8, 2012) will be devoted to deliberations of the EPA's draft assessment by the peer review panel, guided by the charge questions provided to the public for public comment. Registered observers may attend and observe the peer review panel deliberations on Day 2, but will not be allowed to address the panel or provide oral or written comments.

Registration: To attend the August 7-8 public portion of the peer review meeting, you must register for the meeting by 11:59 p.m. (EDT) on July 23, 2012. You can register for the meeting by visiting , completing the online registration form, and submitting the required information. You can also register through U.S. Postal Service or overnight/priority mail by sending the necessary registration information (see Required Registration Information) to the Versar Meeting Coordinator, Ms. Brittany Ekstrom, Versar, Inc., 6850 Versar Center, Springfield, VA 22151; Telephone: (703) 642-6767. Registrations sent via U.S. Postal Service or overnight/priority mail must be received by 11:59 p.m. (EDT) on July 23, 2012. There will be no on-site registration, so members of the public who do not register by July 23, 2012 via one of the methods detailed above will not be able to attend the peer review meeting.

Required Registration Information: To register for the meeting online or via post, you must provide your full name, organization or affiliation, and contact information. You must also indicate which days you plan to attend the meeting and if you are interested in making an oral statement during the public comment session on Day 1 of the meeting. If you register to speak, you must also indicate if you have any special requirements related to your oral comments (e.g., translation).

If you indicate that you wish to make oral comments, you will be

asked to select one category most closely reflecting the content of your comments. These comment categories are: (i) Mine scenario and operational modes; (ii) potential failures and probabilities; (iii) hydrology; (iv) toxicity; (v) potential effects on Alaska Native culture; (vi) potential effects on fish; (vii) potential effects on wildlife; and (viii) other issues. Should more than 100 speakers register, these categories will be used to ensure that a balance of substantive science issues relevant to the assessment are heard.

FOR FURTHER INFORMATION CONTACT: Questions regarding logistics or registration for the external peer review meeting should be directed to Ms. Brittany Ekstrom, Versar, Inc., 6850 Versar Center, Springfield, VA, 22151; telephone: (703) 642-6767; or via email at BEkstrom@versar.com.

SUPPLEMENTARY INFORMATION:

I. Information About the Project

The EPA conducted this assessment to determine the significance of Bristol Bay's ecological resources and evaluate the potential impacts of large-scale mining on these resources. The EPA will use the results of this assessment to inform the consideration of options consistent with its role under the Clean Water Act. The assessment is intended to provide a sound scientific and technical foundation for future decision making. The Web site that describes the project is www.epa.gov/bristolbay.

II. Information About the Peer Review Panel

The EPA released the draft assessment for the purposes of public comment and peer review on May 18, 2012. Consistent with guidelines for the peer review of highly influential scientific assessments, EPA asked a contractor (Versar, Inc.) to assemble a panel of experts to evaluate the draft report. Versar, Inc. evaluated the 68 candidates nominated during a previous public comment period (February 24, 2012 to March 16, 2012) and sought other experts to complete this peer review panel. The twelve peer review panel members were made public in EPA's previous FRN, issued on June 5, 2012. The panelist's names are included below, with corrections made to account for errors present in the June 5, 2012 FRN:

Mr. David Atkins, Watershed Environmental, LLC.--Expertise in mining and hydrology.

Mr. Steve Buckley, WHPacific--Expertise in mining and seismology.

Dr. Courtney Carothers, University of Alaska Fairbanks--Expertise in indigenous Alaskan cultures.

Dr. Dennis Dauble, Washington State University--Expertise in fisheries

biology and wildlife ecology.

Dr. Gordon Reeves, USDA Pacific NW Research Station--Expertise in fisheries biology and aquatic biology.

Dr. Charles Slaughter, University of Idaho--Expertise in hydrology.

Dr. John Stednick, Colorado State University--Expertise in hydrology and biogeochemistry.

Dr. Roy Stein, Ohio State University--Expertise in fisheries and aquatic biology.

Dr. William Stubblefield, Oregon State University--Expertise in aquatic biology and ecotoxicology.

Dr. Dirk van Zyl, University of British Columbia--Expertise in mining.

Dr. Phyllis Weber Scannell--Expertise in aquatic ecology and ecotoxicology.

Dr. Paul Whitney--Expertise in wildlife ecology and ecotoxicology.

Dated: June 29, 2012.

Darrell Winner,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 2012-16441 Filed 7-5-12; 8:45 am]

BILLING CODE 6560-50-P

APPENDIX J. CONFLICT OF INTEREST MEMORANDA FOR ISI

Conflict of Interest Memorandum: Task Orders

U.S. Environmental Protection Agency Conflict of Interest Statement for Task Orders

The contractor shall include a conflict of interest certification in all task orders in accordance with EPAAR 1552.209-71 and the Section B Clause “Ordering Procedures.”

Prior to selecting expert panelists/peer reviewers, the contractor shall perform an evaluation to determine the existence of an actual or potential COI for each potential reviewer. The financial and professional information obtained by the Contractor as part of the evaluation to determine the existence of an actual or potential conflict of interest is considered private and nondisclosable to outside entities except as required by law and/or regulation.

The contractor shall ensure that potential peer reviewers will not have an actual or potential conflict of interest if they are selected to participate in a peer review. When determining if a proposed peer reviewer may have an actual or potential conflict of interest, the contractor shall incorporate the following yes/no questions (a – i) for **all** individuals, and requests for supporting information (j – r) for **task orders involving public peer review meetings** into its established process to evaluate and determine the presence of an actual or potential COI:

Conflict of Interest Analysis		YES	NO
a.	To the best of your knowledge and belief, is there any connection between the subject topic and any of your and/or your spouse’s compensated or uncompensated employment, including government service, during the past 24 months?		
b.	To the best of your knowledge and belief, is there any connection between the subject topic and any of your and/or your spouse’s research support and project funding, including from any government source, during the past 24 months?		
c.	To the best of your knowledge and belief, is there any connection between the subject topic and any consulting by you and/or your spouse, during the past 24 months?		
d.	To the best of your knowledge and belief, is there any connection between the subject topic and any expert witness activity by you and/or your spouse, during the past 24 months?		
e.	To the best of your knowledge and belief, have you, your spouse, or dependent child, held in the past 24 months, any financial holdings (excluding well-diversified mutual funds and holdings, with a value less than \$15,000) with any connection to the subject topic?		
f.	Have you made any public statements or taken positions on or closely related to the subject topic under review?		
g.	Have you had previous involvement with the development of the document (or review materials) you have been asked to review?		
h.	To the best of your knowledge and belief, is there any other information that might reasonably raise a question about an actual or potential personal conflict of interest or bias?		

Conflict of Interest Analysis		
	YES	NO
i. To the best of your knowledge and belief, is there any financial benefit that might be gained by you or your spouse as a result of the outcome of this review?		

Information to be collected from panel members:

j. <u>Compensated and noncompensated employment</u> —for panel member and spouse—sources of compensated and uncompensated employment, including government service, for the preceding 2 years, including a brief description of work.
k. <u>Research funding</u> —for panel member—sources of research support and project funding, including from any government source, for the preceding 2 years for which the panel member served as the Principal Investigator, Significant Collaborator, or Project Manager or Director. For panel member's spouse, a general description of research and project activities in the preceding 2 years.
l. <u>Consulting</u> —for panel member—compensated consulting activities during the preceding 2 years, including names of clients if compensation provided 15% or more of annual compensation. For panel member's spouse, a general description of consulting activities for the preceding 2 years.
m. <u>Expert witness activities</u> —for panel member—sources of compensated expert witness activities and a brief description of issue and testimony. For panel member's spouse, a general description of expert testimony provided in the preceding 2 years.
n. <u>Assets: Stocks, Bonds, Real Estate, Business, Patents, Trademarks and Royalties</u> —for panel member, spouse and dependent children—specific financial holdings that collectively had a fair market value greater than \$15,000 at any time during the preceding 24-month period (excluding well-diversified mutual funds, money market funds, treasury bonds and personal residence).
o. <u>Liabilities</u> —for panel member, spouse and dependent children—liabilities over \$10,000 owed at any time in the preceding 12 months (excluding a mortgage on personal residence, home equity loans, automobile and consumer loans).
p. <u>Public statements</u> —a brief description of public statements and/or positions on, or closely related to, the matter under review by the panel member.
q. <u>Involvement with document under review</u> —a brief description of any previous involvement of the panel member with the development of the document (or review materials) the individual has been asked to review.
r. <u>Other potentially relevant information</u> —a brief description of any other information that might reasonably raise a question about actual or potential personal conflict of interest or bias.

Further, the contractor shall require that panel members sign a statement that says the panel member is not currently arranging new professional relationships with, or obtaining new financial holdings in, an entity, which is not yet reported and which could be viewed as related to the topic under discussion or stakeholders associated with the topic.

Conflict of Interest Memorandum: Certification

**U.S. Environmental Protection Agency
Conflict of Interest Inquiry**

You have been requested by EPA to serve as a Peer Reviewer for _____, and your involvement in certain activities could pose a conflict of interest or create the appearance of a loss of impartiality in your review. Although your involvement in these activities is not necessarily grounds for exclusion from the peer review, affiliations or activities that could potentially lead to conflicts of interest are included in the table.

Please complete the table and sign the certification below. If you have any questions, contact [point of contact at EPA Office] at your earliest convenience to discuss any potential conflict of interest issues.

Conflict of Interest Analysis		
	YES	NO
a. To the best of your knowledge and belief, is there any connection between the subject topic and any of your and/or your spouse's compensated or uncompensated employment, including government service, during the past 24 months?		
b. To the best of your knowledge and belief, is there any connection between the subject topic and any of your and/or your spouse's research support and project funding, including from any government source, during the past 24 months?		
c. To the best of your knowledge and belief, is there any connection between the subject topic and any consulting by you and/or your spouse, during the past 24 months?		
d. To the best of your knowledge and belief, is there any connection between the subject topic and any expert witness activity by you and/or your spouse, during the past 24 months?		
e. To the best of your knowledge and belief, have you, your spouse, or dependent child, held in the past 24 months, any financial holdings (excluding well-diversified mutual funds and holdings, with a value less than \$15,000) with any connection to the subject topic?		
f. Have you made any public statements or taken positions on or closely related to the subject topic under review?		
g. Have you had previous involvement with the development of the document (or review materials) you have been asked to review?		
h. To the best of your knowledge and belief, is there any other information that might reasonably raise a question about an actual or potential personal conflict of interest or bias?		
i. To the best of your knowledge and belief, is there any financial benefit that might be gained by you or your spouse as a result of the outcome of this review?		

CERTIFICATION

I hereby certify that I have read the above statements and, to the best of my knowledge and belief, no conflict of interest exists that may diminish my capacity to provide an impartial, technically sound, objective review of the subject matter or otherwise result in a biased opinion.

(Name – please print)

(Signature)

(Date)



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Thank you for your feedback.

Sincerely,

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United States Environmental Protection Agency
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OPINION | COMMENTARY

A Step Toward Scientific Integrity at the EPA

Scott Pruitt sweeps out Obama-era science advisers. The agency needs truly independent ones.

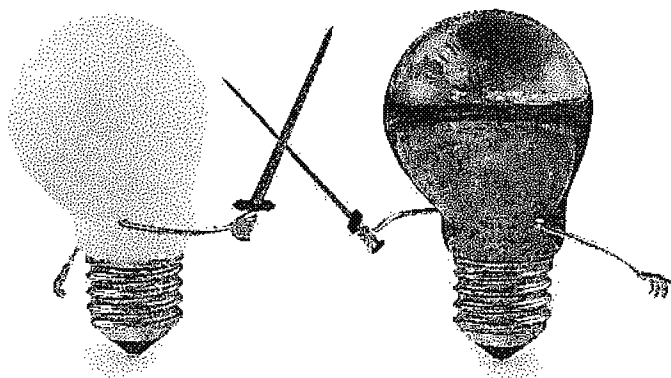


PHOTO: GETTY IMAGES/ISTOCKPHOTO

By Steve Milloy

July 17, 2017 5:14 p.m. ET

The Trump administration in May began the process of replacing the small army of outside science advisers at the Environmental Protection Agency. In June, 38 additional EPA advisers were notified that their appointments would not be renewed in August. To Mr. Trump's critics, this is another manifestation of his administration's "war on science." Histrionics aside, the administration's actions are long overdue.

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<https://www.wsj.com/articles/a-step-toward-scientific-integrity-at-the-epa-1500326062>

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The most prominent of the EPA's myriad boards of outside advisers are the Science Advisory Board and the Clean Air Scientific Advisory Committee, or CASAC. Mostly made up of university professors, these boards also frequently draw members from consulting firms and activist groups. Only rarely do members have backgrounds in industry. All EPA boards are governed by the Federal Advisory Committee Act, which requires that they be balanced and unbiased. While the EPA is required by law to convene the SAB and CASAC, the agency is not bound by law to heed their advice.

The EPA's Obama-era "war on coal" rules and its standards for ground-level ozone—possibly the most expensive EPA rule ever issued—depend on the same scientifically unsupported notion that the fine particles of soot emitted by smokestacks and tailpipes are lethal. The EPA claims that such particles kill hundreds of thousands of Americans annually.

The EPA first considered regulating fine particles in the mid-1990s. But when the agency ran its claims past CASAC in 1996, the board concluded that the scientific evidence did not support the agency's regulatory conclusion. Ignoring the panel's advice, the EPA's leadership chose to regulate fine particles anyway, and resolved to figure out a way to avoid future troublesome opposition from CASAC.

In 1996 two-thirds of the CASAC panel had no financial connection to the EPA. By the mid-2000s, the agency had entirely flipped the composition of the advisory board so two-thirds of its members were agency grantees. Lo and behold, CASAC suddenly agreed with the EPA's leadership that fine particulates in outdoor air kill. During the Obama years, the EPA packed the CASAC panel. Twenty-four of its 26 members are now agency grantees, with some listed as principal investigators on EPA research grants worth more than \$220 million.

Although the scientific case against particulate matter hasn't improved since the 1990s, the EPA has tightened its grip on CASAC. In effect, EPA-funded researchers are empowered to review and approve their own work in order to rubber-stamp the EPA's regulatory agenda. This is all done under the guise of "independence."

Another "independent" CASAC committee conducted the most recent review of the Obama EPA's ground-level ozone standards. Of that panel's 20 members, 70% were EPA grantees who'd hauled in more than \$192 million from the agency over the years. These EPA panels make decisions by consensus, which has lately been easy enough to achieve considering they are usually chaired by an EPA grantee.

Would-be reformers have so far had no luck changing the culture at these EPA advisory committees. In 2016 the Energy and Environment Legal Institute, where I am a senior fellow, sued the agency. We alleged that the CASAC fine-particulate subcommittee was biased—a clear violation of the Federal Advisory Committee Act. We found a plaintiff who had been refused CASAC membership because of his beliefs about fine particles. Unfortunately, that individual was not willing to take a hostile public stand against the EPA for fear of professional retribution. We ultimately withdrew the suit.

The EPA's opaque selection process for membership on its advisory boards has opened the agency to charges of bias. In 2016 Michael Honeycutt, chief toxicologist of the Texas Commission on Environmental Quality, was recommended in 60 of the 83 nominations to the EPA for CASAC membership. The EPA instead selected Donna Kenski of the Lake Michigan Air Directors Consortium. Ms. Kenski received only one of the 83 recommendations. While no one objected to Mr. Honeycutt's nomination, Sen. James Inhofe (R., Okla.) lodged an objection to Ms. Kenski's nomination, claiming she had exhibited partisanship during an earlier term on the committee.

Congress has also tried to reform the EPA's science advisory process. During the three most recent Congresses, the House has passed bills to provide explicit conflict-of-interest rules for EPA science advisers, including bans on receiving EPA grants for three years before and after service on an advisory panel. The bills went nowhere in the Senate, where the threat of a Democrat-led filibuster loomed. Had they passed, President Obama surely would have vetoed them.

President Trump and his EPA administrator have ample statutory authority to rectify the problem. As Oklahoma's attorney general, Scott Pruitt spent years familiarizing himself with the EPA's unlawful ways. He is in the process of reaffirming the independence of the agency's science advisory committees. This won't mean that committee members can't have a point of view. But a committee as a whole must be balanced and unbiased. Mr. Pruitt's goal is the one intended by Congress—peer review, not pal review.

Mr. Milloy served on the Trump EPA transition team and is the author of "Scare Pollution: Why and How to Fix the EPA."

Appeared in the July 18, 2017, print edition.

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September 15, 2017

Administrator Scott Pruitt
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N. W.
Washington, DC 20460

Subject: Invitation for Public Comment on the List of Candidates for the U.S. Environmental Protection Agency's (EPA) Clean Air Scientific Advisory Committee (CASAC)

Administrator Pruitt:

The Association of Air Pollution Control Agencies (AAPCA)¹ appreciates U.S. EPA's request for public comments on the list of candidates for service on EPA's chartered CASAC.² You stated in EPA's call for nominations that you "... encourage scientific viewpoints from a full range of stakeholders in order to achieve balanced scientific advice."³ Recently, AAPCA, in conjunction with The Council of State Governments (CSG), created a new resource – located at www.cooperativefederalism.org – entitled *STATES AT THE TABLE: Engaging Energy and Environmental Opportunities with Federal Advisory Committees* to provide information on federal advisory committee opportunities for state officials.⁴

U.S. EPA's list of qualified candidates includes four experts from state environmental agencies: Dr. James Boylan, Georgia Environmental Protection Division (and co-chair of AAPCA's Modeling Committee); Dr. Sabine Lange, Texas Commission on Environmental Quality; Dr. Steve Packham, Utah Department of Environmental Quality; and, Dr. Larry Wolk, Colorado Department of Public Health and Environment. These individuals have demonstrated high levels of competence, knowledge, and expertise in fields relevant to air pollution and air quality issues, and possess significant experience in the technical aspects of National Ambient Air Quality Standards (NAAQS), including cost-benefit analysis, modeling, monitoring, and emissions inventory assessment. Their on-the-ground experience in implementing the NAAQS would be indispensable to CASAC and EPA, and would provide key perspectives in the scientific review process. Each candidate also holds an advanced degree, with impressive academic credentials in fields that include chemical engineering, modeling, risk assessment, toxicology, and public health.

¹ AAPCA is a national, non-profit, consensus-driven organization focused on assisting state and local air quality agencies and personnel with implementation and technical issues associated with the federal Clean Air Act. AAPCA represents more than 40 state and local air agencies, and senior officials from 20 state environmental agencies currently sit on the AAPCA Board of Directors. AAPCA is housed in Lexington, Kentucky as an affiliate of The Council of State Governments. You can find more information about AAPCA at: <http://www.cleanairact.org>. In addition, more information on AAPCA agencies can be found in the recently released report, *The Greatest Story Seldom Told: Profiles and Success Stories in Air Pollution Control*.

² U.S. EPA Science Advisory Board Staff Office, Invitation for Public Comment on the List of Candidates For the Environmental Protection Agency's Clean Air Scientific Advisory Committee, August 28, 2017.

³ U.S. EPA, "EPA to Accept Nominations for Science Boards," June 27, 2017.

⁴ This resource includes information on federal advisory committees at U.S. EPA, the U.S. Departments of Energy and Interior, and the National Oceanic and Atmospheric Administration, as well as an introduction to the Federal Advisory Committee Act.

AAPCA strongly recommends that EPA consider these state experts in the current chartered CASAC selection process. State, local, and tribal agency personnel possess direct knowledge and experience critical to providing informed, comprehensive, and authoritative understanding of the NAAQS.

EPA should ensure the chartered CASAC and individual NAAQS review panels include significant state, local, or tribal participation and diverse geographic backgrounds of advisors. At present, this is not the case. To illustrate:

- According to a May 2015 letter from CSG West: “For EPA’s Clean Air Scientific Advisory Committee Ozone Review Panel, which provided the critical advice for Administrator Gina McCarthy’s proposed ozone regulations, only one of the 22 panelists came from a state/local perspective.”⁵
- Historically, representation on CASAC committees and panels has been limited to specific regions and a handful of states.⁶
- A survey of twenty state air directors, including both AAPCA members and non-members, provides context for these concerns.⁷ The survey found:
 - A majority of respondents said state and local agencies are not adequately represented on CASAC and its subpanels, and that these panels are not sufficiently geographically diverse.
 - A majority of respondents agreed that the CASAC process for nominating and recommending expert candidates was transparent and clearly understood, but the top three barriers selected by respondents to state personnel serving on CASAC or its subpanels were lack of time to serve, low likelihood of being selected, and a perceived lack of expertise.
- Other EPA federal advisory committees have found avenues to expand membership for intergovernmental partners and co-regulators. For example, the Assumable Waters Subcommittee of the National Advisory Council on Environmental Policy and Technology (NACEPT) included ten state and two tribal members, representing members from seven different EPA regions.⁸
- The *Consolidated Appropriations Act of 2016*, signed into law on December 17, 2015, was accompanied by a report directing the EPA Administrator to develop a policy statement on science quality and integrity for the Science Advisory Board. The report also indicated that “EPA’s policy statement should include goals on increasing membership from States and tribes who are often underrepresented....”⁹
- The Government Accountability Office (GAO) reviewed this policy statement and reported in June 2017 that EPA did “not include specific or numeric goals on increasing membership from states and tribes,” and recommended that the Agency specifically address the Congressional directives.¹⁰
- The U.S. House Appropriations Committee report for H.R. 3354, *the Department of the Interior, Environment, and Related Agencies Appropriations Act of 2018*, again directed EPA “to develop updated policy statements in order to fulfill previous Congressional directives.”¹¹

⁵ The Council of State Governments West, *Letter to Senators Mike Rounds and Edward Markey*, May 19, 2015.

⁶ Data collected from *CASAC entry* in the FACA database, which contains information on panelists back to FY1997.

⁷ Survey results and related presentation are available on AAPCA’s 2016 Spring Meeting website.

⁸ U.S. EPA, *Assumable Waters Sub-Committee*, June 2016. The *Assumable Waters Subcommittee Report* was transmitted via NACEPT on June 2, 2017.

⁹ *Explanatory Statement Submitted for Consolidated Appropriations Act, 2016*, pg. H10220, December 17, 2015.

¹⁰ *GAO Assessment of Updated EPA Policy Statement*, June 8, 2017

¹¹ *Report from the Committee on Appropriations to accompany H.R. 3354*, pg. 62, July 21, 2017.

The Federal Advisory Committee Act requires committees to be “fairly balanced in terms of the points of view represented and the functions to be performed.” CASAC’s charter and the Clean Air Act (CAA) direct EPA to appoint at least one member of the National Academy of Sciences, one physician, and one person representing state air pollution control agencies. The most recent Membership Balance Plan for CASAC, last updated in June 2017, states that “Geographic location may be considered” as the only other balance factor that “EPA identifies as important in achieving a balanced [Federal Advisory Committee].”¹² U.S. EPA’s Peer Review Handbook states that the Agency should “include a broad enough spectrum of other related experts to consider wider dimensions of the issue(s)” and “keep a balance by considering new individuals who bring fresh perspectives to the review of a work product.”¹³

Geographically diverse state, local, and tribal contributors have unique, direct experience with the NAAQS, including expertise that could help CASAC carrying out the full responsibilities in its charter and Section 109(d) of the CAA. This includes advice on: “any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such” NAAQS; “the relative contribution to air pollution concentrations of natural as well as anthropogenic activity”; “areas in which additional knowledge is required to appraise the adequacy and basis of” NAAQS; and, “the research efforts necessary to provide the required information.”

In 2015, the GAO reported that CASAC has not carried out its role in providing some of this advice related to the NAAQS “... because EPA has never asked CASAC to do so.”¹⁴ EPA’s press release calling for nominations also recognized that EPA and CASAC have failed to carry out statutory duties required in the CAA. AAPCA has detailed the historical record confirming GAO’s finding, and identified five avenues for EPA and CASAC to facilitate this advice (including the critical role of experts from state, local, and tribal environmental agencies in reforming the current CASAC review process).¹⁵ Communications from AAPCA members also suggest that state air pollution control agencies would benefit from the full suite of statutorily required advice.¹⁶

EPA should select state air agency experts for the chartered CASAC from this list of qualified candidates. If EPA is unable to select a seven-member chartered CASAC that satisfies CAA requirements for membership and scope of advice, including advice on adverse social, economic or energy effects related to NAAQS, and with geographically and scientifically diverse viewpoints, the EPA Administrator, as the appointing authority, should reconstitute the panel in accordance with 41 CFR 102-3.130.¹⁷ EPA should

¹² CASAC 2017 Membership Balance Plan.

¹³ U.S. EPA, Peer Review Handbook, 4th Edition, October 2015.

¹⁴ U.S. GAO, EPA’S SCIENCE ADVISORY BOARD: Improved Procedures Needed to Process Congressional Requests for Scientific Advice, June 2015.

¹⁵ AAPCA, “Advice and Context: The Role of CASAC in Contextualizing Background Pollution and Adverse NAAQS Effects,” June 2016.

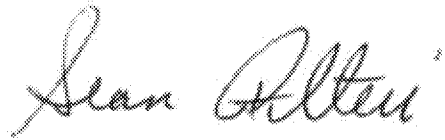
¹⁶ In response to a May 2014 letter from members of the U.S. Senate Committee on Environment and Public Works, the Louisiana Department of Environmental Quality, Mississippi Department of Environmental Quality, North Carolina Department of Environment and Natural Resources (now Department of Environmental Quality), and Texas Commission on Environmental Quality provided feedback on the CASAC process. Multi-state comments on the proposed ozone NAAQS provide perspectives on the role of CASAC. The previously cited survey of state air directors found that more than 80 percent of respondents thought CASAC advice on the full suite of topics in the charter and Section 109(d) of the Clean Air Act, as part of the NAAQS review process, would be helpful.

¹⁷ 41 CFR 102-3.130 states “Unless otherwise provided by statute, Presidential directive, or other establishment authority, advisory committee members serve at the pleasure of the appointing or inviting authority. Membership terms are at the sole discretion of the appointing or inviting authority.”

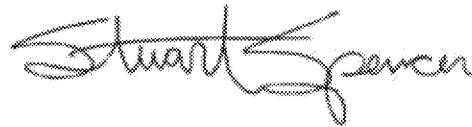
also strongly encourage nominations of qualified state, local, and tribal environmental agency experts for future openings on individual CASAC NAAQS review panels.

Thank you for the opportunity to provide feedback on EPA's excellent list of candidates for CASAC. If you have any questions regarding our comments, please contact Mr. Clint Woods, Executive Director, at cwoods@csg.org or (859) 244-8040.

Sincerely,



Sean Alteri
Director, Kentucky Division for Air Quality
2017 President, AAPCA



Stuart Spencer
Associate Director, Office of Air Quality
Arkansas Department of Environmental Quality
2018 President, AAPCA

September 28, 2017

Mr. Thomas Carpenter
Designated Federal Officer, Science Advisory Board
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N. W.
Washington, DC 20460

Subject: Invitation for Public Comment on the List of Candidates for the U.S. Environmental Protection Agency's (EPA) Chartered Science Advisory Board (SAB)

Mr. Carpenter:

The Association of Air Pollution Control Agencies (AAPCA)¹ appreciates U.S. EPA's request for public comments on the list of candidates under consideration for EPA's chartered SAB.² EPA's call for nominations quoted EPA Administrator Scott Pruitt highlighting that "[t]hese boards play an important role at EPA by providing independent advice based on sound science in support of the agency's mission," and that he strongly encouraged "scientific viewpoints from a full range of stakeholders in order to achieve balanced scientific advice."³ Recently, AAPCA, in conjunction with The Council of State Governments (CSG), created a new resource – located at www.cooperativefederalism.org – entitled *STATES AT THE TABLE: Engaging Energy and Environmental Opportunities with Federal Advisory Committees* to provide information on federal advisory committee opportunities for state officials.⁴

U.S. EPA's list of qualified candidates includes several experts from state environmental agencies with experience and expertise that would enable them to provide independent advice and unique, indispensable perspectives on the suite of scientific issues facing EPA and SAB. The Administrator should look to appoint these officials in leadership roles on the chartered SAB and its subcommittees. These officials possess on-the-ground experience in implementing regulations under the Clean Air Act and other statutes, as well as expertise in disciplines including air quality, public health, chemistry, risk assessment, engineering, modeling, toxicology, and uncertainty and benefit-cost analysis. In addition to the value of this advice from state experts, selecting these nominees for leadership roles could help the Agency in following Congressional directives to increase SAB "membership from States and tribes who are often underrepresented" and the SAB Staff Office's commitment to "expanding the diversity of scientific perspectives on the SAB, including the perspectives from state and local governments..."

¹ AAPCA is a national, non-profit, consensus-driven organization focused on assisting state and local air quality agencies and personnel with implementation and technical issues associated with the federal Clean Air Act. AAPCA represents more than 40 state and local air agencies, and senior officials from 20 state environmental agencies currently sit on the AAPCA Board of Directors. AAPCA is housed in Lexington, Kentucky as an affiliate of The Council of State Governments. You can find more information about AAPCA at: <http://www.cleanairact.org>.

² U.S. EPA Science Advisory Board Staff Office, Invitation for Public Comment on the List of Candidates For the Environmental Protection Agency's Chartered Science Advisory Board, September 7, 2017.

³ U.S. EPA, "EPA to Accept Nominations for Science Boards," June 27, 2017.

⁴ This resource includes information on federal advisory committees at U.S. EPA, the U.S. Departments of Energy and Interior, and the National Oceanic and Atmospheric Administration, as well as an introduction to the Federal Advisory Committee Act.

The SAB is one of the few currently operating EPA advisory committees established by Congress, rather than Agency authority.⁵ The *Environmental Research, Development, and Demonstration Authorization Act of 1978*⁶ (ERDDAA) requires that the Administrator establish the SAB to “provide such scientific advice as may be requested by the Administrator” as well as Congressional committees of jurisdiction. The Board is to be composed of at least nine members (although the Agency’s most recent membership balance plan indicates composition of “about 45 members”)⁷ and each member is to be “qualified by education, training, and experience.” ERDDAA further requires the Administrator, at the time any proposed criteria document, standard, limitation, or regulation under the Clean Air Act or other environmental statute is provided for interagency review, to provide such Agency action with relevant technical and scientific information in possession of EPA to the SAB for review. Administrator Pruitt has stated that he intends to “follow applicable legal authorities” as it related to SAB and other advisory committees.⁸ Nominated state officials are uniquely qualified to help EPA and SAB carry out these statutory duties.

EPA should ensure the chartered SAB and its subcommittees and ad hoc panels include significant state, local, or tribal participation and diverse geographic backgrounds of advisors. At present, this is not the case. To illustrate:

- The *Consolidated Appropriations Act of 2016*, signed into law on December 17, 2015, was accompanied by a report directing the EPA Administrator to develop a policy statement on science quality and integrity for the Science Advisory Board. The report also indicated that “EPA’s policy statement should include goals on increasing membership from States and tribes who are often underrepresented...”⁹
- The Government Accountability Office (GAO) reviewed EPA’s draft policy statement and reported in June 2017 that “the draft document does not include specific or numeric goals on increasing membership from states and tribes. However, it states that the SAB Staff Office is committed to expanding the diversity of scientific perspectives on the SAB, including the perspectives from state and local governments, tribes, industry, and nongovernmental organizations.” GAO also stated they “continue to encourage the agency to specifically address the directives provided in the explanatory statement.”¹⁰
- The U.S. House Appropriations Committee report for H.R. 3354, *the Department of the Interior, Environment, and Related Agencies Appropriations Act of 2018*, again directed EPA “to develop updated policy statements in order to fulfill previous Congressional directives.”¹¹
- A May 2015 letter from CSG West noted that “states are largely underrepresented in EPA advisory panels” and pointed to the dearth of state/local/tribal experts during recent SAB and CASAC reviews of science related to air quality, hydraulic fracturing, and water connectivity.¹²

⁵ More information on establishment authority can be found at the General Services Administration’s [FACA Database](#).

⁶ 42 U.S.C. 4365.

⁷ <http://www.csg.org/aapca/documents/SABMembershipBalancePlan2017.pdf>.

⁸ https://www.epw.senate.gov/public/_cache/files/6d95005c-bd1a-4779-af7e-be831db6866a/scott-pruitt-qfr-responses-01.18.2017.pdf.

⁹ *Explanatory Statement Submitted for Consolidated Appropriations Act, 2016*, pg. H10220, December 17, 2015.

¹⁰ *GAO Assessment of Updated EPA Policy Statement*, June 8, 2017

¹¹ *Report from the Committee on Appropriations to accompany H.R. 3354*, pg. 62, July 21, 2017.

¹² The Council of State Governments West, *Letter to Senators Mike Rounds and Edward Markey*, May 19, 2015.

- In May 15, 2017 comments on regulatory reform, the Western Governors Association argued that U.S. EPA should “enhance state representation on the [SAB], as well as on its standing and *ad hoc* committees.”¹³
- Historically, representation on the chartered SAB has been limited to certain geographic areas, and state experts have constituted no more than three advisors on the roughly 50-member panel at any time over the last decade.¹⁴
- Other EPA federal advisory committees have found avenues to expand membership for intergovernmental partners and co-regulators. For example, the Assumable Waters Subcommittee of the National Advisory Council on Environmental Policy and Technology (NACEPT) included ten state and two tribal members, representing members from seven different EPA regions.¹⁵

The *Federal Advisory Committee Act* (FACA) requires committees to be “fairly balanced in terms of the points of view represented and the functions to be performed.” U.S. EPA’s Peer Review Handbook states that the Agency should “include a broad enough spectrum of other related experts to consider wider dimensions of the issue(s)” and “keep a balance by considering new individuals who bring fresh perspectives to the review of a work product.”¹⁶ 41 CFR 102-3.130 provides the Administrator, as the appointing authority, with the ability to determine membership terms for all SAB members under FACA.¹⁷

EPA should select state environmental agency experts for the chartered SAB from this list of qualified candidates. EPA should also strongly encourage nominations of qualified state, local, and tribal environmental agency experts for future openings on SAB subcommittees and ad hoc panels.

Thank you for the opportunity to provide feedback on EPA’s list of candidates for SAB. If you have any questions regarding our comments, please contact cwoods@csg.org or (859) 244-8040.

Sincerely,



Clinton J. Woods
Executive Director, AAPCA

¹³ http://westgov.org/images/editor/Regulatory_Reform_Task_Forces_-_Final.pdf.

¹⁴ Data collected from SAB entry in the FACA database.

¹⁵ U.S. EPA, *Assumable Waters Sub-Committee*, June 2016. The *Assumable Waters Subcommittee Report* was transmitted via NACEPT on June 2, 2017.

¹⁶ U.S. EPA, *Peer Review Handbook*, 4th Edition, October 2015.

¹⁷ 41 CFR 102-3.130 states “Unless otherwise provided by statute, Presidential directive, or other establishment authority, advisory committee members serve at the pleasure of the appointing or inviting authority. Membership terms are at the sole discretion of the appointing or inviting authority.”

November 28, 2016

Dr. Bryan J. Bloomer
Designated Federal Officer
Science Advisory Board
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Subject: Invitation for Public Comment on the List of Candidates for the EPA Science Advisory Board Ad Hoc Committee for Review of the *Screening Methodologies to Support Risk and Technology Reviews (RTR): A Case Study Analysis*

Dr. Bloomer:

The Association of Air Pollution Control Agencies (AAPCA)¹ appreciates the opportunity to comment on the list of candidates for U.S. Environmental Protection Agency's (EPA) Science Advisory Board (SAB) Ad Hoc Committee for reviewing the EPA's Office of Air and Radiation's draft report *Screening Methodologies to Support Risk and Technology Reviews (RTR): A Case Study Analysis* ("SAB RTR Methods Review Panel").²

In the invitation to comment, EPA notes that "a balanced panel is characterized by inclusion of candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the general charge." Importantly, the list includes experts from state environmental agencies, giving EPA a key opportunity to select individuals that could provide geographically diverse, on-the-ground perspectives, and years of experience addressing emissions of hazardous air pollutants from stationary sources. In particular, the candidates bring expertise in toxicology, health and exposure risk assessment, and air toxics.

AAPCA strongly recommends that EPA's SAB Staff Office consider these state personnel for the SAB RTR Methods Review Panel because of their demonstrated scientific and technical knowledge, as well as their ability to convey diverse expertise and viewpoints.

As the EPA SAB Staff Office reviews these candidates based on the chosen criteria,³ the Agency should ensure state, local and tribal participation in order to obtain input from experts that work with and implement federal Clean Air Act regulations. The need for a wider, more diverse range of advisors on EPA panels is well-noted:

¹ AAPCA is a national, non-profit, consensus-driven organization focused on assisting state and local air quality agencies and personnel with implementation and technical issues associated with the federal Clean Air Act. Twenty state environmental agencies currently sit on AAPCA's Board of Directors. AAPCA is housed in Lexington, Kentucky as an affiliate of The Council of State Governments. You can find more information about AAPCA at: <http://www.cleanairact.org>.

² U.S. EPA Science Advisory Board Staff Office, [Invitation for Public Comment on the List of Candidates for the EPA Science Advisory Board Ad Hoc Committee for Review of the Screening Methodologies to Support Risk and Technology Reviews \(RTR\): A Case Study Analysis](#), November 3, 2016.

³ 81 FR 52683.

- The Consolidated Appropriations Act of 2016, signed into law on December 17, 2015, was accompanied by a report directing the EPA Administrator to develop a policy statement on science quality and integrity for the Science Advisory Board. The report further directed that “EPA’s policy statement should include goals on increasing membership from States and tribes who are often underrepresented....”⁴
- U.S. EPA’s Peer Review Handbook (Fourth Edition) directs that the Agency “include a broad enough spectrum of other related experts to consider wider dimensions of the issue(s)” and “keep a balance by considering new individuals who bring fresh perspectives to the review of a work product.”⁵
- Of the 48 members currently on EPA’s chartered SAB, only two are from state agencies. Additionally, as noted in a May 2015 letter from the Council of State Governments West, EPA’s SAB Staff Office has failed to select intergovernmental experts for other SAB ad hoc panels.⁶

Considering for this panel the candidates that have state-level experience and perspectives would be a step in the appropriate direction. As all of the candidates for the SAB RTR Methods Review Panel were identified by the SAB Staff Office “based on their relevant expertise and willingness to serve,” selecting panelists that meet fundamental criteria, such as a “diversity of scientific expertise and viewpoints,” becomes more vital to the process of creating a balanced panel to review this important document.

In addition to fulfilling the need for proper balance on the SAB RTR Methods Review Panel, AAPCA encourages EPA to solicit advice from, and select for advisory committees and panels, experts from state, local and tribal environmental agencies. These agencies can provide critical guidance as EPA looks to future regulatory actions.

Thank you for the invitation to provide comments on this highly qualified list of candidates. If you have any questions, please contact cwoods@csgr.org or (859) 244-8040.

Sincerely,



Clinton J. Woods, Executive Director
AAPCA

⁴ Explanatory Statement Submitted for Consolidated Appropriations Act, 2016, pg. H10220, December 17, 2015

⁵ U.S. EPA, Peer Review Handbook, 4th Edition, October 2015.

⁶ The Council of State Governments West, Letter to Senators Mike Rounds and Edward Markey, May 19, 2015.

July 19, 2016

Mr. Aaron Yeow
Designated Federal Official
U.S. Environmental Protection Agency
Science Advisory Board & Clean Air Scientific Advisory Committee
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Subject: Invitation for Public Comment on the List of Candidates for the U.S. Environmental Protection Agency's (EPA) Clean Air Scientific Advisory Committee (CASAC)

Mr. Yeow:

The Association of Air Pollution Control Agencies (AAPCA)¹ appreciates U.S. EPA's request for public comments on the list of candidates who represent state air pollution control agencies for service on EPA's chartered CASAC.²

EPA's list of qualified candidates includes several officials from AAPCA member agencies³ as well as from two partner multi-jurisdictional organizations which share state agency members with AAPCA. These individuals possess decades of experience in the technical aspects of National Ambient Air Quality Standards (NAAQS) and have demonstrated high levels of competence, knowledge, and expertise in fields relevant to air pollution and air quality issues. This on-the-ground experience would be indispensable to CASAC and EPA. The candidates also have impressive academic credentials in fields including toxicology, environmental science, zoology, geography, and engineering.

We strongly recommend that EPA's Science Advisory Board (SAB) Staff Office consider these experts in the current chartered CASAC selection process.

EPA should ensure the chartered CASAC and individual NAAQS review panels include significant state, local, or tribal participation and diverse geographic backgrounds of advisors. At present, this is not the case. To illustrate:

- According to a May 2015 letter from the Council of State Governments West: "For EPA's Clean Air Scientific Advisory Committee Ozone Review Panel, which provided the critical advice for Administrator Gina McCarthy's proposed ozone regulations, only one of the 22 panelists came from a state/local perspective."⁴

¹ AAPCA is a national, non-profit, consensus-driven organization focused on assisting state and local air quality agencies and personnel with implementation and technical issues associated with the federal Clean Air Act. Eighteen state environmental agencies currently sit on AAPCA's Board of Directors. AAPCA is housed in Lexington, Kentucky as an affiliate of The Council of State Governments. You can find more information about AAPCA at <http://www.cleanairect.org>.

² U.S. EPA Science Advisory Board Staff Office, *Invitation for Public Comment on the List of Candidates For the Environmental Protection Agency's Clean Air Scientific Advisory Committee*, June 20, 2016

³ These include the Arkansas Department of Environmental Quality, Georgia Department of Natural Resources, Ohio Environmental Protection Agency, and the Texas Commission on Environmental Quality.

⁴ The Council of State Governments West, *Letter to Senators Mike Rounds and Edward Markey*, May 19, 2015.

- Historically, representation on CASAC committees and panels has been limited to specific regions and a handful of states.⁵
- A recent survey of twenty state air directors, including both AAPCA members and non-members, provides context for these concerns.⁶ The survey found:
 - A majority of respondents said state and local agencies are not adequately represented on CASAC and its subpanels, and that these panels are not sufficiently geographically diverse.
 - A majority of respondents agreed that the CASAC process for nominating and recommending expert candidates was transparent and clearly understood, but the top three barriers selected by respondents to state personnel serving on CASAC or its subpanels were lack of time to serve, low likelihood of being selected, and a perceived lack of expertise.
- Other EPA federal advisory committees have found avenues to expand membership for intergovernmental partners and co-regulators. For example, the recently constituted Assumable Waters Subcommittee of the National Advisory Council on Environmental Policy and Technology includes ten state and two tribal members, representing members from seven different EPA regions.⁷
- The Consolidated Appropriations Act of 2016, signed into law on December 17, 2015, was accompanied by a report directing the EPA Administrator to develop a policy statement on science quality and integrity for the Science Advisory Board. The report further directed that “EPA’s policy statement should include goals on increasing membership from States and tribes who are often underrepresented....”⁸

Statutory requirements and federal committee composition directives also suggest a robust role for geographically diverse state, local, and tribal experts in the scientific advisory process. CASAC’s charter and the Clean Air Act direct EPA to appoint *at least* one member of the National Academy of Sciences, one physician, and one person representing state air pollution control agencies. The most recent Membership Balance Plan for CASAC, last updated in 2015, states that “Geographic location may be considered” as the only other balance factor that “EPA identifies as important in achieving a balanced [Federal Advisory Committee].”⁹ The Federal Advisory Committee Act requires committees to be “fairly balanced in terms of the points of view represented and the functions to be performed.” The most recent edition of U.S. EPA’s Peer Review Handbook directs that the Agency “include a broad enough spectrum of other related experts to consider wider dimensions of the issue(s)” and “keep a balance by considering new individuals who bring fresh perspectives to the review of a work product.”¹⁰ Related policy from the National Academies argues that it may be critical to have a particular perspective on a panel, even though an individual is not a representative of their interests, “because such individuals, through their particular knowledge and experience, are often vital to achieving an informed, comprehensive, and authoritative understanding and analysis of the specific problems and potential solutions to be considered by the committee.”¹¹

⁵ Data collected from CASAC entry in the FACA database, which contains information on panelists back to FY1997.

⁶ Survey results and related presentation are available on AAPCA’s 2016 Spring Meeting website.

⁷ U.S. EPA, Assumable Waters Sub-Committee, June 2016.

⁸ Explanatory Statement Submitted for Consolidated Appropriations Act, 2016, pg. H10220, December 17, 2015.

⁹ CASAC 2015 Membership Balance Plan.

¹⁰ U.S. EPA, Peer Review Handbook, 4th Edition, October 2015.

¹¹ The National Academies, Policy on Committee Composition and Balance and Conflicts of Interest for Committees used in the Development of Reports, May 12, 2003.

AAPCA recognizes the distinction between technical advisory committees like CASAC, in which panelists serve as “Special Government Employees,” and representative advisory committees, but we believe that state, local, and tribal agency personnel possess particular knowledge and experience critical to providing informed, comprehensive, and authoritative understanding of the NAAQS.

Geographically diverse state, local, and tribal contributors provide unique, on-the-ground experience with the NAAQS, including expertise that could help CASAC carrying out the full responsibilities in its charter and Section 109(d) of the Clean Air Act. This includes advice on: “any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such” NAAQS; “the relative contribution to air pollution concentrations of natural as well as anthropogenic activity”; “areas in which additional knowledge is required to appraise the adequacy and basis of” NAAQS; and “the research efforts necessary to provide the required information.” The Government Accountability Office (GAO) has determined that CASAC has not carried out its role in providing some of this advice related to the NAAQS “because EPA has never asked CASAC to do so.”¹² Communications from AAPCA Members suggest that state air pollution control agencies would benefit from the full suite of statutorily required advice.¹³

In light of this evidence on the potential benefits of expanding geographically diverse state, local, and tribal participation on CASAC and other advisory activities, AAPCA also suggests that EPA should encourage nominations of, and seriously consider, qualified state, local, and tribal environmental agency experts for future openings on the chartered CASAC (including for those openings not statutorily required to be filled by a representative of state air pollution control agencies) as well as individual CASAC NAAQS review panels.

Thank you for the opportunity to provide feedback on EPA’s excellent list of candidates for CASAC. If you have any questions regarding our comments, please contact cwoods@csg.org or (859) 244-8040.

Sincerely,



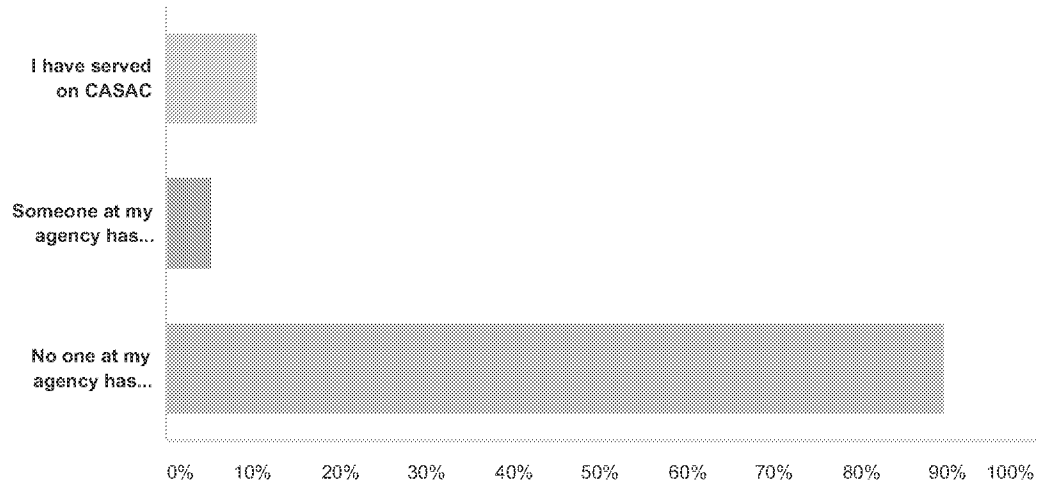
Clinton J. Woods, Executive Director
AAPCA

¹² U.S. GAO, EPA’S SCIENCE ADVISORY BOARD: Improved Procedures Needed to Process Congressional Requests for Scientific Advice, June 2015.

¹³ In response to a May 2014 letter from members of the U.S. Senate Committee on Environment and Public Works, the Louisiana Department of Environmental Quality, Mississippi Department of Environmental Quality, North Carolina Department of Environment and Natural Resources (now Department of Environmental Quality), and Texas Commission on Environmental Quality provided feedback on the CASAC process. Multi-state comments on the proposed ozone NAAQS provide perspectives on the role of CASAC. The previously cited survey of state air directors found that more than 80 percent of respondents thought CASAC advice on the full suite of topics in the charter and Section 109(d) of the Clean Air Act, as part of the NAAQS review process, would be helpful.

Q2 Have you or anyone in your agency ever served on the chartered CASAC or on its subpanels since 2000?

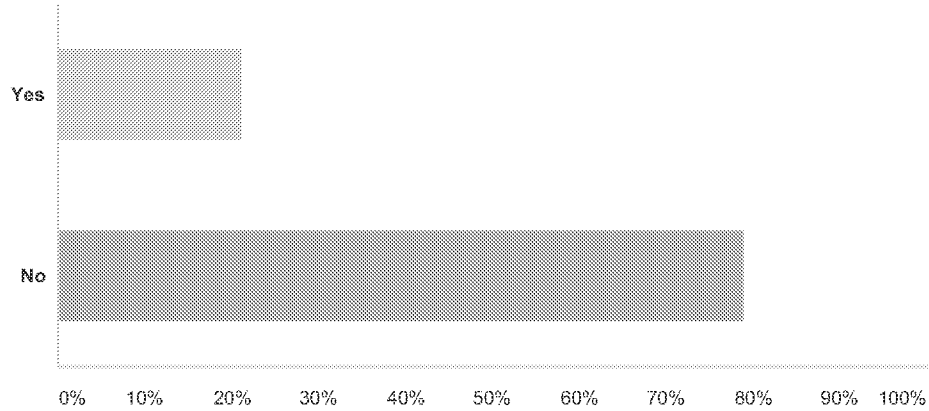
Answered: 19 Skipped: 1



Answer Choices	Responses	
I have served on CASAC	10.53%	2
Someone at my agency has served on CASAC	5.26%	1
No one at my agency has served on CASAC	89.47%	17
Total Respondents: 19		

Q3 Have you or anyone in your agency been nominated for the chartered CASAC or individual NAAQS subpanels since 2000?

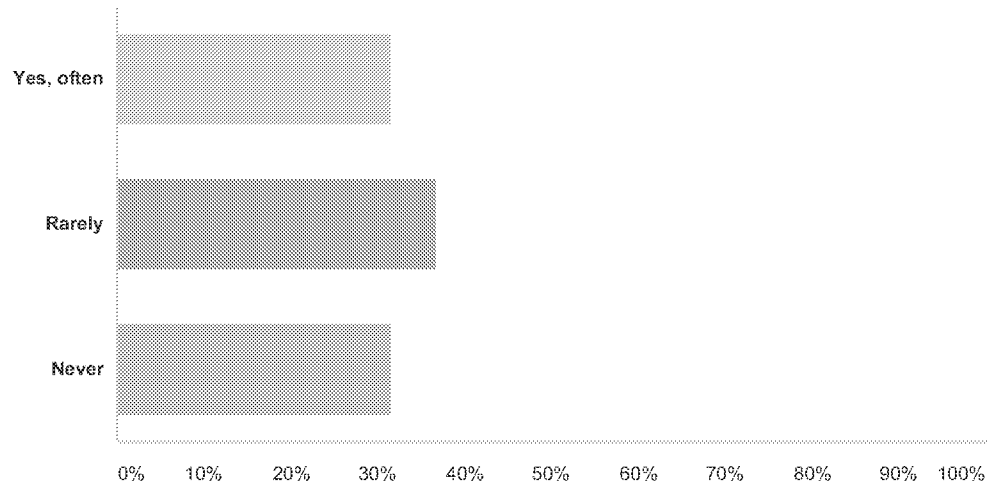
Answered: 19 Skipped: 1



Answer Choices	Responses	
Yes	21.05%	4
No	78.95%	15
Total		19

Q4 Have you or anyone in your agency participated in the CASAC review process through attending in-person meetings, providing written or oral comments to CASAC, or joining teleconferences?

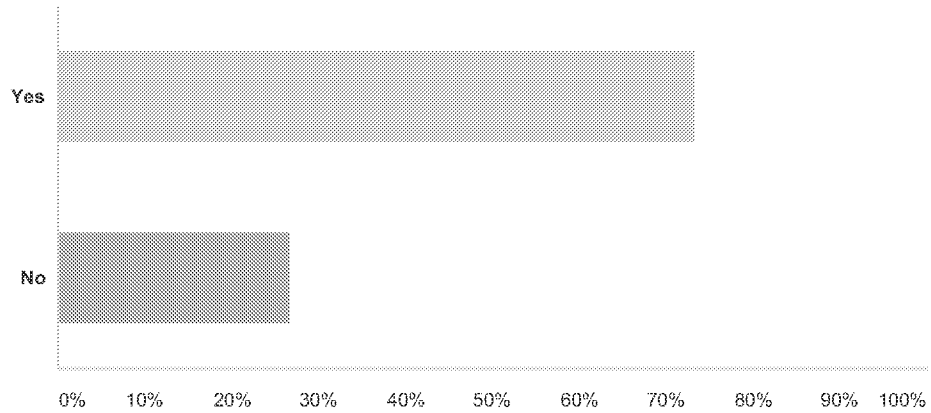
Answered: 19 Skipped: 1



Answer Choices	Responses	
Yes, often	31.58%	6
Rarely	36.84%	7
Never	31.58%	6
Total		19

Q5 Is the CASAC process for nominating and recommending expert candidates transparent and clearly understood?

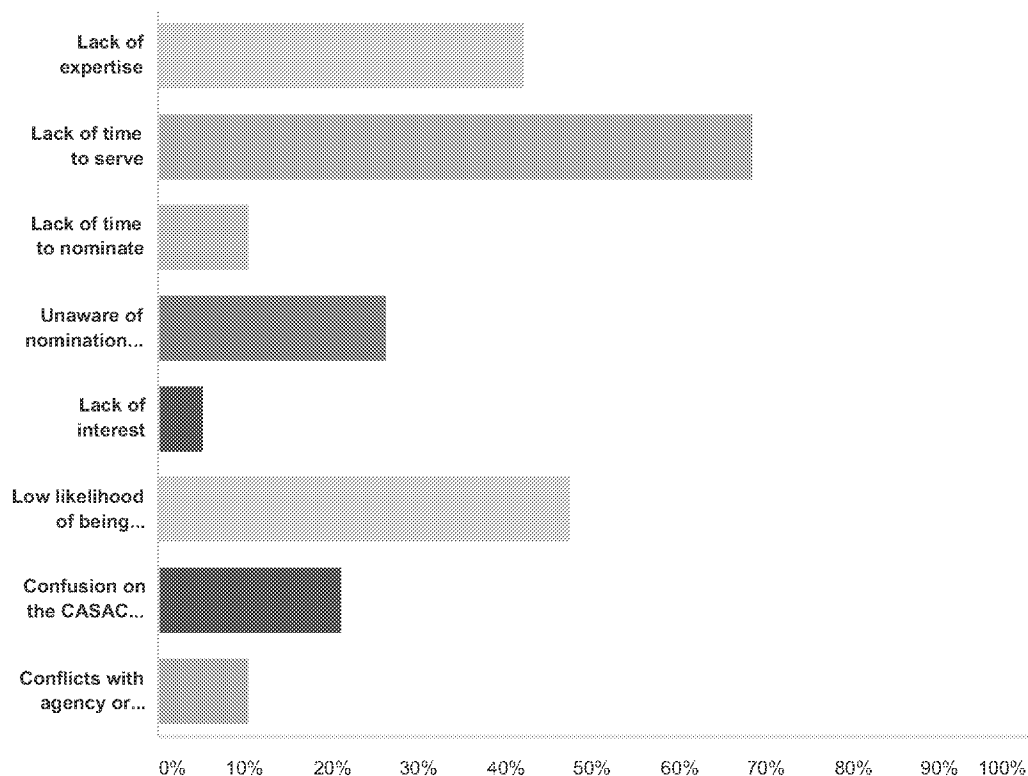
Answered: 15 Skipped: 5



Answer Choices	Responses	
Yes	73.33%	11
No	26.67%	4
Total		15

Q6 What are the barriers to you or anyone in your agency serving on CASAC or its subpanels. Please select all that apply.

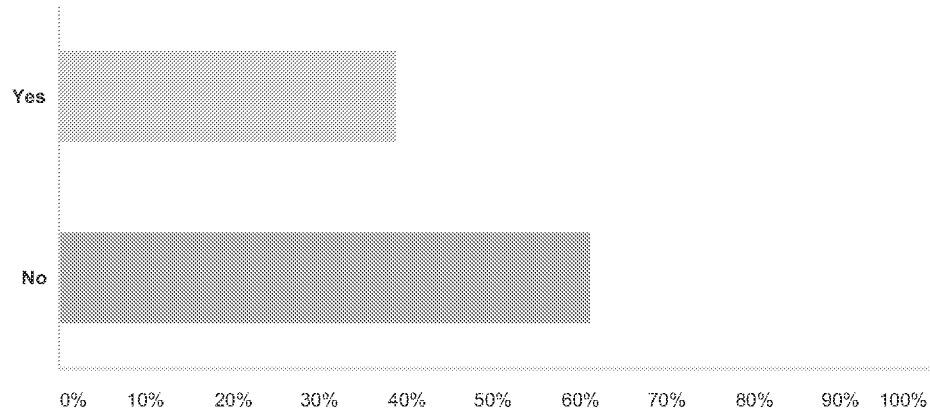
Answered: 19 Skipped: 1



Answer Choices	Responses	
Lack of expertise	42.11%	8
Lack of time to serve	68.42%	13
Lack of time to nominate	10.53%	2
Unaware of nomination openings	26.32%	5
Lack of interest	5.26%	1
Low likelihood of being selected	47.37%	9
Confusion on the CASAC nomination process	21.05%	4
Conflicts with agency or institution policies	10.53%	2
Total Respondents: 19		

Q7 Do you feel that state and local agencies are adequately represented on CASAC and its subpanels?

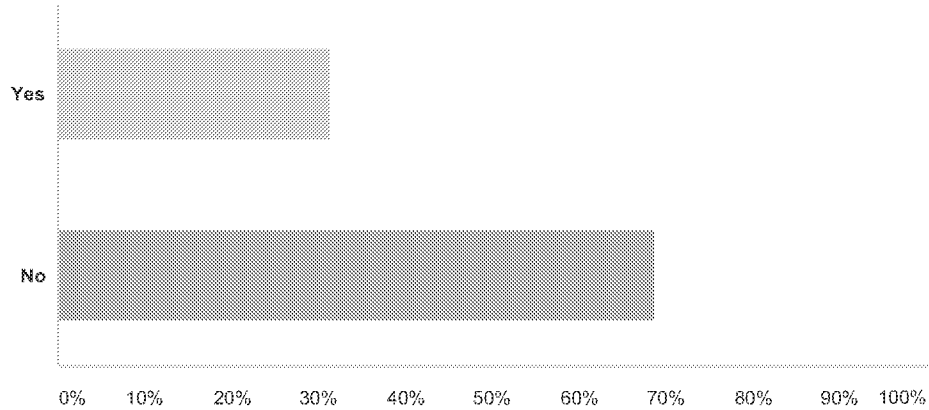
Answered: 18 Skipped: 2



Answer Choices	Responses	
Yes	38.89%	7
No	61.11%	11
Total		18

Q8 The Federal Advisory Committee Act requires advisory panels like CASAC to be fairly balanced in terms of the points of view represented and the functions performed by the advisory committee. Do you believe CASAC meets this requirement?

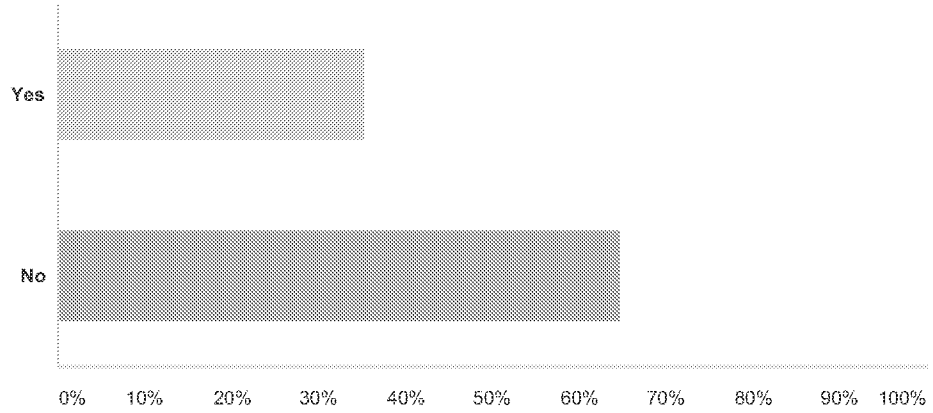
Answered: 16 Skipped: 4



Answer Choices	Responses	
Yes	31.25%	5
No	68.75%	11
Total		16

Q9 Are the chartered CASAC and its subpanels sufficiently geographically diverse?

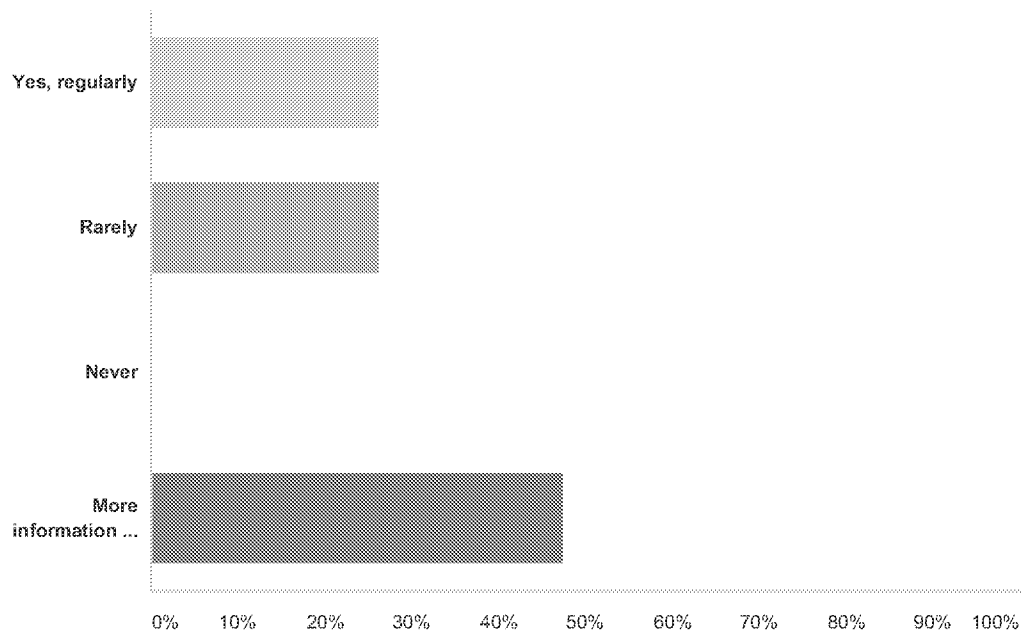
Answered: 17 Skipped: 3



Answer Choices	Responses	
Yes	35.29%	6
No	64.71%	11
Total		17

Q10 In addition to recommending "to the Administrator any new national ambient air quality standards and revisions of existing criteria and standards as may be appropriate," CASAC, under Section 109(d) of the Clean Air Act, "shall also...advise the Administrator on the relative contribution to air pollution concentrations of natural as well as anthropogenic activity."Do you believe that CASAC has carried out this duty?

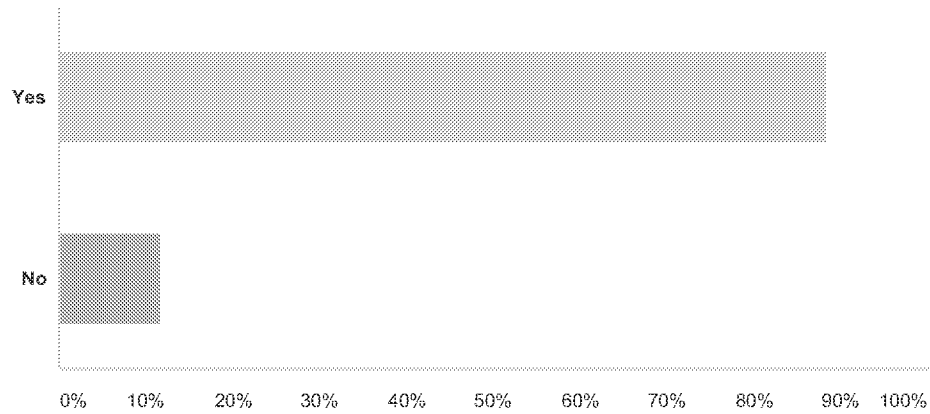
Answered: 19 Skipped: 1



Answer Choices	Responses	
Yes, regularly	26.32%	5
Rarely	26.32%	5
Never	0.00%	0
More information is needed	47.37%	9
Total		19

Q11 Would CASAC advice on the "relative contribution to air pollution concentrations of natural as well as anthropogenic activity," as part of the NAAQS review process, be helpful to your agency?

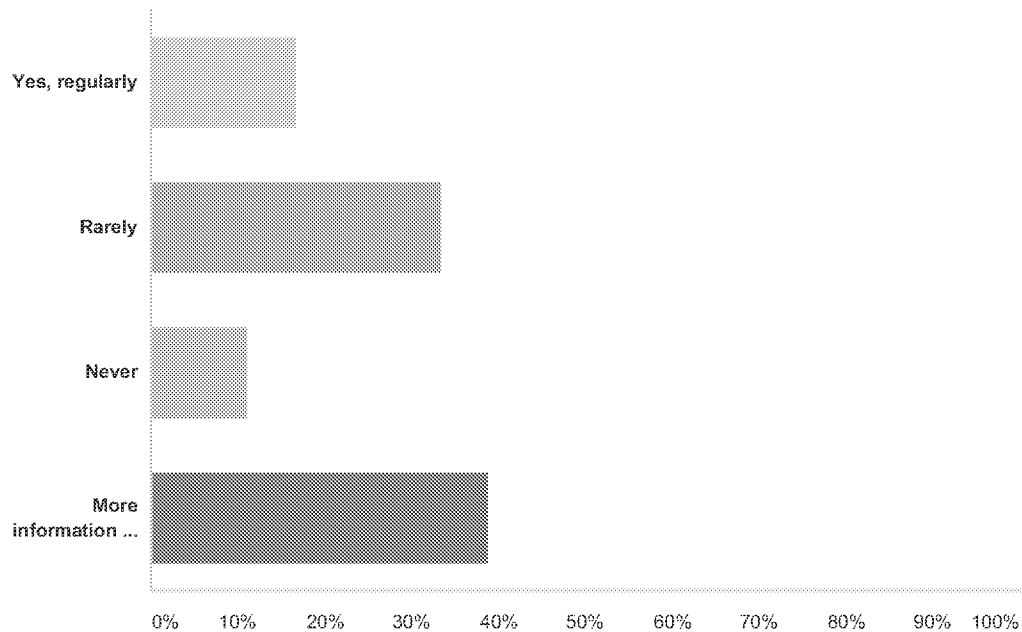
Answered: 17 Skipped: 3



Answer Choices	Responses	
Yes	88.24%	15
No	11.76%	2
Total		17

Q12 In addition to recommending "to the Administrator any new national ambient air quality standards and revisions of existing criteria and standards as may be appropriate," CASAC, under Section 109(d) of the Clean Air Act, "shall also...advise the Administrator of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such national ambient air quality standards." Do you believe that CASAC has carried out this duty?

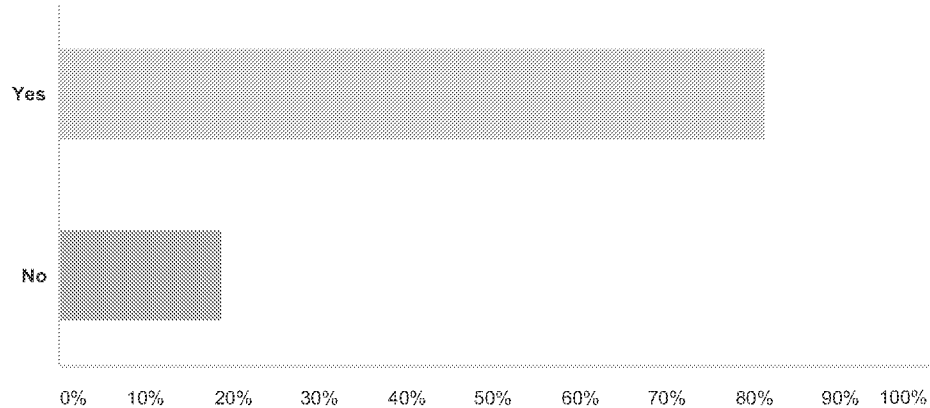
Answered: 18 Skipped: 2



Answer Choices	Responses	
Yes, regularly	16.67%	3
Rarely	33.33%	6
Never	11.11%	2
More information is needed	38.89%	7
Total		18

Q13 Would CASAC advice on "any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such national ambient air quality standards," as part of the NAAQS review process, be helpful to your agency?

Answered: 16 Skipped: 4



Answer Choices	Responses	
Yes	81.25%	13
No	18.75%	3
Total		16

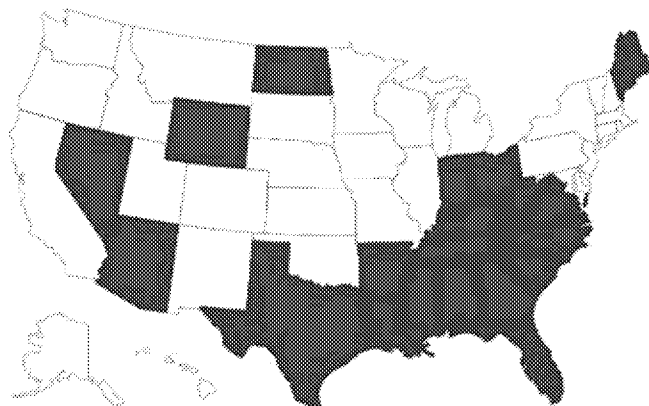
Introduction to AAPCA

The Association of Air Pollution Control Agencies (AAPCA) is a consensus-driven organization focused on assisting state and local air quality agencies and personnel with implementation and technical issues associated with the federal Clean Air Act. AAPCA's members work collaboratively on behalf of states and the communities they protect to act as a conduit for and provide feedback to federal regulators on air quality rules that have significant impacts across the entire nation. AAPCA represents more than 40 state and local air agencies, and senior officials from 20 state environmental agencies currently sit on AAPCA's Board of Directors. AAPCA is housed in Lexington, Kentucky as an affiliated association of the Council of State Governments (CSG).

Association of Air Pollution Control Agencies | 1776 Avenue of the States | Lexington, Kentucky 40511
www.cleanairact.org | [@AAPCA_States](https://twitter.com/AAPCA_States)

State Environmental Agencies Currently Represented on AAPCA's Board of Directors

Alabama | Arizona | Arkansas | Florida
Georgia | Indiana | Kentucky | Louisiana
Maine | Mississippi | Nevada
North Carolina | North Dakota | Ohio
South Carolina | Tennessee | Texas
Virginia | West Virginia | Wyoming



Footprint of AAPCA State Members

State members of AAPCA's Board of Directors have primary responsibility for air quality for a segment of the country that represents:

- Over 140 million Americans, nearly half of the U.S. population;
- More than 45 percent of U.S. Total Manufacturing Output; and,
- 60 percent of total energy production in the United States.

2017 AAPCA Officers and Technical Committees

President | [Sean Alteri](#), Kentucky Division for Air Quality, (502) 564-3999

Vice President | [Stuart Spencer](#), Arkansas Department of Environmental Quality, (501) 683-0873

Secretary/Treasurer | [Vivian Aucoin](#), Louisiana Department of Environmental Quality, (225) 219-3417

Past President | [Sheila Holman](#), North Carolina Department of Environmental Quality, (919) 707-8430

AAPCA's members participate on eleven technical committees that provide information-sharing forums for agency personnel on the following topics: Training; Best Practices; NAAQS/SIP; Modeling; Emission Inventory; Local Government; Ambient Monitoring; Compliance, Enforcement, and Testing; Permitting and New Source Review (NSR); Energy; and Public Outreach & Information.

Recent and Forthcoming AAPCA Activities

Meetings

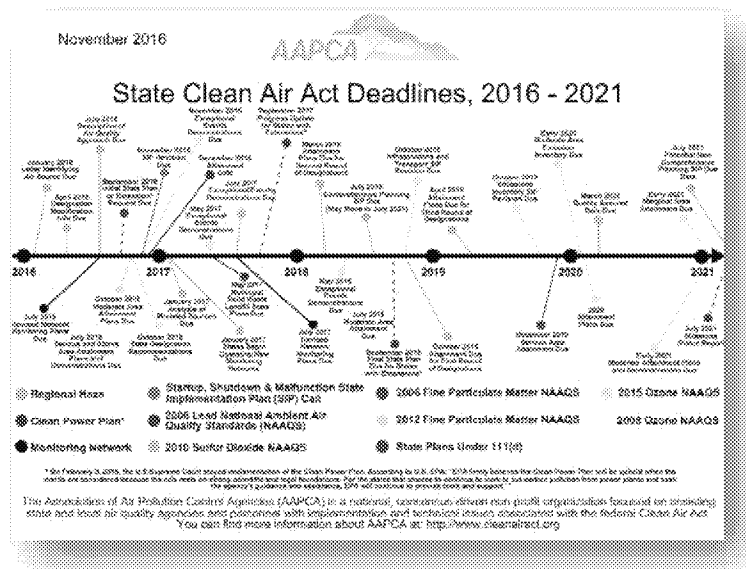
AAPCA's [membership meetings](#) offer a premier venue to engage with senior air quality officials from state and local agencies, and U.S. EPA. In 2017, AAPCA will host two in-person meetings:

- Spring Meeting, March 27 – 29, Tucson, Arizona [presentations available [here](#)]
- Annual Business Meeting, September 20 – 22, Raleigh, North Carolina

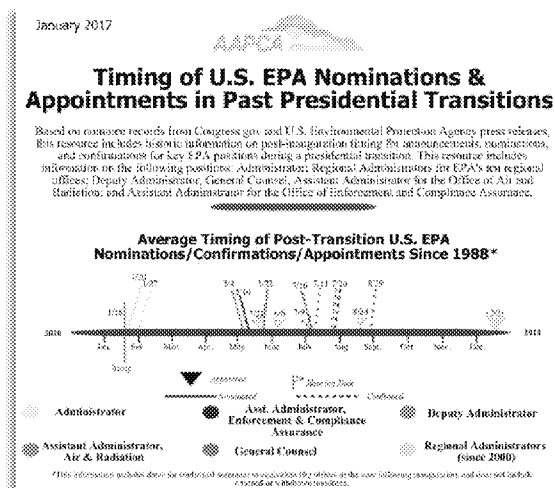
Timelines and Factsheets

AAPCA has recently released several timelines and factsheets:

- [State Clean Air Act Deadlines, 2016 - 2021](#) (updated November 2016):



- In December 2016, AAPCA released an updated timeline, [Forthcoming & Initiated Clean Air Act Regulatory Actions, 2016 - 2020](#).
- [Timing of U.S. EPA Nominations & Appointments in Past Presidential Transitions](#) (January 2017)
- In October 2016, AAPCA released a fact sheet, [Preparing for Personal Air Sensors: Definition, Opportunities, and Data Limitations](#).



Consensus Comments

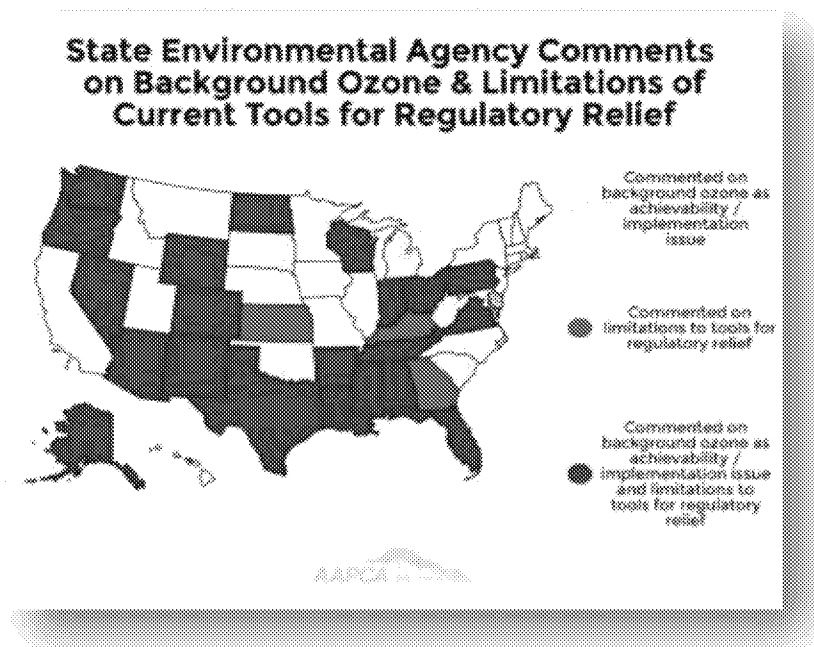
AAPCA has recently provided feedback to U.S. EPA on several topics: U.S. EPA's Preliminary Interstate Ozone Transport Modeling Data for the 2015 Ozone National Ambient Air Quality Standard; data display issues on U.S. EPA's Enforcement and Compliance History Online (September 2016); the list of candidates for U.S. EPA's Science Advisory Board Ad Hoc Committee for Review of the *Screening Methodologies to Support Risk and Technology Reviews (RTR): A Case Study Analysis* (November 2016); the proposed Regional Haze Rule Amendments (August 2016); the list of candidates for U.S. EPA's Clean Air Scientific Advisory Committee (July 2016); the proposed Revision to the Near-Road NO₂ Minimum Monitoring Requirements (June 2016); and Treatment of Data Influenced by Exceptional Events and draft Guidance on the Preparation of Exceptional Events Demonstrations for Wildfire Events that May Influence Ozone (February 2016).

AAPCA has also requested extension of the public comment periods for U.S. EPA's: draft Guidance on Modeled Emission Rates for Precursors and PM_{2.5} Precursor Demonstration (January 2017); Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area Classifications and State Implementation Plan Requirements, (December 2016); Draft Guidance on Significant Impact Levels for Ozone and Fine Particles in the Prevention of Significant Deterioration Permitting Program (September 2016); and Protection of Visibility: Amendments to Requirements for State Plans (June 2016).

Surveys of State Perspectives

AAPCA also conducts surveys of state agency perspectives:

- Perspectives on EPA's Clean Air Scientific Advisory Committee (April 2016)
- State Environmental Agency Perspectives on Timely NAAQS Implementation (September 2015)
- State Environmental Agency Perspectives on Background Ozone & Regulatory Relief (June 2015)



Resource Pages

AAPCA has compiled state and local agency comments on recent Clean Air Act issues, including: [Response to December 9, 2013 CAA Section 176A Petition From Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island and Vermont \(comment deadline: April 13, 2017\)](#); [Preliminary Interstate Ozone Transport Modeling Data for the 2015 Ozone National Ambient Air Quality Standard \(NAAQS\) \(comment deadline: April 6, 2017\)](#); [Implementation of the 2015 NAAQS for Ozone: Nonattainment Area Classifications and State Implementation Plan Requirements \(comment period closed 2/13/2017\)](#); [Protection of Visibility: Amendments to Requirements for State Plans \(final rule published 1/10/2017\)](#); [Cross-State Air Pollution Rule Update for the 2008 Ozone National Ambient Air Quality Standards \("CSAPR Update"; final rule published 10/26/2016\)](#); [Proposed Exceptional Events Rule Revisions & Draft Wildfire Guidance \(final rule published 10/3/16\)](#); [Startup, Shutdown and Malfunction State Implementation Plan Call \("SSM SIP Call"; final action published 5/22/2015\)](#); the proposed [2015 Ozone NAAQS \(final rule published 10/26/2015\)](#); the [Volkswagen litigation and mitigation](#); [permitting updates](#); and [personal air sensors](#).

Forthcoming Projects

In 2017, AAPCA and the Council of State Governments are developing a joint project, entitled [States at the Tables: Engaging Energy and Environmental Federal Advisory Committees](#). This portal will serve as a comprehensive resource for state leaders from all three branches of government regarding opportunities to interact with federal energy and environmental agencies through Federal Advisory Committees. More information will be available at: www.cooperativefederalism.org.



In April 2017, AAPCA anticipates releasing a report entitled *The Greatest Story Seldom Told: Profiles and Success Stories in Air Pollution Control*, which compiles indicators and metrics to illustrate the progress of air pollution control in the United States.



WESTERN GOVERNORS' ASSOCIATION

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May 15, 2017

Justin Clark
Director of Intergovernmental Affairs
The White House
1600 Pennsylvania Avenue N.W.
Washington, D.C. 20500

Dear Mr. Clark:

President Trump's Executive Order 13777 (E.O.), Enforcing the Regulatory Reform Agenda, requires that federal agencies seek input and assistance from states. Western Governors appreciate this requirement and commend to your attention WGA Policy Resolution 2017-01, Building a Stronger State-Federal Relationship, as a good starting point for reform of federal regulatory processes.

Western Governors believe that one of the most important and durable reforms the President could undertake is to work with them to realign the relationship of the federal government and states so that it operates as a true partnership. Such realignment could be significantly advanced by a serious effort to redefine state-federal consultation coupled with agency accountability for engagement in that process.

Pursuant to Western Governors' definition of true consultation:

Each Executive department and agency should be required to have a clear and accountable process to provide each state – through its Governor as the top elected official of the state and other representatives of state and local governments as he or she may designate – with *early, meaningful and substantive* input in the development of regulatory policies that have federalism implications. This includes the development, prioritization and implementation of federal environmental statutes, policies, rules, programs, reviews, budgets and strategic planning.

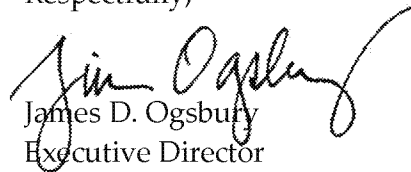
WGA has prepared the attached agency-by-agency menu of reforms for consideration by the White House and various departmental Regulatory Reform Task Forces. These options are informed by Governors' past interactions with federal agencies. We believe they can be useful in initiating realignment of the state-federal relationship, an objective that is consistent with the purposes of the President's E.O.

Justin Clark
May 15, 2017
Page 2

Western Governors are excited to work in authentic partnership with the federal government. Governors are optimistic that the new Administration will be eager to unleash the power and creativity of states for the common advantage of our country. By working cooperatively with the states, the Administration can create a legacy of renewed federalism, resulting in a nation that is stronger, more resilient and more united.

We hope this menu of reforms will be a useful resource to the various Regulatory Reform Task Forces. The Western Governors' Association is prepared to help coordinate the participation of Western Governors in this very important effort.

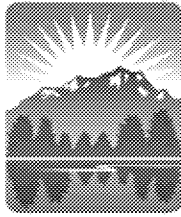
Respectfully,



James D. Ogsbury
Executive Director

Attachment

cc: Honorable Ryan Zinke, Secretary of the Interior
Honorable Sonny Perdue, Secretary of Agriculture
Honorable Scott Pruitt, Administrator, Environmental Protection Agency
Lieutenant General Todd T. Semonite, Commanding General and Chief of Engineers



WESTERN GOVERNORS' ASSOCIATION

Realigning the State-Federal Relationship

Agency-by-Agency Menu of Possible Reforms

This document contains a variety of process improvement recommendations informed by Western Governors' policy resolutions and previous interactions with the Administration and Congress. The Governors' primary priorities for regulatory reform are articulated in [WGA Policy Resolution 2017-01, Building a Stronger State-Federal Relationship](#).

The document begins with a presentation of cross-cutting recommendations (those impacting more than one agency), followed by agency-specific recommendations. It was developed to as a practical tool for the Executive Branch and Congress as they consider regulatory process improvements.

Entity	Description of Reform	Nexus to Governors' Policy Resolutions
CROSS-CUTTING		
White House Congress	Establish a federalism office in the executive branch - potential models include the U.S. Advisory Commission on Intergovernmental Relations (ACIR) and Council on Environmental Quality (CEQ).	<u>WGA Policy Resolution 2017-01, Building a Stronger State-Federal Relationship</u>
White House	Revise Executive Order 13123, <i>Federalism</i> .	<u>WGA Policy Resolution 2017-01, Building a Stronger State-Federal Relationship</u>

Entity	Description of Reform	Nexus to Governors' Policy Resolutions
Congress	Establish a permanent Joint Select Committee on Intergovernmental Relations.	<u>WGA Policy Resolution 2017-01, Building a Stronger State-Federal Relationship</u>
White House Agencies Congress	Governors have specifically defined "consultation." Seek opportunities for more meaningful consultation through: agency-specific processes; Executive Branch cross-cutting regulatory efforts (such as those outlined in recent E.O.s); administrative reorganization, and Congressional regulatory reform initiatives.	<u>WGA Policy Resolution 2017-01, Building a Stronger State-Federal Relationship</u> Letter to Agencies: Executive Order, "Enforcing the Regulatory Reform Agenda": <u>DOI</u> , <u>USDA</u> , <u>USCOE</u>
Congress	Clarify definitions in key enabling statutes to better define state-federal consultation.	<u>WGA Policy Resolution 2017-01, Building a Stronger State-Federal Relationship</u>
White House Agencies Congress	Clarify which federal actions trigger the state consultation requirements under E.O. 13132, <i>Federalism</i> . Federal agencies have recently contemplated excluding certain regulatory activities (such as agency procedures, directives development, and handbook or manual updates) from the APA process (see 80 FR 74740, November 30, 2015, RFI Regarding Involving the Public in the Formulation of Forest Service Directives). This would preclude the application of notice and comment requirements to a great deal of regulatory activity and could operate to diminish the role of states in the development of these significant regulatory tools.	<u>WGA Policy Resolution 2017-01, Building a Stronger State-Federal Relationship</u> <u>Comments: USFS Groundwater Directive</u>

Entity	Description of Reform	Nexus to Governors' Policy Resolutions
White House/ CEQ Congress	Better define “cooperating agency” under NEPA processes.	
White House Agencies Congress	Infrastructure planning and permitting guidelines, rules, and regulations should be coordinated, streamlined, and sufficiently flexible to: (i) allow for timely decision-making in the design, financing, and construction of needed infrastructure; (ii) account for regional differences; (iii) balance economic and environmental considerations; and (iv) minimize the costs of compliance.	<u>WGA Policy Resolution 2015-08: Water Resource Management in the West</u>
White House Congress	Develop an E.O. or legislation that: ensures a more focused and streamlined federal approach to invasive species issues and that promotes greater coordination, collaboration, and communication with states and Pacific islands; and provides for greater transparency of invasive species data and management decisions.	<u>WGA Policy Resolution 2016-05, Combating Invasive Species</u> <u>Letter: Concern regarding invasive species management</u> <u>Testimony: Oversight Hearing on Invasive Species</u> <u>Letter: Recommendations for state experts for Invasive Species Advisory Council</u>
White House Congress	<p>Require agencies to develop step-by-step internal guidelines on compliance with the preemption provisions of the Federalism E.O.; and</p> <p>Require internal oversight procedure by which agency scrutinizes potential preemptions of state authority.</p>	<u>WGA Policy Resolution 2017-01, Building a Stronger State-Federal Relationship</u>

Entity	Description of Reform	Nexus to Governors' Policy Resolutions
White House Congress	Require OMB/OIRA to update directions to agencies "federalism official" designations and "consultation plans." These directions should describe how agencies identify policies with federalism implications and the procedures agencies will use to ensure meaningful and timely consultation with states. Make consultations plans and contact information for designated federalism officials publicly available.	WGA Policy Resolution 2017-01, Building a Stronger State-Federal Relationship
White House	Improve preemption and federalism review requirements in OIRA's "A-4 Circular" checklist.	WGA Policy Resolution 2017-01, Building a Stronger State-Federal Relationship
Congress	Strengthen existing statutory savings clauses and incorporate savings clauses in new legislation as opportunities arise.	WGA Policy Resolution 2017-01, Building a Stronger State-Federal Relationship
Congress	Request a GAO analysis of how often federalism reviews occur in key agencies and what they include.	WGA Policy Resolution 2017-01, Building a Stronger State-Federal Relationship
Congress	Seek mandatory use of state data and expertise, subject to existing state requirements for data protection and transparency.	WGA Policy Resolution 2017-01, Building a Stronger State-Federal Relationship WGA Policy Resolution 2016-08, Species Conservation and the Endangered Species Act WGA Policy Resolution 2014-14, State Wildlife Science, Data and Analysis Appropriations Requests Testimony, FY 2015, 2016, 2017

Entity	Description of Reform	Nexus to Governors' Policy Resolutions
Congress	Require agencies to assure state participation in relevant federal science boards by requiring the selection of state scientists to serve on science-based groups informing federal regulation (e.g. EPA Science Advisory Board panels).	WGA Policy Resolution 2017-01, Building a Stronger State-Federal Relationship Appropriations Requests Testimony, FY 2015
White House Agencies Congress	Seek mandatory use of a refined model for federal land management agencies' economic impact and cost/benefit analyses designed in conjunction with affected states and counties.	WGA Policy Resolution 2017-01, Building a Stronger State-Federal Relationship
White House Agencies Congress	Require agencies to share assumptions supporting federalism assessment impact analyses. (n.b. In a previous CERCLA 108(b) federalism assessment process, EPA refused to share assumptions or modeling information with states. See details here .)	WGA Policy Resolution 2017-01, Building a Stronger State-Federal Relationship
DEPARTMENT OF AGRICULTURE		
United States Forest Service (USFS)		
Congress	Clarify definitions in key enabling statutes such as NFMA, MUSYA, and FRRRPA to better define state-federal consultation.	WGA Policy Resolution 2017-01, Building a Stronger State-Federal Relationship
White House Agencies	Consult with states in a meaningful way prior to proposing directives or rules affecting states' management and allocation of water resources.	WGA Policy Resolution 2015-08: Water Resource Management in the West

Entity	Description of Reform	Nexus to Governors' Policy Resolutions
	(n.b. USFS previously contemplated excluding certain regulatory activities (such as agency procedures, directives development, and handbook or manual updates) from the APA process [see 80 FR 74740, November 30, 2015, RFI Regarding Involving the Public in the Formulation of Forest Service Directives]. This would preclude the application of notice and comment requirements to a great deal of regulatory activity and could diminish the role of states in the development of these significant regulatory tools.)	WGA Policy Resolution 2017-01: Building a Stronger State-Federal Relationship Appropriations Requests Testimony, FY 2016, 2017 Testimony: State Authority over Water Management Comments: USFS Groundwater Directive Letter: Concern on USFS Proposed Groundwater Management Directive Comments: Ski Area Water Rights on Forest Service Lands Comments: Proposed USFS Directive for National Best Management Practices for Water Quality
White House/CEQ Agencies	<p>Increase state-federal coordination to complete the siting and permitting of electricity transmission across federal lands within three years of submission of a completed application.</p> <p>Include meaningful state consultation as a required component of the west-wide energy corridor designation process under section 368 of the Energy Policy Act of 2005.</p>	WGA Policy Resolution 2016-09: Energy and Transmission Comments: The first iteration of DOE's Quadrennial Energy Review Comments: DOE Integrated, Interagency Pre-Application Process proposal Comments: DOE Integrated, Interagency Pre-application Process proposal Letter: Western states' need for substantial state role in Section 368 energy corridor designation process WGA Policy Resolution 2016-09: Energy and Transmission

Entity	Description of Reform	Nexus to Governors' Policy Resolutions
		<p><u>Letter: Request for substantive partnership in Section 368 energy corridor designation process</u></p> <p><u>Letter: Offer to work with federal agencies on western energy Section 368 corridors</u></p>
White House Agencies	<p>Consult with states in development of a consistent, cross-agency process for identifying and selecting highest priority hazardous fuels projects.</p> <p>Involve states in development and implementation of risk assessment tools for identifying and prioritizing hazardous fuels reductions projects on western NFS lands.</p> <p>Implement tracking measurements to quantify and report acres treated for hazardous fuels reduction as an accomplishment only after an entire project has been completed and the desired condition is achieved.</p>	<p><u>USFS Inspector General's Report "Forest Service Wildland Fire Activities – Hazardous Fuels Reduction." (July, 2016)</u></p>
White House Agencies	<p>Federal statutes require federal land management agencies to establish a balance between multiple uses of public lands. Take steps to account for local needs and state priorities when evaluating the viability of various uses.</p>	<p><u>WGA Policy Resolution 2016-01 National Forest and Rangeland Management</u></p> <p><u>WGA National Forest and Rangeland Management Initiative</u></p>
Agencies	<p>Expand use of authorities included in the 2014 Farm Bill to increase the pace and scale of forest management and restoration on western National Forests and adjacent non-federal lands; Expand opportunities for state and local collaborative involvement in decision-making processes.</p>	<p><u>2016-01 National Forest and Rangeland Management</u></p> <p><u>Appropriations Requests Testimony, FY 2016, 2017</u></p> <p><u>Letter: Support for accelerated implementation of forest management projects</u></p>

Entity	Description of Reform	Nexus to Governors' Policy Resolutions
	<p>Target funding from USFS, BLM, NRCS and state sources to address cross-boundary management goals in priority areas consistent with state forest action plans. Increase training of state, tribal, and other partners in USFS analysis, administration, and business practices to facilitate interagency implementation of cross-boundary projects.</p> <p>Enable State leadership to reinforce and reward collaboration on USFS and DOI planning and projects.</p>	
Agencies	Identify fuels management priorities in consultation with states to focus resources on greatest wildfire threats.	<p><u>2014-10 Regional Wildfire Fighting Resources</u></p> <p><u>Letter: State collaboration in addressing rangeland fire risk</u></p>
DEPARTMENT OF COMMERCE		
National Marine Fisheries Service (NMFS)		
	Provide regulatory and statutory avenues to implement forthcoming recommendations produced by the Western Governors' Species Conservation and ESA Initiative.	<u>WGA Policy Resolution 2016-08, Species Conservation and the Endangered Species Act</u>
	Require petitioners to provide a copy of petitions to affected state(s) so states may provide any existing state data regarding the petitioned species.	<p><u>WGA Policy Resolution 2016-08, Species Conservation and the Endangered Species Act</u></p> <p><u>Comments: Endangered & Threatened Wildlife and Plants: Revisions to the Regulations for Petitions</u></p>
	Limit critical habitat designations for broadly distributed species to only the area deemed necessary by the best available science. Critical habitat designations should be based on analysis that	<u>WGA Policy Resolution 2016-08, Species Conservation and the Endangered Species Act</u>

Entity	Description of Reform	Nexus to Governors' Policy Resolutions
	includes data and scientific information from states included in proposed critical habitat. Engage states as full partners in critical habitat designations, especially when federal agencies intend to rely on the precautionary principle, coupled with the use of long-term modeling and forecasting.	<u>Comments: Implementing Changes to the Regulations for Designating Critical Habitat</u>
	Utilize data and expertise provided by states in conducting status reviews and 12-month findings on petitions for listing species under the ESA.	<u>WGA Policy Resolution 2016-08, Species Conservation and the Endangered Species Act</u> <u>Comments: Use of State Data & Expertise in ESA Listing Methodology</u>
National Oceanic and Atmospheric Administration (NOAA)		
	Work with states and resource managers to improve predictive and adaptive capabilities for extreme weather variability and related impacts, with a priority on improving sub-seasonal and seasonal precipitation forecasting capabilities to support water management decision-making.	<u>WGA Policy Resolution 2015-08, Water Resource Management in the West</u> <u>Letter: Support for federal drought relief legislation</u>
DEPARTMENT OF DEFENSE		
United States Army Corps of Engineers (USACE)		
	Promote early, meaningful consultation with states in the promulgation or development of any rules, regulations, directives, or agency action that affects or influences states' management or allocation of water resources, including "surplus" water supplies in USACE reservoirs or water storage projects.	<u>WGA Policy Resolution 2015-08, Water Resource Management in the West</u> <u>Letter: Concern regarding U.S. Army Corps of Engineers water surplus rule</u>

Entity	Description of Reform	Nexus to Governors' Policy Resolutions
	Any attempts to define the jurisdictional scope of "Waters of the United States" in the Clean Water Act must respect limits set by Congress and the U.S. Supreme Court, recognizing the authority of states to manage water within their boundaries.	WGA Policy Resolution 2015-08, Water Resource Management in the West Appropriations Requests Testimony, FY 2015, 2016, 2017 Comments: Final Waters of the United States (WOTUS) Rule Request for Extended Comment Period - Waters of the United States (WOTUS) Rule Letter: Concern regarding Clean Water Act jurisdiction rulemaking
DEPARTMENT OF ENERGY		
	Work cooperatively with states in implementing a policy to ensure the safe transportation, storage, and disposal of spent fuel and high-level waste.	WGA Policy Resolution 2016-03: Transportation of Radioactive Waste, Radioactive Materials and Spent Nuclear Fuel 2017-05 Storage and Disposal of Radioactive Waste and Spent Nuclear Fuel
	Require consent of an affected state's Governor before allowing construction of a centralized interim storage facility.	WGA Policy Resolution 2016-03: Transportation of Radioactive Waste, Radioactive Materials and Spent Nuclear Fuel WGA Policy Resolution 2017-05 Storage and Disposal of Radioactive Waste and Spent Nuclear Fuel

Entity	Description of Reform	Nexus to Governors' Policy Resolutions
	<p>Increase state-federal coordination to complete the siting and permitting of electricity transmission across federal lands within three years of submission of a completed application.</p> <p>Include meaningful state consultation as a required component of the west-wide energy corridor designation process under section 368 of the Energy Policy Act of 2005.</p>	<p><u>WGA Policy Resolution 2016-09: Energy and Transmission</u></p> <p><u>Comments: The first iteration of DOE's Quadrennial Energy Review</u></p> <p><u>Comments: DOE Integrated, Interagency Pre-Application Process proposal</u></p> <p><u>Comments: DOE Integrated, Interagency Pre-application Process proposal</u></p> <p><u>Letter: Western states' need for substantial state role in Section 368 energy corridor designation process</u></p> <p><u>WGA Policy Resolution 2016-09: Energy and Transmission</u></p> <p><u>Letter: Request for substantive partnership in Section 368 energy corridor designation process</u></p> <p><u>Letter: Offer to work with federal agencies on western energy Section 368 corridors</u></p>
FEDERAL ENERGY REGULATORY COMMISSION		
	<p>Existing state hydropower licensing authorities should not be replaced or in any way impeded by FERC jurisdiction.</p>	<p><u>WGA Policy Resolution 2016-09: Energy and Transmission</u></p> <p><u>Letter: Hydropower facility licensing authorities</u></p> <p><u>Comments: The feasibility of a two-year licensing process for small hydropower projects</u></p>

Entity	Description of Reform	Nexus to Governors' Policy Resolutions
ENVIRONMENTAL PROTECTION AGENCY		
	Clarify key enabling statutes such as CAA, CWA, RCRA, CERCLA to better define delegated authority of states.	WGA Policy Resolution 2017-01, Building a Stronger State-Federal Relationship
	Use of state science should be a predicate for rulemaking decisions. Enhance state representation on the Science Advisory Board (SAB), as well as on it standing and <i>ad hoc</i> committees. State participation should constitute no less than 10% of the membership of SAB committees, subcommittees, and subject matter panels.	WGA Policy Resolution 2017-01, Building a Stronger State-Federal Relationship Appropriations Requests Testimony, FY 2015
	Consult with Western Governors and state regulators prior to determining whether to pursue any CERCLA section 108(b) financial assurance regulations. In the event EPA opts to pursue regulation of any industry subject to such regulation, it should enter substantive pre-publication consultation with Western Governors and state regulators.	WGA Policy Resolution 2017-06: Financial Assurance Regulation Comments: CERCLA 108(b) financial assurance rule for hardrock mining industry Letter: Concerns over potential EPA CERCLA 108(b) financial assurance requirements
	Recognize state authority under the Clean Air Act. Ensure that newly promulgated rules are drafted and issued, where appropriate, in coordination with existing regulations, considering elements and requirements common to both. Provide states and local entities with adequate support and	WGA Policy Resolution 2014-13: State Clean Air Act Authority and Air Quality Regulation Appropriations Requests Testimony, FY 2017 Letter: Concern over pending revision to Exceptional Events Rule, given reduced ground-level ozone NAAQS

Entity	Description of Reform	Nexus to Governors' Policy Resolutions
	<p>technical assistance to help them comply with regulations promulgated under the CAA.</p> <p>Collaborate with states to identify priority areas and focus on programs that provide the greatest benefit to air quality.</p> <p>Adhere closely to the timelines in the CAA.</p> <p>Recognize and account for unique circumstances of individual states. Avoid one-size-fits-all rulemakings (exceptional events and ozone example).</p> <p>Complete and publish timely guidance for state use in connection with implementation of the 2015 revised National Ambient Air Quality Standard for ground-level ozone.</p> <p>Avoid duplication of state programs. Permit states to create programs tailored to individual state needs, industries, and economies. Engage states as co-regulators (e.g. with respect to methane emissions).</p> <p>Provide those states with delegated authority timely implementation guidance when new and revised regulations are published.</p>	<p><u>Comments: Proposed reduction to ground-level ozone NAAQS</u></p> <p><u>WGA Policy Resolution 2015-02: Methane Emissions Regulation</u></p>
	<p>Expressly, unambiguously, and conspicuously recognize states' primary authority over water management and allocation decisions in all new federal laws, rules, regulations, and guidance documents.</p> <p>Any definition of "Waters of the United States" in the Clean Water Act must respect limits set by Congress and the U.S. Supreme</p>	<p><u>WGA Policy Resolution 2015-08: Water Resource Management in the West</u></p> <p><u>Appropriations Requests Testimony, FY 2015, 2016, 2017</u></p> <p><u>Comments: Final Waters of the United States (WOTUS) Rule</u></p>

Entity	Description of Reform	Nexus to Governors' Policy Resolutions
	<p>Court, recognizing the authority of states to manage water within their boundaries.</p> <p>Recognize states' exclusive authority over the allocation and administration of rights to develop groundwater resources and expressly preclude federal agencies from usurping such authority through rulemakings, regulations, guidance documents, or agency directives.</p>	<p>Request for Extended Comment Period - Waters of the United States (WOTUS) Rule</p> <p>Letter: Request for Waters of the United States (WOTUS) Rule Comment Period Extension</p> <p>WGA Policy Resolution 2017-04: Water Quality in the West</p> <p>Appropriations Requests Testimony, FY 2016, 2017</p>
	<p>Engage the states as co-regulators and ensure that state water managers have a robust and meaningful voice in the development of any federal rule regarding CWA jurisdiction, particularly in the early stages of development and before any irreversible momentum precludes effective state participation.</p> <p>Allow states to adopt flexible water quality standards and establish total maximum daily loads (TMDLs) that are tailored to the specific characteristics of western water bodies, including variances for unique state and local conditions.</p> <p>Directly coordinate with states in establishing and, if necessary, modifying any water quality standards under Section 303 of the CWA; EPA should document the need for any new requirements and ensure they do not unduly interfere with sound existing practices.</p>	<p>WGA Policy Resolution 2017-04: Water Quality in the West</p> <p>Appropriations Requests Testimony, FY 2015, 2016, 2017</p> <p>Comments: Final Waters of the United States (WOTUS) Rule</p> <p>Request for Extended Comment Period - Waters of the United States (WOTUS) Rule</p> <p>Letter: Request for Waters of the United States (WOTUS) Rule Comment Period Extension</p> <p>Letter: Concern regarding Clean Water Act jurisdiction rulemaking</p>
DEPARTMENT OF HOMELAND SECURITY		

Entity	Description of Reform	Nexus to Governors' Policy Resolutions
Federal Emergency Management Agency (FEMA)		
	Work directly with individual states and territories to jointly identify their individual and common disaster risks and needs, and the best methods to determine the necessity and provision of federal disaster assistance.	WGA Policy Resolution 2015-04: Federal Disaster Recovery Assistance for Communities in the West
DEPARTMENT OF THE INTERIOR		
	Clarify definitions in key enabling statutes (such as FLMPA and NWRSA) to better define state-federal consultation.	WGA Policy Resolution 2017-01, Building a Stronger State-Federal Relationship
Bureau of Land Management (BLM)		
	<p>Enhance state-federal consultation regarding BLM's planning processes.</p> <p>Resource Management Plans (RMPs) should be developed and amended in coordination with Governors. These foundational documents should be developed with meaningful and substantial input from governors and state regulators before they are released for public comment.</p> <ul style="list-style-type: none"> • Provide sufficient time for completion of Governors' Consistency Reviews; • Governors' Consistency Reviews should be applied to ensure consistency of RMPs with state policies, programs and processes – as well as various types of state plans (e.g. 	<p>WGA Policy Resolution 2017-01: Building a Stronger State-Federal Relationship</p> <p>Letter: Governors concerned by final BLM Planning 2.0 Rule</p> <p>Testimony: BLM proposed rule, Resource Management Planning</p> <p>Testimony: BLM proposed rule, Resource Management Planning</p> <p>Comments: BLM proposed rule, Resource Management Planning</p>

Entity	Description of Reform	Nexus to Governors' Policy Resolutions
	<p>State Wildlife Action Plans) and multi-state agreements – in addition to officially adopted state land use plans;</p> <ul style="list-style-type: none"> • Maintain the existing appeals process (and associated timelines) for Governors' Consistency Reviews; and • Ensure that the standard for consistency in the resource management planning process matches the requirement of FLPMA 1712(c)(9). <p>Consult with states on a regular basis: as a predicate to federal action; through the pre-publication stage of rulemaking; after publication and before adoption of rules and regulations; and on an ongoing basis throughout implementation.</p> <p>Federal-state consultation should be substantive, take place on an early and ongoing basis, and involve both Governors and state regulators.</p> <p>Retain existing minimum public comment period timeframes. Any process that reduces BLM's responsibility to actively inform the public of its actions represents a retreat from openness and transparency.</p> <p>Retain existing requirements for publication of a Federal Register notice at the start of every planning effort. These publication requirements should also apply to Notices of Intent to prepare environmental assessments as part of RMP amendments.</p>	<p><u>Letter: Request for extension of comment period for BLM proposed rule, Resource Management Planning</u></p> <p><u>Letter: Request for clarification on aspect of BLM's Planning 2.0 Initiative</u></p>
	<p>Most Western states have a BLM office that coordinates and directs agency activity in that state. State directors need to be</p>	

Entity	Description of Reform	Nexus to Governors' Policy Resolutions
	given independent authority to respond to issues that are unique to individual states.	
	FLPMA requires BLM to establish a balance between multiple uses of public lands. Take steps to account for local needs and state priorities when evaluating the viability of various uses.	
	Use authorities in the 2014 Farm Bill (Good Neighbor Authority and Stewardship Contracting Authority) to increase the pace and scale of forest management and restoration on BLM lands.	2016-01 National Forest and Rangeland Management Appropriations Requests Testimony, FY 2016, 2017 Letter: Support for accelerated implementation of forest management projects
	<p>Develop mitigation requirements and processes that may affect state and private land in cooperation with the Governors in whose states DOI lands are situated. Clearly define and predictably implement those requirements and processes so proper and reasonable mitigation can be incorporated in project planning.</p> <p>Revise BLM Mitigation Policy to better define key terms.</p>	WGA Policy Resolution 2017-01: Building a Stronger State-Federal Relationship Letter: Request for clarification on Secretarial Order 3330, Improving Mitigation Policies and Practices of the Department of the Interior Letter: Reiterating request for clarification on Secretarial Order 3330 Letter: Governors request Interior establish preference for state-based mitigation programs
	In any methane regulation, ensure that the capture, commoditization and sale of methane is promoted and that states remain empowered able to create programs tailored to individual state needs, industries, and economies.	WGA Policy Resolution 2015-02: Methane Emissions Regulation

Entity	Description of Reform	Nexus to Governors' Policy Resolutions
		<p><u>Comments: BLM should defer to state regulations for BLM proposed rule on methane reduction from oil and gas sector</u></p> <p><u>Letter: Request for extension of comment period for BLM proposed rule for methane reduction from oil and gas sector</u></p> <p><u>Letter: Urging state consultation on BLM's methane rule</u></p>
	Recognize that the states, territories, and flag islands have regulated the practice of hydraulic fracturing for decades and redundant federal regulation is not required where sufficient state regulations exist.	<p><u>WGA Policy Resolution 2016-09: Energy and Transmission</u></p> <p><u>Letter: Input on BLM proposed rule, Oil and Gas: Hydraulic Fracturing and Federal and Indian lands</u></p>
	<p>Improve state-federal coordination to complete the siting and permitting of electricity transmission across federal lands within three years of submission of a completed application.</p> <p>Include meaningful state consultation as a required component of the west-wide energy corridor designation process under section 368 of the Energy Policy Act of 2005.</p>	<p><u>WGA Policy Resolution 2016-09: Energy and Transmission</u></p> <p><u>Letter: Western states' need for substantial state role in Section 368 energy corridor designation process</u></p> <p><u>Letter: Support for Presidential Memo Transforming our Nation's Electric Grid through Improved Siting, Permitting and Review</u></p> <p><u>Letter: Support for the Senate's BLM Permit Processing Improvement Act of 2014</u></p> <p><u>Letter: Support for reauthorization of the Federal Permit Streamlining Pilot Project</u></p> <p><u>Letter: Western states' need for substantial state role in Section 368 energy corridor designation process</u></p>

Entity	Description of Reform	Nexus to Governors' Policy Resolutions
		Letter: Request for substantive partnership in Section 368 energy corridor designation process Letter: Offer to work with federal agencies on western energy Section 368 corridors
	Provide states a forum to advise DOI on federal mineral leasing royalty policy (such as through reestablishment of the Royalty Policy Committee).	WGA Policy Resolution 2017-12: States' Share of Royalties and Leasing Revenues from Federal Lands and Minerals and States' Role in Associated Federal Policy
	Identify fuels management priorities in consultation with states to focus resources on greatest wildfire threats.	WGA Policy Resolution 2014-10 Regional Wildfire Fighting Resources
U.S. Fish and Wildlife Service (FWS)		
	Provide regulatory and statutory avenues to implement recommendations produced by the Western Governors' Species Conservation and ESA Initiative.	WGA Policy Resolution 2016-08, Species Conservation and the Endangered Species Act
	Consult with Governors and state regulators to clarify landscape-scale compensatory mitigation and define "net conservation gain."	WGA Policy Resolution 2017-01: Building a Stronger State-Federal Relationship
	Develop mitigation requirements and processes in cooperation with Governors in whose states DOI lands are situated. Clearly define and predictably implement those requirements and processes to ensure proper and reasonable mitigation is incorporated in project planning.	WGA Policy Resolution 2016-08, Species Conservation and the Endangered Species Act Comments: Endangered Species Act Compensatory Mitigation Policy

Entity	Description of Reform	Nexus to Governors' Policy Resolutions
	Mitigation requirements having the potential to impact state and private land must be developed in coordination with Governors.	<p><u>Letter: Request for clarification on Secretarial Order 3330, Improving Mitigation Policies</u></p> <p><u>Letter: Request for clarification on Secretarial Order 3330, Improving Mitigation Policies and Practices of the Department of the Interior</u></p> <p><u>Letter: Reiterating request for clarification on Secretarial Order 3330</u></p> <p><u>Comments: Proposed Revisions to the U.S. Fish and Wildlife Service Mitigation Policy</u></p>
	Require petitioners to provide a copy of the petitions to affected state(s) so states may provide any existing state data regarding the petitioned species.	<p><u>WGA Policy Resolution 2016-08, Species Conservation and the Endangered Species Act</u></p> <p><u>Comments: Endangered & Threatened Wildlife and Plants: Revisions to the Regulations for Petitions</u></p>
	Incentivize voluntary conservation actions in order to preclude the need to list species under the ESA. Support the provision of economic incentives for landowners to participate in voluntary conservation efforts. Consult with Governors to promote proper implementation of FWS policy on Voluntary Prelisting Conservation Actions.	<p><u>WGA Policy Resolution 2016-08, Species Conservation and the Endangered Species Act</u></p> <p><u>Comments: Policy Regarding Voluntary Prelisting Conservation Actions</u></p>
	Limit critical habitat designations for broadly distributed species to only the area deemed necessary by the best available science. Use scientific information and analysis from states to inform critical habitat designations. Engage states as full partners in critical habitat designation, especially when federal agencies	<p><u>WGA Policy Resolution 2016-08, Species Conservation and the Endangered Species Act</u></p> <p><u>2016-08: Species Conservation and the Endangered Species Act.</u></p>

Entity	Description of Reform	Nexus to Governors' Policy Resolutions
	intend to rely on the precautionary principle, coupled with the use of long-term modeling and forecasting.	
	The Services should utilize data and expertise provided by states in conducting status reviews and 12-month findings on petitions for listing species under the ESA.	<p><u>WGA Policy Resolution 2016-08, Species Conservation and the Endangered Species Act</u></p> <p><u>WGA Policy Resolution 2014-14, State Wildlife Science, Data and Analysis</u></p> <p><u>Comments: Use of State Data & Expertise in ESA Listing Methodology</u></p> <p><u>Testimony: State Wildlife Data</u></p> <p><u>Appropriations Requests Testimony, FY 2015, 2016, 2017</u></p>



"Serving Western Legislatures"

The Council of State Governments West

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Charlotte Carter-Yamauchi, HI
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May 19, 2015

Honorable Mike Rounds
United States Senator
Chairman, Superfund, Waste Management, and Regulatory Oversight
Subcommittee
410 Dirksen Senate Office Building
Washington, DC 20510-6175

Honorable Edward Markey
United States Senator
Ranking Member, Superfund, Waste Management, and Regulatory
Oversight Subcommittee
456 Dirksen Senate Office Building
Washington, DC 20510-6175

Dear Senator Rounds and Senator Markey,

On behalf of the Council of State Governments West (CSG West), thank you for the opportunity to contribute to the Superfund, Waste Management, and Regulatory Oversight Subcommittee's hearing on oversight of scientific advisory panels and processes at the Environmental Protection Agency (EPA). We appreciate your leadership and the subcommittee's interest in hearing from Western state legislators.

As a nonpartisan, nonprofit organization serving Western state legislatures, CSG West is dedicated to preserving the role of states as "laboratories of democracy" and fostering effective cooperation with relevant federal agencies in areas of shared jurisdiction while limiting unnecessary federal intrusion in areas of state responsibility. In no other region in our country is effective federal and state cooperation more important than in the West where federal agencies work with relevant state and local agencies on a number of critical issues affecting the sustainability of our region, including the management of our natural resources and the protection of wildlife.

Over the past several years CSG West, through resolutions and correspondence, has urged Congress and federal agencies to communicate and consult with Western states in a substantive and timely manner when considering amendments to the Water Pollution Control Act as well as other federal laws. Moreover, CSG West has urged federal agencies to adhere to Presidential Executive Order 13132, issued August 4, 1999, requiring federal agencies to "have an accountable process to ensure meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications."

Enclosed for your reference are copies of CSG West resolutions related to proposed amendments to the Federal Water Pollution Control Act and water-related federal rules, regulations, directives, orders and policies.

Despite our organization's call for greater consultation with Western states, communication challenges remain. In many instances state consultation by federal agencies, including U.S. EPA, has taken place in the latter part of the policy development process, placing states and regional organizations such as CSG West in a reactionary position to a proposed regulation or interpretation as opposed to engaging states on the front-end of the process to ensure that state perspectives are taken into account.

In addition to the state consultation challenges limited state representation exists in EPA advisory panels. U.S. EPA advisory panels play an important role in providing independent advice to the EPA Administrator and other high level administration officials on a number of technical issues, including the development of rules related to the jurisdiction and application of the Clean Water Act, Clean Air Act and other regulations that impact state authority. Because they provide an independent voice to complex, technical matters, it is imperative that such advisory boards be comprised by a wide array of stakeholders, including state level representatives. However, states are largely underrepresented in EPA advisory panels.

Below are some examples related to the lack of state/local participation on EPA advisory panels:

- Of the 47 members of EPA's Chartered Science Advisory Board, only three are from state and local governments.
- EPA's Hydraulic Fracturing Research Advisory Panel, a subpanel of the Science Advisory Board designed to review EPA science on hydraulic fracturing and water, has no state/local/tribal experts on the panel. Thirteen state/local/tribal experts were nominated including from Western states and local governments, but none were selected by EPA.
- For the Science Advisory Board "Connectivity" Panel, which was reviewing a highly influential scientific assessment designed to inform EPA's authority over "waters of the U.S." under the Clean Water Act, EPA did not pick any of the nine qualified state/local experts the 27-member panel. As the Western Governors' Association recently testified: "It is worth noting that the SAB panel for the review of the EPA water body connectivity report included no state representatives. The report was therefore developed without the regulatory expertise, scientific resources and on-the-ground knowledge possessed by state professionals."
- For EPA's Clean Air Scientific Advisory Committee Ozone Review Panel, which provided the critical advice for Administrator Gina McCarthy's proposed ozone regulations, only one of the 22 panelists came from a state/local perspective.

- For EPA's seven-member chartered Clean Air Scientific Advisory Committee, whose recommendations establish the range to be considered by EPA in setting national air pollution standards, not a single member has come from EPA Region 6 (AR, LA, NM, OK, TX), Region 7 (IA, KS, MO, NE), Region 8 (CO, MT, ND, SD, UT, WY), or Region 10 (AK, ID, OR, WA) since at least 2010.

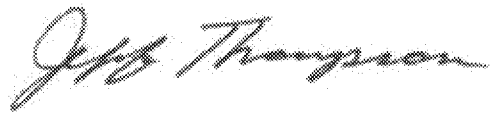
CSG West recognizes that the federal government has a vital role to play in advancing national priorities. However, it is imperative that federal agencies substantially engage states when developing or enacting regulations which affect state jurisdictions, and ensure that advisory panels designed to provide an independent voice include greater state representation. We encourage you and the members of the subcommittee to address these challenges with the hope that our state and federal engagement can be strengthened for the benefit our states and communities.

Once again, thank you for your consideration of these important issues. If you or your staff has any questions, please feel free to contact CSG West Executive Director, Edgar Ruiz, at (916) 553-4423.

Sincerely,



Senator Nancy Todd
Chair, CSG West
Colorado State Senate



Representative Jeff Thompson
Chair-Elect, CSG West
Idaho House of Representatives



Representative Sam Hunt
Vice Chair, CSG West
Washington House of Representatives



Representative Craig Johnson
Immediate Past Chair, CSG West
Alaska House of Representatives



Representative Lance Pruitt
Chair, CSG West State &
Federal Relations Committee
Alaska House of Representatives



Representative Cindy Evans
Vice Chair, CSG West State &
Federal Relations Committee
Hawaii House of Representatives

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CC:

Senator James M. Inhofe (OK), Chairman, U.S. Senate Committee on Environment & Public Works

Senator Barbara Boxer (CA), Ranking Member, U.S. Senate Committee on Environment & Public Works

Enclosures

- CSG West Resolution 2014-03 on water-related federal rules, regulations, directives, orders and policies.
- CSG West Resolution 2011-03 regarding U.S. EPA and the U.S. Army Corp of Engineers' draft guidance on identifying waters protected by the Clean Water Act.
- CSG West Resolution 2010-01 regarding amendments to the Federal Water Pollution Control Act, as proposed by S. 787 and H.R. 5088 in the 111th Congress.

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CRS Joins Congressional Calls for Transparency at EPA: Submits FOIA Request for Records on CASAC's Member Selection Process

04/13/2018

CRS stresses need for balanced panel that includes western representation

Washington D.C. — Joining congressional calls for transparency at EPA, the Center for Regulatory Solutions (CRS), a project of the Small Business and Entrepreneurship Council, today filed a Freedom of Information Act (FOIA) request for public records and communications regarding the process for selecting new members to the Clean Air Science Advisory Committee (CASAC) and its Ozone Review Panel. The Administrator of the Environmental Protection Agency (EPA) annually reviews CASAC membership, appointing new members on a rotating basis. In turn, CASAC advises EPA on their National Ambient Air Quality Standards (NAAQS) for ozone and other pollutants.

On April 4, 2018, the EPA initiated the 2018 CASAC nominating process, quietly posting a notice in the Federal Register soliciting nominations for new members. However, little is known about how EPA makes its ultimate decisions for membership, and the time allotted for public comment is only 30 days. Even so, Congressional leaders, the EPA Inspector General and the Governmental Accountability Office (GAO), have all raised concerns about conflicts of interest and the lack of transparency in previous nomination and selection processes. For example, in 2015, public comments on the "short-list" of candidates were never made publically available and the EPA Administrator's final decision was not publically noticed.

"CASAC has immense influence and input on EPA's decisions regarding air quality standards, like Ozone NAAQS. As such, EPA has an obligation to ensure that the process of selecting new members is open and transparent and that the panel is balanced and unbiased. Unfortunately, the EPA historically fails in this regard, causing many to question the integrity of the panel," said Karen Kerrigan, President of the Small Business and Entrepreneurship Council. "We're filing this FOIA request to shine a light on the process, as EPA begins to consider a new candidate for the Committee. Moreover, I am urging EPA to consider naming a Western air regulator to the panel, since EPA has so far proved incapable of grappling with the complications associated with background ozone, which disproportionately impacts Western states."

It is important to pull back the curtain and allow the public to understand EPA's selection process, especially in light of the CASAC status as a Federal Advisory Committee, which is governed by Federal Advisory Committee Acts (FACA) requirements of balance and transparency. According to its charter, CASAC's membership must include a physician, a member of the National Academy of Sciences (NAS), and a representative from a state pollution control agencies. These individuals should be free of conflict-of-interest and not hold preconceived views on the science. Yet the current panel does not include a member of NAS and the state representative is from the Northeast States for Coordinated Air Use Management (NESCAUM), which actively lobbies for stricter ozone standards. There is sparse representation from Western states on the Committee, even though they face higher implementation burdens due to the role of background ozone.

In February 2016, Senator James Inhofe (R-OK), Chairman of the Senate Environment and Public Works Committee, sent a letter to the EPA charging that the Administration is "cherry-picking the same allies" to serve on the Committee and its subcommittees "at the expense of having an open and robust process for selecting external advisors." The letter notes that six of the seven current members have previously served on CASAC, or CASAC subcommittees. Inhofe also called on the EPA to address potential conflicts-of-interest of CASAC members, revealing that CASAC members have received millions of dollars in EPA grant funding. The House Science Committee, led by Chairman Lamar Smith (R-TX) has found that the vast majority of appointees to CASAC's Ozone Review Panel were essentially reviewing their own work. In a letter sent this week to the EPA, leaders of the House Oversight and Government Committee asked the agency to produce financial disclosure forms of CASAC members in order to "understand the reliability of EPA's conflicts assessment."

While the public knows very little about CASAC and its membership, it is the main driver for pushing the ozone NAAQS steadily downward, consistently advocating for EPA to lower the standard to 60 parts per billion (ppb) — a level that would be the most expensive regulation in history.

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and force the majority of the country into non-attainment. Many areas in the U.S. have background ozone levels higher than 60 ppb, and as such CASAC's preferred standard would not be achievable for much of the country. Such an outcome would be devastating for America's small business owners, their workforce and communities, all would be unfairly penalized by the decision. While the EPA thus far has declined to follow the Committee's extreme advice, the members selected to serve on CASAC will start the process again and define the terms of the debate for the next review of the ozone standard.

CRS' FOIA seeks the following records from EPA:

1. All documents referring or relating to the 2015 CASAC selection process, which includes, but is not limited to the following categories of documents:
 1. All comments submitted to EPA pursuant to its April 2, 2015 request for nominations to CASAC.
 2. All communications referring or relating to the CASAC selection process between EPA's SAB and the Office of the Administrator, the Office of Air and Radiation EPA, and the Office of General Counsel.
 3. All communications between each candidate for CASAC membership and the Office of the Administrator, the Office of Air and Radiation EPA, and the EPA's SAB staff.
 4. All communications referring or relating to Administrator McCarthy's final CASAC selection between and among any of the following offices: EPA's Office of the Administrator, Office of the Air and Radiation, and/ or the Office of General Counsel.
 5. All press releases or public announcements and notifications related to the CASAC selection process.
2. All documents referring or relating to the upcoming Ozone Review Panel selection, which includes, but is not limited to the following categories of documents:
 1. Correspondence between any candidate for the ORP and the SAB.
 2. Discussion between an EPA employee and an outside party relating to ORP panel membership.
 3. All communications referring or relating to the ORP between EPA's SAB and the Office of the Administrator, the Office of Air and Radiation EPA, and the Office of General Counsel.
 4. All communications between each candidate for the ORP and the Office of the Administrator, the Office of Air and Radiation EPA, and the EPA's SAB staff.

About CRS

The Center for Regulatory Solutions is a project of the Small Business and Entrepreneurship Council, a 501(c)(4) advocacy, research, education and networking organization dedicated to protecting small business and promoting entrepreneurship. For twenty-three years, SBE Council has worked to educate elected officials, policymakers, business leaders and the public about policies that enable business start-up and growth.

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Congressional Oversight Committee Chairs and Air Regulators Call for Balance on CASAC

07/23/2016

By Karen Kerrigan

Congressional leaders and air quality regulators are calling on the Environmental Protection Agency (EPA) to bring regional diversity to the Clean Air Scientific Advisory Committee (CASAC) in a trio of letters to the agency. The letters, from the chair of the U.S. Senate Committee on Environment and Public Works (EPW), the chair of the House Committee on Oversight and Government Reform (OGR) and another from an influential state air regulators group, the Association of Air Pollution Control Agencies (AAPCA) raise issues with the current makeup of CASAC in their calls for increasing balance on the committee.

The letters come as EPA seeks input to make a new appointment to the committee that is tasked with providing advice, information, and recommendations on the scientific and technical aspects of air quality for ozone and other pollutants.

The nomination is particularly significant with EPA preparing to implement its new National Ambient Air Quality Standards (NAAQS) for Ozone, adopted last October. The rule has drawn widespread bipartisan opposition from federal, state, and local elected officials, editorial boards, business groups, and others who warn that the costs of the rule far outweigh any apparent benefits of dropping permissible ozone concentrations in ambient air from 75 parts per billion (ppb) to 70 ppb.

Congressional Leaders Want Balance on CASAC

In a letter to EPA, Sen. James Inhofe, (R-OK), chairman of Senate EPW, is calling for the agency to select a candidate from the current list of nominees that would bring "much needed balance and integrity to CASAC." Raising his "concerns with two of the nominees under consideration," Inhofe writes that "there is no reason for EPA to overlook well-qualified candidates" from areas "that would clearly balance the panel." From the letter:

This seeming geographic bias on the chartered CASAC cannot be ignored. It is also important to note that with respect to this specific state-based position on CASAC, there has been no meaningful geographic diversity at all.

This is not the first time the chairman has raised issues with CASAC. In February 2016, he admonished EPA for "cherry picking the same allies" to serve on its committees "at the expense of having an open and robust process for selecting external advisors."

Meanwhile, similar concerns are being raised in a letter to EPA from Congressman Bruce Westerman (R-AR), Jason Chaffetz (R-UT) and others, who are calling for EPA to nominate a candidate from a region not currently represented on CASAC. Also from the letter:

When considering nominees, it is vitally important that different EPA Regions are represented to ensure a fair balance of experts and experience. EPA specifically acknowledges in the notice that geographic diversity is an important selection criteria. Currently, no CASAC members come from Region 8 (MT, WY, ND, SD, UT, CO), Region 6 (NM, TX, OK, AR, LA), Region 7 (NE, KS, IA, MO), or Region 4 (KY, TN, MS, AL, FL, GA, SC, NC). Additionally, not a single CASAC member has come from Region's 6, 7, or 8 since 2010. Accordingly, in order for balance, fairness and geographic diversity on CASAC, we request that EPA fill the open position with someone from an area not represented on the Committee.

The pair of Congressional letters is the latest development in what is becoming a growing list of CASAC critics. Congressional leaders, the EPA Inspector General and the Governmental Accountability Office (GAO), have all raised concerns about conflicts of interest and the lack of

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transparency in previous nomination and selection processes for the committee. For example, in 2015, public comments on the "short-list" of candidates were never made public.

But members of Congress are not the only ones calling for more balance on CASAC. The Association of Air Pollution Control Agencies (AAPCA) has also recently called on EPA to expand diversity on the committee. In a letter to EPA, the group writes:

"AAPCA also suggests that EPA should encourage nominations of, and seriously consider, qualified state, local, and tribal environmental agency experts for future openings on the chartered CASAC (including for those openings not statutorily required to be filled by a representative of state air pollution control agencies) as well as individual CASAC NAAQS review panels."

The regulatory burden of EPA's new ozone standard has come under intense scrutiny from business groups, editorial boards, and elected officials on both sides of the aisle who are calling on the agency to put the brakes on the new ozone rule. This blanket approach to ozone is exactly why the members of CASAC should represent the greatest geographic diversity available. Communities struggling with the new ozone standard deserve a voice that can speak to the specific and unique issues communities across the country will face in implementing this new standard.

Karen Kerrigan is president & CEO of the Small Business & Entrepreneurship Council (SBE Council). The Center for Regulatory Solutions is a project of the Council.

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May 15, 2017

Sarah Rees
Director, Office of Regulatory Policy and Management
Office of Policy
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail Code 1803A
Washington, DC 20460

Attention: Docket ID Number EPA-HQ-OA-2017-0190

Submitted to the Federal eRulemaking Portal (www.regulations.gov)

Re: U.S. Environmental Protection Agency's Request for Comment, "Evaluation of Existing Regulations"

Dear Ms. Rees:

The American Fuel & Petrochemical Manufacturers (AFPM) respectfully submits these comments in response to the Environmental Protection Agency's (EPA or Agency) Request for Comment, titled "Evaluation of Existing Regulations."¹ AFPM recognizes this information will assist EPA's Regulatory Reform Task Force (Task Force) in evaluating existing regulations to alleviate unnecessary regulatory burdens, as directed by Executive Order 13777, "Enforcing the Regulatory Reform Agenda" (EO 13777).²

AFPM is a national trade association representing nearly 400 companies that encompass virtually all U.S. refining and petrochemical manufacturing capacity. Millions of Americans use products produced by AFPM members every day. Our members serve the American people responsibly and effectively by manufacturing virtually all U.S. petroleum fuels and petrochemicals, strengthening economic and national security, and providing jobs directly and indirectly for over four million people.

While domestic fuel and petrochemical manufacturers have invested and will continue to invest substantial capital in environmental protection, AFPM member companies face regulatory obstacles that can undermine the ability of petrochemical manufacturers and refiners to create jobs and compete in the global economy. It is a truism that our modern lifestyle is inextricably linked to the fuels and petrochemicals AFPM members produce. AFPM supports clear and reasonable regulations that are science and data driven, create a level playing field upon which to compete, and have benefits that exceed the regulation's costs. That said, the U.S. regulatory burden, if left

¹ "Evaluation of Existing Regulations, 82 *Fed. Reg.* 17,793 (April 13, 2017).

² "Presidential Executive Order on Enforcing the Regulatory Reform Agenda," February 24, 2017, <https://www.whitehouse.gov/the-press-office/2017/02/24/presidential-executive-order-enforcing-regulatory-reform-agenda>.

unchecked, creates an economic incentive to produce these essential products outside the country, threatening well-paying jobs, tax revenues, and the security of the nation.

The market policy and infrastructure factors affecting the American fuel supply have created a high-cost environment that hampers our nation's economy and threatens our critical refining infrastructure. Unfortunately, government regulation has the ability to make matters even worse. Proposed new regulations and unnecessary tightening of existing standards threaten to raise energy costs for every American consumer, with little or no environmental benefit.

AFPM supports sensible regulations as important tools to protect our well-being by providing rules for all businesses to live by. Too often, however, the U.S. regulatory regime is opaque, duplicative, or outright conflicting—creating uncertainty for businesses, shuttering good projects, and ultimately harming consumers. There are common sense regulatory reform measures that will promote transparency, good government, and sound science without compromising the environment, health, or safety. Far from undermining sensible regulation, such reforms would allow regulated entities to deliver better results for less cost.

These comments highlight EPA regulations AFPM believes are most burdensome for our members and their business operations. We have included recommendations to either eliminate some of these requirements or modify them as appropriate. To facilitate EPA's review, we have divided these comments into three broad categories: 1) Stationary Sources; 2) Fuels; and 3) Toxic Substance Control Act (TSCA) and Lautenberg Chemical Safety Act (LCSA) Implementation.

A. Stationary Sources

The following are the five stationary source regulations of greatest concern to AFPM members:

1. Risk Management Plan (RMP) – 40 CFR Part 68

In August 2013, following the explosion of the fertilizer plant in West, Texas, President Obama issued Executive Order (EO) 13650, entitled "Improving Chemical Facility Safety and Security." The EO directs the federal government to improve operational coordination with state and local partners, improve federal agency coordination and information sharing, modernize policies, regulations and standards, and work with stakeholders to identify best practices in chemical facility safety and security. The Department of Homeland Security (DHS), Occupational Safety and Health Administration (OSHA) and EPA were to work in conjunction to achieve these objectives. Using this EO as justification, EPA proposed significant modifications to the existing RMP regulations. On May 11, 2016, the Bureau of Alcohol, Tobacco, Firearms and Explosives said that the West, Texas facility fire had been deliberately set. Because the incident was caused intentionally, the recently-promulgated RMP revisions would not have prevented the incident.

AFPM members have significant concerns surrounding the new requirements to compel disclosure of potentially security-sensitive information to emergency responders and the public, perform inherently safer technology assessments and third-party audits, and eliminate the use of representative sampling when performing a compliance audit. Particularly, sharing security-sensitive information is adverse to DHS's mission to protect our nation's security.

EPA's RMP revisions relied on an erroneous cost-benefit analysis. Some of the revisions compromise safety by limiting the ability of companies to hire qualified auditors and diverting resources to inherently safer technology analysis that provides little safety benefit when conducted after a facility is already built. Furthermore, EPA did not respect the jurisdictional lines between itself and OSHA on these issues, as OSHA has primary jurisdiction over the "inside the fence line" requirements that EPA relied on to justify its cost-benefit calculations.

As such, AFPM and five other industry associations filed a petition for reconsideration with EPA and a petition for review with the U.S. Court of Appeals for the District of Columbia Circuit. The coalition is challenging aspects of the rule that compromise security and fail to enhance safety. The petition urges EPA to seek further public comment on various issues surrounding the rule, such as investigators' finding that arson caused the fire that served as the foundation of EO 13650 and the subsequent RMP revisions. In addition, the petition asks EPA to seek feedback on changes in the final rule that expanded provisions for disclosure of facility data and the scope of auditing requirements, as well as whether the rule's independent audit and safer technologies analysis provisions are justified. In response to the petition, EPA agreed to delay the rule's effective date from March 21 to June 19 in order to reconsider the regulation, and has proposed to further delay the effective date until February 19, 2019.

Moreover, the RMP rules significantly overlap with and are redundant to the OSHA Process Safety Management Rules in 29 C.F.R. §1910.119. This overlap/redundancy can lead to duplicative and inconsistent regulations. It can also lead to differing interpretations between OSHA and EPA. AFPM members believe this is an area that is especially ripe for reform and revision.

Recommendation

EPA should withdraw the revisions to the RMP rules and allow OSHA to take the lead on process safety management.

2. Ozone NAAQS – 40 CFR Part 50; 40 CFR Part 58

Under the Clean Air Act, EPA must review national ambient air quality standards (NAAQS) for criteria pollutants at least every five years and revise them "as may be appropriate." Primary NAAQS must be set at a level "requisite to protect the public health" with "an adequate margin of safety." Secondary NAAQS must specify a level of air quality "requisite to protect the public welfare from any known or anticipated adverse effects." In a final rule published in the Federal Register on October 26, 2015, EPA lowered the primary and secondary ozone NAAQS from 75 parts per billion (ppb) to 70 ppb.³

On December 23, 2015, AFPM and numerous other entities filed petitions for review in the U.S. Court of Appeals for the D.C. Circuit. EPA petitioned the court to postpone oral argument and the Court placed the case in abeyance. EPA is to file status reports and a motion to govern further proceedings after EPA takes action on the 2015 standard. AFPM's primary concern with EPA's rule is the attainability of the standard. AFPM continues to advocate for a legislative solution on

³ "National Ambient Air Quality Standards for Ozone," 80 *Fed. Reg.* 65,292 (Oct. 26, 2015).

ozone that would provide meaningful relief for companies faced with more stringent permitting requirements and regulations as a result of the new standard, but the Administration should also consider what avenues may exist for regulatory relief, including with respect to associated implementation rules, such as the Exceptional Events Rule.⁴

EPA's decision to lower the ozone standard from 75 parts ppb to 70 ppb will force many counties across the United States into non-attainment with the ozone NAAQS, increasing the burden on state and local governments and industry. Nonattainment areas are subject to numerous Clean Air Act requirements, including the submittal of state plans to bring an area into attainment, application of reasonably available control technology ("RACT") requirements, permit requirements for the construction and operation of new or modified major sources and other measures that a state or EPA may determine are necessary or appropriate in order to bring an area into attainment. *See* 42 U.S.C. § 7502. These requirements can both inhibit the ability of industry already located in a nonattainment area to expand as well as raise costs and act as a disincentive for new industry to locate in a nonattainment area.

During the 2015 ozone NAAQS rulemaking, EPA identified 241 counties that would not meet the 70 ppb ozone standard based on 2012-2014 data.⁵ But under EPA's current ozone designation process, nonattainment areas are not limited to counties that have measured air quality above a NAAQS; instead, EPA stated that "it is important to examine ozone-contributing emissions across a relatively broad geographic area associated with a monitored violation . . . EPA intends to consider information relevant to designations associated with the counties in the Combined Statistical Area (CSA), or where appropriate, the Core Based Statistical Area (CBSA) in which the violating monitor is located."⁶ If this process is followed, new nonattainment areas will need to be established for the 70 ppb standard and existing nonattainment areas must be reevaluated to determine whether they should be expanded under a "weight of the evidence analysis" based on the evaluation of air quality data, emissions and emissions-related data, meteorology, geography/topography, and jurisdictional boundaries.⁷

Conversely, however, EPA has also projected that a combination of on-the-books federal regulations and implementation of the existing 75 ppb ozone standard would achieve air quality meeting or exceeding a 70 ppb standard across virtually the entire country outside of California by 2025. Thus, EPA has been proceeding apace with the designation process for the 2015 ozone NAAQS – planned for 2017 – while it also has information indicating that further burdening state and local governments with new ozone designations and re-designations of existing nonattainment areas will occur when air quality in most of the country is moving towards attainment of the 2015 NAAQS.

AFPM recognizes that the five-year cycle is part of the statutory design of the Clean Air Act and that other implementation measures are based in statute. But the Administration can ease the burden on states and businesses by further considering how improving air quality can be accounted for considered during the implementation process for the 2015 ozone NAAQS.

⁴ "Treatment of Data Influenced by Exceptional Events," 81 *Fed. Reg.* 68,216 (Oct. 3, 2016).

⁵ "2015 Ozone Standards," https://ozoneairqualitystandards.epa.gov/OAR_OAQPS/OzoneSliderApp/index.html#.

⁶ "Area Designations for the 2015 Ozone National Ambient Air Quality Standards," Memorandum from Janet McCabe to EPA Regional Administrators, February 25, 2016 at 5.

⁷ *Id.* at 6.

For example, EPA has previously implemented policies like Early Action Compacts designed to both achieve air quality standards and avoid imposing the burdens that flow from nonattainment designations. This process used a “nonattainment deferred” status for areas, dependent upon the achievement of certain milestones. Thus, EPA should fully explore whatever additional flexibility it may possess to implement NAAQS in a reasonable manner which recognizes the cumulative impact of finalizing more stringent NAAQS in 1997, 2008 and 2015, the overall downward trend in ozone concentrations,⁸ and improvements in air quality that can be projected in future years. Such an approach will allow state resources to be allocated more effectively and reduce resulting economic hardship, while still achieving intended air quality improvements.

EPA should also review rules and guidance that the previous Administration relied on when it promulgated the 2015 ozone NAAQS. Specifically, EPA should review rules and guidance for “exceptional events” which rely on authority within Clean Air Act §319(b), the Agency’s interpretation of international transport provision contained in Clean Air Act §179B, and the available classification of an area as a “rural transport area” pursuant to Clean Air Act §182. AFPM previously filed detailed comments regarding all three provisions as part of the comments it filed on the proposed 2015 ozone NAAQS.⁹ Among other recommendations, AFPM urged EPA to allow for greater state flexibility in “flagging” and excluding exceptional event data, clarify that relief under the international transport provisions is available to non-border states and that such relief is intended to be widely available on a consistent basis, and that EPA should take additional steps to issue workable regulations or guidance for use of the rural transport area designation.

Regarding EPA’s recent rulemaking and guidance for Exceptional Events, the information lacks objective, science-based criteria for approving a demonstration. For example, the guidance document discusses “Q/D” (fire emissions divided by the distance from the fire) for wildfire-related ozone events. However, Q/D appears inconsistent with peer reviewed scientific analyses that clearly demonstrate that for most wildfire plumes, ozone concentrations increase with distance from the fire (Jaffe and Wigder 2012). Another inconsistency with EPA’s exceptional event guidance lies in the discussion of the possible use of statistical analyses to quantify the ozone increment related to exceptional events. In the guidance, EPA requires an overly conservative methodology that is inconsistent with EPA’s prior approval of an ozone exceptional event that used a similar statistical analysis but not by the overly conservative methodology described by EPA in the guidance. This guidance states “*The difference between the predicted values and the measured values are analyzed, and the 95th percentile of those positive differences (observed [ozone (“O3”)] is greater than predicted) is recorded. This 95 percent error bound is added to the O3 value predicted by the regression equation for the flagged days, and any difference between this sum and the observed O3 for the flagged day may be considered an estimate of the O3 contribution from the fire...*” [Emphasis added] The 95th percentile of positive values is equivalent to the 97.5th percentile of all values. The California Air Resources Board applied this statistical method in a successful exceptional events case demonstration for 2008 California wildfires (CARB 2011), and EPA cited this element in its approval documentation (April 13,

⁸ National ozone levels (as measured over 8 hours) have decreased 22% since 1990. See <https://gispub.epa.gov/air/trendsreport/2016>.

⁹ American Fuel & Petrochemical Manufacturers’ Comments on the Environmental Protection Agency’s Proposed Rulemaking: National Ambient Air Quality Standards for Ozone (Docket No. EPA-HQ-OAR-2008-0699-2114.), March 17, 2015 at 25-34.

2011). However, the CARB analysis did not apply the stringent error bound requirements of considering only the positive differences, but was accepted in any case.

AFPM calls upon EPA to take immediate steps to increase the transparency of data EPA relies on for NAAQS rulemakings. EPA should ensure that all scientific and technical information that the Agency relies on to determine the level of a NAAQS is publicly available to ensure opportunities for independent analysis of the data. In addition, EPA should reform the Clean Air Scientific Advisory Committee (CASAC) and increase the diversity of CASAC membership to include qualified professionals in regulated industries.

Recommendations

EPA should:

- Support a more flexible implementation of non-attainment designations for the 2015 ozone NAAQS to allow for full implementation of the 2008 ozone NAAQS as well as for implementation of other federal and state rules that will reduce ozone formation.
- Empanel CASAC with diverse membership to include qualified professionals within industry, consulting, and state environmental agency backgrounds.
- Revise and reissue the exceptional events rule and guidance, taking into account comments related to science-based information about fire-related events and objective approval criteria that clarify what constitutes an adequate demonstration.

3. Refinery Sector Rule (RSR) – 40 CFR Part 60, Subparts J and Ja; 40 CFR Part 63, Subparts CC and UUU

Under the Clean Air Act, EPA is required to regulate hazardous air pollutants (HAPs) from “major” sources (i.e., those that emit 10 tons per year (tpy) or more of a listed HAP, or 25 tpy or more of a combination of HAPs). EPA must develop standards for HAPs based on the maximum achievable control technology (MACT) used at the best-controlled facilities within an industry. The petroleum refining and petrochemical industries are subject to a number of MACT standards. EPA also must develop and implement a program for assessing risks remaining after facilities implement MACT standards (i.e., residual risk), and may issue regulations to reduce residual risks to protect the public health with an “ample margin of safety.” The residual risk provisions require EPA to consider costs, energy, safety and other relevant factors as it regulates to prevent “adverse environmental effects.” If necessary, EPA must issue risk-based regulations within eight years after the promulgation of the MACT standard.

Beginning in 2006, EPA conducted a thorough residual risk review that concluded that the existing 40 CFR 63 Subpart CC and UUU standards for petroleum refineries did not have residual risks requiring further rules. This was finalized in a rule signed by EPA on January 16, 2009. However, the final rule was withheld from publication at the request of the Obama Administration and withdrawn in 2009.”

After withdrawing the completed refinery residual risk rule in 2009, EPA began a second residual risk analysis and finalized the Refinery Sector Rule on December 1, 2015,¹⁰ and subsequently clarified the compliance dates in a second final rule published on July 13, 2016.¹¹ AFPM supported EPA's process to evaluate the residual risk remaining after full implementation of the refinery MACT rules. As demonstrated by EPA's analysis for this rule, refinery emissions do not pose a significant residual risk to the public. But despite this fact, EPA included significant new compliance requirements in the December 2015 rule. AFPM does not believe that the additional regulation of these sources is authorized under the Clean Air Act because EPA concluded that the risks were acceptable. Further, much of the rulemaking eliminated various allowances for emissions during startups, shutdowns, and malfunctions as a result of EPA's overly broad interpretation of *Sierra Club v. EPA*, 551 F.3d 1019 (D.C. Cir. 2008).

Furthermore, in setting new standards for controlling flare emissions, EPA erroneously went far beyond the MACT "floor" of the best 12 percent controlled flares, in requiring flare compliance for several parameters based on a 15-minute block average compliance period, an example of EPA over-reaching its Congressional mandate to set the MACT floor based on the best performing 12 percent. The 15-minute block average compliance period does not represent the best 12 percent of flares. We are unaware of any flares controlled to a 15-minute block average compliance period prior to this rulemaking. Even the flares subject to Consent Decrees were required to comply on a rolling 3-hour basis prior to this rulemaking. We provided comments to EPA in support of a rolling 3-hour compliance period and against the 15-minute block average compliance period, but EPA finalized the rule with the 15-minute block average compliance period.

In response, AFPM and the American Petroleum Institute (API) filed a joint petition for review in the D.C. Circuit and administrative petitions for reconsideration of EPA's refinery sector residual risk rule as a number of issues need to be clarified. A collection of environmental groups also filed petitions for review and reconsideration, seeking to tighten EPA's emissions standards for flares and pressure relief devices. The lawsuit has been placed in abeyance while EPA considers the pending petitions for reconsideration.

On June 16, 2016, EPA granted the environmental groups' petitions for reconsideration and requested comment on the following aspects of the final rule: 1) work practice standards for pressure relief devices and emergency flaring events, including the assessment of risk from the implementation of these standards; 2) alternative work practice standards for delayed coking units employing a water overflow design; and 3) the provision allowing refineries to reduce the frequency of fence-line monitoring at sampling stations that consistently record benzene concentrations below 0.9 micrograms per cubic meter. While these issues go beyond those raised by AFPM and API in their petitions for reconsideration, the letter granting reconsideration stated that EPA may grant reconsideration of additional issues in the future. AFPM and API submitted comments opposing the environmental groups' petition and are awaiting a decision. EPA has also not yet made a determination on the AFPM/API petition for reconsideration.

¹⁰ "Petroleum Refinery Sector Risk and Technology Review and New Source Performance Standards," 80 *Fed. Reg.* 75,178 (Dec. 1, 2015).

¹¹ "National Emission Standards for Hazardous Air Pollutant Emissions: Petroleum Refinery Sector Amendments," 81 *Fed. Reg.* 45,232 (July 13, 2016).

Recommendations

EPA should:

- Reject the environmental groups' petitions for reconsideration and retain the challenged provisions. In addition, since compliance deadlines are approaching in 2018, EPA needs to take action on the AFPM/API petition in order to ensure regulatory certainty;
- Revise the flare compliance requirements to replace all 15-minute block average compliance periods with a rolling 3-hour compliance period. EPA should make this change quickly to alleviate the need for compliance planning and expenditures related to the shorter compliance period currently in the rule; and
- Eliminate the fence line monitoring provisions as EPA has found insufficient risk to justify their inclusion.

4. Recommendations for Revising New Source Review (NSR) and Prevention of Significant Deterioration (PSD)

In 2002, EPA promulgated a package of NSR reform regulations. These regulations contained provisions that changed the test for measuring whether a significant net emissions increase occurred (allowing use of “projected actual emissions”) and allowing for a longer baseline period in order to determine past emissions and therefore whether an emissions increase triggering NSR had occurred. The 2002 NSR reform package also contained other provisions providing for plantwide applicability limits (PALs) which included a simplified “facility-wide actuals” emission test under which PSD/nonattainment new source review (NNSR) permitting would not be triggered if the facility-wide actual emissions for a given pollutant did not increase above the PAL.

In the years since this effort, EPA has offered small “fixes” for grandfathering facilities when NAAQS are lowered and other implementation rules and guidance have been proposed or finalized designed to reduce NSR analysis and permitting burdens. But the time has come for a more comprehensive review of the NSR program and exploration of legislative and regulatory changes to the program.

Recommendation

The Administration should consider the following modifications to the permitting process, including revisions to the PSD/NNSR program:

- Eliminate the need to consider emissions increases from non-modified affected emission units;
- Allow project netting so that emissions reductions associated with a project can be considered in Step 1 of the PSD/NNSR applicability analysis;
- Use a “potential to potential” comparison of emissions to determine whether PSD/NNSR is triggered; and/or
- Provide a definition of “project” to address uncertainty around project aggregation.

5. Refinery Effluent Limit Guidelines

With respect to the Clean Water Act (CWA) and national pollutant discharge elimination system (NPDES) permitting, EPA is currently undertaking a study to determine whether to revise the petroleum refining effluent limit guidelines (ELGs) for NPDES permits. As a first step, AFPM urges EPA and the Administration to consider whether new regulations are necessary or beneficial before burdening industry with an extensive information collection request (ICR). EPA has stated that it is investigating two theories: (1) whether there has been an increase in loadings to refinery wastewater treatment plants resulting from increases in heavy Canadian crude feedstock; and (2) whether there are increase loadings to refinery wastewater treatment plants as a result of the installation of air pollution control equipment (e.g. fluid catalytic cracking unit (FCCU) scrubbers).

Over the past several decades, AFPM members have invested billions of dollars in technologies to modernize their wastewater treatment facilities to meet the Total Maximum Daily Load (TMDL) developments, NPDES permit revisions (every 5 years at a minimum), and water quality-based effluent limits (WQBEL). Therefore, AFPM requests that EPA further study existing data (eliminating the overly conservative estimations commonly found in the Toxics Release Inventory) and identify the gaps that are not covered by TMDL and WQBEL before embarking on another data collection effort through the ICR that EPA is preparing to issue. This would better utilize scarce agency resources as well as reduce unnecessary burdens on industry. Further, AFPM believes that reviewing available data, as recommended above, will support a conclusion that further rulemaking is unnecessary.

Recommendation

AFPM does not support EPA pursuing a refinery ELG rulemaking based on unclear drivers and objectives from EPA. AFPM recommends that EPA positively state that there is no need to revise the refinery ELG.

Other key regulations of concern to AFPM members:

6. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Financial Assurance

CERCLA 108(b) addresses the promulgation of regulations that require certain classes of facilities to establish and maintain evidence of financial responsibility consistent with the degree and duration of risk associated with the production, transportation, treatment, storage, or disposal of hazardous substances. EPA published an Advanced Notice of Proposed Rulemaking (ANPRM) in the Federal Register on January 6, 2010, and a Notice of Intent to proceed with Rulemaking in the Federal Register on January 11, 2017.

The ANPRM identified additional classes of facilities within three industry sectors that may warrant the development of financial responsibility requirements under section 108(b)—the Chemical Manufacturing industry (NAICS 325), the Petroleum and Coal Products Manufacturing industry (NAICS 324), and the Electric Power Generation, Transmission, and Distribution industry

(NAICS 2211). A court order¹² established a schedule for EPA's regulatory response, with the hard rock mining industry chosen as the first industry sector with other industries to follow.

Factors EPA may consider in the decision on whether to propose requirements for an industry sector include: 1) the amounts of hazardous substances released to the environment; (2) the toxicity of these substances; 3) the existence and proximity of potential receptors; 4) contamination historically found from facilities; 5) whether the causes of this contamination still exist; 6) experiences from Federal cleanup programs; 7) projected costs of Federal clean-up programs; and 8) corporate structures and bankruptcy potential. EPA's action will consider whether section 108(b) financial assurance will effectively reduce these risks. The proposed rule for the hardrock mining industry (82 Fed. Reg. 3,388) is contrary to the new administration's priority to focus on promoting U.S. businesses, industries, and job creation, and may add a potentially unnecessary additional financial burden on this industry group. Additionally, many of these facilities are already required to maintain financial assurance under State programs, raising the question of why additional Federal requirements are necessary.

Since many of the affected facilities are likely to be already required to have Resource Conservation and Recovery Act (RCRA) financial assurance, this requirement should be deemed unnecessary. It is not clear what additional benefit this regulation will provide or what additional activities it will cover.

Recommendation

AFPM does not support a rulemaking process for additional financial assurance at this time as the benefits have not been adequately demonstrated.

7. Elimination of "Once in Always in" policy for MACT rules

On January 3, 2007, EPA proposed amendments to the General Provisions to the national emission standards for hazardous air pollutants (NESHAP). The proposed amendments would replace the policy described in the May 16, 1995 EPA memorandum entitled, "Potential to Emit for MACT Standards—Guidance on Timing Issues," from John Seitz, Director, Office of Air Quality Planning and Standards (OAQPS), to EPA Regional Air Division Directors.¹³ This policy clarified when a major source of hazardous air pollutants can become an area source – by obtaining federally enforceable limits on its potential to emit – rather than comply with major source requirements. The proposed amendments would allow a major source to become an area source at any time by limiting its potential to emit HAPs to below the major source thresholds of 10 tpy of any single HAP or 25 tpy of any combination of HAPs. EPA also proposed revising tables in numerous MACT standards that specify the applicability of General Provisions requirements to account for the regulatory provisions proposed through this notice.

After receiving comments, no further action was taken on this proposed rule.

¹² Idaho Conservation League, et al., No. 14-1149 (D.C. Cir. 2016).

¹³ "Potential to Emit for MACT Standards – Guidance on Timing Issues," May 16, 1995, <https://www.epa.gov/sites/production/files/2015-08/documents/pteguid.pdf>.

Recommendation

AFPM recommends that EPA finalize this rule, as proposed to minimize the long-term compliance burden for sources that reduce emissions below the major source threshold. Finalizing this rule would provide a powerful incentive for facilities to reduce emissions to below the major source threshold, where possible and practicable.

8. Hazardous Waste Generators Improvement Rule

EPA recently published the Hazardous Waste Generators Improvement Rule.¹⁴ The rule is helpful in some respects but imposes additional burdens in others. For instance, it causes waste generators who violate even one “Condition for Exemption” to be treated as if it was a violation of a waste treatment, storage, and disposal facilities (TSDFs) requiring a RCRA permit even though waste generators are not required to comply with as many regulations as a TSDF. Violation of a single minor condition can therefore mean that an otherwise exempt facility must obtain a RCRA permit and can be cited for violations of numerous regulations and permit conditions. This regulatory change contradicts the clear intention of Congress that RCRA permits not be required of hazardous waste generators who do not treat, store, or dispose of the waste.

Recommendation

EPA should revise the provisions equating a generator violation as a TSDF violation and the need for so many conditions constraining RCRA generators from realizing the improvements in the final rule.

9. Site Remediation MACT

EPA has proposed changes to the NESHAP for the Site Remediation source category.¹⁵ The proposal would expand the regulatory program to include air emissions associated with site remediation conducted under the authority of CERCLA and RCRA. Eliminating the exemption will subject such remediation sites to new regulatory burdens and expense, when such sites are already subject to RCRA and CERCLA air emission controls. The agency itself acknowledges that the expansion is redundant and unnecessary, stating in the proposal that “[w]e do not anticipate any [Hazardous Air Pollutant (HAP)] emission reductions from the proposed removal of the RCRA/CERCLA exemption.” 81 FR 29825. Thus, by the Agency’s own admission, this is a proposed rule that, if finalized, would impose new regulatory burdens, yet achieve no environmental benefit.

Recommendation

AFPM supports withdrawing this proposed rule in its entirety and maintaining the current RCRA/CERCLA exemption.

¹⁴ 40 CFR Part 260-265; 40 CFR Part 268; 40 CFR Part 270; 40 CFR Part 279.

¹⁵ “National Emission Standards for Hazardous Air Pollutants: Site Remediation, 81 *Fed. Reg.* 29,821 (May 13, 2016).

10. EPA's Tentative Denial of a Petition to Expand the Corrosivity Characteristic to Include Solids

In 81 *Fed. Reg.* 21,295 (April 11, 2016), EPA responded to a court-ordered deadline and agreement to evaluate expanding the definition of corrosive hazardous waste (HW) (D002 waste code) to include solids. EPA proposed to reject the Public Employees for Environmental Responsibility (PEER) petition requesting this expansion on the grounds that it fails to demonstrate that the revisions are necessary to protect human health. Other programs, such as OSHA's worker safety regulations, address the petitioner's stated concerns as well.

Recommendation

AFPM supports EPA's denial of the petition, maintaining the current definition of the HW corrosivity characteristic.

11. Hazardous Waste Import-Export Rule

The proposed revisions of the existing regulations will require hazardous waste exporters and receiving facilities recycling or disposing hazardous waste from foreign sources to maintain a single publicly accessible Website ("Export/Import Web site") to which documents can be posted regarding the confirmation of receipt and confirmation of completed recovery or disposal of individual hazardous waste import and export shipments.

Recommendation

AFPM supports withdrawing this regulation as it will likely not add to protection of human health and the environment. The existing system of documentation under RCRA adequately tracks the fate of imported or exported hazardous waste.

12. Aquatic Life Ambient Water Quality Criterion for Selenium in Freshwater

EPA issued updated CWA guidance, which is used in setting water quality standards and is relevant to CWA discharge permits and other regulatory programs (e.g., RCRA ecological risk assessment).¹⁶

The updated criteria are overly conservative in the application of selenium standards to lentic and lotic water bodies and in the corresponding fish tissue standards, which are not applicable in all instances. Revised implementation guidance should clearly state that flexibility to evaluate area-specific appropriate fish species and area water body conditions is necessary and prudent. As an example, the recently issued criteria are based on warm water fish uptake; however, the regulations need flexibility to account for local sensitive aquatic species.

¹⁶ "Recommended Aquatic Life Ambient Water Quality Criterion for Selenium in Freshwater," 81 *Fed. Reg.* 45,285 (July 13, 2016).

Recommendation

AFPM supports a reevaluation of this guidance based upon more realistic assumptions, such as accounting for local sensitive aquatic species.

B. Fuels

Key Fuels Regulation facing AFPM members:

1. Renewable Fuel Standard (RFS) – 40 CFR Part 80, Subpart M

One of the biggest challenges American fuel manufacturers are experiencing today involves the regulatory conflicts and problems with the size and scope of EPA's RFS program. The RFS is an unworkable policy that disadvantages consumers, drives up costs, and fails to achieve its purported goals.

The Energy Independence and Security Act of 2007 (EISA) expanded the RFS to include a de facto mandate for 15 billion gallons of corn ethanol by 2015. EISA also established an advanced biofuels mandate that includes three subcategories: cellulosic biofuels, biomass-based diesel, and "other advanced." "Other advanced" biofuels have regulatory significance because the statutory sum of cellulosic biofuels and biomass-based diesel is less than the total advanced biofuels requirement and must be made up with ethanol derived from sugar, additional cellulosic biofuels, or additional biomass-based diesel. Under EISA, the total renewable mandate will increase to 36 billion gallons by 2022 unless EPA waives or revises the annual mandates. The Congressionally-forecasted quantities of "other advanced" biofuels are particularly problematic because the cellulosic industry failed to commercialize drop-in renewable fuels, such as cellulosic gasoline.

AFPM opposes government-mandated biofuel blending, which distorts the free market's efficient allocation of transportation fuels and disadvantages consumers. The statutory RFS provisions contain an aggressive schedule for mandating the use of a large amount of ethanol. Declining gasoline demand and increasing ethanol mandates under the RFS threaten our nation's fuel supply. Moving beyond the E10 blendwall¹⁷ is not feasible because higher ethanol blends are not suitable for widespread distribution given the incompatibility of these blends with the existing fleet of motor vehicles, small engines, marine engines, and fuel distribution infrastructure.

Recommendation

EPA should use realistic projections of the demand for gasoline/ethanol blends and E85, and for the production of cellulosic biofuel. The Agency should must use its waiver authority to reduce the advanced, cellulosic, and total renewable fuel obligations to ensure the overall mandate for renewable fuel does not exceed the E10 blendwall. EPA must continue to recognize the blendwall and realistic E0 demand and should not set an RFS mandate that would cause the average mandated ethanol content to exceed 9.7 percent of projected gasoline demand.

¹⁷ "E10" refers to a blend of 90 percent gasoline and 10 percent ethanol.

In addition, EPA should move the existing point of obligation to the position holder at the blending rack. This would make the RFS more equitable by leveling the playing field between refiner and large exempt blenders. AFPM petitioned EPA to move the point of obligation on August 4, 2016. EPA subsequently proposed a denial of the petition on November 22, 2016, and closed the comment period on February 22, 2017.

In addition to the RFS recommendations above, AFPM has additional suggestions for EPA fuels regulations that should be deleted/eliminated or modified, including:

Topic	Discussion	Recommendation
Winter Reformulated Gasoline (RFG) and winter conventional gasoline (CG) 40 CFR Part 80	<p>Currently, CG and RFG are segregated year-round. The RFG segregation restrictions are unnecessary because all RFG downstream of a refinery must meet RFG specifications anyway. Minor mixing of non-RFG products, as can occur in normal product distribution systems, that does not cause RFG to be off-spec with EPA compliance specifications (benzene, sulfur, and VOC-reduction) should not be prohibited.</p> <p>This will provide optimization of fuel distribution and storage through the reduction of the need to downgrade expensive RFG to lower-valued products (such as transmix or conventional gasoline).</p>	<p>Delete requirements to segregate winter RFG and winter conventional gasoline.</p> <p>Assuming EPA removes the distinction between RFG and conventional gasoline in the non-VOC season (winter), it also should:</p> <ul style="list-style-type: none"> • Remove the survey requirement for winter RFG (because there would not be winter RFG any longer) in 80.68; and • Adjust the total number of surveys and samples so that the sample size is based on a statistically supported calculation to provide the prescribed level of accuracy in the survey results. Any other current minimum sample requirements should also be removed.
The RFG survey oxygen program to verify downstream oxygenate blending 40 CFR Part 80	Since all RFG has been E10 since 2006, a retail survey is an unnecessary expense. The RFS regulations are requiring ethanol blending at or near the blendwall rendering the survey pointless and no longer necessary.	Eliminate the RFG survey oxygen program in 80.69.
Mandatory Greenhouse Gas (GHG) emissions reporting	EPA was required by the appropriations bill for FY 2008 (P. L. 110-161) to develop a program for reporting GHG emissions. Reporting	Delete requirements for mandatory GHG emissions reporting.

40 CFR Part 98	has been required for years without an associated GHG emissions control requirement.	
Fuel registrations 40 CFR Part 79	Refiners are required to submit duplicative information on multiple EPA reporting forms, resulting in redundant reporting requirements.	<ul style="list-style-type: none"> • Eliminate the Fuel Manufacturer Quarterly Report for Motor Vehicle Gasoline or Diesel Fuel as it serves no purpose or provides duplicate information (EPA Form 3520-12Q). • Eliminate the Fuel Manufacturer Annual Report for Motor Vehicle Gasoline or Diesel Fuel as it also serves no purpose or provides duplicate information (EPA Form 3520-12A).
Reid Vapor Pressure (RVP) of the complex model valid range for RFG 40 CFR Part 80	EPA has promulgated ranges for several gasoline parameters. One of these is a lower limit for RVP in the complex model at 80.45, 6.4 psi.	Change the lower RVP of the complex model valid range for RFG to 6.0 psi.
RFS program 40 CFR Part 80	Renewable volume obligations should not include transmix. Transmix is not gasoline or diesel fuel and cannot be used directly as a transportation fuel.	Allow refiners to back out transmix from their gasoline and diesel production when calculating their renewable fuel obligations (RVOs) in the RFS program.
Gasoline properties required for certification and reported to EPA in batch reports 40 CFR Part 80	<p>The only EPA compliance standards for gasoline are benzene, sulfur, and summertime volatility (RVP for conventional gasoline and RFG volatile organic compounds (VOC) reduction). Other gasoline parameters (<i>i.e.</i>, olefins, aromatics and distillation) are currently required to be reported to EPA for every batch of gasoline produced or imported. These other parameters were necessary for complex model compliance.</p> <p>However, the complex model is only used now for summer RFG VOC. The batch reports should be revised.</p>	<p>The following should be the <u>only</u> properties reported on batch reports:</p> <ul style="list-style-type: none"> • All batches – Sulfur and benzene • All summer batches – RVP • All summer RFG batches – VOC Reduction and supporting test results (oxygen, E200, E300, aromatics, and olefins) <p>In addition to removing the reporting requirements and obsolete regulatory certification sections, the regulations, primarily at</p>

		<p>§80.47, should be clarified that EPA-required tests need only be run if the property is used in determining compliance with an EPA standard or an EPA reporting requirement.</p> <p>This will reduce compliance exposure with regard to running an EPA-required test method incorrectly. For instance, we may still run distillation year-round for all gasoline batches, but running it flawlessly by the EPA-prescribed version of the D-86 test method would only carry compliance implications for summer RFG batches. Another value is <i>the complex model limits would no longer apply</i> for all conventional gasoline and for all non-VOC RFG, reducing a current refinery constraint.</p> <p>--- OR ---</p> <p>Eliminate gasoline batch reporting altogether</p> <p>The gasoline batch reports support the refiner's benzene, sulfur, and volatility compliance reporting. The annual attestation is sufficient to check that the refiner's testing records support the refiner's compliance with the standards. The batch reporting is duplicative and burdensome.</p> <p>The two options above reduce the number of parameters in</p>
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		batch reports or eliminate batch reporting altogether and apply to individual batches and composites of batches.
Independent laboratory sampling and testing of RFG (or at least non-VOC RFG) 40 CFR Part 80	<p>In the early days of the RFG program, with uncertainty around how refinery labs would perform, the independent laboratory option seemed to make sense to help EPA evaluate if a particular refinery laboratory was having testing performance issues. Today, especially under the Tier 3 rule, refineries have more stringent lab performance requirements. The independent lab requirement no longer adds value and only causes extra cost and delay in producing RFG.</p> <p>This could reduce the cost of producing RFG, including the cost of independent sampling and testing, and reduce shipping delays while waiting for independent lab sampler.</p>	Eliminate independent laboratory sampling and testing of RFG (or at least non-VOC RFG).
The Substantially Similar (SubSim) Interpretive Rule 73 Fed. Reg. 22277 (April 25, 2008)	<p>The current SubSim Interpretive Rule refers to a 1988 version of ASTM D4814. Today's fuel is being manufactured to meet modern versions of D4814. Differences exist between the 1988 version and the current versions that cause sub-optimization of the fuel pool.</p> <p>This would enable greater optimization during fuel production by only having to meet a single, modern specification.</p>	Update the SubSim Interpretive Rule.
RFG reporting 40 CFR Part 80	AFPM would like to see the elimination of quarterly RFG reports, as annual reports are sufficient for EPA's statistical and enforcement needs.	Amend 40 CFR Sec. 80.75 to require annual reporting.
Volumetric Additive Reconciliations (VARs) 40 CFR Part 80	AFPM members are striving to reduce administrative tasks, and reduce compliance exposure with regard to ensuring each of the required elements are placed on a VAR record each month for each additive system. This	Eliminate required VARs.

	requirement is unnecessary to ensure compliance with the regulatory requirement that certified detergent additives be used in all gasoline.	
EPA administrative <i>preview</i> of Office of Transportation and Air Quality Registration (OTAQREG) registration changes	When a company submits a registration change, duly signed by the responsible corporate officer (RCO), such changes should be accepted as submitted, and should not be subject to an EPA review prior to making the changes effective. The delay caused by EPA's review/approval queue is unnecessary. If EPA reviews changes after they are effective and the changes are found to be in violation, the company should bear the burden of the erroneous submission. The main value of an electronic submission system should be speed. This value is negated when EPA previews everything before it is effective. AFPM requests a reduction in wait time to make registration changes.	Eliminate EPA administrative <i>preview</i> of OTAQREG registration changes.
Ultra low sulfur diesel (ULSD) 40 CFR Part 80, Subpart I	AFPM is seeking increased clarity around applicable requirements. Subpart I is riddled with expired requirements, making it very difficult for regulated parties (and the regulators) to understand the requirements.	Eliminate expired elements of 40 CFR Part 80 Subpart I (ULSD).
Detergent additive regulations 40 CFR Part 80	The "Interim" detergent additive program was implemented in 1996 (effective in 1997) at 80.161, but the requirements remain listed in the CFR. Retaining expired requirements in the regulations complicates a regulatory entity's compliance.	Eliminate §80.141 through §80.160.
Gasoline Toxics 40 CFR Part 80, Subpart J	40 CFR Part 80, Subpart J, Gasoline Toxics, was effectively replaced by Subpart L, Gasoline Benzene. Removal of this obsolete regulation will increase understanding of applicable requirements.	Eliminate 40 CFR Part 80, Subpart J, Gasoline Toxics.

Lead and phosphorous test methods 40 CFR Part 80	Section 80.3 references appendices of Part 80 as test methods to test for lead and phosphorus. These methods are antiquated and should be replaced with references to the appropriate ASTM test methods.	Eliminate §80.3 in 40 CFR (lead and phosphorous test methods).
RFS 0104 reports 40 CFR Part 80	All information for the RFS 0104 report comes straight from the EPA Moderated Transaction System (EMTS) except the volume of biofuel held at the end of the quarter and even that is not required for obligated parties. If the biofuel inventories are necessary, maybe it can be set up to enter that into EMTS, or have just a single annual report of inventories for non-obligated parties. EPA already has access to this information and should not maintain a separate reporting requirement for information it already has in its possession.	Eliminate the quarterly RFS 0104 reports.
Downstream Oxygenate Blending 40 CFR Part 80	<p>There are four separate programs that govern the inclusion of downstream oxygenates in gasoline, each with distinct testing requirements: 1) anti-dumping, 2) RFG, 3) gasoline benzene and 4) gasoline sulfur</p> <ul style="list-style-type: none"> - Conventional blendstock for oxygenate blending (CBOB) may be included if it meets requirements of 80.101(d)(4)(ii) - must demonstrate added by refiner or have contract with downstream oxygenate blending (currently only 18 percent accounted for) - RFG 80.69(a) – hand blend and in-use retail survey to ensure oxygenate was added downstream - Tier 2 gasoline sulfur allowed 0 ppm ethanol in calculations, now Tier 3 (beginning 2017) requires refiners to test for ethanol content or assume 5 ppm (this also necessitates testing neat reformulated blendstock for oxygenate blending) 	<p>Simplify and modernize the programs, ideally using one methodology for CG/RFG, which covers all programs and would maintain the level of stringency.</p> <p>Options: Test hand blends for all gasoline (instead of only for RFG), or refinery gate sampling and testing for all gasoline.</p>

	<p>(RBOB)/CBOB, in addition to hand blended sample testing required per 80.69, etc.)</p> <ul style="list-style-type: none"> - Gasoline benzene allow refiners to be included in RFG (if 80.69 is met) or 80.101(d)(4) is met <p>Many reporting options and requirements create burden, causes refiners to blend conventional gasoline (CG) that is cleaner than RFG, and test both neat and oxygenated blended samples.</p>	
Emergency response streamlining and enhancement 40 CFR Part 80	<p>The variation of procedures in response to a temporary fuel supply interruption (such as a hurricane) from state to state creates challenges from a timing and complexity standpoint. In some states, response is only available if the interruption/shortage is due to a named storm, and some states would only offer enforcement discretion. In addition, the level of approval varies from a state agency approval to needing the Governor's signature (always slower), etc. There should be a consistent, Federal process, and in return, EPA needs to let states drop any NAAQS exceedances during this time from Attainment determinations. This would remove the major concern for states in these waivers being granted by removing the potential penalty for these actions.</p>	<p>A Federal process to either self-implement or receive rapid approval for summer gasoline RVP waivers in case of temporary supply interruptions.</p>
Butane blending 40 CFR Part 80	<p>Six reports are required for butane blending and as a result, there is much redundancy.</p>	<p>Streamline and eliminate redundancies of butane blending reporting requirements.</p>
Gasoline Loading Racks 40 CFR 63 Subpart XX	<p>There needs to be an efficient means for temporary relaxation of some of the Federal rules on Gasoline Loading Racks (40 CFR 63 Subpart XX) to allow for open dome loading during periods of supply interruption. The regulation requires loading to be controlled using a vapor recovery</p>	<p>The regulations should recognize temporary situations when there is a supply disruption.</p>

	system, and that greatly slows down the loading time and truck turnaround. EPA offers enforcement discretion, which is not sufficient. Perhaps states should be authorized to grant permission, since they have a better grip on local conditions and needs than Federal policymakers.	
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C. TSCA and LCSA Implementation

The following comments are organized by opportunities that AFPM believes EPA can take advantage of when finalizing regulations to implement the LCSA. Comments on EPA's existing chemical work plan and new chemicals program are also included. AFPM is also commenting on certain policies, procedures and guidance that are integral to TSCA but have not been included in any existing or proposed regulations. AFPM sees a unique opportunity for EPA to minimize regulatory burdens as these regulations are implemented.

I. Implementation of the LCSA

- a) AFPM supports EPA's efforts to implement the LCSA, wants the subsequent regulations to reflect the intent of Congress, and believes that EPA should meet the deadlines outlined in the statute.**

The LCSA requires EPA to promulgate a series of regulations ranging from modernizing the TSCA Inventory to outlining the processes for prioritization of substances, risk evaluation and collection of fees. AFPM fully supports the Agency's efforts to propose the rules and meet the deadlines imposed by LCSA.

While it is important to meet statutory deadlines, it is equally important to reflect the intent of Congress in any regulations required by a particular statute. AFPM believes that if the Agency is fully transparent throughout the rulemaking process, any deviation from the statutory requirements, including deadline obligations, will be understood by stakeholders.

- b) EPA has an opportunity to reduce regulatory burdens when finalizing rules that have been proposed to implement the LCSA provisions.**

EPA has proposed rules to modernize the TSCA inventory, outline the process for prioritization of substances for further work, and establish a framework for risk evaluations of high priority substances. AFPM has commented on each of those proposals, outlining concerns and offering constructive suggestions. Although some stakeholders may say that congressionally mandated regulations are outside of the scope of EO 13777, AFPM disagrees. The final rules ("TSCA Inventory Notification (Active-Inactive) Requirements" [EPA-HQ-OPPT-2016-0426]; "Procedures for Prioritization of Chemicals for Risk Evaluation Under the Toxic Substances Control Act" [EPA-HQ-OPPT-2016-0636]; and, "Processes for Risk Evaluation and Chemical Prioritization Under the Amended Toxic Substances Control Act" [EPA-HQ-OPPT-2016-0400]),

which are expected in June 2017, should meet the general objectives of EO 13777, which are to reduce regulatory burdens. Below are several examples of where regulatory burdens could be reduced while finalizing proposed rules under TSCA.

c) To reduce the burdens associated with new chemical reviews, prioritization of existing substances for work, and the risk evaluation process, EPA should revise its interpretation of the LCSA safety standard’s “conditions of use.”

In general, EPA’s interpretation of “conditions of use” is overly broad and goes well beyond what Congress intended when creating the safety standard. This interpretation has already created additional and unnecessary burdens on the regulated community as well as the Agency. This effect can be seen in the new chemicals program, where EPA is considering uses beyond those identified by the manufacturer. The result has been lengthy reviews, as well as demands for complex toxicity testing (i.e., sub-chronic and chronic inhalation studies) that do not reflect potential exposures from uses identified in the premanufacture notice (PMN).

When creating LCSA, Congress did not intend a dramatic change in the safety standard, nor did it intend for EPA to significantly change the way it conducts risk evaluations for new and existing chemicals. The intent was to allow EPA to more efficiently use its TSCA regulatory tools and to make the Agency’s processes and decision-making more transparent and based on the best available science.

There are no provisions in the LCSA that require EPA to consider all conditions of use, nor was that the intent of Congress. In fact, at Section 6(b)(4)(F)(ii) the statute explicitly mentions “sentinel exposures” when requiring EPA to describe its consideration of exposures. Sentinel exposures are employed to represent broad categories of use so that the assessor does not have to go into each specific subcategory of use. Sentinel exposures represent realistic upper-bound exposures within those broad use categories. The exposures are expected to be much greater than other sources or pathways, so if the margin of exposure is at an acceptable level, there is no need to delve into each and every type of use or background source. This approach reduces the regulatory burden on industry and EPA, while ensuring an effective health and safety regulatory program.

AFPM interprets the inclusion of sentinel exposures as a clear message to the Agency that it should not include every conceivable use when determining the scope of a risk evaluation. The intent of Congress was to allow EPA flexibility in its approach to risk evaluation so that the Agency could maximize the efficient use of resources.

The move away from EPA’s standard risk assessment practices has already brought the new chemical review process to a sudden halt, impeding innovation in the US and affecting supply chains throughout the economy. The result of EPA’s misinterpretation of conditions of use has wasted time and resources by not focusing on the uses and exposures that present the greatest risk. EPA’s new approach lacks the type of focus the Agency had for years in the new chemicals program and in other previous risk assessment activities. Prior to EPA’s move away from its established risk evaluation approaches, nearly ten times the number of new and often safer chemicals were introduced into the US on an annual basis than in Europe. Currently, the backlog of new chemicals in the review process numbers in the hundreds, which is unprecedented. If this

trend continues, by the end of the year Europe will outpace the US in the number of new chemicals entering commerce, which is directly linked to American innovation.

EPA should not consider uses and exposures outside of those identified by the PMN submitter. That will alleviate the backlog of substances in the new chemical review process and return the Agency to its successful and internationally acclaimed approach to new chemical reviews. Importantly, AFPM is not suggesting that EPA disregard “known, intended, or reasonably foreseen uses” of existing chemicals; rather, the Agency should more narrowly exercise and clearly articulate its discretion in the prioritization and risk evaluation process rules to use qualitative, semi-quantitative and other approaches when evaluating hazards, exposures and risks.

d) Acceptance of robust summaries in lieu of full study reports will reduce regulatory burdens on EPA, the regulated community and other interested stakeholders.

The concept of a robust summary was developed and established as part of the High Production Volume (HPV) Challenge, which was a voluntary program that allowed sponsors to voluntarily submit hazard information to EPA on high production volume chemicals. The idea was to reduce the burdens of gathering full study reports, submitting the full reports to EPA, and Agency staff reviewing them. The format and content of robust summaries was the result of a multi-stakeholder group and designed to provide a technically qualified reviewer with enough information to make a scientific judgment on the study methods, reliability and results. Since then, the concept of a robust summary has been adopted globally through individual environmental authorities, as well as the Organization for Economic Cooperation and Development (OECD) and United Nations environment programs.

Full study reports from laboratory toxicity studies are voluminous and have significant monetary value, often into the hundreds of thousands and even millions of dollars. Great care must be taken to protect that private property and its contents, which creates a burden on both industry and EPA. In addition, reviewing the volumes of underlying data found in a study report should only be reserved for cases of scientific ambiguity, questionable scientific integrity or where there is significant disagreement with the interpretation of results.

EPA adoption of robust summaries will bring about greater consistency in regulatory approaches with countries that have strong trade relationships with the US. Robust summaries will significantly reduce potential burdens on EPA and the regulated community. AFPM believes that there are no issues with adopting the use of robust summaries for actions under TSCA Sections 4, 5, 6, and 8.

e) EPA can reduce the burdens associated with risk evaluations by allowing manufacturers to voluntarily submit risk evaluations conducted by EPA contractors and other approved technical organizations.

Part of the risk evaluation process outlined in TSCA Section 6, as modified by LCSA, is a process by which manufacturers can voluntarily request a risk evaluation on a chemical. The statute directs EPA regarding the number of chemicals that can go through this process at any one time, but gives EPA discretion as to how the process is implemented. AFPM urges EPA to consider expediting the approval or disapproval of dossiers that have already undergone a risk evaluation by an EPA-approved contractor or other technically qualified convener of risk experts. This would create a

pathway for a series of risk evaluations that is parallel and concurrent to the risk evaluations conducted by EPA.

AFPM member companies have a tremendous amount of experience in a variety of different programs that regulate chemicals in commerce. Petrochemicals, refining streams and derivative products tend to be well-studied and have been reviewed through a variety of programs. The dossiers prepared for other programs, such as REACH in Europe, can be easily modified for an evaluation under TSCA. While EPA is busy conducting evaluations on chemicals it selects as high priorities, industry should be afforded the opportunity to hire an EPA contractor or other technically qualified consultancy to convene a panel of experts and conduct a risk evaluation that could be submitted for expedited evaluation by the Agency.

A simple and straightforward process would include the following:

1. Company or consortium retains an EPA contractor or other technically qualified consultancy to conduct a risk evaluation on a chemical, which follows the procedures outlined by EPA;
2. EPA contractor convenes a panel of technical experts to review the dossier of hazard and exposure information;
3. Expert panel reaches a conclusion based on the TSCA safety standard;
4. EPA contractor packages the dossier, list of panelists (including qualifications), review procedures and outcome for submission to EPA;
5. Company or consortium submits package to EPA for expedited review; and
6. EPA makes decision whether chemical meets safety standard.

f) EPA can reduce the burdens associated with modernization of the TSCA Inventory.

AFPM generally supports the approach proposed by EPA to create a list of substances currently in commerce, which will become the Active portion of the TSCA Inventory. AFPM has identified opportunities where EPA can reduce the reporting burden when creating the Active list.

The intent of Congress when crafting TSCA Section 8(b) was to create and continually update an Inventory of substances actually in commerce. It is widely agreed by Congress and stakeholders that the TSCA Inventory no longer reflects an accurate depiction of chemicals in commerce; therefore, Congress added provisions in the LCSA to modernize (reset) the TSCA Inventory. Those provisions are quite clear that the sole purpose of the Inventory reset is to create an Active Inventory that lists chemicals in commerce, and create an Inactive Inventory that lists chemicals that may have been in commerce at some point in the past. Only the chemical names are necessary to create the Active and Inactive lists. Any other information contradicts the objectives set out in Section 8(a)(5)(A) to avoid unnecessary reporting, reduce the costs of compliance and to limit reporting to the entities most likely to have that information.

g) EPA should only require submission of the substance that was manufactured and not require date ranges when reporting substances to the Active portion of the Inventory.

In Unit I.C. of its Federal Register notice, “TSCA Inventory Notification (Active-Inactive) Requirements” at 82 FR 4255 (January 13, 2017), EPA first mentions a requirement for reporting the “date range when manufacture occurred,” because the Agency could “obtain confirmation that the chemical substance in question had indeed been manufactured or processed” during the 10-

year time period. EPA reiterates the proposed inclusion of date ranges in Unit III.C. and adds that the information is necessary to limit erroneous reporting outside of the look-back period, ensure the accuracy of the notices, and increase the reliability of commercial activity designations. AFPM does not agree that the reporting of date ranges will achieve any of these objectives.

Date ranges for manufacturing activities are typically not retained for 10 years, so it is very unlikely that companies will have that information. Because companies are unlikely to have date ranges going back 10 years, that information will do nothing to limit reporting of manufacture beyond the 10-year period – i.e., the erroneous reporting.

Date ranges will not ensure the accuracy of information contained in Form A. Companies will already be required to sign a statement verifying the accuracy of reported information. AFPM does not see how adding a date range assures Inventory accuracy.

Date ranges have no impact on the reliability of commercial activity designations. Again, companies will already be signing a statement that assures the accuracy of the submitted information, so adding date ranges does not verify whether a substance was produced or imported. In fact, knowing whether a substance was produced or imported has no purpose in creating an Active Inventory. Only the identification of the substance is necessary for the Inventory reset.

In summary, AFPM sees no purpose for requiring date ranges in Form A submissions. That information will be difficult, if not impossible to ascertain, which presents an unnecessary burden on reporters and runs counter to the objectives set forth in Section 8(a)(5)(A). Eliminating date ranges will reduce the cost of compliance and avoid unnecessary reporting, both of which are objectives outlined in Section 8(a)(5)(A). It will also avoid a situation where EPA is requiring reporting from a party not likely to have that information, which is another objective outlined in that subparagraph.

h) EPA should not require the type of commercial activity when reporting a substance to the Active portion of the Inventory.

Knowing whether a substance was produced domestically or imported is not necessary to determine whether the substance was in commerce during the past 10 years. The purpose of the Inventory reset is solely to create a list of chemicals that are active in commerce. It doesn't matter if the chemicals were produced or imported, since both fall under the definition of "manufacture." AFPM urges EPA to delete the requirement to report the type of commercial activity, which will further the Agency's goals of reducing "unnecessary" reporting and reducing the cost of compliance, both outlined explicitly in Section 8(a)(5)(A).

i) EPA should ensure that a company no longer intending to sell a chemical into commerce is not responsible for reporting to the Inventory reset, even if that company manufactured the substance within the past 10 years.

There are many reasons that businesses cancel or divest products or product lines. In cases where businesses or product lines are sold or merged, the new entity that intends to sell those substances into commerce should be responsible for and be afforded the opportunity to report for the purpose of being placed on the Active portion of the Inventory. The company that sold the business or product line should not be responsible for reporting because there is no longer intent to distribute

that substance for commercial purposes and there is a high likelihood that the pertinent records were transferred as part of the business transaction. One of the objectives of TSCA Section 8(a)(5)(A) is to limit reporting to the entity most likely to have the information. In this case, the seller would not likely have that information.

Another example is a company experiencing a temporary domestic supply disruption sometime in the past, which could have been the result of a supply shortage in the US, and then being forced to obtain a substance from a non-domestic source for a limited time. The company had and still has no intent to import in the future, as this was a temporary situation. The company should not be required to report that substance to the Active Inventory if there was and still is no intent to distribute the substance in commerce in the future.

j) Polymers on the current TSCA Inventory should also appear on the Interim Active Inventory.

Polymers on the TSCA Inventory but not subject to Chemical Data Reporting (CDR) rule requirements are excluded from EPA's proposed Interim Active Inventory, including polymers with a "Y" designation. Many polymers were placed on the TSCA Inventory before EPA promulgated the polymer exemption under Section 5. These low risk polymers would likely meet the standard for the polymer exemption today. The purpose of the polymer exemption was to alleviate the need for EPA to expend resources reviewing these low-risk substances under the new chemicals program. These polymers should appear on the Interim Active Inventory to help avoid unnecessary reporting and reduce the cost of compliance, which are objectives found in Section 8(a)(5)(A).

k) AFPM commends EPA for eliminating the requirements for substantiation of CBI claims when reporting to the Active Inventory, especially for substances reported during the 2016 CDR reporting cycle, because those claims were recently substantiated.

In Unit III.E. of its Federal Register notice, "TSCA Inventory Notification (Active-Inactive) Requirements" at 82 FR 4255 (January 13, 2017), Summary of the Proposed Rule, EPA does not include mandatory substantiation requirements for CBI claims for chemical identity made on Form A. Under a separate rule, to be promulgated at a future date, EPA will propose the substantiation requirements for those claims. AFPM generally supports the decision to postpone substantiation requirements for CBI claims older than five years and include them in the Review Plan, but believes substantiation for substances reported during the latest CDR cycle is unnecessary. AFPM also supports EPA's acceptance of early, voluntary substantiations with Form A submissions.

Section 8(b)(4)(B)(iii) compels EPA to require substantiation of CBI claims for chemical identities; however, Section 8(b)(4)(D)(i) excludes companies that have "substantiated the claim in a submission made to the Administrator during the 5-year period ending on the last day of the of the time period specified by the Administrator." The statute does not specify a particular type of submission for the substantiation, so AFPM interprets these provisions to apply to any CBI substantiation, including submissions under CDR.

AFPM agrees with the Agency decision to reduce the reporting burden by minimizing the information requirements, especially for CBI recently claimed and substantiated during the most

recent CDR reporting cycle. Minimizing the information requirements would also help the Agency meet its obligations under Section 8(a)(5)(A) by not requiring reporting that is “unnecessary or duplicative” and minimizing “the cost of compliance.”

AFPM supports EPA’s decision to honor the existing CBI claims of manufacturers and processors, even if they were not the original CBI claimants. Through this decision, EPA acknowledges that businesses are acquired, merged and even leave the marketplace. The maintenance of an existing CBI claim can provide companies with an innovation-based competitive advantage that would not otherwise be afforded.

I) EPA should regularly update the Active list to avoid multiple reporting of any one substance.

To further achieve the objectives set forth in Section 8(a)(5)(A) of “TSCA Inventory Notification (Active-Inactive) Requirements,” EPA should update the Interim Active Inventory on a frequent and regular basis. This would alert others that manufacture those same substances and avoid redundant reporting, thereby reducing unnecessary reporting and the overall cost of compliance. The purpose of the Active Inventory is to create a list of chemicals currently in commerce, not a list of manufacturers that produce or import those chemicals.

II. Existing Regulations Prior to LCSA

a) EPA can reduce the burdens of substantiating CBI claims.

Congress has provided EPA with a great deal of discretion when it comes to substantiating claims of CBI. EPA requires up-front substantiation and periodic re-substantiation for all CBI claims, which has become quite burdensome over the years. AFPM views CBI as intellectual property and believes that companies should be afforded more deference when asserting a CBI claim.

40 CFR 711.30 outlines the questions companies are required to answer when asserting a CBI claim. The questions are numerous and burdensome, which provides a disincentive to companies wishing to keep their sensitive business information confidential, especially from foreign competitors that do not respect the concept of intellectual property. EPA could significantly reduce the regulatory burden by limiting the number of questions that need to be answered to substantiate a CBI claim.

b) EPA should reduce the reporting requirements of substances that are non-toxic or do not present a potential for exposure under the intended use, and use its Section 8 Preliminary Assessment and Information Rule (PAIR) authority to collect information for chemicals it intends to prioritize.

Currently, data on production, use and exposure must be reported for substances on the TSCA Inventory that are produced or imported above 25,000 pounds per year, regardless of whether those chemicals pose a risk to human health or the environment. This includes materials that are non-

toxic or for which there is no potential for exposure under their intended uses. During the last available reporting cycle, EPA collected information on 7,690 chemicals from 4,785 sites.

AFPM supports the Agency's efforts to collect information under CDR. Casting such a broad net, however, is not necessary. Most of the information collected under CDR will not be used for prioritization or risk evaluation; rather, it will just be put on a web site. Additionally, the quality of the exposure information collected under CDR is questionable, since manufacturers are unlikely to possess downstream use and exposure information.

EPA could reduce the reporting burdens under CDR by exempting or partially exempting non-toxic chemicals and those that do not present a potential for exposure under the intended uses, such as intermediates. Limiting collected information to quantities manufactured and known uses can still provide EPA with enough information to make a rough estimate of risk.

EPA has computer models and other tools that can predict ranges of toxicity and potential exposures, just by knowing the molecular structure of the chemical and its general uses. If EPA requires more precise or detailed information, it should use its authority under TSCA Section 8(a) and issue a PAIR rule that includes processors (i.e., those most likely to have downstream use and exposure information). PAIR rules are more targeted than general information collections (i.e., CDR reporting) and can include specific entities without burdening the rest of industry.

c) Chemicals that are manufactured in the U.S. for export and returned to the U.S. should not be counted as imports or subject to CDR reporting.

There are a number of reasons why a chemical could be manufactured, exported, then returned to the U.S. The only information relevant to EPA should be the original manufacture of the substance. To count returns as imports results in double-counting and distorts the actual market picture, in addition to placing an unnecessary burden on reporters.

d) Substances that are byproducts from recycling processes should be exempt or partially exempt from reporting under the CDR rule.

TSCA Section 8(b) requires EPA to create and maintain a list of chemicals in commerce, commonly known as the TSCA Inventory. For many years companies were required to report the chemicals and amounts they were manufacturing and importing under the Inventory Update Rule (IUR). In 2006, EPA changed the nature of IUR reporting, significantly increasing the burden by including information related to use and exposure. EPA stopped using the term "Inventory Update Rule" in 2011 and established the term "Chemical Data Reporting."

Included in CDR reporting are byproducts from recycling processes. AFPM believes that the burden associated with reporting byproducts under CDR is a strong disincentive for recycling. Furthermore, it results in a distortion of the marketplace because the recycling does not change the overall volume of the manufacture for that substance. Those same molecules are counted over and over, each time the material is recycled. To make matters worse, the companies required to report byproducts of recycling will be considered manufacturers and could be subject to even more costly burdens, such as toxicity testing and risk evaluations. EPA should exempt byproducts of recycling processes from CDR reporting.

- e) **EPA should allow for a non-punitive correction to the TSCA Inventory for Chemical Substances of Unknown or Variable Composition, Complex Reaction Products, and Biological Materials (UVCBs) to reduce the potential burden associated with the new chemical review process.**

UVCB substances, also known as Class 2 substances, cannot be represented by a distinct molecular structure. They may be isomeric mixtures, complex and naturally occurring mixtures of related molecules, and other materials for which separation and purification of components is technically or economically unfeasible. Many products derived from oil, such as petroleum streams, waxes, base oils, etc., are UVCBs.

In the past several years, EPA's enforcement office has threatened action against AFPM member companies because EPA staff insisted that certain UVCB nomenclature was outdated. This marked a distinct change in nomenclature policy, but the regulated community was never afforded the opportunity to comment on the change, nor was it given any chance to comply.

EPA stated that the manufacturers of those substances were out of compliance with TSCA and demanded that certain UVCBs be renamed and treated as new chemicals subject to the burdensome new chemical review process, even though the products and processes used by manufacturers had not changed in decades, even before there was an EPA. AFPM members and petroleum-related products are not the only ones facing this sudden burden.

In addition to fines of up to \$25,000 per day, the burden of reporting the substance as a new chemical would entail a sudden stoppage in manufacturing or import, disrupting supply chains that depend on the chemical. Each UVCB would have to be broken up into sub-species and a premanufacture notice would be required for each separate substance, potentially numbering in the hundreds. The potential burden under this scenario could cripple a small or medium-sized company. EPA could easily reduce the burden of UVCB nomenclature issues by instituting a non-punitive TSCA Inventory correction and allow companies to work in cooperation with the Agency to resolve long-standing nomenclature issues.

D. Conclusion

AFPM encourages the Administration to work with Congress to bring long overdue reforms to the regulatory process. Reforms to increase transparency, enhance the quality of data used in rulemaking, and increase the accountability of the Administration and Congress to the American people are important goals that will promote economic opportunities while protecting health, safety, and the environment. Significant reductions in air, water, and waste pollution have occurred over the past several decades. Further reductions generally come at an increasing cost and are smaller than prior reductions. This rising cost to benefit ratio should be strongly considered in any future statutory or regulatory changes.

AFPM looks forward to continuing our work with you and other federal agencies to create a regulatory environment that protects public health and welfare without destroying jobs, jeopardizing our nation's energy security, or eroding our domestic manufacturing capabilities. If

you have any questions about our comments or need any additional information, please contact me at (202) 552-8461 or dfriedman@afpm.org.

Sincerely,

A handwritten signature in dark ink, appearing to read "David Friedman". The signature is fluid and cursive, with the first name "David" being more prominent than the last name "Friedman".

David Friedman
Vice President, Regulatory Affairs

**Testimony of Scott Faber
Senior Vice President
Environmental Working Group**

Before the

**Subcommittee on Superfund, Waste Management, and Regulatory Oversight
of the Senate Committee on Environment and Public Works**

on

S. 543, the EPA Science Advisory Board Reform Act of 2015

May 20, 2015

Thank you for the opportunity to testify. My name is Scott Faber and I am Senior Vice President of Government Affairs for EWG, a national environmental health organization.

EWG strongly opposes legislation designed to cripple the Environmental Protection Agency's ability to carry out its essential functions, including S. 543, the EPA Science Advisory Board Reform Act of 2015.

By providing independent advice to the EPA Administrator, the Science Advisory Board has played a unique role in environmental protection for more than three decades. The SAB is primarily focused on *technical* issues, not policy issues, and does not make risk management or regulatory decisions. Its role is limited to offering advice on the scientific and technical basis on which the agency makes its risk management and regulatory decisions. The Board makes recommendations that are grounded in science, not politics.

Unfortunately, S. 543 would inject politics and needless delay into the Board's scientific and technical deliberations.

First, S. 543 would place the affiliation of potential Board members ahead of their scientific qualifications by establishing a quota for representatives of state, local and tribal governments.

SAB members are called upon to provide their technical and professional expertise, not to represent the views of any particular agency or organization. By creating such a quota system, S. 543 would undermine the integrity of the SAB and the original intent of Congress to enlist the advice of scientists “qualified by education, training and experience to evaluate scientific and technical information.”¹

Second, S. 543 would allow the appointment of Board members who have potential financial conflicts of interest, so long as those interests are disclosed. Under current law, EPA carefully evaluates the potential conflicts of interest of all Board members in accordance with federal law, which permits waivers in some cases, and with the ethics requirements of the Federal Advisory Committee Act (FACA). Like the quota system described in Sec. 2(b)(2)(B) of S. 543, a provision permitting Board members with financial conflicts would undermine the integrity, and potentially the impartiality, of SAB reviews.

Third, S. 543 would discourage qualified experts from agreeing to serve on the Board. In particular, Sec. 2(b)(3)(D) would have a chilling effect on participation by requiring public disclosure of SAB members’ private financial information. In addition, Sec. 2(b)(7) would needlessly limit the number of terms a Board member could serve, frustrating the SAB’s access to individuals with specialized expertise.

Fourth, S. 543 would create significant new and unnecessary burdens on the Board that are ultimately designed to delay EPA action. In particular, S. 543 would require the SAB to provide written responses to all public comments – which in some cases number more than 100,000. In addition, S. 543 would extend the public comment period beyond a Board meeting – even though FACA prevents the board from considering such comments without holding yet another public meeting. This would create an endless cycle of meetings and comments that would ultimately impede and delay the Board’s ability to provide the Administrator with its scientific and technical advice.

¹ 42 U.S.C. 4365

Advocates for S. 543 claim these reforms would increase transparency, empower scientists, avoid conflicts of interest and enhance the Board's scientific integrity.² However, the Federal Advisory Committee Act already provides important safeguards that prevent conflicts of interest and ensure public access and input to the SAB's deliberations. What's more, the Board already has launched initiatives to solicit even greater public participation.³ More generally, the Office of Science and Technology Policy⁴ has taken steps to ensure the scientific integrity of agency actions and the EPA has adopted its own Scientific Integrity Policy,⁵ consistent with the Information Quality Guidelines of the Office of Management and Budget.⁶

In summary, these provisions of S. 543 would undermine the SAB's scientific integrity by making Board membership subject to organizational affiliation rather than merit; by increasing, not reducing, financial conflicts of interest; and by creating a needless cycle of meetings and comments that will only serve to delay action.

As the Union of Concerned Scientists has noted, S. 543 and S. 544, the so-called "Secret Science Reform Act of 2015," are elements of a broader strategy to delay and ultimately deny to EPA the ability to improve air and water quality for all Americans.

In particular, S. 544 would sharply limit the science EPA can rely on by prohibiting the use of studies based on private health data, proprietary models and confidential business information. S. 544 would also prohibit the use of long-term studies, workplace exposure studies, oil and chemical spill studies, and other research that is difficult or impractical to "reproduce" but that provides critical information about health effects. What's more, S. 544 creates an outrageous

²<http://www.boozman.senate.gov/public/index.cfm/press-releases?ID=2d5d3849-5c88-4cac-a0e5-5a6afb4e5a05>

³<http://yosemite.epa.gov/sab/sabproduct.nsf/WebSABSO/PublicInvolvement?OpenDocument>

⁴<https://www.whitehouse.gov/the-press-office/memorandum-heads-executive-departments-and-agencies-3-9-09>

⁵http://www2.epa.gov/sites/production/files/2014-02/documents/scientific_integrity_policy_2012.pdf

⁶https://www.whitehouse.gov/sites/default/files/omb/inforeg/iqg_oct2002.pdf

double standard by restricting the use of such studies in actions designed to protect public health but permitting them in actions that benefit industry, such as permit approvals and chemical registrations.

Taken together, these bills would needlessly rob EPA of the ability to rely upon basic science and needlessly limit the agency's ability to subject scientific and technical questions to review by the Science Advisory Board. We urge you to oppose S. 543 and S. 544.

Thank you for the opportunity to testify.

**Subcommittee on Superfund, Waste Management, and Regulatory
Oversight Hearing:**

**“Oversight of Scientific Advisory Panels and Processes at the
Environmental Protection Agency and Legislative Hearing on S. 543
the Science Advisory Board Reform Act of 2015”**

Wednesday, May 20, 2015, at 9:30 a.m.

Thank you Subcommittee Chairman Rounds for convening today’s oversight and legislative hearing, and thank you to our witnesses for being here to testify. Today’s hearing covers a very important issue that hinges nearly every decision made by the Environmental Protection Agency (EPA): science.

When it comes to very technical and complex matters before the EPA, Congress specially crafted laws to ensure that EPA decisions are based on sound science and advice from independent experts. Two key panels advising the EPA on such matters we will review today include the Science Advisory Board (SAB) and the Clean Air Scientific Advisory Committee (CASAC).

Ideally, these panels should be composed of well-qualified and balanced experts, operate in an open and transparent process, and provide a robust and independent review to inform EPA action. However, current SAB and CASAC panels deviate far from this framework. We will hear testimony today that these panels exclude

professionals with real-world expertise, lack geographic diversity, limit public participation, and fail to hold the EPA accountable.

A prominent theme that will emerge from the testimony today is that the SAB is not fully independent from the EPA. The SAB has not fulfilled its obligation to respond to Congress because of EPA interference. EPA limits the ability for the SAB to review critical science and regulatory actions. The SAB is discouraged from expressing dissenting views and communicating uncertainties in reviews. EPA selects members of the SAB and CASAC who are seemingly an extension of the Agency due to the number of EPA grants received, work cited under review, or tenure on such panels.

Testimony will also highlight the need for Senators Boozman and Manchin's S. 543, the Science Advisory Board Reform Act of 2015, to address these issues. I am a proud cosponsor of S. 543. The bill would bring the much needed transparency, public participation, accountability, and independence to the advisory process which will ultimately lead to better science and better EPA decision-making.

I ask that my full statement be entered into the record. Thank you.

STATEMENT OF

Roger O. McClellan
Advisor, Toxicology and Human Health Risk Analysis
Albuquerque, New Mexico

Before the

Subcommittee on Superfund, Waste Management and Regulatory Oversight
Committee on Environmental and Public Works
U.S. Senate

Hearing Purpose:

- a) Oversight related to the panels and processes by which the Environmental Protection Agency receives independent advice**
- b) Review of S.543, the Science Advisory Board Reform Act of 2015**

May 20, 2015

Good Morning, Mr. Chairman and Members of the Subcommittee. Thank you for the invitation to present my views on the importance of independent scientific advice and an effective and efficient Science Advisory Board to inform the Environmental Protection Agency's policy decisions and regulations.

My biography is attached to this statement (Attachment 1). Since 1999, I have served as an Advisor to public and private organizations on issues related to air quality in the ambient environment and workplace drawing on more than 50 years of experience in comparative medicine, toxicology, aerosol science, and risk analysis. Prior to 1999, I provided scientific leadership for two organizations – the Chemical Industry Institute of Toxicology (1988-1999) in Research Triangle Park, NC and the Lovelace Inhalation Toxicology Research Institute (1966-1988) in Albuquerque, NM. The Chemical Industry Institute of Toxicology (now The Hamner Institutes for Health Sciences), was a not-for-profit research organization funded primarily by the chemical industry. The Lovelace Inhalation Toxicology Research Institute, continuing today as part of the Lovelace Respiratory Research Institute, was a non-profit research institute funded with both public and private funds. Both organizations, under my leadership, earned an international reputation for developing scientific data that informed the setting of important occupational and environmental health standards. During my career, I have held adjunct faculty appointments at 8 different universities and held major leadership roles in scientific organizations with membership from all sectors of the economy. I make this point since, in my opinion, the USA is fortunate to have many well-qualified scientists in all sectors of Society.

In my opinion, sound scientific advice from highly competent scientists and engineers is critical to the successful functioning of any science-based enterprise operating in the public or private sector. This includes the Environmental Protection Agency that develops policies and regulations that have substantial impact on the health and well-being of the American public, including those mediated through the U.S. economy. The EPA's policy decisions and the resultant promulgation of regulations must be informed by the best available scientific information independent of any preconceived ideological inclination as to a particular policy or regulatory outcome.

The testimony I offer today also draws on my experience serving on numerous scientific advisory committees for government agencies, academic institutions, non-profit entities, trade associations and private companies. This has included service on advisory committees to all the major federal agencies concerned with health issues, including service on many EPA Scientific Advisory Committees starting soon after the U.S. Environmental Protection Agency (EPA) was created by President Richard M. Nixon by Executive Order.

At the time EPA was created, I was serving as Chair of the Environmental Radiation Exposure Committee to the U.S. Public Health Service (USPHS). When the USPHS radiation protection activities were transferred to the new EPA, the Environmental Radiation Exposure Advisory Committee became advisory to the EPA along with dozens of other Advisory Committees that had operated as part of EPA's predecessor Agencies, such as the National Air Pollution Control Administration. The Bureau of the Budget, the predecessor to the current Office of Management and Budget, noted the large number of Advisory Committees and the

hundreds of consultants. The Bureau of Budget thought there must be a more efficient way for the new Agency to secure scientific advice. The EPA responded, after seeking informal consent from the Congress, by creating a Science Advisory Board (SAB) under the Chairmanship of the late Dr. Emil Mrak, then Chancellor of the University of California-Davis. The new SAB had umbrella committees organized along disciplinary lines; the key committees were Health, Engineering, and Ecology. I argued for an alternative structure with committees organized by issues or media. However, I lost the argument, with my colleagues noting that “birds of a feather” are comfortable together, and that Academic institutions are organized by disciplines. Recognizing that the radiation science field is different, that specific Committee was retained and I joined the SAB Executive Committee. Thus began my long involvement with EPA and its advisory processes.

In one of my files I have a photograph of Administrator William Ruckelshaus providing me a certificate confirming my appointment as Chair of the EPA’s Environmental Radiation Exposure Committee. As expected, most of the early advisory attention focused on each Committee advocating for a bigger share of the budget from the EPA’s newly created centralized Office of Research and Development. Only later would the SAB become involved with the other programmatic offices.

One of the first major issues EPA management brought to the SAB involved airborne Pb. The Natural Resources Defense Council (NRDC) had sued the EPA to have Pb listed as a criteria air pollutant under the Clean Air Act Amendments of 1970. When EPA lost the suit at the Appeals Court, it had to proceed with developing a Criteria Document to support its issuance of a National Ambient Air Quality Standard for Pb. Administrator Douglas Costle, on the advice of Dr. Mrak as Chair of the SAB, asked me to chair an *ad hoc* Committee to review the draft criteria document on airborne Pb. The Administrator appointed an appropriately diverse committee with multiple scientific and engineering disciplines represented. Within a week of the appointments being announced, I received a telephone call from one of the prospective Committee members telling me that he had two problems with the Committee. One problem, as he expressed it, was that two committee members were “lackeys or toadies of industry.” The second problem of concern to him was my serving as Chair – “I do not think you will advocate for a stringent airborne Pb NAAQS.” At the time I was an employee of the Lovelace Medical Foundation in Albuquerque, NM managing an Atomic Energy Commission funded program on the toxicity of airborne materials. I suggested that if the prospective member had any problems with the composition of the Committee or chairmanship he should contact Administrator Costle. Needless to say, the deliberations of the Committee, and especially the hallway conversations, were contentious. As the deliberations proceeded, the EPA wisely decided to remove the recommendation of a specific Pb NAAQS from the criteria document, recognizing that the level of the standard and averaging time were policy decisions that should be informed by science and not made by scientists. It is noteworthy that a significant amount of Committee time was spent receiving public comments. I am proud to note that when the *ad hoc* airborne Pb standard committee concluded its work, the lead attorney from the NRDC congratulated me on my leadership of the Committee.

Forty five years later I have five major concerns with EPA’s Advisory Committee activities: (a) the role of academic scientists versus scientists employed or engaged by industry,

(b) the important distinction between offering scientific advice to inform policy decisions versus scientists making and/or endorsing policy decisions, (c) the role of the SAB in offering independent science advice versus responding only to EPA requests for advice, (d) the role of the SAB committee activities as a forum for public comment, and (e) the need for a strong SAB Executive Committee to enhance the effectiveness of the multiple committees operating under the SAB umbrella.

Over the subsequent years, I have been a member of several dozen EPA Advisory Committees, including serving as Chairman of seven Committees and more than 20 years of service on the SAB Executive Committee. In those early decades, the SAB Executive Committee – consisting of about 12 individuals who chaired the major SAB committees or had at-large appointments – played a valuable role in coordinating the activities of multiple committees and, most importantly, advising the EPA Administrator on major scientific issues. This included the SAB offering both unsolicited advice and independently recommending the initiation of important advisory functions. I am disappointed that the current EPA SAB apparently no longer has that kind of Executive Committee.

I am proud to say that the activities of the *ad hoc* Committee that reviewed the Pb Criteria Document, which I noted earlier, had a small role in the Congress amending the Clean Air Act in 1978 to formally require the EPA Administrator to appoint a Clean Air Scientific Advisory Committee (CASAC). I am pleased to have served both as Chair of CASAC (1988-1992) and in one of the seven positions mandated by the Clean Air Act and as a consultant on numerous CASAC Panels that considered all of the criteria pollutants. I note the role of both members of CASAC and consultants. In my opinion, the appointment of CASAC members and consultants deserves equal attention. The consultants frequently out-number the seven CASAC members that are legislatively mandated. My last CASAC service was on the Particulate Matter (PM) Panel (2000-2007). The CASAC and the PM Panel struggled over the distinction between offering scientific advice and attempting to mandate the specific level of the NAAQS for PM_{2.5}. The majority of the Panel wanted to advise the Administrator that the annual PM_{2.5} National Ambient Air Quality Standard (NAAQS) must be reduced from 15 µg/m³ to 14 µg/m³ or lower. I was a minority on the Panel, arguing that the specific concentration level and statistical forms of the NAAQS were inter-related policy decisions that should be informed by science; however, the level and form are ultimately policy judgments that can only be made by the EPA Administrator. Science alone cannot identify the concentration and statistical form requisite to setting a NAAQS consistent with the language of the Clean Air Act. I have addressed this issue in a paper I authored entitled “Role of Science and Judgment in Setting National Ambient Air Quality Standards: How low is low enough?” *Air Quality and Atmospheric Health* 5: 243-258, 2012.

In addition to serving on numerous EPA Advisory Committees, I have served on Advisory Committees to essentially all of the federal agencies that are concerned with environmental and occupational factors influencing the health of individuals and populations. I have also served on various committees of the National Research Council and the Institute of Medicine of which I am a member. In many cases, the issues at hand have been at the interface between the physical and engineering sciences and the biological and medical sciences. Each of these disciplinary areas has different traditions and approaches to defining what is known and

unknown on a given subject. Issues in the life sciences are especially contentious because they are at the interface of science, the environment and health, where different individuals, including scientists, have strong personal ideological views as to a preferred policy outcome or regulation.

It is my professional opinion that scientific advisory committees offer the most useful advice to inform public policy when they examine all the scientific evidence relevant to the issue at hand, identifying the strengths and weaknesses of various facets of the science, including differences in the opinions of individual Board or Committee members on specific scientific matters. I am concerned that the differences in scientific views among Committee members are frequently down-played in a rush to create a consensus opinion. It is my view that consensus is best left to ideologically-based institutions such as religious organizations, labor unions and political parties. “Consensus” positions in the life sciences are frequently based on ideological positions and pressure, not necessarily science alone.

An issue of major concern for scientific advisory committees, irrespective of the issue being addressed, is how the deliberations and actions of the Committee are influenced by funding that the Committee members have received in the past or may receive during the course of future employment. This issue is of heightened interest as institutions, in both the public and private sectors, increasingly face severe constraints on financial support for scientific research. Indeed, the top priority for many organizations that are science-based is what can be done to make certain their scientific constituency receives its “fair share” of funding.

Many scientists hold the view that funding from federal agencies comes with no strings attached, while anyone receiving private sector funding is somehow indentured. In short, some individuals argue that academic scientists are free of bias and conflicts of interest, while industry affiliated scientists automatically have biases and conflicts of interest. I think such a viewpoint is open to question when the funding agency, such as the EPA, is also a regulatory agency. In my opinion, the agency needs to focus on reducing scientific uncertainty on a range of issues and take special precautions to avoid creating a funding environment focused on identifying new crises or creating more stringent regulations. In my opinion, the creation of a more stringent standard or regulation should not be viewed as a criterion of success for scientific research or scientific advisory bodies. Alternatively, I argue that the criterion of success for an advisory committee should be whether it appropriately examined all the scientific evidence, including both the strengths and weaknesses, so the information could inform policy judgments.

As an aside, I am of the opinion that private sector funding is of critical importance to advancing scientific knowledge and its application. However, the interface between industry-funded science and its use in informing policy decisions needs the same kind of scrutiny as the science created with public funding.

Let me return to the importance of distinguishing between an advisory committee’s evaluation of the science, on the one hand, and its entering into the policy arena and offering policy judgments, on the other hand. This is dangerous turf because many policy makers would like to say the science “dictated” the outcome on specific difficult policy decision; that the Administrator was a mere bystander to the science. I addressed these issues in the paper I noted earlier.

An important underlying concern for the use of science to inform policy decisions is access to the underlying data for review and, indeed, re-analysis by others. This is an issue addressed in Senate Bill 544. In my opinion, any science used in the federal regulatory process should have been published in a high-quality peer-reviewed journal and, equally as important, the underlying data must be available to other qualified scientists for review and potential re-analysis. Key data used in the setting of several of the NAAQS in the past have not always met the second test. As one academic scientist noted, “I do not want some industrial-hired gun wading through my data.” I applaud the Johns Hopkins University team that created the National Morbidity and Mortality Air Pollution (NMMAPS) data set, used extensively in the setting of several NAAQS, for making that data set publicly available to others. My colleague, Dr. Suresh Moolgavkar, and I have recently used the NMMAPS data set to explore alternative approaches to data analysis (Moolgavkar, SH, McClellan, RO, et al, Time-Series Analyses of Air Pollution and Mortality in the United States: A Subsampling Approach. *Environ. Health Perspectives* 121(1): 73-78, 2013.). I am concerned that in recent years the use of the NMMAPS data has been constrained.

Likewise, I applaud the National Institute of Occupational Safety and Health (NIOSH) and the National Cancer Institute (NCI) for seeking ways to make the Diesel Exhaust in Miners Study (DEMS) available to qualified investigators. Initiated in the early 1990s, DEMS was completed in 2012 with the publication of five exposure assessment papers and two seminal epidemiological papers (Attfield et al, The Diesel Exhaust in Miners Study: A Cohort Mortality Study with Emphasis on Lung Cancer, *J Natl Cancer Inst* 104:1-15, 2012; Silverman et al, The Diesel Exhaust in Miners Study: A Nested Case-Control Study of Lung Cancer and Diesel Exhaust, *J Natl Cancer Inst* 104:855-868, 2012)). The complete data set acquired by federal employees and collaborators at a cost of over \$12 million needs to be made available and evaluated by other scientists before it is used to establish federal regulations and standards. I am pleased that NCI ultimately released the key exposure assessment data in response to a Freedom of Information Act request and that both NCI and NIOSH developed ways for qualified scientists to access the DEMS epidemiological data.

With leadership from my colleague, Dr. Kenny Crump, the exposure assessment that is a crucial component of DEMS has been evaluated with funding from a coalition of industry trade associations (Crump, K. and C. Van Landingham, Evaluation of an Exposure Assessment used in Epidemiological Studies of Diesel Exhaust and Lung Cancer in Underground Mines, *Crit. Reviews in Toxicol.* 42(7):599-812, 2012). Dr. Crump identified major flaws and uncertainties in the methodology used in the original exposure assessment. Subsequently, with funding from an industry coalition, Dr. Suresh Moolgavkar and Dr. Kenny Crump replicated the epidemiological analyses of the original DEMS investigation and, more importantly, conducted additional analyses using alternative methods and exposure assessments, which have been published in peer-reviewed journals (Moolgavkar et al, Diesel Engine Exhaust and Lung Cancer Mortality – Time Related Factors in Exposure and Risk, *Risk Analysis*, in press, 2015; Crump et al., Reanalysis of the DEMS Nested Case-Control Study of Lung Cancer and Diesel Exhaust: Suitability for Quantitative Risk Assessment, *Risk Analysis*, in press, 2015). These analyses revealed major uncertainties in estimates of excess lung cancer risk associated with exposures of

non-metal miners to diesel exhaust over and above that associated with the primary well-established risk factor – cigarette smoking.

The critical question now is how both the results of the original NIOSH/NCI investigators and the subsequent results of Drs. Moolgavkar and Crump, using the same DEMS data set, will be evaluated and used to inform subsequent scientific analyses, such as their potential use in quantitative risk analysis and to inform public policy decisions and regulatory actions by EPA, NIOSH, the Occupational Safety and Health Administration and the Mine Safety and Health Administration. I have urged that the results of all the analyses should be considered on a level playing field, irrespective of when they were conducted, who conducted the analyses, or if they were conducted with public or private funding. Other individuals have advanced the view that the analyses conducted with industry support should be viewed as secondary because the industry support was alleged to focus on obtaining particular outcomes. These questions are being addressed by a Panel organized by the Health Effects Institute, a non-profit entity jointly funded by EPA and the private sector, primarily the manufacturers of combustion engines. That Panel's report will be of special interest since the hurdle of access to data was cleared allowing the Panel to focus on evaluating the results of the original investigators and subsequent analyses by other independent scientists.

Before leaving my discussion of service on EPA Advisory Committees, I would like to briefly note an EPA Committee I did not serve on – the CASAC Ozone Panel whose deliberations started in the early 2000s and concluded in 2008. When the CASAC Ozone Panel was being formed, I was encouraged by the Chair of CASAC to self-nominate for service on the Panel. I did so. Some months later I received a call from a Reporter asking if I had seen the letter a prominent ENGO had sent to SAB concerning my services on the Panel. I said no. He said you need to see the comments; they are not very flattering. I promptly called the SAB offices and inquired about the letter. The SAB staffer acknowledged receipt of not one, but two letters concerning my potential service and that of two well-qualified colleagues. I asked if he would share the letters with me. His response was “I think you will need to file a Freedom of Information Act (FOIA) request.” I told him “That is ridiculous – my fax machine is available and if I did not receive the letters within an hour I will take the matter up with the Administrator and my elected Senators and Representatives.” I promptly received the letters via fax. The letters from two different ENGOs were virtually identical. They questioned how I could be considered for membership on a CASAC Panel when I had previously served as President and CEO of the Chemical Industry Institute of Toxicology, a research laboratory principally funded by the chemical industry. To top it off, they suggested I was not qualified professionally to serve on the Panel since – “he was trained as a Veterinarian.”

While I can appreciate that an agency may wish to solicit comments on nominees to particular Committees, I think it should be with the understanding that any comments received by the Agency will be shared with the nominee. Indeed, if an organization is moved to comment on a nominee, the organization should be willing to directly confront the nominee by sharing its concerns directly with the nominee. Appointments to scientific advisory committees should be made in an open and transparent manner and not influenced by *sub rosa* innuendos as to their qualifications. I will never know if those two letters influenced the Agency's decision to not appoint me to EPA's CASAC Ozone Panel.

I appreciate the Subcommittee on Super Fund, Waste Management and Regulatory Oversight of the Committee on Environment and Public Works holding this hearing and addressing the important topic of the processes by which EPA receives independent scientific advice, including the important role of the Science Advisory Board. I view this topic as part of a much bigger picture – how do we move the economy of the USA forward building on this nation’s remarkable pool of scientific talent?

Let me provide some context for this statement. I am regularly asked by fellow scientists, including those at regulatory agencies, as to what I think are the most important factors influencing human health. In some cases, the question is framed relative to revision of the National Ambient Air Quality Standards for particulate matter or ozone or some specific chemical. My answer is simple – in my opinion, the single most important risk factor for the health of the U.S. citizens and other populations around the world is their SOCIO-ECONOMIC STATUS (SES). Jobs and income matter! A study by Steenland et al (2004) showed that the mortality ratio for all-cause mortality for men in the lowest quartile of SES over the top quartile is about 2.00 (Steenland, K. and J. Walker, All-Cause and Cause-Specific Mortality by Socioeconomic Status Among Employed Persons in 27 US States, 1984-1997, *Am. J. Public Health* 94(6): 1037-1042, 2004). In other words, there is a doubling of the mortality rate for individuals in the lowest quartile of SES versus those in the top quartile. Putting it another way, moving from the bottom quartile to the second quartile reduced the mortality ratio to 1.69 and a move from the second to the third quartile reduced the mortality ratio to 1.25. In short, an optimal way to improve the health of Americans is to create employment – JOBS.

Some individuals reading this may argue that I am off track relative to the topic subject of this hearing. I am on track – let me explain.

The USA has a remarkable pool of scientific and engineering talent. We have excellent colleges and universities that attract students from around the world, including the world’s most rapidly advancing economy – China. Historically, well-educated individuals have found an abundance of job opportunities in the USA. Indeed, many students who came from abroad elected to stay in the USA for the opportunities it affords. The current job market for professionals in the USA is the softest I have seen during my professional career spanning a half century. While I am optimistic the situation can change, major change will require many small and seemingly insignificant changes.

One change that is required is to start using ALL of the USA’s scientific and engineering talent as candidates to serve as members or consultants on Scientific Advisory Committees such as those assembled by the EPA. In the past, EPA’s scientific advisory committees have been composed largely of academic scientist and engineers. Using information from the EPA SAB website, I note that for the standing SAB only 2 individuals are affiliated with commercial firms, 3 individuals are apparently private consultants, 3 individuals are with NGOs, 3 individuals are with State Agencies and 36 individuals are affiliated with academic institutions. The SAB has 7 Standing Committees listed on its website with a total of 115 members. Some of these individuals are also on the primary SAB. Only 3 of these individuals are affiliated with major commercial firms selling products or commercial services, eight individuals are independent

consultants or with consulting firms, 7 are affiliated with State agencies, and 100 members are affiliated with academic institutions. I know many of these academicians personally; they are first-rate scientists or engineers. Do they represent the best and brightest of all the scientists and engineers in the USA? The answer cannot be Yes, since that would mean the millions of scientists and engineers employed in the private sector somehow do not measure up to the academic scientists.

Some will quickly note that those in the private sector have financial conflicts of interest that preclude their service on EPA Advisory Committees because of requirements of the Federal Advisory Committee Act (FACA). If FACA is used to deny the EPA of the talents of individuals from the private sector, then I think the solution is quite simple – Congress should change FACA. Some academic scientists and EPA managers would argue that individuals in the private sector are biased – their primary motivation is making certain their employer does the right thing and stays profitable. I am glad they have that motivation, it is important. It is consistent with the best interests of the USA. I have worked with many private sector firms and employees. I can assure you they understand the importance of getting the science right to ensure long-term profitability. In other words, individuals employed or funded by the private sector are just as interested in the quality of scientific information and seeing it used properly as are academics.

One might ask why it is important to broaden the talent pool for service on EPA's Science Advisory Board and other Advisory Committees. One good reason is context. EPA's scientific committees deal with complex issues, not abstract scientific facts; it is science interpreted and used in the context of resolving complex issues. For example, the question is not just whether a chemical or technology is hazardous, but, also how can use of the chemical be changed or the technology advanced to reduce health hazards and increase efficiency and effectiveness. Private sector scientists and engineers deal with these concepts daily and could bring the concepts to bear in EPA Advisory Committee discussions. Everyone wins when all participants contribute to the dialogue on the issue under consideration and everyone takes something home to their university or private sector job.

In this regard, I think the remarkable advances made in diesel engine technology over the last several decades are an excellent example, as covered in a paper I co-authored (McClellan, R.O., T.W. Hesterberg and J. C. Wall, Evaluation of Carcinogenic Hazard of Diesel Engine Exhaust Needs to Consider Revolutionary Changes in Diesel Technology, *Regulatory Toxicol. Pharmacol.* 63: 225-258, 2012). In the 1970s and 1980s, new toxicological and epidemiological evidence emerged pointing to the potential lung cancer hazard of exposure to diesel engines using high-sulfur fuels. There was no question that exposure to high levels of exhaust were hazardous to health. However, there was considerable debate over whether the scientific knowledge was sufficiently robust to develop quantitative estimates of risk. In the face of uncertainty, EPA made a policy decision to move forward with stringent regulations for reduced diesel engine emissions of particulate matter and nitrogen oxides, and mandated the marketing of ultra-low sulfur fuel. The engine manufacturers and fuel refiners responded to the challenge. The diesel engines marketed today meet the new standards and, in combination with use of ultra-low sulfur fuel, are contributing to cleaner air. A quantitative estimate of the lung cancer risk of the old technology was not needed to advance the technology. The question now is how rapidly

the new technology will be deployed to replace old technology on the road and in off-road applications.

In preparation for this hearing, I reviewed the SAB website to determine the status of recent activities of the Board and its seven standing Committees [Chemical Assessment Advisory, Drinking Water, Ecological Processes and Effects, Environmental Economics Advisory, Environmental Engineering, Exposure and Human Health, and Radiation Advisory Committees].

A new Agricultural Science Committee is being formed. I hope its membership will be truly representative of America's substantial agricultural enterprise. Quite frankly, I was surprised by the size of the SAB staff, the modest number of reports completed over the last decade, the infrequent meetings of some of the Standing Committees, and the relative absence of any activities that were initiated by the SAB. If I were to encounter this situation in a private sector organization I was advising, I would suggest it was time for a rigorous retrospective assessment of the entire SAB operation and its processes. This would include assessing what has been done well, what is not working, and how the SAB can be best organized and managed to provide the EPA sound, independent scientific advice to inform policies and regulations that have substantial impact on the American people and the American economy.

The Bill, S 543, "EPA Science Advisory Board Reform Act of 2015" includes provisions that will strengthen the independent role of the SAB. However, the changes required by provisions in S. 543 will need to be augmented by substantial changes initiated by EPA management to create a more efficient and effective SAB to better serve the American public.

I will be pleased to address any questions you may have now or wish to forward to me.

Disclosure

The foregoing statement was prepared by me and represents my independent views and advice. I gratefully acknowledge financial support provided to me by Tronox Corporation to cover my expenses related to participation in this Hearing. I advise Tronox Corporation on air quality issues. Tronox Corporation is committed to using the best available scientific information to guide its operations and to endorsing the use of the best available scientific information to inform federal policies and regulations.

ATTACHMENT 1

BIOGRAPHY

ROGER O. McCLELLAN, DVM, MMS, DSc (Honorary),
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ROGER O. McCLELLAN serves as an advisor to public and private organizations on issues concerned with inhalation toxicology, comparative medicine, and human health risk analysis focusing on issues of air quality in the ambient environment and work place. He has over three decades of experience studying the human health hazards of exposure to diesel exhaust and promoting advances in diesel technology to minimize any health hazards. He received his Doctor of Veterinary Medicine degree with Highest Honors from Washington State University in 1960 and a Master of Management Science degree from the University of New Mexico in 1980. He is a Diplomate of the American Board of Toxicology and the American Board of Veterinary Toxicology and a Fellow of the Academy of Toxicological Sciences.

He served as Chief Executive Officer and President of the Chemical Industry Institute of Toxicology (CIIT) in Research Triangle Park, NC from 1988 through 1999. CIIT continues today as The Hamner Institute for Health Sciences. During his tenure, the organization achieved international recognition for development of scientific information under-girding important environmental and occupational health decisions and regulations. Prior to his CIIT appointment, Dr. McClellan was Director of the Inhalation Toxicology Research Institute, and President of the Lovelace Biomedical and Environmental Research Institute, Albuquerque, New Mexico. The Institute continues today as a core element of the Lovelace Respiratory Research Institute. During 22 years with the Lovelace organization, he provided leadership for development of one of the world's leading research programs concerned with the health hazards of airborne radioactive and chemical materials. Prior to joining the Lovelace organization, he was a scientist with the Division of Biology and Medicine, U.S. Atomic Energy Commission, Washington, DC (1965-1966), and Hanford Laboratories, General Electric Company, Richland, WA (1959-1964). In those assignments, he conducted and managed research directed toward understanding the human health risks of internally deposited radionuclides.

Dr. McClellan is an internationally recognized authority in the fields of inhalation toxicology, aerosol science, comparative medicine, and human health risk analysis. He has authored or co-authored over 350 scientific papers and reports and edited 10 books. In addition, he frequently speaks on risk assessment and air pollution issues in the United States and abroad. He is active in the affairs of a number of professional organizations, including past service as President of the Society of Toxicology and the American Association for Aerosol Research. He serves in an editorial role for a number of journals, including service since 1987 as Editor of Critical Reviews in Toxicology. He serves or has served on the Adjunct Faculty of 8 universities.

Dr. McClellan has served in an advisory role to numerous public and private organizations. He has served on senior advisory committees for the major federal agencies concerned with human health. This included services as past Chairman of the Clean Air Scientific Advisory Committee, Environmental Health Committee, Research Strategies Advisory Committee, and Member of the Executive Committee,

Science Advisory Board, U. S. Environmental Protection Agency; Member, National Council on Radiation Protection and Measurements; Member, Advisory Council for Center for Risk Management, Resources for the Future; Member, Health Research Committee, Health Effects Institute; and service on National Academy of Sciences/National Research Council Committees on Toxicology (served as Chairman for 7 years), Risk Assessment for Hazardous Air Pollutants, Health Risks of Exposure to Radon, Research Priorities for Airborne Particulate Matter, as well as the Committee on Environmental Justice of the Institute of Medicine. He has served on the Board of Scientific Councilors for the Center for Environmental Health Research of the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry and on the National Institutes of Health Scientific Advisory Committee on Alternative Toxicological Methods. He currently serves on the National Aeronautics and Space Administration Lunar Airborne Dust Toxicity Advisory Group.

Dr. McClellan's contributions have been recognized by receipt of a number of honors, including election in 1990 to membership in the Institute of Medicine of the National Academy of Sciences. He is a Fellow of the Society for Risk Analysis, the American Association for Aerosol Research, the Health Physics Society, and the American Association for the Advancement of Science. In 1998, he received the International Achievement Award of the International Society of Regulatory Toxicology and Pharmacology for outstanding contributions to improving the science used for decision making and the International Aerosol Fellow Award of the International Aerosol Research Assembly for outstanding contributions to aerosol science and technology. In 2002, he was inducted into the University of New Mexico Anderson School of Management Hall of Fame for contributions to the effective management of multi-disciplinary research organizations. He received the Society of Toxicology Merit Award in 2003 for a distinguished career in toxicology and the Society's Founders Award in 2009 for contributions to science-based safety/risk decision-making. In 2012, he received the Outstanding Career Achievement Award of the International Dose-Response Society for contributions to understanding dose-response relationships and the David Sinclair Award of the American Association for Aerosol Research for sustained excellence in aerosol research and technology.

In 2005, The Ohio State University awarded him an Honorary Doctor of Science degree for his contributions to comparative medicine and the science under-girding improved air quality. In 2006, he received the New Mexico Distinguished Public Service Award. In 2008, Washington State University presented Dr. McClellan the Regents Distinguished Alumnus Award, the highest recognition the University can bestow on an Alumnus.

Dr. McClellan has a long-standing interest in environmental and occupational health issues, especially those involving risk assessment, and air quality and in the management of multidisciplinary research organizations. He is a strong advocate of science-based decision-making and the need to integrate data from epidemiological, controlled clinical, laboratory animal and cell studies to assess human health risks of exposure to toxic materials and to inform policy makers in developing standards and guidance to protect public health.

**Oversight of Scientific Advisory Panels and Processes at the Environmental
Protection Agency
Subcommittee on Superfund, Waste Management, and Regulatory Oversight
Committee on Environment and Public Works
United States Senate**

**Testimony of
Terry F. Yosie, President and CEO
World Environment Center**

May 20, 2015

Thank you, Mr. Chairman, for the opportunity to testify today on the issue of the management of scientific advisory panels at the U.S. Environmental Protection Agency and their role in public health and environmental decision making. I appear in a personal capacity as my employer, the World Environment Center, is a non-profit organization that conducts no advocacy activities and takes no positions on public policy issues.

My comments today will reflect several experiences. From 1981-1988 I served as the Director of EPA's Science Advisory Board during the Administration of Ronald Reagan. Between 1988-1992, I was Vice President for Health and Environment at the American Petroleum Institute and from 1999-2005 I was a Vice President at the American Chemistry Council responsible for environment, health, safety and security. During all the years of my post-government employment, up to the present time, I have actively served on a number of scientific advisory panels advising the U.S. government, including Boards and Committees of the National Academy of Sciences.

Effective management of scientific advisory processes at EPA should embody several important principles that I believe are also consistent with the law and best practices as implemented in both Republican and Democratic administrations. These principles include:

- ***The advice provided by scientific advisory committees should only be advisory in nature.*** Both the Federal Advisory Committee Act and the Environmental Research, Development, and Demonstration Authorization Act of 1978 (that legislatively established the EPA Science Advisory Board) embody this principle. In practice, this means that advisory committee reports should be explicitly taken into account during

the policymaking process, but they are not binding. The reason for such a principle is simple and compelling: many other factors in addition to science must be taken into account in finalizing a public policy decision such as economics and implementation feasibility. Neither the professional training of scientists, nor their subsequent careers, prepares them to offer specific insight or expertise concerning these non-scientific factors.

- ***Appointments to scientific advisory panels should be made on the basis of merit rather than institutional affiliation, quotas or other factors.*** In 1982, President Ronald Reagan vetoed legislation that would have undermined this principle by requiring that appointments to EPA's Science Advisory be based on representation of specific interests rather than scientific merit. If I may quote President Reagan, "this requirement runs counter to the basic premise of modern scientific thought as an objective undertaking...the purpose of the Science Advisory Board is to apply the universally accepted principles of scientific peer review to the research conclusions that will form the basis for EPA regulations, a function that must remain above interest group politics." I believe that President Reagan's words echo across the subsequent decades and are directly relevant to the discussion we're having today.
- ***Scientists can never answer all of the scientific questions, but they can help policymakers focus on the important questions.*** I believe that EPA Administrators, members of Congress and stakeholders frequently have very unrealistic expectations about what scientists and scientific peer review can deliver. I once worked for a very distinguished EPA Administrator who was upset that EPA's Clean Air Scientific Advisory Committee did not recommend a specific numerical limit for him to establish the national ambient air quality standard for particulate matter. Both environmental and industry groups frequently petition for the re-opening of scientific reviews even when no significantly new information is available. This leads to worse case outcomes such as the twenty years it took EPA to conduct its dioxin risk assessment.
- ***Most potential conflict of interest issues can be resolved by appropriate transparency—but not all of them.*** I personally would take a dim view of any scientist who refuses to disclose the source of his/her research funding or who believes there is no conflict issue in reviewing one's own published work that may have an important bearing in a risk assessment. On the other hand, I believe that scientists from industry, environmental groups and other institutions have important expertise that needs to be represented on scientific advisory panels. So long as no single interest group has disproportionate representation on an advisory committee and has representatives that

qualify for appointment based on merit, I believe the Federal Advisory Committee Act's requirement for "balanced points of view" can be effectively met.

- ***Priorities for peer review panels should remain focused on research and scientific assessment.*** Throughout the long history of peer review, executive branch policymakers, Congress, and interest groups have sometimes sought to expand the scope of scientific peer reviews beyond the scope of relevant scientific information. These have included requests for to review proposed standards in addition to the science underlying proposed standards, or recommendations that advisory panels review public comments along with scientific research and assessments. In my professional experience, these attempts at expanding the scope and priorities of the review process distort the concept and practice of scientific review, and are outside the purview of the capabilities of scientists serving on such panels.
- ***Scientists are under no obligation to serve on scientific advisory panels. Adding further non-scientific responsibilities to peer review panels will make the recruitment of qualified, independent scientists even more difficult.*** This is a continuing challenge given the many commitments that talented scientists already have. Requiring scientists to review public comments, in addition to EPA assessment documents, or to burden scientists with additional information requirements, will only further hinder the ability to recruit scientists to scientific review panels.

With these principles in mind, I have several specific comments to offer regarding S. 543. They include:

- Section 2(B) states that "at least ten percent of the membership of the Board are from State, local or tribal governments." This is similar to a provision that was the basis for President Reagan's veto of similar legislation in 1982. The proposed legislation substitutes a quota for merit as the basis for a significant percentage of advisory committee appointments. In practice, this will distort the peer review process. Let me provide an example. In 1986, the Science Advisory Board reviewed a draft EPA risk assessment to evaluate the potential health and environmental effects of stratospheric ozone depletion. The chemicals of concern at that time were chlorofluorocarbons (CFC). Various substitutes have replaced CFCs in commerce, yet some of these substitutes are now implicated in public health and environmental risks. If EPA were to ask the Science Advisory Board to review the risk assessment for any of the current substitutes, it would be required, under the proposed legislation, to recruit representatives of State, local and tribal governments for the peer review panel. There are many issues where

expertise from such constituencies is valuable and necessary, but I do not believe that their expertise in CFC substitutes is a main competency. Thus, the proposed legislation would substitute a quota for merit without added an informed perspective on the critical scientific issues under review.

- Section 2(E) states that members “may not participate in advisory activities that directly or indirectly involve review or evaluation of their own work, unless fully disclosed to the public and the work has been externally peer-reviewed.” In other words, the proposed legislation would permit scientists to review their own work. I believe this provision will result in compromising the integrity of the scientific review process—and here’s why. Many risk assessment are highly dependent upon only a very few studies published by a small number of scientists. If one of the major study authors also serves on the advisory panel reviewing a risk assessment that relies upon his/her work, how is the integrity of the process then not compromised?
- Section 3(D) of S. 543 requires the filing of a “written report disclosing financial relationships and interests” including EPA grants, contracts, etc. I believe that more extensive financial disclosures about personal investments and portfolios will greatly discourage scientists from even considering participation in advisory panels. Scientists are like you and me—they don’t want government officials having access to their private investment portfolio data. Another important disclosure factor that is not considered by the legislation is the need to report whether the scientist on an EPA advisory panel is also under contract to advise any other institution on the same issues that come before the panel for review. In addition, it’s important not only to disclose EPA grants but also grants or contracts supported by other federal agencies, private industry or other institutions.
- In reviewing public participation, S. 543 proposes that “prior to conducting major advisory activities, the Board shall hold a public information-gathering session to discuss the state of the science related to the advisory activity.” As a point of reference, the Science Advisory Board conducted approximately 60-80 annual scientific reviews during the latter period of my tenure in the Reagan Administration. Had the S. 543 language been in effect during that time, I would have been required to organize 60-80 information-gathering sessions. The question I pose to this Subcommittee is: when would I have been able to actually organize the scientific reviews for which the Science Advisory Board is constituted? S. 543 adds a new, intrusive and expensive layer of bureaucracy to the scientific review process that would result in its breakdown and paralysis and directly undermine the peer review process.

- The proposed legislation also would require that public comments during Science Advisory Board reviews “shall not be limited by an insufficient or arbitrary time restrictions.” I’ve had a great deal of professional experience in integrating public comments into the scientific review process. Public comments can provide valuable information or perspective bearing on important scientific issues, and they deserve to be heard by advisory panels. Public comments can also provide input that is not related to the purpose of the scientific review, or they can be duplicative across the various business or environmental organizations that seek formal time on the agenda. One characteristic of many public requests for comments from both industry and environmental groups is that they seek to “flood the zone.” This means that multiple organizations with a common interest will make individual requests for comments on similar issues rather than coordinating their comments. By providing unlimited time for public comments, S. 543 creates the perverse incentive of driving scientific advisory panels away from their focus on the underlying science and towards a role of referee among competing interest groups. This provision of S. 543 should be removed.

In summary, as I reviewed the provisions of S. 543, I’m having a tremendous case of déjà vu that recalls my experience as Science Advisory Board Director during President Ronald Reagan’s Administration. Then, as now, Congress proposed legislation that substituted quotas for scientific merit in the appointment of advisory committee members. Then, as now, proposed legislation would add burdensome new requirements to the operation of scientific advisory panels that compete with and diminish their ability to focus on their core purpose—to provide independent evaluation of the quality of research and the scientific basis of proposed criteria, risks assessments and proposed policies and standards. Enactment of this proposed legislation will waste of taxpayer dollars and will further divert the focus away from the critical need of ensuring that scientific panels advising the EPA deliver qualified, timely and effective scientific advice.

(C) the environmental, energy, and economic impact of such processes, procedures, and methods.

(g) Assessment of risks to ecosystems

The Administrator may assess the risks to ecosystems from exposure to criteria air pollutants (as identified by the Administrator in the Administrator's sole discretion).

(h) RACT/BACT/LAER clearinghouse

The Administrator shall make information regarding emission control technology available to the States and to the general public through a central database. Such information shall include all control technology information received pursuant to State plan provisions requiring permits for sources, including operating permits for existing sources.

(July 14, 1955, ch. 360, title I, § 108, as added Pub. L. 91-604, § 4(a), Dec. 31, 1970, 84 Stat. 1678; amended Pub. L. 95-95, title I, §§ 104, 105, title IV, § 401(a), Aug. 7, 1977, 91 Stat. 689, 790; Pub. L. 101-549, title I, §§ 108(a)-(c), (o), 111, Nov. 15, 1990, 104 Stat. 2465, 2466, 2469, 2470; Pub. L. 105-362, title XV, § 1501(b), Nov. 10, 1998, 112 Stat. 3294.)

CODIFICATION

November 15, 1990, referred to in subsec. (e), was in the original "enactment of the Clean Air Act Amendments of 1989", and was translated as meaning the date of the enactment of Pub. L. 101-549, popularly known as the Clean Air Act Amendments of 1990, to reflect the probable intent of Congress.

Section was formerly classified to section 1857c-3 of this title.

PRIOR PROVISIONS

A prior section 108 of act July 14, 1955, was renumbered section 115 by Pub. L. 91-604 and is classified to section 7415 of this title.

AMENDMENTS

1998—Subsec. (f)(3), (4). Pub. L. 105-362 struck out par. (3), which required reports by the Secretary of Transportation and the Administrator to be submitted to Congress by Jan. 1, 1993, and every 3 years thereafter, reviewing and analyzing existing State and local air quality related transportation programs, evaluating achievement of goals, and recommending changes to existing programs, and par. (4), which required that in each report after the first report the Secretary of Transportation include a description of the actions taken to implement the changes recommended in the preceding report.

1990—Subsec. (e). Pub. L. 101-549, § 108(a), inserted first sentence and struck out former first sentence which read as follows: "The Administrator shall, after consultation with the Secretary of Transportation and the Secretary of Housing and Urban Development and State and local officials and within 180 days after August 7, 1977, and from time to time thereafter, publish guidelines on the basic program elements for the planning process assisted under section 7505 of this title."

Subsec. (f)(1). Pub. L. 101-549, § 108(b), in introductory provisions, substituted present provisions for provisions relating to Federal agencies, States, and air pollution control agencies within either 6 months or one year after Aug. 7, 1977.

Subsec. (f)(1)(A). Pub. L. 101-549, § 108(b), substituted present provisions for provisions relating to information prepared in cooperation with Secretary of Transportation, regarding processes, procedures, and methods to reduce certain pollutants.

Subsec. (f)(3), (4). Pub. L. 101-549, § 111, added pars. (3) and (4).

Subsec. (g). Pub. L. 101-549, § 108(o), added subsec. (g). Subsec. (h). Pub. L. 101-549, § 108(c), added subsec. (h). 1977—Subsec. (a)(1)(A). Pub. L. 95-95, § 401(a), substituted "emissions of which, in his judgment, cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare" for "which in his judgment has an adverse effect on public health or welfare".

Subsec. (b)(1). Pub. L. 95-95, § 104(a), substituted "cost of installation and operation, energy requirements, emission reduction benefits, and environmental impact of the emission control technology" for "technology and costs of emission control".

Subsec. (c). Pub. L. 95-95, § 104(b), inserted provision directing the Administrator, not later than six months after Aug. 7, 1977, to revise and reissue criteria relating to concentrations of NO₂ over such period (not more than three hours) as he deems appropriate, with the criteria to include a discussion of nitric and nitrous acids, nitrites, nitrates, nitrosamines, and other carcinogenic and potentially carcinogenic derivatives of oxides of nitrogen.

Subsecs. (e), (f). Pub. L. 95-95, § 105, added subsecs. (e) and (f).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as a note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7409. National primary and secondary ambient air quality standards

(a) Promulgation

(1) The Administrator—

(A) within 30 days after December 31, 1970, shall publish proposed regulations prescribing a national primary ambient air quality standard and a national secondary ambient air quality standard for each air pollutant for which air quality criteria have been issued prior to such date; and

(B) after a reasonable time for interested persons to submit written comments thereon (but no later than 90 days after the initial publication of such proposed standards) shall by regulation promulgate such proposed national primary and secondary ambient air quality standards with such modifications as he deems appropriate.

(2) With respect to any air pollutant for which air quality criteria are issued after December 31, 1970, the Administrator shall publish, simultaneously with the issuance of such criteria and information, proposed national primary and secondary ambient air quality standards for any such pollutant. The procedure provided for in paragraph (1)(B) of this subsection shall apply to the promulgation of such standards.

(b) Protection of public health and welfare

(1) National primary ambient air quality standards, prescribed under subsection (a) of this section shall be ambient air quality standards the attainment and maintenance of which in the judgment of the Administrator, based on such criteria and allowing an adequate margin of safety, are requisite to protect the public health. Such primary standards may be revised in the same manner as promulgated.

(2) Any national secondary ambient air quality standard prescribed under subsection (a) of this section shall specify a level of air quality the attainment and maintenance of which in the judgment of the Administrator, based on such criteria, is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air. Such secondary standards may be revised in the same manner as promulgated.

(c) National primary ambient air quality standard for nitrogen dioxide

The Administrator shall, not later than one year after August 7, 1977, promulgate a national primary ambient air quality standard for NO₂ concentrations over a period of not more than 3 hours unless, based on the criteria issued under section 7408(c) of this title, he finds that there is no significant evidence that such a standard for such a period is requisite to protect public health.

(d) Review and revision of criteria and standards; independent scientific review committee; appointment; advisory functions

(1) Not later than December 31, 1980, and at five-year intervals thereafter, the Administrator shall complete a thorough review of the criteria published under section 7408 of this title and the national ambient air quality standards promulgated under this section and shall make such revisions in such criteria and standards and promulgate such new standards as may be appropriate in accordance with section 7408 of this title and subsection (b) of this section. The Administrator may review and revise criteria or promulgate new standards earlier or more frequently than required under this paragraph.

(2)(A) The Administrator shall appoint an independent scientific review committee composed of seven members including at least one member of the National Academy of Sciences, one physician, and one person representing State air pollution control agencies.

(B) Not later than January 1, 1980, and at five-year intervals thereafter, the committee referred to in subparagraph (A) shall complete a review of the criteria published under section 7408 of this title and the national primary and secondary ambient air quality standards promulgated under this section and shall recommend to the Administrator any new national ambient air quality standards and revisions of existing criteria and standards as may be appropriate under section 7408 of this title and subsection (b) of this section.

(C) Such committee shall also (i) advise the Administrator of areas in which additional knowledge is required to appraise the adequacy

and basis of existing, new, or revised national ambient air quality standards, (ii) describe the research efforts necessary to provide the required information, (iii) advise the Administrator on the relative contribution to air pollution concentrations of natural as well as anthropogenic activity, and (iv) advise the Administrator of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such national ambient air quality standards.

(July 14, 1955, ch. 360, title I, §109, as added Pub. L. 91-604, §4(a), Dec. 31, 1970, 84 Stat. 1679; amended Pub. L. 95-95, title I, §106, Aug. 7, 1977, 91 Stat. 691.)

CODIFICATION

Section was formerly classified to section 1857c-4 of this title.

PRIOR PROVISIONS

A prior section 109 of act July 14, 1955, was renumbered section 116 by Pub. L. 91-604 and is classified to section 7416 of this title.

AMENDMENTS

1977—Subsec. (c). Pub. L. 95-95, §106(b), added subsec. (c).

Subsec. (d). Pub. L. 95-95, §106(a), added subsec. (d).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as a note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

ROLE OF SECONDARY STANDARDS

Pub. L. 101-549, title VIII, §817, Nov. 15, 1990, 104 Stat. 2697, provided that:

“(a) REPORT.—The Administrator shall request the National Academy of Sciences to prepare a report to the Congress on the role of national secondary ambient air quality standards in protecting welfare and the environment. The report shall:

“(1) include information on the effects on welfare and the environment which are caused by ambient

concentrations of pollutants listed pursuant to section 108 [42 U.S.C. 7408] and other pollutants which may be listed;

“(2) estimate welfare and environmental costs incurred as a result of such effects;

“(3) examine the role of secondary standards and the State implementation planning process in preventing such effects;

“(4) determine ambient concentrations of each such pollutant which would be adequate to protect welfare and the environment from such effects;

“(5) estimate the costs and other impacts of meeting secondary standards; and

“(6) consider other means consistent with the goals and objectives of the Clean Air Act [42 U.S.C. 7401 et seq.] which may be more effective than secondary standards in preventing or mitigating such effects.

“(b) SUBMISSION TO CONGRESS; COMMENTS; AUTHORIZATION.—(1) The report shall be transmitted to the Congress not later than 3 years after the date of enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990].

“(2) At least 90 days before issuing a report the Administrator shall provide an opportunity for public comment on the proposed report. The Administrator shall include in the final report a summary of the comments received on the proposed report.

“(3) There are authorized to be appropriated such sums as are necessary to carry out this section.”

§ 7410. State implementation plans for national primary and secondary ambient air quality standards

(a) Adoption of plan by State; submission to Administrator; content of plan; revision; new sources; indirect source review program; supplemental or intermittent control systems

(1) Each State shall, after reasonable notice and public hearings, adopt and submit to the Administrator, within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof) under section 7409 of this title for any air pollutant, a plan which provides for implementation, maintenance, and enforcement of such primary standard in each air quality control region (or portion thereof) within such State. In addition, such State shall adopt and submit to the Administrator (either as a part of a plan submitted under the preceding sentence or separately) within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national ambient air quality secondary standard (or revision thereof), a plan which provides for implementation, maintenance, and enforcement of such secondary standard in each air quality control region (or portion thereof) within such State. Unless a separate public hearing is provided, each State shall consider its plan implementing such secondary standard at the hearing required by the first sentence of this paragraph.

(2) Each implementation plan submitted by a State under this chapter shall be adopted by the State after reasonable notice and public hearing. Each such plan shall—

(A) include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this chapter;

(B) provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to—

(i) monitor, compile, and analyze data on ambient air quality, and

(ii) upon request, make such data available to the Administrator;

(C) include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D of this subchapter;

(D) contain adequate provisions—

(i) prohibiting, consistent with the provisions of this subchapter, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will—

(I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or

(II) interfere with measures required to be included in the applicable implementation plan for any other State under part C of this subchapter to prevent significant deterioration of air quality or to protect visibility,

(ii) insuring compliance with the applicable requirements of sections 7426 and 7415 of this title (relating to interstate and international pollution abatement);

(E) provide (i) necessary assurances that the State (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the State or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under State (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of Federal or State law from carrying out such implementation plan or portion thereof), (ii) requirements that the State comply with the requirements respecting State boards under section 7428 of this title, and (iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provision;

(F) require, as may be prescribed by the Administrator—

(i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources,

(ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and

(iii) correlation of such reports by the State agency with any emission limitations

Membership Balance Plan

ENVIRONMENTAL PROTECTION AGENCY
1. FEDERAL ADVISORY COMMITTEE NAME <i>State the legal name of the FAC</i>
Clean Air Scientific Advisory Committee (CASAC)
2. AUTHORITY <i>Identify the authority for establishing the FAC</i>
<p>Statutory: Section 109 of the Clean Air Act (CAA) enacted on August 7, 1977 (42 U.S.C. § 7409), specifically directs the EPA Administrator to review the air quality criteria published under section 108 and the national ambient air quality standards (NAAQS) promulgated under section 109 and to make such revisions in such criteria and standards and promulgate such new standards as may be appropriate no later than every five years. Section 109 also directs the Administrator to establish this committee to review the criteria and standards promulgated, and provide other related scientific and technical advice.</p>
3. MISSION/FUNCTION <i>Describe the mission/function of the FAC</i>
<p>The CASAC is identified as a scientific/technical advisory committee. As required by CAA section 109(d), the CASAC will: (a.) review the criteria published under section 108 of the Clean Air Act and the national primary and secondary ambient air quality standards and recommend to the Administrator any new national ambient air quality standards and revisions of existing criteria and standards as may be appropriate; (b.) advise the Administrator of areas in which additional knowledge is required to appraise the adequacy and basis of existing, new, or revised national ambient air quality standards; (c.) describe the research efforts necessary to provide the required information; (d.) advise the Administrator on the relative contribution to air pollution concentrations of natural as well as anthropogenic activity; and (e.) advise the Administrator of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such national ambient air quality standards.</p>
4. POINTS OF VIEW <i>Based on understanding the purpose of the FAC,</i> <i>(a) describe the process that will be used to ensure the committee is balanced, and identify the categories</i> <i>(b) consider identifying an anticipated relative distribution of candidates across the categories; and</i> <i>(c) explain how a determination was made to appoint any individuals as Special Government Employees or Representative members</i>
<p>CASAC will be composed of seven (7) members. The Administrator will appoint a Chairperson and six members including, as required by CAA section 109(d), at least one member of the National Academy of Sciences (NAS), one physician, and one person representing State air pollution control agencies. Members shall be persons who have demonstrated high levels of competence, knowledge, and</p>

expertise in the scientific/technical fields relevant to air pollution and air quality issues. Members will generally serve as Special Government Employees (SGE).

5. OTHER BALANCE FACTORS

List any other factors EPA identifies as important in achieving a balanced FAC

Geographic location may be considered.

6. CANDIDATE IDENTIFICATION PROCESS

Summarize the process intended to be used to identify candidates for the FAC, key resources expected to be tapped to identify candidates and the key persons (by position, not name) who will evaluate FAC balance. The summary should:

- (a) describe the process*
- (b) identify EPA key staff involved (by position, not name)*
- (c) briefly describe how FAC vacancies, if any, will be handled by EPA*
- (d) state the membership term limit of FAC members, if applicable*

Prior to the expiration of committee members' terms, the Designated Federal Officer (DFO) meets with EPA's Federal Advisory Committee Management Division (FACMD) to discuss the outreach plan, establish a timeline, and other issues concerning the membership package. After approval of the outreach plan the DFO conducts outreach for new members in accordance with the plan. The DFO also solicits candidates through a Federal Register solicitation.

After a review of the pool of nominees, a determination is made to consider whether additional outreach is needed. Each SGE candidate is researched to determine whether the person is a federally registered lobbyist. In addition, SGE candidates are screened for the absence of financial conflicts of interest as well as the absence of an appearance of a lack of impartiality. The DFO develops a draft grid of nominees, including at least one alternate candidate for each point of view for the function the committee is to perform.

A balance review of the proposed membership is then conducted by FACMD and the Office of General Counsel. Different levels of EPA managers then review the draft package for questions or comments before the final package is prepared.

Formal letters of invitation to serve on the CASAC will be extended by the Administrator or Deputy Administrator of EPA. This cycle will be repeated for any occurring vacancies. CASAC members are usually appointed for a three-year term. Generally, members may be reappointed for a total of 6 years.

7. SUBCOMMITTEE BALANCE

Subcommittees subject to FACA should either state that the process for determining FAC member balance on subcommittees is the same as the process for the parent FAC, or describe how it is different*

**This is relevant to those agencies that require their subcommittees to follow all FACA requirements.*

EPA plans to use the process that is used to determine advisory committee member balance for the parent (Tier1) Federal advisory committee for any Tier 2 subcommittee(s) that may be created.

8. OTHER

Provide any additional information that supports the balance of the FAC

Not applicable.
9. DATE PREPARED/UPDATED
April 14, 2017

Membership Balance Plan

ENVIRONMENTAL PROTECTION AGENCY
1. FEDERAL ADVISORY COMMITTEE NAME <i>State the legal name of the FAC</i>
EPA Board of Scientific Counselors
2. AUTHORITY <i>Identify the authority for establishing the FAC</i>
Agency Authority
3. MISSION/FUNCTION <i>Describe the mission/function of the FAC</i>
<p>The EPA Board of Scientific Counselors (BOSC) will provide advice and recommendations on all aspects (technical and management) of the Office of Research and Development's (ORD) research program. As appropriate, the BOSC will consult and coordinate its work with the EPA Science Advisory Board. The major objectives are to provide advice and recommendations on:</p> <ul style="list-style-type: none"> a. ORD's research programs and research management practices, and actions to improve research program quality, relevance, and performance, as well as program structure, scientific leadership, research coordination, communication, and outcomes; b. ORD's program development, progress, and research program balance, which may include evaluation of ORD's Strategic Research Action Plans and Cross-cutting Research Roadmaps; c. Use of peer review within ORD to sustain and enhance the quality of science in EPA; d. Scientific and management issues specific to ORD Offices, National Laboratories, and Centers; and e. ORD's human resources planning, such as scientist career development and rotational assignment programs, and the appropriate scope and design of training programs for environmental research professionals.
4. POINTS OF VIEW <i>Based on understanding the purpose of the FAC,</i> <i>(a) describe the process that will be used to ensure the committee is balanced, and identify the categories</i> <i>(b) consider identifying an anticipated relative distribution of candidates across the categories; and</i> <i>(c) explain how a determination was made to appoint any individuals as Special Government Employees or Representative members</i>
<p>The BOSC will be composed of approximately twenty (20) members who will serve as Special Government Employees (SGEs). In selecting members, EPA will consider candidates from the environmental scientific and technical fields, human health care professions, academia, industry, public and private research institutes and organizations, and other relevant interest areas.</p>

5. OTHER BALANCE FACTORS

List any other factors EPA identifies as important in achieving a balanced FAC

Balances in disciplines, work sector (i.e., academia, government – federal/state/local, industry, environmental associations), diversity, and geographic distribution area are also considered.

6. CANDIDATE IDENTIFICATION PROCESS

Summarize the process intended to be used to identify candidates for the FAC, key resources expected to be tapped to identify candidates and the key persons (by position, not name) who will evaluate FAC balance.

The summary should:

- (a) describe the process*
- (b) identify EPA key staff involved (by position, not name)*
- (c) briefly describe how FAC vacancies, if any, will be handled by EPA*
- (d) state the membership term limit of FAC members, if applicable*

Approximately 8 months prior to expiration of committee members' terms the DFO meets with EPA's Federal Advisory Committee Management (FACM) staff to discuss the outreach plan, establish a timeline, and address other issues concerning the membership package. After approval of the outreach plan, the DFO conducts outreach for new members in accordance with the plan.

The DFO solicits candidate names through a Federal Register notice and from individuals who are actively engaged in interests relating to environmental scientific and technical fields, human health care professions, academia, industry, public and private research institutes and organizations, and other relevant interest areas.

After a review of the pool of nominees, a determination is made to consider whether additional outreach is needed. Each candidate is researched to determine whether the person is a federally registered lobbyist. In addition, candidates are screened for the absence of conflicts of interest and other ethics issues. The DFO develops a draft grid of nominees, including at least one additional candidate for each point of view for the function the committee is to perform.

A balance review of the proposed membership is then conducted by FACM staff and the Office of General Counsel FACA Attorney. Different levels of EPA managers then review the draft package for questions or comments before the final package is prepared.

Formal letters of invitation to serve on the BOSC will be extended by the Administrator or Deputy Administrator of EPA. This cycle will be repeated for any occurring vacancies. Members are usually appointed for a three-year term. Generally, members may be reappointed for a total of 6 years.

7. SUBCOMMITTEE BALANCE

Subcommittees subject to FACA should either state that the process for determining FAC member balance on subcommittees is the same as the process for the parent FAC, or describe how it is different*

**This is relevant to those agencies that require their subcommittees to follow all FACA requirements.*

EPA plans to use the process that is used to determine advisory committee member balance for the parent (Tier 1) Federal advisory committee for any Tier 2 subcommittee(s) that may be created.

8. OTHER

Provide any additional information that supports the balance of the FAC

Not applicable.

9. DATE PREPARED/UPDATED

February 29, 2016

FACA Essentials at EPA for Federal Advisory Committee Members



What is FACA and to whom does it apply?

Congress passed the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, in 1972, to create an orderly procedure by which Federal agencies may seek collective advice from federal advisory committees. FACA establishes procedures for the management of federal advisory committees, ensures transparency of advisory committee decision-making, and ensures balanced representation on advisory committees. When a Federal agency establishes a group (or manages and controls a group established by a non-federal entity) to obtain collective advice, the agency may be required to comply with FACA if the group has one or more members who are not Federal government employees.

FACA ensures that committees convened to give group advice are accountable to the public by maximizing public access to advisory committee deliberations and minimizing the influence of special interests through balanced committee membership. In addition, the Act seeks to reduce wasteful expenditures and improve the overall administration of advisory committees.

Today, an average of 1000 advisory committees with more than 70,000 members advise the President and the Executive Branch agencies on a variety of issues. Advisory committees are established by one of four authorities – Presidential authority, statutory requirement, statutory authority, and Federal Agency discretion.

Federal advisory committees are an important tool within EPA for building consensus and providing input and recommendations from EPA's diverse customers, partners, and stakeholders. EPA manages approximately 22 committees, and 16 subcommittees, which play

a strategic role in the Agency to carry out its mission to protect human health and the environment.

In 2016, the Agency held 96 committee meetings. These meetings included approximately 720 scientists, public health officials, industry representatives, academics, citizens, Tribal groups, and stakeholders.

What are your responsibilities as a new federal advisory committee member?

The primary responsibilities of federal advisory committee members are to:

- Attend and participate in committee meetings.
- Study any review material in advance of the meetings.
- Be willing to engage in an exchange of views and perspectives and search for consensus solutions, where appropriate.
- Represent your constituent group if you are appointed as a representative member, or provide your best independent judgment if appointed as a special government employee.
- Comply with the applicable ethics in government laws if appointed as a special government employee.
- Cooperate with your committee's Designated Federal Officer.
- Serve on the committee for your appointed term, or if you find you cannot serve, resign from the committee.
- Refrain from any language or activities that would compromise the civility of the committee.

- Maintain an environment that promotes the participation of individuals regardless of race, color, national origin, age, sex, religion, disability, sexual orientation, genetic information, prior EEO activity, status as a parent or marital status.

What are the main requirements for committee operations under FACA?

Each committee must have a Designated Federal Officer (DFO) or Federal employee to attend each meeting. Meetings may not be conducted in the absence of that officer or employee. 5 U.S.C. App.2 § 10(e).

Committee meetings must be announced in advance and open to the public, unless designated as closed for national security, or other appropriate reasons. The public shall be provided an opportunity to voice comments to the committee. 5 U.S.C. App.2 § 10(a).

All committee documents provided to or prepared by the committee, including reports, transcripts, drafts, minutes, working papers, and agenda must be made available for public inspection and copying, unless they can be withheld under the Freedom of Information Act. 5 U.S.C. App.2 § 10(b).

The committees must be “fairly balanced” in the points of view represented for the functions to be performed. 5 U.S.C. App.2 § 5 (b)(2) & 5(c).

How does FACA impact collaborative processes at EPA?

EPA has been a leader among Federal agencies and departments in using collaborative approaches to environmental problem-solving. Collaborative processes can take many forms and can be either formal or informal.

In general, FACA applies to collaborative efforts when all of the following criteria are met:

- 1) EPA establishes (organizes or forms) or utilizes (exerts “actual management or control” of) a group;

- 2) The group includes one or more individuals who are not government employees;
- 3) The product of the collaboration is group advice for EPA, another federal agency, or the President.

What are the types of members appointed to federal advisory committees?

Your functions as a committee member may differ depending on the type of membership under which you were invited.

Representative members are selected to represent the point of view of a group. Representative Members may represent groups or organizations, such as industry, labor, consumers, or any other recognizable group of persons having an interest in matters before the committee.

Special Government Employee (SGE) members are appointed to provide the Agency with their own best independent judgment based on their individual expertise. As an SGE member, you are speaking for yourself as an expert in your field.

Regular Government Employee (RGE) members are individuals employed by the Federal Government 5 U.S.C. 2105.

Where can you find further information on FACA?

Federal Advisory Committee Act
<http://www.epa.gov/laws-regulations/summary-federal-advisory-committee-act>

Information on EPA’s Federal Advisory Committees
<http://www.epa.gov/faca>

or

Federal Advisory Committee Management Division

U.S. Environmental Protection Agency
 1200 Pennsylvania Avenue, N.W.,
 MC-1601M
 Washington D.C. 20460



Federal Register

Thursday,
July 19, 2001

Part II

General Services Administration

41 CFR Parts 101–6 and 102–3
Federal Advisory Committee Management;
Final Rule

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101–6 and 102–3

[FPMR Amendment A–57]

RIN 3090–AG49

Federal Advisory Committee Management

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is revising Federal Property Management Regulations (FPMR) coverage on Federal advisory committee management and moving it into the Federal Management Regulation (FMR). A cross-reference is added to the FPMR to direct readers to the coverage in the FMR. The FMR coverage is written in plain language to provide agencies with updated regulatory material that is easy to read and understand. This action is necessary due to legislative and policy changes that have occurred, and judicial decisions that have been issued since the regulation was last updated. It is based also on suggestions for improvement from other Federal agencies and interested parties, and clarifies how the regulation applies or does not apply to certain situations.

EFFECTIVE DATE: August 20, 2001.

FOR FURTHER INFORMATION CONTACT: Charles F. Howton, Deputy Director, Committee Management Secretariat (202) 273–3561, or electronically at the following Internet address: charles.howton@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. Background

GSA's authority for administering the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. (also referred to as "the Act"), is contained in section 7 of the Act and Executive Order 12024 (42 FR 61445; 3 CFR 1977 Comp., p. 158). Under Executive Order 12024, the President delegated to the Administrator of General Services all of the functions vested in the President by the Act. GSA's responsibilities for administering the Act have been delegated to the Associate Administrator for Governmentwide Policy and to the Director of the Committee Management Secretariat.

In a previous issue of the **Federal Register** (62 FR 31550, June 10, 1997), GSA published an Advance Notice of Proposed Rulemaking (ANPRM) and requested comments. Additional

comments were requested from the Interagency Committee on Federal Advisory Committee Management. GSA requested comments on: (1) Suggested issues to address; (2) specific recommendations about changes needed in the current Federal Advisory Committee Management subpart; (3) examples of situations where FACA was either a useful tool or a hindrance to public involvement; and (4) GSA's intent to include illustrative examples and principles. On January 14, 2000, GSA published a proposed rule in the **Federal Register** (65 FR 2504) and requested comments over a 60-day period ending on March 14, 2000. All comments received were considered in drafting this final rule.

This final rule provides administrative and interpretive guidelines and management controls for Federal agencies to implement the provisions of the Act, and is intended to improve the management and operation of Federal advisory committees in the executive branch.

B. Discussion of Comments

Twenty-six commenters responded to the invitation for comments, including twenty commenters from the executive branch and six commenters from non-Federal sources. Of the twenty comments received from executive branch sources, three comments were submitted by subcomponents of a Federal department or agency. A total of fifty-nine specific issues or recommendations were identified, of which seven were either fully supportive of the proposed rule or concerned typographical errors. GSA addressed the disposition of the remaining fifty-two issues or recommendations as follows:

The Final Rule Should Include More Guidance Relating to the Management of Advisory Committees, Including the Impact of Other Statutes and Issues on Day-to-Day Operations

Several commenters provided suggestions regarding the addition of guidance on issues that, although not addressed by the Act, likely would improve the management of advisory committees. For example, one commenter suggested that the final rule include a provision to encourage agencies to streamline their internal processes and procedures in order to expedite the establishment of advisory committees. Other commenters requested that GSA: (1) Provide more detailed provisions on the compensation of advisory committee members and staff, and experts and consultants; (2) expand the range of

information required to be listed in an advisory committee's charter to include the nature and disposition of records; and (3) incorporate new regulatory requirements for increasing access to advisory committee information, such as providing meeting notices, minutes, and reports via the Internet.

In response to these recommendations, GSA expanded the number of examples included within the final rule to illustrate how other statutes or issues potentially could affect the effective management of advisory committees.

In addition, GSA reorganized the examples and other guidance into appendices to avoid any ambiguity between actions required by the Act and the final rule, and actions that are suggested only within an implementing framework of "best practices." In the final rule, a "Key Points and Principles" appendix appears at the end of each subpart to which it relates.

In applying the "best practices" offered in the appendices, users of the final rule should continue to examine the extent to which other factors, including agency-specific statutory provisions and internal agency procedures, may affect a specific advisory committee or program. Although GSA believes that the examples contained in the appendices to the final rule represent the circumstances most commonly encountered during the day-to-day management of advisory committees, the listing is not exhaustive and must be supplemented based upon the unique requirements of the user.

Provide Additional Guidance Regarding What Advisory Committees and Their Subcommittees Must Do To Comply With the Act

Many commenters expressed concern over language contained in the preamble to the proposed rule relating to coverage of subcommittees under the Act. The preamble to the proposed rule noted that:

The applicability of the procedural requirements contained in FACA and this proposed rule to subcommittees of advisory committees has been clarified. GSA's current FACA regulation does not make clear that subcommittees reporting to a parent committee are not subject to FACA. Indeed, the regulation states just the opposite, providing that "[s]ubcommittees that do not function independently of the full or parent advisory committee" are subject to all requirements of FACA except the requirement for a charter. (See 41 CFR 101–6.1007(b)(3).) This provision is problematic for two reasons. First, it applies FACA more broadly than the statute itself requires. Second, it essentially creates a special type

of advisory committee that is subject to some, but not all of FACA's requirements, which has no foundation in the statute. Under FACA, a group is either an advisory committee subject to all of the statutory requirements, or it is not an advisory committee, and therefore not subject to any of its requirements. Because a subcommittee which reports to a parent committee is not an "advisory committee" under FACA, there is no legal basis for applying any of FACA's requirements to such a subcommittee.

In evaluating the comments received, GSA notes that there were no objections to the exclusions contained in § 102–3.185 of the proposed rule (now § 102–3.160 of the final rule), relating to "What activities of an advisory committee are not subject to the notice and open meeting requirements of the Act?" The exclusions in § 102–3.160 of the final rule continue to cover the types of activities routinely performed by subcommittees. By this reasoning GSA sought to bring into harmony these activities with those provisions in the proposed rule differentiating subcommittees reporting to a parent advisory committee from those reporting directly to a Federal officer or agency.

However, the preamble to the proposed rule did not explain and describe adequately the legal framework for GSA's decision to differentiate subcommittees that report only to a parent advisory committee more clearly from advisory committees that report directly to a Federal officer or agency. The Act defines the term "advisory committee" as "any committee, * * * or any subcommittee or other subgroup thereof which is established or utilized by the President or an agency in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government". Under this definition, a subcommittee is an "advisory committee" subject to the Act if it provides advice to the President or a Federal officer or agency. Most subcommittees, however, report only to a parent advisory committee and it is the parent committee that is normally responsible for providing advice or recommendations to the Government. In this conventional scenario, the subcommittee is not subject to the Act because it is not providing advice to the Government.

Case law supports this conclusion. In *National Anti-Hunger Coalition v. Executive Committee*, 557 F.Supp. 524 (D.D.C.), *aff'd*, 711 F.2d 1071 (D.C. Cir. 1983), the question presented was whether the Act applied to task forces reporting to the Executive Committee of the President's Private Sector Survey on

Cost Control in the Federal Government. The task forces had no authority to make recommendations to agencies or to the President. Instead, their function was to do the "preliminary work of the survey, including fact-gathering, statistical evaluations, and the formulation of preliminary reports." (557 F.Supp. at 526). Although it was undisputed that the Executive Committee was subject to the Act, the court held that the Act did not apply to the task forces under the following reasoning:

There is no question that the task forces are intimately involved in the gathering of information about federal programs and the formulation of possible recommendations for consideration of the Committee. That is not enough to render them subject to the FACA. The Act itself applies only to committees "established or utilized by" the President or an agency "in the interest of obtaining advice or recommendations for the President or one or more agencies." The Act does not cover groups performing staff functions such as those performed by the so-called task forces. (557 F.Supp. at 529). (See also *Association of American Physicians and Surgeons v. Clinton*, 997 F.2d 898, 911–913 (D.C. Cir. 1993).)

GSA believes that as a result of this decision, subcommittees that report to a parent advisory committee generally are not subject to the Act. GSA also believes that subcommittees whose advice or recommendations are provided directly to a Federal officer or agency are subject to the Act. However, GSA further believes that this decision does not shield those subcommittees from coverage under the Act whose advice or recommendations are not subject to deliberation by their parent advisory committees.

From this reasoning, it is not permissible for parent advisory committees simply to "rubber-stamp" the advice or recommendations of their subcommittees, thereby depriving the public of its opportunity to know about, and participate contemporaneously in, an advisory committee's deliberations. Agencies are cautioned to avoid excluding the public from attending any meeting where a subcommittee develops advice or recommendations that are not expected to be reviewed and considered by the parent advisory committee before being submitted to a Federal officer or agency. These exclusions may run counter to the provisions of the Act that require contemporaneous access to the advisory committee deliberative process.

To address these issues more clearly, GSA strengthened language in the final rule by: (1) Adding a new § 102–3.35 that outlines policies relating to subcommittees; (2) clarifying language

in § 102–3.145 relating to subcommittee meetings; and (3) clarifying the examples contained in Appendix A to Subpart C.

Correct and Clarify the Definition of "Utilized"

Nine commenters recommended that GSA revise its definition of the term, "utilized" to conform to governing case law.

As noted by some of the commenters, the definition of the term "utilized" in § 102–3.30 of the proposed rule inadvertently misstated the applicable legal test. The proposed rule stated that a committee is "utilized within the meaning of the Act when the President or a Federal agency exercises actual management and control over its operation." This construction would require an agency both to have management of the committee and to exercise control over the committee before the committee can be deemed "utilized." The proper statement of the "utilized" test is whether an agency either has management of the committee or, in some fashion other than management, exercises control over the committee.

The controlling legal authority is *Washington Legal Foundation v. U. S. Sentencing Commission*, 17 F.3d 1446 (D.C. Cir. 1994). In that case, the appeals court gave structure to the U.S. Supreme Court's prior decision interpreting the term "utilized." (See *Public Citizen v. Department of Justice*, 491 U.S. 440 (1989).) The appeals court ruled that the word "utilized" indicates "something along the lines of actual management or control of the advisory committee." (17 F.3d at 1450). The operative criterion for determining whether a committee has sufficiently close ties to an agency in order to render it "utilized" is whether the agency has either *management* of the committee or exerts some other type of *control*, but not necessarily both.

Similarly, § 102–3.50(b) of the proposed rule (now § 102–3.185(b) of the final rule) used the phrase "actual management and control" with regard to section 15 of the Act. In explaining the relationship between Federal agencies and the National Academy of Sciences (NAS) and the National Academy of Public Administration (NAPA) covered by section 15 of the Act, § 102–3.50(b) of the proposed rule states that "[a]gencies must not manage or control the specific procedures adopted by each academy." However, committees covered by section 15 of the Act must be under *both* the actual management *and* the control of the academies, not that of a Federal agency. In this instance, the use of the conjunctive

word “and” is appropriate and indicates that the academies cannot relinquish *either* management or control of their committees to Federal agencies.

Accordingly, GSA revised the language contained in the final rule by changing *management and control* to *management or control* in the definition of the term “utilized,” now in § 102–3.25 of the final rule, and in those instances in which it appears in the “Key Points and Principles” guidance in the appendices to the final rule.

Clarify the Application of the Act to Agency Interactions With the Public

Several commenters noted that Federal agencies are increasingly reliant on local communities, individual citizens, and interested parties to obtain information, advice, or recommendations on which to base decisions. They expressed concerns that: (1) Uncertainty about the scope of the Act creates a disincentive for Federal officers and agencies wishing to engage in public outreach; (2) the requirements of the Act are being interpreted differently within and among agencies; and (3) GSA’s current regulations do not adequately differentiate between those groups and activities covered by the Act and others that are not. (See 41 CFR 101–6.10.)

GSA recognizes that the broad definition in the Act of an “advisory committee” might be interpreted to extend coverage by the Act to any gathering or two or more persons from whom the President or other Federal officers or agencies seek advice or recommendations. However, in the cases discussed above, the courts have rejected such a broad reading of “advisory committee.” GSA believes that the sections in the final rule on definitions and on groups not covered by the Act, §§ 102–3.25 and 102–3.40, respectively, clarify the limits of the coverage by, or scope of, the Act when applied together.

Within this group of comments, GSA noted a consistent theme related to the need for more information regarding public participation tools and techniques that would allow for more collaboration that is not subject to the Act. Although advisory committees support Federal decisions in a variety of situations, GSA believes that the ability of agencies to interact with the public in numerous other ways is particularly important because advisory committees are only one method for agencies to obtain the views of the public for their programs. Federal agencies may engage in continuous collaboration using diverse, but complimentary, tools, techniques, and methods. Whether or

not a selected approach includes the use of advisory committees, the potential or perceived applicability of the Act must not prevent constructive collaboration from taking place. Agencies are encouraged to contact GSA concerning not only the use of Federal advisory committees, but also for information about alternative forms of public involvement.

In GSA’s view, agencies have broad latitude to consult with the public using many different approaches that are not subject to the Act. Public consultation formats that generally fall outside of the scope of the Act include public meetings, information exchange forums, meetings initiated with or by non-governmental organizations, Federal participation on groups that are not established or utilized by the Government, and certain work products generated by contractors as a result of consultation with the public.

While FACA is not a public participation statute, it directly affects how the executive branch is held accountable for the use and management of Federal advisory committees as a major means of obtaining public involvement. Within this context, agencies wishing to consult with private individuals, non-governmental organizations, or with the public at large through other assemblages often must consider whether or not the Act applies to a given situation.

The number and range of scenarios presented by the commenters underscore the importance of presenting a clearer understanding of how advisory committees are established by Federal agencies or how the Government’s relationship with groups not established within the meaning of the Act may nevertheless become subject to the Act if they are *utilized*. Based upon the comments received, the circumstances under which advisory committees are *established* within the executive branch appear to be well understood. Accordingly, GSA retained the language contained in § 102–3.30 of the proposed rule in § 102–3.25 of the final rule and throughout subpart B.

However, as noted in the above discussion of the proposed rule’s treatment of the term “utilized,” agencies must determine whether or not their relationship with a group created by non-Federal entities constitutes *actual management or control* within the meaning of the Act. To help agencies make this determination, GSA has included within the final rule several new examples illustrating the application of the *actual management or control* test to different situations.

These additions are contained in the “Key Points and Principles” guidance in Appendix A to Subpart A.

Explain the Relationship Between Committees Established by the National Academy of Sciences (NAS) or the National Academy of Public Administration (NAPA) and the Act

The Federal Advisory Committee Act Amendments of 1997, Public Law 105–153, December 17, 1997, established separate procedures for committees that are managed and controlled by NAS or NAPA. Subpart E of the final rule contains implementing instructions for the new section 15 of FACA.

Clarify the Distinction Between Advisory Committees Subject to the Act and Operational Committees Not Covered by the Act

Five commenters suggested that further guidance in the final rule is necessary to assist agencies in differentiating an operational committee not covered by the Act from one that performs primarily advisory functions and is, therefore, subject to the Act. GSA added guidance within Appendix A to Subpart A listing those characteristics generally associated with committees having primarily operational, as opposed to advisory, functions.

Clarify the Applicability of the Act to Advisory Committee Meetings Conducted Through Electronic Means

Four commenters supported GSA’s language contained in the proposed rule extending the definition of “committee meeting” to meetings conducted in whole or part through electronic means. However, two commenters suggested additional clarifications, which GSA has adopted.

First, GSA slightly modified the definition of “committee meeting” contained in § 102–3.25 of the final rule to include a “gathering” of advisory committee members whether in person or through electronic means. This change was made to highlight coverage by the Act of both physical and “virtual” meetings conducted by such means as a teleconference, videoconference, the Internet, or other electronic medium.

Second, GSA amended the language contained in § 102–3.140 of the final rule to provide for adequate public access to advisory committee meetings that are conducted in whole or part through electronic means. This change complements existing policy covering advisory committee meetings that are held within a physical setting, such as a conference room, by ensuring that agencies adequately plan for public

participation by adding additional capability (such as a designated number of public call-in lines for a teleconference) to ensure access to committee deliberations.

Provide Additional Guidance on Balanced Representation and Selection of Members

One commenter expressed concern that the proposed rule did not contain sufficient guidance on balanced representation and the selection of members. GSA recognizes that the guidance contained in the proposed rule is limited to the language of the Act, but believes that the provisions of section 5(c) of the Act are broad enough to allow for agency discretion in determining advisory committee representation and membership relative to applicable statutes, Executive orders, and the needs of the agency responsible for the advisory committee.

However, GSA added a list of possible considerations within Appendix A to Subpart B that, while not comprehensive or universally applicable, may help in developing a plan for balancing an advisory committee's membership.

Emphasize the Importance of Maximizing an Advisory Committee's Independent Judgment

Five commenters offered various suggestions to address the requirement contained in section 5(b)(3) of the Act, which is intended to ensure that the work products of an advisory committee reflect the group's independent judgment.

Included among these suggestions were recommendations from the U.S. Office of Government Ethics (OGE) that GSA modify the language contained in § 102–3.155 of the proposed rule (now contained in Appendix A to Subpart C of the final rule) to clarify the applicability of conflict of interest statutes and other Federal ethics rules to advisory committee members. GSA adopted all of OGE's suggestions.

The remaining suggestions received concerned the appointment of advisory committee members, including a recommended change to § 102–3.155 of the proposed rule (now Appendix A to Subpart C) to clarify that: (1) An agency may appoint a member to an advisory committee based upon the recommendation of an organization to be represented; and (2) recommendations from an advisory committee may be a part of an agency's process to nominate new members. GSA adopted these changes and suggestions.

Provide Additional Guidance on the Management of Federal Records

GSA received suggestions from the National Archives and Records Administration (NARA) regarding three areas where additional guidance on records management issues could be useful. Specifically, NARA recommended that § 102–3.190 of the proposed rule: (1) Be expanded to include all recordkeeping requirements specified by the Act, not just those relating to advisory committee minutes; (2) include a statement that records should be scheduled for disposition before actual termination of the advisory committee; and (3) with regard to information that must be included within an advisory committee's charter, include a determination as to whether its records fall within the Presidential Records Act, 44 U.S.C. Chap 22.

GSA addressed these recommendations by expanding § 102–3.200 of the proposed rule (now Appendix A to Subpart D) to include additional guidance relating to records management and to highlight the applicability and importance of Federal recordkeeping statutes and policies to advisory committee operations. GSA decided to include this guidance within this appendix because the Act generally is silent on records management issues, with the exception of the responsibilities of the Committee Management Officer (CMO) in section 8(b)(2) of the Act.

Pursuant to the National Archives and Records Administration Act, 44 U.S.C. Chap. 21, the Archivist of the United States is responsible for records management in the Federal Government, including the issuance of regulations and guidance for records retention and disposition. The Archivist, working in conjunction with the agencies' Records Management Officers, also is responsible for identifying records that are appropriate for transfer to the permanent Archives of the United States and those that must be processed in accordance with the Presidential Records Act.

Strengthen Provisions Relating to the Public's Access to Advisory Committee Records

Two commenters suggested that the final rule contain more explicit guidance regarding the public's access to committee records under section 10(b) of the Act. In particular, the commenters recommended adding language describing the circumstances under which records may be withheld pursuant to the Freedom of Information Act (FOIA), as amended, 5 U.S.C. 552.

GSA believes that timely access to advisory committee records is an important element of the public access provisions of the Act and, therefore, agrees with these suggestions. GSA further believes that there are two separate, but equally important issues related to the availability of advisory committee records under section 10(b) of FACA: (1) The extent to which records may be protected from disclosure under FOIA; and (2) the extent to which agencies may require that requests for non-exempt records be processed under the request and review process established by section 552(a)(3) of FOIA.

Section 10(b) of the Act provides that:

Subject to section 552 of title 5, United States Code, the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying at a single location in the offices of the advisory committee or the agency to which the advisory committee reports until the advisory committee ceases to exist.

The purpose of section 10(b) of the Act is to provide for the contemporaneous availability of advisory committee records that, when taken in conjunction with the ability to attend advisory committee meetings, ensures that interested parties have a meaningful opportunity to comprehend fully the work undertaken by the advisory committee. Records covered by the exemptions set forth in section 552(b) of FOIA generally may be withheld. However, it should be noted that FOIA Exemption 5 generally cannot be used to withhold documents reflecting an advisory committee's internal deliberations.

An opinion of the Office of Legal Counsel, U.S. Department of Justice, 12 Op. O.L.C. 73, April 29, 1988, entitled "Disclosure of Advisory Committee Deliberative Materials," concludes that FOIA Exemption 5 "is not generally applicable to materials prepared by or for an advisory committee, but that it does extend to protect privileged documents delivered from the agency to an advisory committee." The opinion further states that:

This construction gives meaning to exemption 5 without vitiating Congress' enumeration of deliberative documents such as working papers and drafts as subject to disclosure. It is also supported by a close reading of exemption 5 itself. Because by its terms exemption 5 protects only inter-agency and intra-agency documents and because an advisory committee is not an agency, documents do not receive the protection of exemption 5 by virtue of the fact that they are prepared by an advisory committee. On

the other hand, documents prepared by an agency do not lose the protection of exemption 5 by virtue of the fact that they are delivered to an advisory committee.

In determining whether or not such records fall within these narrow exclusions, the OLC opinion provides that consideration should be given to determining whether or not section 10(b) of FACA is applicable in the first instance. As noted in the OLC opinion:

Section 10(b) itself applies only to materials made available to or prepared for or by an advisory committee established by statute or reorganization plan or established or utilized by the President or an agency. 5 U.S.C. app. I, 3(2), 10(b). Accordingly, in determining whether a document is to be disclosed the first issue is not whether it is subject to an exemption under 5 U.S.C. 552 but whether it meets this threshold definition.

In explaining this threshold determination of whether particular records are subject to the section 10(b) disclosure requirement, the OLC opinion states that:

The courts and this Office have construed the concept of advisory committees established or utilized by the President or an agency to preclude section 10(b)'s application to the work prepared by a staff member of an advisory committee or a staffing entity within an advisory committee, such as an independent task force limited to gathering information, or a subcommittee of the advisory committee that is not itself established or utilized by the President or agency, so long as the material was not used by the committee as a whole.

Although advisory committee records may be withheld under the provisions

of FOIA if there is a *reasonable expectation* that the records sought fall within the exemptions contained in section 552(b) of FOIA, agencies may not require members of the public or other interested parties to file requests for non-exempt advisory committee records under the request and review process established by section 552(a)(3) of FOIA.

In *Food Chemical News v. Department of Health and Human Services*, 980 F.2d 1468, 299 U.S. App. DC 25, the appeals court held that:

Under section 10(b) of FACA an agency is generally obligated to make available for public inspection and copying all materials that were made available to or prepared for or by an advisory committee. Except with respect to those materials that the agency reasonably claims to be exempt from disclosure pursuant to FOIA, a member of the public need not request disclosure in order for FACA 10(b) materials to be made available. Thus, whenever practicable, all 10(b) materials must be available for public inspection and copying before or on the date of the advisory committee meeting to which they apply.

Accordingly, GSA included language within § 102–3.170 of the final rule describing the policy to be followed in implementing section 10(b) of the Act, and included additional guidance in Appendix A to Subpart D concerning the applicability of FOIA to records covered by section 10(b) of FACA.

Improve the Organization of the Final Rule

During the course of evaluating comments received from all sources,

GSA conducted a review of the proposed rule's general organization and structure for the purpose of achieving greater clarity and consistency in presentation. This effort led to a number of changes, such as redesignating the "Key Points and Principles" sections following each subpart as appendices. Other changes were made throughout the final rule to improve alignment between section headings and the material that follows. Similar changes were made within the appendices in order to improve the linkage between the examples or questions and the corresponding guidance.

In addition, GSA reorganized the final rule to redesignate subpart B as subpart E to improve the flow of information distinguishing Federal advisory committees subject to the Act from those committees created by the National Academy of Sciences (NAS) or the National Academy of Public Administration (NAPA) which, if not *utilized* by the executive branch, are not subject to the Act's provisions. Section numbers previously assigned in the proposed rule affected by the redesignation of subpart B as subpart E, subpart C as subpart B, subpart D as subpart C, and subpart E as subpart D have been changed accordingly.

C. Technical and Procedural Comments

The final rule incorporates several technical and procedural recommendations made by a range of commenters, particularly in the following sections or appendices:

Section/Appendix	Modification
102–3.60	Specific procedures for consulting with the Secretariat have been eliminated. GSA will issue separate guidance to agencies covering the administration of the consultation requirement.
Appendix A to Subpart B	Addition of guidance relating to the achievement of "balanced" advisory committee membership.
Appendix A to Subpart B	Addition of guidance covering the legal duration of the charter of an advisory committee required by statute where Congress authorizes the advisory committee for a period exceeding two years.
Appendix A to Subpart C	Addition of guidance addressing the designation of an alternate Designated Federal Officer (DFO).
102–3.130	All references to compensation limits imposed by the Act have been updated, and references to alternative similar agency compensation systems other than the General Schedule have been included.
102–3.130	All references to the word, "handicapped," have been replaced with the phrase, "with disabilities."
Appendix A to Subpart D	Addition of guidance regarding activities that are not subject to the notice and open meeting requirements of the Act.
102–3.165	The requirement for the completion of advisory committee meeting minutes now requires the DFO to ensure certification within the time limit specified.

D. Consultation With Other Federal Agencies

Pursuant to section 7(d) of the Act, the guidelines contained in this final

rule with respect to uniform fair rates of compensation for comparable services of members and staff of, and experts and consultants to advisory committees have

been established after consultation with the U.S. Office of Personnel Management (OPM).

Although not required by the Act, the guidelines contained in this final rule that refer to the applicability of conflict of interest statutes and other Federal ethics rules to advisory committee members have been established after consultation with the U.S. Office of Government Ethics (OGE).

Although not required by the Act, the guidelines contained in this final rule that relate to the management of advisory committee records have been established after consultation with the National Archives and Records Administration (NARA).

E. Executive Order 12866

GSA has determined that this final rule is a significant rule for the purposes of Executive Order 12866 of September 30, 1993.

F. Regulatory Flexibility Act

GSA has determined that this final rule will not have a significant economic impact on a substantial number of small entities (including small businesses, small organizational units, and small governmental jurisdictions) within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The rule does not impact small entities and applies only to Federal officers and agencies.

G. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

H. Small Business Regulatory Enforcement Fairness Act

This final rule is being submitted for Congressional review as prescribed under 5 U.S.C. 801.

List of Subjects in 41 CFR Parts 101-6 and 102-3

Advisory committees, Government property management.

Dated: July 5, 2001.

Stephen A. Perry,
Administrator of General Services.

For the reasons set forth in the preamble, GSA amends 41 CFR chapters 101 and 102 as follows:

CHAPTER 101—[AMENDED]

PART 101-6—MISCELLANEOUS REGULATIONS

1. Subpart 101-6.10 is revised to read as follows:

Subpart 101-6.10—Federal Advisory Committee Management

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)); sec. 7, 5 U.S.C., App.; and E.O. 12024, 3 CFR, 1977 Comp., p. 158.

§ 101-6.1001 Cross-reference to the Federal Management Regulation (FMR) (41 CFR chapter 102, parts 102-1 through 102-220).

For Federal advisory committee management information previously contained in this subpart, see FMR part 102-3 (41 CFR part 102-3).

CHAPTER 102—[AMENDED]

2. Part 102-3 is added to subchapter A of chapter 102 to read as follows:

PART 102-3—FEDERAL ADVISORY COMMITTEE MANAGEMENT

Subpart A—What Policies Apply To Advisory Committees Established Within the Executive Branch?

Sec.

- 102-3.5 What does this subpart cover and how does it apply?
- 102-3.10 What is the purpose of the Federal Advisory Committee Act?
- 102-3.15 Who are the intended users of this part?
- 102-3.20 How does this part meet the needs of its audience?
- 102-3.25 What definitions apply to this part?
- 102-3.30 What policies govern the use of advisory committees?
- 102-3.35 What policies govern the use of subcommittees?
- 102-3.40 What types of committees or groups are not covered by the Act and this part?

Appendix A to Subpart A of Part 102-3—Key Points and Principles

Subpart B—How Are Advisory Committees Established, Renewed, Reestablished, and Terminated?

- 102-3.45 What does this subpart cover and how does it apply?
- 102-3.50 What are the authorities for establishing advisory committees?
- 102-3.55 What rules apply to the duration of an advisory committee?
- 102-3.60 What procedures are required to establish, renew, or reestablish a discretionary advisory committee?
- 102-3.65 What are the public notification requirements for discretionary advisory committees?
- 102-3.70 What are the charter filing requirements?
- 102-3.75 What information must be included in the charter of an advisory committee?
- 102-3.80 How are minor charter amendments accomplished?
- 102-3.85 How are major charter amendments accomplished?

Appendix A to Subpart B of Part 102-3—Key Points and Principles

Subpart C—How Are Advisory Committees Managed?

- 102-3.90 What does this subpart cover and how does it apply?
 - 102-3.95 What principles apply to the management of advisory committees?
 - 102-3.100 What are the responsibilities and functions of GSA?
 - 102-3.105 What are the responsibilities of an agency head?
 - 102-3.110 What are the responsibilities of a chairperson of an independent Presidential advisory committee?
 - 102-3.115 What are the responsibilities and functions of an agency Committee Management Officer (CMO)?
 - 102-3.120 What are the responsibilities and functions of a Designated Federal Officer (DFO)?
 - 102-3.125 How should agencies consider the roles of advisory committee members and staff?
 - 102-3.130 What policies apply to the appointment, and compensation or reimbursement of advisory committee members, staff, and experts and consultants?
- Appendix A to Subpart C of Part 102-3—Key Points and Principles

Subpart D—Advisory Committee Meeting and Recordkeeping Procedures

- 102-3.135 What does this subpart cover and how does it apply?
 - 102-3.140 What policies apply to advisory committee meetings?
 - 102-3.145 What policies apply to subcommittee meetings?
 - 102-3.150 How are advisory committee meetings announced to the public?
 - 102-3.155 How are advisory committee meetings closed to the public?
 - 102-3.160 What activities of an advisory committee are not subject to the notice and open meeting requirements of the Act?
 - 102-3.165 How are advisory committee meetings documented?
 - 102-3.170 How does an interested party obtain access to advisory committee records?
 - 102-3.175 What are the reporting and recordkeeping requirements for an advisory committee?
- Appendix A to Subpart D of Part 102-3—Key Points and Principles

Subpart E—How Does This Subpart Apply to Advice or Recommendations Provided to Agencies by the National Academy of Sciences or the National Academy of Public Administration?

- 102-3.180 What does this subpart cover and how does it apply?
 - 102-3.185 What does this subpart require agencies to do?
- Appendix A to Subpart E of Part 102-3—Key Points and Principles

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)); sec. 7, 5 U.S.C., App.; and E.O. 12024, 3 CFR, 1977 Comp., p. 158.

Subpart A—What Policies Apply to Advisory Committees Established Within the Executive Branch?

§ 102–3.5 What does this subpart cover and how does it apply?

This subpart provides the policy framework that must be used by agency heads in applying the Federal Advisory Committee Act (FACA), as amended (or “the Act”), 5 U.S.C., App., to advisory committees they establish and operate. In addition to listing key definitions underlying the interpretation of the Act, this subpart establishes the scope and applicability of the Act, and outlines specific exclusions from its coverage.

§ 102–3.10 What is the purpose of the Federal Advisory Committee Act?

FACA governs the establishment, operation, and termination of advisory committees within the executive branch of the Federal Government. The Act defines what constitutes a Federal advisory committee and provides general procedures for the executive branch to follow for the operation of these advisory committees. In addition, the Act is designed to assure that the Congress and the public are kept informed with respect to the number, purpose, membership, activities, and cost of advisory committees.

§ 102–3.15 Who are the intended users of this part?

(a) The primary users of this Federal Advisory Committee Management part are:

- (1) Executive branch officials and others outside Government currently involved with an established advisory committee;
- (2) Executive branch officials who seek to establish or utilize an advisory committee;
- (3) Executive branch officials and others outside Government who have decided to pursue, or who are already engaged in, a form of public involvement or consultation and want to avoid inadvertently violating the Act; and
- (4) Field personnel of Federal agencies who are increasingly involved with the public as part of their efforts to increase collaboration and improve customer service.

(b) Other types of end-users of this part include individuals and organizations outside of the executive branch who seek to understand and interpret the Act, or are seeking additional guidance.

§ 102–3.20 How does this part meet the needs of its audience?

This Federal Advisory Committee Management part meets the general and

specific needs of its audience by addressing the following issues and related topics:

(a) *Scope and applicability.* This part provides guidance on the threshold issue of what constitutes an advisory committee and clarifies the limits of coverage by the Act for the benefit of the intended users of this part.

(b) *Policies and guidelines.* This part defines the policies, establishes minimum requirements, and provides guidance to Federal officers and agencies for the establishment, operation, administration, and duration of advisory committees subject to the Act. This includes reporting requirements that keep Congress and the public informed of the number, purpose, membership, activities, benefits, and costs of these advisory committees. These requirements form the basis for implementing the Act at both the agency and Governmentwide levels.

(c) *Examples and principles.* This part provides summary-level key points and principles at the end of each subpart that provide more clarification on the role of Federal advisory committees in the larger context of public involvement in Federal decisions and activities. This includes a discussion of the applicability of the Act to different decisionmaking scenarios.

§ 102–3.25 What definitions apply to this part?

The following definitions apply to this Federal Advisory Committee Management part:

Act means the Federal Advisory Committee Act, as amended, 5 U.S.C., App.

Administrator means the Administrator of General Services.

Advisory committee subject to the Act, except as specifically exempted by the Act or by other statutes, or as not covered by this part, means any committee, board, commission, council, conference, panel, task force, or other similar group, which is established by statute, or established or utilized by the President or by an agency official, for the purpose of obtaining advice or recommendations for the President or on issues or policies within the scope of an agency official's responsibilities.

Agency has the same meaning as in 5 U.S.C. 551(1).

Committee Management Officer (“CMO”), means the individual designated by the agency head to implement the provisions of section 8(b) of the Act and any delegated responsibilities of the agency head under the Act.

Committee Management Secretariat (“Secretariat”), means the organization established pursuant to section 7(a) of the Act, which is responsible for all matters relating to advisory committees, and carries out the responsibilities of the Administrator under the Act and Executive Order 12024 (3 CFR, 1977 Comp., p. 158).

Committee meeting means any gathering of advisory committee members (whether in person or through electronic means) held with the approval of an agency for the purpose of deliberating on the substantive matters upon which the advisory committee provides advice or recommendations.

Committee member means an individual who serves by appointment or invitation on an advisory committee or subcommittee.

Committee staff means any Federal employee, private individual, or other party (whether under contract or not) who is not a committee member, and who serves in a support capacity to an advisory committee or subcommittee.

Designated Federal Officer (“DFO”), means an individual designated by the agency head, for each advisory committee for which the agency head is responsible, to implement the provisions of sections 10(e) and (f) of the Act and any advisory committee procedures of the agency under the control and supervision of the CMO.

Discretionary advisory committee means any advisory committee that is established under the authority of an agency head or authorized by statute. An advisory committee referenced in general (non-specific) authorizing language or Congressional committee report language is discretionary, and its establishment or termination is within the legal discretion of an agency head.

Independent Presidential advisory committee means any Presidential advisory committee not assigned by the Congress in law, or by President or the President's delegate, to an agency for administrative and other support.

Non-discretionary advisory committee means any advisory committee either required by statute or by Presidential directive. A *non-discretionary advisory committee* required by statute generally is identified specifically in a statute by name, purpose, or functions, and its establishment or termination is beyond the legal discretion of an agency head.

Presidential advisory committee means any advisory committee authorized by the Congress or directed by the President to advise the President.

Subcommittee means a group, generally not subject to the Act, that reports to an advisory committee and not directly to a Federal officer or

agency, whether or not its members are drawn in whole or in part from the parent advisory committee.

Utilized for the purposes of the Act, does not have its ordinary meaning. A committee that is not established by the Federal Government is *utilized* within the meaning of the Act when the President or a Federal office or agency exercises actual management or control over its operation.

§ 102-3.30 What policies govern the use of advisory committees?

The policies to be followed by Federal departments and agencies in establishing and operating advisory committees consistent with the Act are as follows:

(a) *Determination of need in the public interest.* A discretionary advisory committee may be established only when it is essential to the conduct of agency business and when the information to be obtained is not already available through another advisory committee or source within the Federal Government. Reasons for deciding that an advisory committee is needed may include whether:

(1) Advisory committee deliberations will result in the creation or elimination of (or change in) regulations, policies, or guidelines affecting agency business;

(2) The advisory committee will make recommendations resulting in significant improvements in service or reductions in cost; or

(3) The advisory committee's recommendations will provide an important additional perspective or viewpoint affecting agency operations.

(b) *Termination.* An advisory committee must be terminated when:

(1) The stated objectives of the committee have been accomplished;

(2) The subject matter or work of the committee has become obsolete by the passing of time or the assumption of the committee's functions by another entity;

(3) The agency determines that the cost of operation is excessive in relation to the benefits accruing to the Federal Government;

(4) In the case of a discretionary advisory committee, upon the expiration of a period not to exceed two years, unless renewed;

(5) In the case of a non-discretionary advisory committee required by Presidential directive, upon the expiration of a period not to exceed two years, unless renewed by authority of the President; or

(6) In the case of a non-discretionary advisory committee required by statute, upon the expiration of the time explicitly specified in the statute, or implied by operation of the statute.

(c) *Balanced membership.* An advisory committee must be fairly balanced in its membership in terms of the points of view represented and the functions to be performed.

(d) *Open meetings.* Advisory committee meetings must be open to the public except where a closed or partially-closed meeting has been determined proper and consistent with the exemption(s) of the Government in the Sunshine Act, 5 U.S.C. 552b(c), as the basis for closure.

(e) *Advisory functions only.* The function of advisory committees is advisory only, unless specifically provided by statute or Presidential directive.

§ 102-3.35 What policies govern the use of subcommittees?

(a) In general, the requirements of the Act and the policies of this Federal Advisory Committee Management part do not apply to subcommittees of advisory committees that report to a parent advisory committee and not directly to a Federal officer or agency. However, this section does not preclude an agency from applying any provision of the Act and this part to any subcommittee of an advisory committee in any particular instance.

(b) The creation and operation of subcommittees must be approved by the agency establishing the parent advisory committee.

§ 102-3.40 What types of committees or groups are not covered by the Act and this part?

The following are examples of committees or groups that are not covered by the Act or this Federal Advisory Committee Management part:

(a) *Committees created by the National Academy of Sciences (NAS) or the National Academy of Public Administration (NAPA).* Any committee created by NAS or NAPA in accordance with section 15 of the Act, except as otherwise covered by subpart E of this part;

(b) *Advisory committees of the Central Intelligence Agency and the Federal Reserve System.* Any advisory committee established or utilized by the Central Intelligence Agency or the Federal Reserve System;

(c) *Committees exempted by statute.* Any committee specifically exempted from the Act by law;

(d) *Committees not actually managed or controlled by the executive branch.* Any committee or group created by non-Federal entities (such as a contractor or private organization), provided that these committees or groups are not actually managed or controlled by the executive branch;

(e) *Groups assembled to provide individual advice.* Any group that meets with a Federal official(s), including a public meeting, where advice is sought from the attendees on an individual basis and not from the group as a whole;

(f) *Groups assembled to exchange facts or information.* Any group that meets with a Federal official(s) for the purpose of exchanging facts or information;

(g) *Intergovernmental committees.* Any committee composed wholly of full-time or permanent part-time officers or employees of the Federal Government and elected officers of State, local and tribal governments (or their designated employees with authority to act on their behalf), acting in their official capacities. However, the purpose of such a committee must be solely to exchange views, information, or advice relating to the management or implementation of Federal programs established pursuant to statute, that explicitly or inherently share intergovernmental responsibilities or administration (see guidelines issued by the Office of Management and Budget (OMB) on section 204(b) of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1534(b), OMB Memorandum M-95-20, dated September 21, 1995, available from the Committee Management Secretariat (MC), General Services Administration, 1800 F Street, NW., Washington, DC 20405-0002);

(h) *Intragovernmental committees.* Any committee composed wholly of full-time or permanent part-time officers or employees of the Federal Government;

(i) *Local civic groups.* Any local civic group whose primary function is that of rendering a public service with respect to a Federal program;

(j) *Groups established to advise State or local officials.* Any State or local committee, council, board, commission, or similar group established to advise or make recommendations to State or local officials or agencies; and

(k) *Operational committees.* Any committee established to perform primarily operational as opposed to advisory functions. Operational functions are those specifically authorized by statute or Presidential directive, such as making or implementing Government decisions or policy. A committee designated operational may be covered by the Act if it becomes primarily advisory in nature. It is the responsibility of the administering agency to determine whether a committee is primarily operational. If so, it does not fall under

the requirements of the Act and this part.

Appendix A to Subpart A of Part 102–3—Key Points and Principles

This appendix provides additional guidance in the form of answers to frequently

asked questions and identifies key points and principles that may be applied to situations not covered elsewhere in this subpart. The guidance follows:

APPENDIX A TO SUBPART A

Key points and principles	Section(s)	Question(s)	Guidance
I. FACA applies to advisory committees that are either "established" or "utilized" by an agency.	102–3.25, 3.40(f), 102–3.40(d), 102–	<ol style="list-style-type: none"> 1. A local citizens group wants to meet with a Federal official(s) to help improve the condition of a forest's trails and quality of concessions. May the Government meet with the group without chartering the group under the Act? 2. May an agency official attend meetings of external groups where advice may be offered to the Government during the course of discussions? 3. May an agency official participate in meetings of groups or organizations as a member without chartering the group under the Act? 4. Is the Act applicable to meetings between agency officials and their contractors, licensees, or other "private sector program partners?" 	<p>A. The answer to questions 1, 2, and 3 is yes, if the agency does not either "establish" or "utilize" (exercise "actual management or control" over) the group. (i) Although there is no precise legal definition of "actual management or control," the following factors may be used by an agency to determine whether or not a group is "utilized" within the meaning of the Act: (a) Does the agency manage or control the group's membership or otherwise determine its composition? (b) Does the agency manage or control the group's agenda? (c) Does the agency fund the group's activities? (ii) Answering "yes" to any or all of questions 1, 2, or 3 does not automatically mean the group is "utilized" within the meaning of the Act. However, an agency may need to reconsider the status of the group under the Act if the relationship in question essentially is indistinguishable from an advisory committee established by the agency.</p> <p>B. The answer to question 4 is no. Agencies often meet with contractors and licensees, individually and as a group, to discuss specific matters involving a contract's solicitation, issuance, and implementation, or an agency's efforts to ensure compliance with its regulations. Such interactions are not subject to the Act because these groups are not "established" or "utilized" for the purpose of obtaining advice or recommendations.</p>
II. The development of consensus among all or some of the attendees at a public meeting or similar forum does not automatically invoke FACA.	102–3.25, 3.40(f), 102–3.40(d), 102–	<ol style="list-style-type: none"> 1. If, during a public meeting of the "town hall" type called by an agency, it appears that the audience is achieving consensus, or a common point of view, is this an indication that the meeting is subject to the Act and must be stopped? 	<p>A. No, the public meeting need not be stopped. (i) A group must either be "established" or "utilized" by the executive branch in order for the Act to apply. (ii) Public meetings represent a chance for individuals to voice their opinions and/or share information. In that sense, agencies do not either "establish" the assemblage of individuals as an advisory committee or "utilize" the attendees as an advisory committee because there are no elements of either "management" or "control" present or intended.</p>

APPENDIX A TO SUBPART A—Continued

Key points and principles	Section(s)	Question(s)	Guidance
III. Meetings between a Federal official(s) and a collection of individuals where advice is sought from the attendees on an individual basis are not subject to the Act.	102–3.40(e)	1. May an agency official meet with a number of persons collectively to obtain their individual views without violating the Act? 2. Does the concept of an “individual” apply only to “natural persons?”	A. The answer to questions 1 and 2 is yes. The Act applies only where a group is established or utilized to provide advice or recommendations “as a group.” (i) A mere assemblage or collection of individuals where the attendees are providing individual advice is not acting “as a group” under the Act. (ii) In this respect, “individual” is not limited to “natural persons.” Where the group consists of representatives of various existing organizations, each representative individually may provide advice on behalf of that person’s organization without violating the Act, if those organizations themselves are not “managed or controlled” by the agency.
IV. Meetings between Federal, State, local, and tribal elected officials are not subject to the Act.	102–3.40(g)	1. Is the exclusion from the Act covering elected officials of State, local, and tribal governments acting in their official capacities also applicable to associations of State officials?	A. Yes. The scope of activities covered by the exclusion from the Act for intergovernmental activities should be construed broadly to facilitate Federal/State/local/tribal discussions on shared intergovernmental program responsibilities or administration. Pursuant to a Presidential delegation, the Office of Management and Budget (OMB) issued guidelines for this exemption, authorized by section 204(b) of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1534(b). (See OMB Memorandum M–95–20, dated September 21, 1995, published at 60 FR 50651 (September 29, 1995), and which is available from the Committee Management Secretariat (MC), General Services Administration, 1800 F Street, NW, Washington, DC 20405–0002).
V. Advisory committees established under the Act may perform advisory functions only, unless authorized to perform “operational” duties by the Congress or by Presidential directive.	102–3.30(e), 102–3.40(k)	1. Are “operational committees” subject to the Act, even if they may engage in some advisory activities?	A. No, so long as the operational functions performed by the committee constitute the “primary” mission of the committee. Only committees established or utilized by the executive branch in the interest of obtaining advice or recommendations are subject to the Act. However, without specific authorization by the Congress or direction by the President, Federal functions (decisionmaking or operations) cannot be delegated to, or assumed by, non-Federal individuals or entities.

APPENDIX A TO SUBPART A—Continued

Key points and principles	Section(s)	Question(s)	Guidance
VI. Committees authorized by the Congress in law or by Presidential directive to perform primarily "operational" functions are not subject to the Act.	102–3.40(k)	<ol style="list-style-type: none"> 1. What characteristics are common to "operational committees?" 2. A committee created by the Congress by statute is responsible, for example, for developing plans and events to commemorate the contributions of wildlife to the enjoyment of the Nation's parks. Part of the committee's role includes providing advice to certain Federal agencies as may be necessary to coordinate these events. Is this committee subject to FACA? 	<p>A. In answer to question 1, non-advisory, or "operational" committees generally have the following characteristics: (i) Specific functions and/or authorities provided by the Congress in law or by Presidential directive; (ii) The ability to make and implement traditionally Governmental decisions; and (iii) The authority to perform specific tasks to implement a Federal program.</p> <p>B. Agencies are responsible for determining whether or not a committee primarily provides advice or recommendations and is, therefore, subject to the Act, or is primarily "operational" and not covered by FACA.</p> <p>C. The answer to question 2 is no. The committee is not subject to the Act because: (i) Its functions are to plan and implement specific tasks; (ii) The committee has been granted the express authority by the Congress to perform its statutorily required functions; and (iii) Its incidental role of providing advice to other Federal agencies is secondary to its primarily operational role of planning and implementing specific tasks and performing statutory functions.</p>

Subpart B—How Are Advisory Committees Established, Renewed, Reestablished, and Terminated?

§ 102–3.45 What does this subpart cover and how does it apply?

Requirements for establishing and terminating advisory committees vary depending on the establishing entity and the source of authority for the advisory committee. This subpart covers the procedures associated with the establishment, renewal, reestablishment, and termination of advisory committees. These procedures include consulting with the Secretariat, preparing and filing an advisory committee charter, publishing notice in the **Federal Register**, and amending an advisory committee charter.

§ 102–3.50 What are the authorities for establishing advisory committees?

FACA identifies four sources of authority for establishing an advisory committee:

(a) *Required by statute.* By law where the Congress establishes an advisory committee, or specifically directs the President or an agency to establish it (*non-discretionary*);

(b) *Presidential authority.* By Executive order of the President or other Presidential directive (*non-discretionary*);

(c) *Authorized by statute.* By law where the Congress authorizes, but does

not direct the President or an agency to establish it (*discretionary*); or

(d) *Agency authority.* By an agency under general authority in title 5 of the United States Code or under other general agency-authorizing statutes (*discretionary*).

§ 102–3.55 What rules apply to the duration of an advisory committee?

(a) An advisory committee automatically terminates two years after its date of establishment unless:

(1) The statutory authority used to establish the advisory committee provides a different duration;

(2) The President or agency head determines that the advisory committee has fulfilled the purpose for which it was established and terminates the advisory committee earlier;

(3) The President or agency head determines that the advisory committee is no longer carrying out the purpose for which it was established and terminates the advisory committee earlier; or

(4) The President or agency head renews the committee not later than two years after its date of establishment in accordance with § 102–3.60. If an advisory committee needed by the President or an agency terminates because it was not renewed in a timely manner, or if the advisory committee has been terminated under the provisions of § 102–3.30(b), it can be

reestablished in accordance with § 102–3.60.

(b) When an advisory committee terminates, the agency shall notify the Secretariat of the effective date of the termination.

§ 102–3.60 What procedures are required to establish, renew, or reestablish a discretionary advisory committee?

(a) *Consult with the Secretariat.* Before establishing, renewing, or reestablishing a discretionary advisory committee and filing the charter as addressed later in § 102–3.70, the agency head must consult with the Secretariat. As part of this consultation, agency heads are encouraged to engage in constructive dialogue with the Secretariat. With a full understanding of the background and purpose behind the proposed advisory committee, the Secretariat may share its knowledge and experience with the agency on how best to make use of the proposed advisory committee, suggest alternate methods of attaining its purpose that the agency may wish to consider, or inform the agency of a pre-existing advisory committee performing similar functions.

(b) *Include required information in the consultation.* Consultations covering the establishment, renewal, and reestablishment of advisory committees must, as a minimum, contain the following information:

(1) *Explanation of need.* An explanation stating why the advisory committee is essential to the conduct of agency business and in the public interest;

(2) *Lack of duplication of resources.* An explanation stating why the advisory committee's functions cannot be performed by the agency, another existing committee, or other means such as a public hearing; and

(3) *Fairly balanced membership.* A description of the agency's plan to attain fairly balanced membership. The plan will ensure that, in the selection of members for the advisory committee, the agency will consider a cross-section of those directly affected, interested, and qualified, as appropriate to the nature and functions of the advisory committee. Advisory committees requiring technical expertise should include persons with demonstrated professional or personal qualifications and experience relevant to the functions and tasks to be performed.

§ 102-3.65 What are the public notification requirements for discretionary advisory committees?

A notice to the public in the **Federal Register** is required when a discretionary advisory committee is established, renewed, or reestablished.

(a) *Procedure.* Upon receiving notice from the Secretariat that its review is complete in accordance with § 102-3.60(a), the agency must publish a notice in the **Federal Register** announcing that the advisory committee is being established, renewed, or reestablished. For the establishment of a new advisory committee, the notice also must describe the nature and purpose of the advisory committee and affirm that the advisory committee is necessary and in the public interest.

(b) *Time required for notices.* Notices of establishment and reestablishment of advisory committees must appear at least 15 calendar days before the charter is filed, except that the Secretariat may approve less than 15 calendar days when requested by the agency for good cause. This requirement for advance notice does not apply to advisory committee renewals, notices of which may be published concurrently with the filing of the charter.

§ 102-3.70 What are the charter filing requirements?

No advisory committee may meet or take any action until a charter has been filed by the Committee Management Officer (CMO) designated in accordance with section 8(b) of the Act, or by another agency official designated by the agency head.

(a) *Requirement for discretionary advisory committees.* To establish, renew, or reestablish a discretionary advisory committee, a charter must be filed with:

(1) The agency head;

(2) The standing committees of the Senate and the House of Representatives having legislative jurisdiction of the agency, the date of filing with which constitutes the official date of establishment for the advisory committee;

(3) The Library of Congress, Anglo-American Acquisitions Division, Government Documents Section, Federal Advisory Committee Desk, 101 Independence Avenue, SE., Washington, DC 20540-4172; and

(4) The Secretariat, indicating the date the charter was filed in accordance with paragraph (a)(2) of this section.

(b) *Requirement for non-discretionary advisory committees.* Charter filing requirements for non-discretionary advisory committees are the same as those in paragraph (a) of this section, except the date of establishment for a Presidential advisory committee is the date the charter is filed with the Secretariat.

(c) *Requirement for subcommittees that report directly to the Government.* Subcommittees that report directly to a Federal officer or agency must comply with this subpart and include in a charter the information required by § 102-3.75.

§ 102-3.75 What information must be included in the charter of an advisory committee?

(a) *Purpose and contents of an advisory committee charter.* An advisory committee charter is intended to provide a description of an advisory committee's mission, goals, and objectives. It also provides a basis for evaluating an advisory committee's progress and effectiveness. The charter must contain the following information:

(1) The advisory committee's official designation;

(2) The objectives and the scope of the advisory committee's activity;

(3) The period of time necessary to carry out the advisory committee's purpose(s);

(4) The agency or Federal officer to whom the advisory committee reports;

(5) The agency responsible for providing the necessary support to the advisory committee;

(6) A description of the duties for which the advisory committee is responsible and specification of the authority for any non-advisory functions;

(7) The estimated annual costs to operate the advisory committee in dollars and person years;

(8) The estimated number and frequency of the advisory committee's meetings;

(9) The planned termination date, if less than two years from the date of establishment of the advisory committee;

(10) The name of the President's delegate, agency, or organization responsible for fulfilling the reporting requirements of section 6(b) of the Act, if appropriate; and

(11) The date the charter is filed in accordance with § 102-3.70.

(b) The provisions of paragraphs (a)(1) through (11) of this section apply to all subcommittees that report directly to a Federal officer or agency.

§ 102-3.80 How are minor charter amendments accomplished?

(a) *Responsibility and limitation.* The agency head is responsible for amending the charter of an advisory committee. Amendments may be either minor or major. The procedures for making changes and filing amended charters will depend upon the authority basis for the advisory committee. Amending any existing advisory committee charter does not constitute renewal of the advisory committee under § 102-3.60.

(b) *Procedures for minor amendments.* To make a minor amendment to an advisory committee charter, such as changing the name of the advisory committee or modifying the estimated number or frequency of meetings, the following procedures must be followed:

(1) *Non-discretionary advisory committees.* The agency head must ensure that any minor technical changes made to current charters are consistent with the relevant authority. When the Congress by law, or the President by Executive order, changes the authorizing language that has been the basis for establishing an advisory committee, the agency head or the chairperson of an independent Presidential advisory committee must amend those sections of the current charter affected by the new statute or Executive order, and file the amended charter as specified in § 102-3.70.

(2) *Discretionary advisory committees.* The charter of a discretionary advisory committee may be amended when an agency head determines that technical provisions of a filed charter are inaccurate, or specific provisions have changed or become obsolete with the passing of time, and that these amendments will not alter the advisory committee's objectives and scope

substantially. The agency must amend the charter language as necessary and file the amended charter as specified in § 102–3.70.

§ 102–3.85 How are major charter amendments accomplished?

Procedures for making major amendments to advisory committee charters, such as substantial changes in

objectives and scope, duties, and estimated costs, are the same as in § 102–3.80, except that for discretionary advisory committees an agency must:

- (a) Consult with the Secretariat on the amended language, and explain the purpose of the changes and why they are necessary; and
- (b) File the amended charter as specified in § 102–3.70.

Appendix A to Subpart B of Part 102–3—Key Points and Principles

This appendix provides additional guidance in the form of answers to frequently asked questions and identifies key points and principles that may be applied to situations not covered elsewhere in this subpart. The guidance follows:

APPENDIX A TO SUBPART B

Key points and principles	Section(s)	Question(s)	Guidance
I. Agency heads must consult with the Secretariat prior to establishing a discretionary advisory committee.	102–3.60, 102–3.115	1. Can an agency head delegate to the Committee Management Officer (CMO) responsibility for consulting with the Secretariat regarding the establishment, renewal, or reestablishment of discretionary advisory committees?	A. Yes. Many administrative functions performed to implement the Act may be delegated. However, those functions related to approving the final establishment, renewal, or reestablishment of discretionary advisory committees are reserved for the agency head. Each agency CMO should assure that their internal processes for managing advisory committees include appropriate certifications by the agency head.
II. Agency heads are responsible for complying with the Act, including determining which discretionary advisory committees should be established and renewed.	102–3.60(a), 102–3.105	1. Who retains final authority for establishing or renewing a discretionary advisory committee?	A. Although agency heads retain final authority for establishing or renewing discretionary advisory committees, these decisions should be consistent with § 102–3.105(e) and reflect consultation with the Secretariat under § 102–3.60(a).
III. An advisory committee must be fairly balanced in its membership in terms of the points of view represented and the functions to be performed.	102–3.30(c), 102–3.60(b)(3) ..	1. What factors should be considered in achieving a "balanced" advisory committee membership?	A. The composition of an advisory committee's membership will depend upon several factors, including: (i) The advisory committee's mission; (ii) The geographic, ethnic, social, economic, or scientific impact of the advisory committee's recommendations; (iii) The types of specific perspectives required, for example, such as those of consumers, technical experts, the public at-large, academia, business, or other sectors; (iv) The need to obtain divergent points of view on the issues before the advisory committee; and (v) The relevance of State, local, or tribal governments to the development of the advisory committee's recommendations.
IV. Charters for advisory committees required by statute must be filed every two years regardless of the duration provided in the statute.	102–3.70(b)	1. If an advisory committee's duration exceeds two years, must a charter be filed with the Congress and GSA every two years?	A. Yes. Section 14(b)(2) of the Act provides that: Any advisory committee established by an Act of Congress shall file a charter upon the expiration of each successive two-year period following the date of enactment of the Act establishing such advisory committee.

Subpart C—How Are Advisory Committees Managed?

§ 102–3.90 What does this subpart cover and how does it apply?

This subpart outlines specific responsibilities and functions to be carried out by the General Services Administration (GSA), the agency head, the Committee Management Officer (CMO), and the Designated Federal Officer (DFO) under the Act.

§ 102–3.95 What principles apply to the management of advisory committees?

Agencies are encouraged to apply the following principles to the management of their advisory committees:

- (a) *Provide adequate support.* Before establishing an advisory committee, agencies should identify requirements and assure that adequate resources are available to support anticipated activities. Considerations related to support include office space, necessary supplies and equipment, Federal staff

support, and access to key decisionmakers.

- (b) *Focus on mission.* Advisory committee members and staff should be fully aware of the advisory committee's mission, limitations, if any, on its duties, and the agency's goals and objectives. In general, the more specific an advisory committee's tasks and the more focused its activities are, the higher the likelihood will be that the advisory committee will fulfill its mission.

(c) *Follow plans and procedures.* Advisory committee members and their agency sponsors should work together to assure that a plan and necessary procedures covering implementation are in place to support an advisory committee's mission. In particular, agencies should be clear regarding what functions an advisory committee can perform legally and those that it cannot perform.

(d) *Practice openness.* In addition to achieving the minimum standards of public access established by the Act and this part, agencies should seek to be as inclusive as possible. For example, agencies may wish to explore the use of the Internet to post advisory committee information and seek broader input from the public.

(e) *Seek feedback.* Agencies continually should seek feedback from advisory committee members and the public regarding the effectiveness of the advisory committee's activities. At regular intervals, agencies should communicate to the members how their advice has affected agency programs and decisionmaking.

§ 102–3.100 What are the responsibilities and functions of GSA?

(a) Under section 7 of the Act, the General Services Administration (GSA) prepares regulations on Federal advisory committees to be prescribed by the Administrator of General Services, issues other administrative guidelines and management controls for advisory committees, and assists other agencies in implementing and interpreting the Act. Responsibility for these activities has been delegated by the Administrator to the GSA Committee Management Secretariat.

(b) The Secretariat carries out its responsibilities by:

- (1) Conducting an annual comprehensive review of Governmentwide advisory committee accomplishments, costs, benefits, and other indicators to measure performance;
- (2) Developing and distributing Governmentwide training regarding the Act and related statutes and principles;
- (3) Supporting the Interagency Committee on Federal Advisory Committee Management in its efforts to improve compliance with the Act;
- (4) Designing and maintaining a Governmentwide shared Internet-based system to facilitate collection and use of information required by the Act;
- (5) Identifying performance measures that may be used to evaluate advisory committee accomplishments; and
- (6) Providing recommendations for transmittal by the Administrator to the

Congress and the President regarding proposals to improve accomplishment of the objectives of the Act.

§ 102–3.105 What are the responsibilities of an agency head?

The head of each agency that establishes or utilizes one or more advisory committees must:

- (a) Comply with the Act and this Federal Advisory Committee Management part;
- (b) Issue administrative guidelines and management controls that apply to all of the agency's advisory committees subject to the Act;
- (c) Designate a Committee Management Officer (CMO);
- (d) Provide a written determination stating the reasons for closing any advisory committee meeting to the public, in whole or in part, in accordance with the exemption(s) of the Government in the Sunshine Act, 5 U.S.C. 552b(c), as the basis for closure;
- (e) Review, at least annually, the need to continue each existing advisory committee, consistent with the public interest and the purpose or functions of each advisory committee;
- (f) Determine that rates of compensation for members (if they are paid for their services) and staff of, and experts and consultants to advisory committees are justified and that levels of agency support are adequate;
- (g) Develop procedures to assure that the advice or recommendations of advisory committees will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the result of the advisory committee's independent judgment;
- (h) Assure that the interests and affiliations of advisory committee members are reviewed for conformance with applicable conflict of interest statutes, regulations issued by the U.S. Office of Government Ethics (OGE) including any supplemental agency requirements, and other Federal ethics rules;
- (i) Designate a Designated Federal Officer (DFO) for each advisory committee and its subcommittees; and
- (j) Provide the opportunity for reasonable participation by the public in advisory committee activities, subject to § 102–3.140 and the agency's guidelines.

§ 102–3.110 What are the responsibilities of a chairperson of an independent Presidential advisory committee?

The chairperson of an independent Presidential advisory committee must:

- (a) Comply with the Act and this Federal Advisory Committee Management part;

(b) Consult with the Secretariat concerning the designation of a Committee Management Officer (CMO) and Designated Federal Officer (DFO); and

(c) Consult with the Secretariat in advance regarding any proposal to close any meeting in whole or in part.

§ 102–3.115 What are the responsibilities and functions of an agency Committee Management Officer (CMO)?

In addition to implementing the provisions of section 8(b) of the Act, the CMO will carry out all responsibilities delegated by the agency head. The CMO also should ensure that sections 10(b), 12(a), and 13 of the Act are implemented by the agency to provide for appropriate recordkeeping. Records to be kept by the CMO include, but are not limited to:

(a) *Charter and membership documentation.* A set of filed charters for each advisory committee and membership lists for each advisory committee and subcommittee;

(b) *Annual comprehensive review.* Copies of the information provided as the agency's portion of the annual comprehensive review of Federal advisory committees, prepared according to § 102–3.175(b);

(c) *Agency guidelines.* Agency guidelines maintained and updated on committee management operations and procedures; and

(d) *Closed meeting determinations.* Agency determinations to close or partially close advisory committee meetings required by § 102–3.105.

§ 102–3.120 What are the responsibilities and functions of a Designated Federal Officer (DFO)?

The agency head or, in the case of an independent Presidential advisory committee, the Secretariat, must designate a Federal officer or employee who must be either full-time or permanent part-time, to be the DFO for each advisory committee and its subcommittees, who must:

(a) Approve or call the meeting of the advisory committee or subcommittee;

(b) Approve the agenda, except that this requirement does not apply to a Presidential advisory committee;

(c) Attend the meetings;

(d) Adjourn any meeting when he or she determines it to be in the public interest; and

(e) Chair the meeting when so directed by the agency head.

§ 102–3.125 How should agencies consider the roles of advisory committee members and staff?

FACA does not assign any specific responsibilities to members of advisory

committees and staff, although both perform critical roles in achieving the goals and objectives assigned to advisory committees. Agency heads, Committee Management Officers (CMOs), and Designated Federal Officers (DFOs) should consider the distinctions between these roles and how they relate to each other in the development of agency guidelines implementing the Act and this Federal Advisory Committee Management part. In general, these guidelines should reflect:

(a) *Clear operating procedures.* Clear operating procedures should provide for the conduct of advisory committee meetings and other activities, and specify the relationship among the advisory committee members, the DFO, and advisory committee or agency staff;

(b) *Agency operating policies.* In addition to compliance with the Act, advisory committee members and staff may be required to adhere to additional agency operating policies; and

(c) *Other applicable statutes.* Other agency-specific statutes and regulations may affect the agency's advisory committees directly or indirectly. Agencies should ensure that advisory committee members and staff understand these requirements.

§ 102-3.130 What policies apply to the appointment, and compensation or reimbursement of advisory committee members, staff, and experts and consultants?

In developing guidelines to implement the Act and this Federal Advisory Committee Management part at the agency level, agency heads must address the following issues concerning advisory committee member and staff appointments, and considerations with respect to uniform fair rates of compensation for comparable services, or expense reimbursement of members, staff, and experts and consultants:

(a) *Appointment and terms of advisory committee members.* Unless otherwise provided by statute, Presidential directive, or other establishment authority, advisory committee members serve at the pleasure of the appointing or inviting authority. Membership terms are at the sole discretion of the appointing or inviting authority.

(b) *Compensation guidelines.* Each agency head must establish uniform compensation guidelines for members and staff of, and experts and consultants to an advisory committee.

(c) *Compensation of advisory committee members not required.* Nothing in this subpart requires an agency head to provide compensation to

any member of an advisory committee, unless otherwise required by a specific statute.

(d) *Compensation of advisory committee members.* When an agency has authority to set pay administratively for advisory committee members, it may establish appropriate rates of pay (including any applicable locality pay authorized by the President's Pay Agent under 5 U.S.C. 5304(h)), not to exceed the rate for level IV of the Executive Schedule under 5 U.S.C. 5315, unless a higher rate expressly is allowed by another statute. However, the agency head personally must authorize a rate of basic pay in excess of the maximum rate of basic pay established for the General Schedule under 5 U.S.C. 5332, or alternative similar agency compensation system. This maximum rate includes any applicable locality payment under 5 U.S.C. 5304. The agency may pay advisory committee members on either an hourly or a daily rate basis. The agency may not provide additional compensation in any form, such as bonuses or premium pay.

(e) *Compensation of staff.* When an agency has authority to set pay administratively for advisory committee staff, it may establish appropriate rates of pay (including any applicable locality pay authorized by the President's Pay Agent under 5 U.S.C. 5304(h)), not to exceed the rate for level IV of the Executive Schedule under 5 U.S.C. 5315, unless a higher rate expressly is allowed by another statute. However, the agency head personally must authorize a rate of basic pay in excess of the maximum rate of basic pay established for the General Schedule under 5 U.S.C. 5332, or alternative similar agency compensation system. This maximum rate includes any applicable locality payment under 5 U.S.C. 5304. The agency must pay advisory committee staff on an hourly rate basis. The agency may provide additional compensation, such as bonuses or premium pay, so long as aggregate compensation paid in a calendar year does not exceed the rate for level IV of the Executive Schedule, with appropriate proration for a partial calendar year.

(f) *Other compensation considerations.* In establishing rates of pay for advisory committee members and staff, the agency must comply with any applicable statutes, Executive orders, regulations, or administrative guidelines. In determining an appropriate rate of basic pay for advisory committee members and staff, an agency must give consideration to the significance, scope, and technical complexity of the matters with which

the advisory committee is concerned, and the qualifications required for the work involved. The agency also should take into account the rates of pay applicable to Federal employees who have duties that are similar in terms of difficulty and responsibility. An agency may establish rates of pay for advisory committee staff based on the pay these persons would receive if they were covered by the General Schedule in 5 U.S.C. Chapter 51 and Chapter 53, subchapter III, or by an alternative similar agency compensation system.

(g) *Compensation of experts and consultants.* Whether or not an agency has other authority to appoint and compensate advisory committee members or staff, it also may employ experts and consultants under 5 U.S.C. 3109 to perform work for an advisory committee. Compensation of experts and consultants may not exceed the maximum rate of basic pay established for the General Schedule under 5 U.S.C. 5332 (that is, the GS-15, step 10 rate, excluding locality pay or any other supplement), unless a higher rate expressly is allowed by another statute. The appointment and compensation of experts and consultants by an agency must be in conformance with applicable regulations issued by the U. S. Office of Personnel Management (OPM) (See 5 CFR part 304.).

(h) *Federal employees assigned to an advisory committee.* Any advisory committee member or staff person who is a Federal employee when assigned duties to an advisory committee remains covered during the assignment by the compensation system that currently applies to that employee, unless that person's current Federal appointment is terminated. Any staff person who is a Federal employee must serve with the knowledge of the Designated Federal Officer (DFO) for the advisory committee to which that person is assigned duties, and the approval of the employee's direct supervisor.

(i) *Other appointment considerations.* An individual who is appointed as an advisory committee member or staff person immediately following termination of another Federal appointment with a full-time work schedule may receive compensation at the rate applicable to the former appointment, if otherwise allowed by applicable law (without regard to the limitations on pay established in paragraphs (d) and (e) of this section). Any advisory committee staff person who is not a current Federal employee serving under an assignment must be appointed in accordance with applicable agency procedures, and in consultation with the DFO and the

members of the advisory committee involved.

(j) *Gratuitous services.* In the absence of any special limitations applicable to a specific agency, nothing in this subpart prevents an agency from accepting the gratuitous services of an advisory committee member or staff person who is not a Federal employee, or expert or consultant, who agrees in advance and in writing to serve without compensation.

(k) *Travel expenses.* Advisory committee members and staff, while engaged in the performance of their

duties away from their homes or regular places of business, may be allowed reimbursement for travel expenses, including per diem in lieu of subsistence, as authorized by 5 U.S.C. 5703, for persons employed intermittently in the Government service.

(l) Services for advisory committee members with disabilities. While performing advisory committee duties, an advisory committee member with disabilities may be provided services by a personal assistant for employees with disabilities, if the member qualifies as

an individual with disabilities as provided in section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 791, and does not otherwise qualify for assistance under 5 U.S.C. 3102 by reason of being a Federal employee.

Appendix A to Subpart C of Part 102-3—Key Points and Principles

This appendix provides additional guidance in the form of answers to frequently asked questions and identifies key points and principles that may be applied to situations not covered elsewhere in this subpart. The guidance follows:

APPENDIX A TO SUBPART C

Key points and principles	Section	Question(s)	Guidance
I. FACA does not specify the manner in which advisory committee members and staff must be appointed.	102-3.105, 102-3.130(a)	1. Does the appointment of an advisory committee member necessarily result in a lengthy process?	A. No. Each agency head may specify those policies and procedures, consistent with the Act and this part, or other specific authorizing statute, governing the appointment of advisory committee members and staff. B. Some factors that affect how long the appointment process takes include: (i) Solicitation of nominations; (ii) Conflict of interest clearances; (iii) Security or background evaluations; (iv) Availability of candidates; and (v) Other statutory or administrative requirements. C. In addition, the extent to which agency heads have delegated responsibility for selecting members varies from agency to agency and may become an important factor in the time it takes to finalize the advisory committee's membership.
II. Agency heads retain the final authority for selecting advisory committee members, unless otherwise provided for by a specific statute or Presidential directive.	102-3.130(a)	1. Can an agency head select for membership on an advisory committee from among nominations submitted by an organization? 2. If so, can different persons represent the organization at different meetings?	A. The answer to question 1 is yes. Organizations may propose for membership individuals to represent them on an advisory committee. However, the agency head establishing the advisory committee, or other appointing authority, retains the final authority for selecting all members. B. The answer to question 2 also is yes. Alternates may represent an appointed member with the approval of the establishing agency, where the agency head is the appointing authority.
III. An agency may compensate advisory committee members and staff, and also employ experts and consultants.	102-3.130(d), 102-3.130(g), 102-3.130(e),	1. May members and staff be compensated for their service or duties on an advisory committee? 2. Are the guidelines the same for compensating both members and staff? 3. May experts and consultants be employed to perform other advisory committee work?	A. The answer to question 1 is yes. (i) However, FACA limits compensation for advisory committee members and staff to the rate for level IV of the Executive Schedule, unless higher rates expressly are allowed by other statutes. (ii) Although FACA provides for compensation guidelines, the Act does not require an agency to compensate its advisory committee members.

APPENDIX A TO SUBPART C—Continued

Key points and principles	Section	Question(s)	Guidance
			<p>B. The answer to question 2 is no. The guidelines for compensating members and staff are similar, but not identical. For example, the differences are that: (i) An agency "may" pay members on either an hourly or a daily rate basis, and "may not" provide additional compensation in any form, such as bonuses or premium pay; while (ii) An agency "must" pay staff on an hourly rate basis only, and "may" provide additional compensation, so long as aggregate compensation paid in a calendar year does not exceed the rate for level IV of the Executive Schedule, with appropriate proration for a partial calendar year.</p> <p>C. The answer to question 3 is yes. Other work not part of the duties of advisory committee members or staff may be performed by experts and consultants. For additional guidance on the employment of experts and consultants, agencies should consult the applicable regulations issued by the U. S. Office of Personnel Management (OPM). (See 5 CFR part 304.)</p>
IV. Agency heads are responsible for ensuring that the interests and affiliations of advisory committee members are reviewed for conformance with applicable conflict of interest statutes and other Federal ethics rules..	102–3.105(h)	<p>1. Are all advisory committee members subject to conflict of interest statutes and other Federal ethics rules?</p> <p>2. Who should be consulted for guidance on the proper application of Federal ethics rules to advisory committee members?</p>	<p>A. The answer to question 1 is no. Whether an advisory committee member is subject to Federal ethics rules is dependent on the member's status. The determination of a member's status on an advisory committee is largely a personnel classification matter for the appointing agency. Most advisory committee members will serve either as a "representative" or a "special Government employee" (SGE), based on the role the member will play. In general, SGEs are covered by regulations issued by the U. S. Office of Government Ethics (OGE) and certain conflict of interest statutes, while representatives are not subject to these ethics requirements.</p> <p>B. The answer to question 2 is the agency's Designated Agency Ethics Official (DAEO), who should be consulted prior to appointing members to an advisory committee in order to apply Federal ethics rules properly.</p>
V. An agency head may delegate responsibility for appointing a Committee Management Officer (CMO) or Designated Federal Officer (DFO); however, there may be only one CMO for each agency..	102–3.105(c), 102–3.105(i)	1. Must an agency's CMO and each advisory committee DFO be appointed by the agency head?	A. The answer to question 1 is no. The agency head may delegate responsibility for appointing the CMO and DFOs. However, these appointments, including alternate selections, should be documented consistent with the agency's policies and procedures.

APPENDIX A TO SUBPART C—Continued

Key points and principles	Section	Question(s)	Guidance
VI. FACA is the principal statute pertaining to advisory committees. However, other statutes may impact their use and operations..	102–3.125(c)	<p>2. May an agency have more than one CMO?</p> <p>1. Do other statutes or regulations affect the way an agency carries out its advisory committee management program?</p>	<p>B. The answer to question 2 also is no. The functions of the CMO are specified in the Act and include oversight responsibility for all advisory committees within the agency. Accordingly, only one CMO may be appointed to perform these functions. The agency may, however, create additional positions, including those in its sub-components, which are subordinate to the CMO's agencywide responsibilities and functions.</p> <p>A. Yes. While the Act provides a general framework for managing advisory committees Governmentwide, other factors may affect how advisory committees are managed. These include: (i) The statutory or Presidential authority used to establish an advisory committee; (ii) A statutory limitation placed on an agency regarding its annual expenditures for advisory committees; (iii) Presidential or agency management directives; (iv) The applicability of conflict of interest statutes and other Federal ethics rules; (v) Agency regulations affecting advisory committees; and (vi) Other requirements imposed by statute or regulation on an agency or its programs, such as those governing the employment of experts and consultants or the management of Federal records.</p>

Subpart D—Advisory Committee Meeting and Recordkeeping Procedures

§ 102–3.135 What does this subpart cover and how does it apply?

This subpart establishes policies and procedures relating to meetings and other activities undertaken by advisory committees and their subcommittees. This subpart also outlines what records must be kept by Federal agencies and what other documentation, including advisory committee minutes and reports, must be prepared and made available to the public.

§ 102–3.140 What policies apply to advisory committee meetings?

The agency head, or the chairperson of an independent Presidential advisory committee, must ensure that:

(a) Each advisory committee meeting is held at a reasonable time and in a manner or place reasonably accessible to the public, to include facilities that are readily accessible to and usable by persons with disabilities, consistent with the goals of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794;

(b) The meeting room or other forum selected is sufficient to accommodate advisory committee members, advisory committee or agency staff, and a

reasonable number of interested members of the public;

(c) Any member of the public is permitted to file a written statement with the advisory committee;

(d) Any member of the public may speak to or otherwise address the advisory committee if the agency's guidelines so permit; and

(e) Any advisory committee meeting conducted in whole or part by a teleconference, videoconference, the Internet, or other electronic medium meets the requirements of this subpart.

§ 102–3.145 What policies apply to subcommittee meetings?

If a subcommittee makes recommendations directly to a Federal officer or agency, or if its recommendations will be adopted by the parent advisory committee without further deliberations by the parent advisory committee, then the subcommittee's meetings must be conducted in accordance with all openness requirements of this subpart.

§ 102–3.150 How are advisory committee meetings announced to the public?

(a) A notice in the **Federal Register** must be published at least 15 calendar days prior to an advisory committee meeting, which includes:

(1) The name of the advisory committee (or subcommittee, if applicable);

(2) The time, date, place, and purpose of the meeting;

(3) A summary of the agenda, and/or topics to be discussed;

(4) A statement whether all or part of the meeting is open to the public or closed; if the meeting is closed state the reasons why, citing the specific exemption(s) of the Government in the Sunshine Act, 5 U.S.C. 552b(c), as the basis for closure; and

(5) The name and telephone number of the Designated Federal Officer (DFO) or other responsible agency official who may be contacted for additional information concerning the meeting.

(b) In exceptional circumstances, the agency or an independent Presidential advisory committee may give less than 15 calendar days notice, provided that the reasons for doing so are included in the advisory committee meeting notice published in the **Federal Register**.

§ 102–3.155 How are advisory committee meetings closed to the public?

To close all or part of an advisory committee meeting, the Designated Federal Officer (DFO) must:

(a) *Obtain prior approval.* Submit a request to the agency head, or in the case of an independent Presidential

advisory committee, the Secretariat, citing the specific exemption(s) of the Government in the Sunshine Act, 5 U.S.C. 552b(c), that justify the closure. The request must provide the agency head or the Secretariat sufficient time (generally, 30 calendar days) to review the matter in order to make a determination before publication of the meeting notice required by § 102–3.150.

(b) *Seek General Counsel review.* The General Counsel of the agency or, in the case of an independent Presidential advisory committee, the General Counsel of GSA should review all requests to close meetings.

(c) *Obtain agency determination.* If the agency head, or in the case of an independent Presidential advisory committee, the Secretariat, finds that the request is consistent with the provisions in the Government in the Sunshine Act and FACA, the appropriate agency official must issue a determination that all or part of the meeting be closed.

(d) *Assure public access to determination.* The agency head or the chairperson of an independent Presidential advisory committee must make a copy of the determination available to the public upon request.

§ 102–3.160 What activities of an advisory committee are not subject to the notice and open meeting requirements of the Act?

The following activities of an advisory committee are excluded from the procedural requirements contained in this subpart:

(a) *Preparatory work.* Meetings of two or more advisory committee or subcommittee members convened solely to gather information, conduct research, or analyze relevant issues and facts in preparation for a meeting of the advisory committee, or to draft position papers for deliberation by the advisory committee; and

(b) *Administrative work.* Meetings of two or more advisory committee or subcommittee members convened solely to discuss administrative matters of the advisory committee or to receive administrative information from a Federal officer or agency.

§ 102–3.165 How are advisory committee meetings documented?

(a) The agency head or, in the case of an independent Presidential advisory committee, the chairperson must ensure that detailed minutes of each advisory committee meeting, including one that is closed or partially closed to the public, are kept. The chairperson of each advisory committee must certify the accuracy of all minutes of advisory committee meetings.

(b) The minutes must include:

(1) The time, date, and place of the advisory committee meeting;

(2) A list of the persons who were present at the meeting, including advisory committee members and staff, agency employees, and members of the public who presented oral or written statements;

(3) An accurate description of each matter discussed and the resolution, if any, made by the advisory committee regarding such matter; and

(4) Copies of each report or other document received, issued, or approved by the advisory committee at the meeting.

(c) The Designated Federal Officer (DFO) must ensure that minutes are certified within 90 calendar days of the meeting to which they relate.

§ 102–3.170 How does an interested party obtain access to advisory committee records?

Timely access to advisory committee records is an important element of the public access requirements of the Act. Section 10(b) of the Act provides for the contemporaneous availability of advisory committee records that, when taken in conjunction with the ability to attend committee meetings, provide a meaningful opportunity to comprehend fully the work undertaken by the advisory committee. Although advisory committee records may be withheld under the provisions of the Freedom of Information Act (FOIA), as amended, if there is a *reasonable expectation* that the records sought fall within the exemptions contained in section 552(b) of FOIA, agencies may not require members of the public or other interested parties to file requests for non-exempt advisory committee records under the request and review process established by section 552(a)(3) of FOIA.

§ 102–3.175 What are the reporting and recordkeeping requirements for an advisory committee?

(a) *Presidential advisory committee follow-up report.* Within one year after a Presidential advisory committee has submitted a public report to the President, a follow-up report required by section 6(b) of the Act must be prepared and transmitted to the Congress detailing the disposition of the advisory committee's recommendations. The Secretariat shall assure that these reports are prepared and transmitted to the Congress as directed by the President, either by the President's delegate, by the agency responsible for providing support to a Presidential advisory committee, or by the responsible agency or organization designated in the charter of the

Presidential advisory committee pursuant to § 102–3.75(a)(10). In performing this function, GSA may solicit the assistance of the President's delegate, the Office of Management and Budget (OMB), or the responsible agency Committee Management Officer (CMO), as appropriate. Reports shall be consistent with specific guidance provided periodically by the Secretariat.

(b) *Annual comprehensive review of Federal advisory committees.* To conduct an annual comprehensive review of each advisory committee as specified in section 7(b) of the Act, GSA requires Federal agencies to report information on each advisory committee for which a charter has been filed in accordance with § 102–3.70, and which is in existence during any part of a Federal fiscal year. Committee Management Officers (CMOs), Designated Federal Officers (DFOs), and other responsible agency officials will provide this information by data filed electronically with GSA on a fiscal year basis, using a Governmentwide shared Internet-based system that GSA maintains. This information shall be consistent with specific guidance provided periodically by the Secretariat. The preparation of these electronic submissions by agencies has been assigned interagency report control number (IRCN) 0304–GSA–AN.

(c) *Annual report of closed or partially-closed meetings.* In accordance with section 10(d) of the Act, advisory committees holding closed or partially-closed meetings must issue reports at least annually, setting forth a summary of activities and such related matters as would be informative to the public consistent with the policy of 5 U.S.C. 552(b).

(d) *Advisory committee reports.* Subject to 5 U.S.C. 552, 8 copies of each report made by an advisory committee, including any report of closed or partially-closed meetings as specified in paragraph (c) of this section and, where appropriate, background papers prepared by experts or consultants, must be filed with the Library of Congress as required by section 13 of the Act for public inspection and use at the location specified § 102–3.70(a)(3).

(e) *Advisory committee records.* Official records generated by or for an advisory committee must be retained for the duration of the advisory committee. Upon termination of the advisory committee, the records must be processed in accordance with the Federal Records Act (FRA), 44 U.S.C. Chapters 21, 29–33, and regulations issued by the National Archives and Records Administration (NARA) (see 36 CFR parts 1220, 1222, 1228, and 1234),

or in accordance with the Presidential Records Act (PRA), 44 U.S.C. Chapter 22.

Appendix A to Subpart D of Part 102–3—Key Points and Principles

This appendix provides additional guidance in the form of answers to frequently

asked questions and identifies key points and principles that may be applied to situations not covered elsewhere in this subpart. The guidance follows:

APPENDIX A TO SUBPART D

Key points and principles	Section(s)	Question(s)	Guidance
I. With some exceptions, advisory committee meetings are open to the public.	102–3.140, 102–3.145(a), 102–3.155.	1. Must all advisory committee and subcommittee meetings be open to the public?	A. No. Advisory committee meetings may be closed when appropriate, in accordance with the exemption(s) for closure contained in the Government in the Sunshine Act, 5 U.S.C. 552b(c). (i) Subcommittees that report to a parent advisory committee, and not directly to a Federal officer or agency, are not required to open their meetings to the public or comply with the procedures in the Act for announcing meetings. (ii) However, agencies are cautioned to avoid excluding the public from attending any meeting where a subcommittee develops advice or recommendations that are not expected to be reviewed and considered by the parent advisory committee before being submitted to a Federal officer or agency. These exclusions may run counter to the provisions of the Act requiring contemporaneous access to the advisory committee deliberative process.
II. Notices must be published in the Federal Register announcing advisory committee meetings.	102–3.150	1. Can agencies publish a single Federal Register notice announcing multiple advisory committee meetings?	A. Yes, agencies may publish a single notice announcing multiple meetings so long as these notices contain all of the information required by § 102–3.150. (i) "Blanket notices" should not announce meetings so far in advance as to prevent the public from adequately being informed of an advisory committee's schedule. (ii) An agency's Office of General Counsel should be consulted where these notices include meetings that are either closed or partially closed to the public.

APPENDIX A TO SUBPART D—Continued

Key points and principles	Section(s)	Question(s)	Guidance
III. Although certain advisory committee records may be withheld under the Freedom of Information Act (FOIA), as amended, 5 U.S.C. 552, agencies may not require the use of FOIA procedures for records available under section 10(b) of FACA.	102–3.170	1. May an agency require the use of its internal FOIA procedures for access to advisory committee records that are not exempt from release under FOIA?	A. No. Section 10(b) of FACA provides that: Subject to section 552 of title 5, United States Code, the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying at a single location in the offices of the advisory committee or the agency to which the advisory committee reports until the advisory committee ceases to exist. (i) The purpose of section 10(b) of the Act is to provide for the contemporaneous availability of advisory committee records that, when taken in conjunction with the ability to attend advisory committee meetings, provide a meaningful opportunity to comprehend fully the work undertaken by the advisory committee. (ii) Although advisory committee records may be withheld under the provisions of FOIA if there is a reasonable expectation that the records sought fall within the exemptions contained in section 552(b) of FOIA, agencies may not require members of the public or other interested parties to file requests for non-exempt advisory committee records under the request and review process established by section 552(a)(3) of FOIA. (iii) Records covered by the exemptions set forth in section 552(b) of FOIA may be withheld. An opinion of the Office of Legal Counsel (OLC), U.S. Department of Justice concludes that: FACA requires disclosure of written advisory committee documents, including predecisional materials such as drafts, working papers, and studies. The disclosure exemption available to agencies under exemption 5 of FOIA for predecisional documents and other privileged materials is narrowly limited in the context of FACA to privileged “inter-agency or intra-agency” documents prepared by an agency and transmitted to an advisory committee. The language of the FACA statute and its legislative history support this restrictive application of exemption 5 to requests for public access to advisory committee documents. Moreover, since an advisory committee is not itself an agency, this construction is supported by the express language of exemption 5 which applies only to inter-agency or intra-agency materials. (iv) Agencies first should determine, however, whether or not records being sought by the public fall within the scope of FACA in general, and section 10(b) of the Act in particular, prior to applying the available exemptions under FOIA. (See OLC Opinion 12 Op. O.L.C. 73, dated April 29, 1988, which is available from the Committee Management Secretariat (MC), General Services Administration, 1800 F Street, NW., Washington, DC 20405–0002.)

APPENDIX A TO SUBPART D—Continued

Key points and principles	Section(s)	Question(s)	Guidance
IV. Advisory committee records must be managed in accordance with the Federal Records Act (FRA), 44 U.S.C. Chapters 21, 29–33, and regulations issued by the National Archives and Records Administration (NARA) (see 36 CFR parts 1220, 1222, 1228, and 1234), or the Presidential Records Act (PRA), 44 U.S.C. Chapter 22.	102–175(e)	1. How must advisory committee records be treated and preserved?	<p>A. In order to ensure proper records management, the Committee Management Officer (CMO), Designated Federal Officer (DFO), or other representative of the advisory committee, in coordination with the agency's Records Management Officer, should clarify upon the establishment of the advisory committee whether its records will be managed in accordance with the FRA or the PRA.</p> <p>B. Official records generated by or for an advisory committee must be retained for the duration of the advisory committee. Responsible agency officials are encouraged to contact their agency's Records Management Officer or NARA as soon as possible after the establishment of the advisory committee to receive guidance on how to establish effective records management practices. Upon termination of the advisory committee, the records must be processed in accordance with the FRA and regulations issued by NARA, or in accordance with the PRA.</p> <p>C. The CMO, DFO, or other representative of an advisory committee governed by the FRA, in coordination with the agency's Records Management Officer, must contact NARA in sufficient time to review the process for submitting any necessary disposition schedules of the advisory committee's records upon termination. In order to ensure the proper disposition of the advisory committee's records, disposition schedules need to be submitted to NARA no later than 6 months before the termination of the advisory committee.</p> <p>D. For Presidential advisory committees governed by the PRA, the CMO, DFO, or other representative of the advisory committee should consult with the White House Counsel on the preservation of any records subject to the PRA, and may also confer with NARA officials.</p>

Subpart E—How Does This Subpart Apply to Advice or Recommendations Provided to Agencies by the National Academy of Sciences or the National Academy of Public Administration?

§ 102–3.180 What does this subpart cover and how does it apply?

This subpart provides guidance to agencies on compliance with section 15 of the Act. Section 15 establishes requirements that apply only in connection with a funding or other written agreement involving an agency's use of advice or recommendations provided to the agency by the National Academy of Sciences (NAS) or the National Academy of Public Administration (NAPA), if such advice or recommendations were developed by use of a committee created by either academy. For purposes of this subpart,

NAS also includes the National Academy of Engineering, the Institute of Medicine, and the National Research Council. Except with respect to NAS committees that were the subject of judicial actions filed before December 17, 1997, no part of the Act other than section 15 applies to any committee created by NAS or NAPA.

§ 102–3.185 What does this subpart require agencies to do?

(a) *Section 15 requirements.* An agency may not use any advice or recommendation provided to an agency by the National Academy of Sciences (NAS) or the National Academy of Public Administration (NAPA) under an agreement between the agency and an academy, if such advice or recommendation was developed by use of a committee created by either academy, unless:

(1) The committee was not subject to any actual management or control by an agency or officer of the Federal Government; and

(2) In the case of NAS, the academy certifies that it has complied substantially with the requirements of section 15(b) of the Act; or

(3) In the case of NAPA, the academy certifies that it has complied substantially with the requirements of sections 15(b) (1), (2), and (5) of the Act.

(b) *No agency management or control.* Agencies must not manage or control the specific procedures adopted by each academy to comply with the requirements of section 15 of the Act that are applicable to that academy. In addition, however, any committee created and used by an academy in the development of any advice or recommendation to be provided by the

academy to an agency must be subject to both actual management and control by that academy and not by the agency.

(c) *Funding agreements.* Agencies may enter into contracts, grants, and cooperative agreements with NAS or NAPA that are consistent with the requirements of this subpart to obtain advice or recommendations from such academy. These funding agreements require, and agencies may rely upon, a written certification by an authorized

representative of the academy provided to the agency upon delivery to the agency of each report containing advice or recommendations required under the agreement that:

(1) The academy has adopted policies and procedures that comply with the applicable requirements of section 15 of the Act; and

(2) To the best of the authorized representative's knowledge and belief, these policies and procedures

substantially have been complied with in performing the work required under the agreement.

Appendix A to Subpart E of Part 102-3—Key Points and Principles

This appendix provides additional guidance in the form of answers to frequently asked questions and identifies key points and principles that may be applied to situations not covered elsewhere in this subpart. The guidance follows:

APPENDIX A TO SUBPART E

Key points and principles	Section(s)	Question(s)	Guidance
I. Section 15 of the Act allows the National Academy of Sciences (NAS) and the National Academy of Public Administration (NAPA) to adopt separate procedures for complying with FACA.	102-3.185(a)	1. May agencies rely upon an academy certification regarding compliance with section 15 of the Act if different policies and procedures are adopted by NAS and NAPA?	A. Yes. NAS and NAPA are completely separate organizations. Each is independently chartered by the Congress for different purposes, and Congress has recognized that the two organizations are structured and operate differently. Agencies should defer to the discretion of each academy to adopt policies and procedures that will enable it to comply substantially with the provisions of section 15 of the Act that apply to that academy.
II. Section 15 of the Act allows agencies to enter into funding agreements with NAS and NAPA without the academies' committees being "managed" or "controlled".	102-3.185(c)	1. Can an agency enter into a funding agreement with an academy which provides for the preparation of one or more academy reports containing advice or recommendations to the agency, to be developed by the academy by use of a committee created by the academy, without subjecting an academy to "actual management or control" by the agency?	A. Yes, if the members of the committee are selected by the academy and if the committee's meetings, deliberations, and the preparation of reports are all controlled by the academy. Under these circumstances, neither the existence of the funding agreement nor the fact that it contemplates use by the academy of an academy committee would constitute actual management or control of the committee by the agency.

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FEDERAL ADVISORY COMMITTEE ACT

FEDERAL ADVISORY COMMITTEE ACT

5 U.S.C. app.

As Amended

§1. Short title

This Act may be cited as the "Federal Advisory Committee Act Amendments."

§2. Findings and purpose

(a) The Congress finds that there are numerous committees, boards, commissions, councils, and similar groups which have been established to advise officers and agencies in the executive branch of the Federal Government and that they are frequently a useful and beneficial means of furnishing expert advice, ideas, and diverse opinions to the Federal Government.

(b) The Congress further finds and declares that--

- (1) the need for many existing advisory committees has not been adequately reviewed;
- (2) new advisory committees should be established only when they are determined to be essential and their number should be kept to the minimum necessary;
- (3) advisory committees should be terminated when they are no longer carrying out the purposes for which they were established;
- (4) standards and uniform procedures should govern the establishment, operation, administration, and duration of advisory committees;
- (5) the Congress and the public should be kept informed with respect to the number, purpose, membership, activities, and cost of advisory committees; and
- (6) the function of advisory committees should be advisory only, and that all matters under their consideration should be determined, in accordance with law, by the official, agency, or officer involved.

§3. Definitions

For the purpose of this Act--

- (1) The term "Administrator" means the Administrator of General Services.
- (2) The term "advisory committee" means any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof (hereafter in this paragraph referred to as "committee"), which is--
 - (A) established by statute or reorganization plan, or
 - (B) established or utilized by the President, or
 - (C) established or utilized by one or more agencies,

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in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government, except that such term excludes (i) any committee that is composed wholly of full-time, or permanent part-time, officers or employees of the Federal Government, and (ii) any committee that is created by the National Academy of Sciences or the National Academy of Public Administration.

(3) The term "agency" has the same meaning as in section 551(1) of Title 5, United States Code.

(4) The term "Presidential advisory committee" means an advisory committee which advises the President.

§4. Applicability; restrictions

(a) The provisions of this Act or of any rule, order, or regulation promulgated under this Act shall apply to each advisory committee except to the extent that any Act of Congress establishing any such advisory committee specifically provides otherwise.

(b) Nothing in this Act shall be construed to apply to any advisory committee established or utilized by--

(1) the Central Intelligence Agency;

(2) the Federal Reserve System; or

(3) the Office of the Director of National Intelligence, if the Director of National Intelligence determines that for reasons of national security such advisory committee cannot comply with the requirements of this Act.

(c) Nothing in this Act shall be construed to apply to any local civic group whose primary function is that of rendering a public service with respect to a Federal program, or any State or local committee, council, board, commission, or similar group established to advise or make recommendations to State or local officials or agencies.

§5. Responsibilities of Congressional committees; review; guidelines

(a) In the exercise of its legislative review function, each standing committee of the Senate and the House of Representatives shall make a continuing review of the activities of each advisory committee under its jurisdiction to determine whether such advisory committee should be abolished or merged with any other advisory committee, whether the responsibilities of such advisory committee should be revised, and whether such advisory committee performs a necessary function not already being performed. Each such standing committee shall take appropriate action to obtain the enactment of legislation necessary to carry out the purpose of this subsection.

(b) In considering legislation establishing, or authorizing the establishment of any advisory committee, each standing committee of the Senate and of the House of Representatives shall determine, and report such determination to the Senate or to the House of Representatives, as the case may be, whether the functions of the proposed advisory committee are being or could be performed by one or more agencies or by an advisory committee already in existence, or by enlarging the mandate of an existing advisory committee. Any such legislation shall--

(1) contain a clearly defined purpose for the advisory committee;

(2) require the membership of the advisory committee to be fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee;

(3) contain appropriate provisions to assure that the advice and recommendations of the advisory committee will not be inappropriately influenced by the appointing authority or by

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any special interest, but will instead be the result of the advisory committee's independent judgment;

(4) contain provisions dealing with authorization of appropriations, the date for submission of reports (if any), the duration of the advisory committee, and the publication of reports and other materials, to the extent that the standing committee determines the provisions of section 10 of this Act to be inadequate; and

(5) contain provisions which will assure that the advisory committee will have adequate staff (either supplied by an agency or employed by it), will be provided adequate quarters, and will have funds available to meet its other necessary expenses.

(c) To the extent they are applicable, the guidelines set out in subsection (b) of this section shall be followed by the President, agency heads, or other Federal officials in creating an advisory committee.

§6. Responsibilities of the President; report to Congress; annual report to Congress; exclusion

(a) The President may delegate responsibility for evaluating and taking action, where appropriate, with respect to all public recommendations made to him by Presidential advisory committees.

(b) Within one year after a Presidential advisory committee has submitted a public report to the President, the President or his delegate shall make a report to the Congress stating either his proposals for action or his reasons for inaction, with respect to the recommendations contained in the public report.

(c) [Annual report] Repealed by the Federal Reports Elimination and Sunset Act of 1995, Pub. L. No. 104-66, § 3003, 109 Stat. 707, 734-36 (1995), amended by Pub. L. No. 106-113, § 236, 113 Stat. 1501, 1501A-302 (1999) (changing effective date to May 15, 2000).

§7. Responsibilities of the Administrator of General Services; Committee Management Secretariat, establishment; review; recommendations to President and Congress; agency cooperation; performance guidelines; uniform pay guidelines; travel expenses; expense recommendations

(a) The Administrator shall establish and maintain within the General Services Administration a Committee Management Secretariat, which shall be responsible for all matters relating to advisory committees.

(b) The Administrator shall, immediately after October 6, 1972, institute a comprehensive review of the activities and responsibilities of each advisory committee to determine--

(1) whether such committee is carrying out its purpose;

(2) whether, consistent with the provisions of applicable statutes, the responsibilities assigned to it should be revised;

(3) whether it should be merged with other advisory committees; or

(4) whether it should be abolished.

The Administrator may from time to time request such information as he deems necessary to carry out his functions under this subsection. Upon the completion of the Administrator's review he shall make recommendations to the President and to either the agency head or the Congress with respect to action he believes should be taken. Thereafter, the Administrator shall carry out a similar review annually. Agency heads shall cooperate with the Administrator in making the reviews required by this subsection.

(c) The Administrator shall prescribe administrative guidelines and management controls applicable to advisory committees, and, to the maximum extent feasible, provide advice, assistance, and

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guidance to advisory committees to improve their performance. In carrying out his functions under this subsection, the Administrator shall consider the recommendations of each agency head with respect to means of improving the performance of advisory committees whose duties are related to such agency.

(d)(1) The Administrator, after study and consultation with the Director of the Office of Personnel Management, shall establish guidelines with respect to uniform fair rates of pay for comparable services of members, staffs, and consultants of advisory committees in a manner which gives appropriate recognition to the responsibilities and qualifications required and other relevant factors. Such regulations shall provide that--

(A) no member of any advisory committee or of the staff of any advisory committee shall receive compensation at a rate in excess of the rate specified for GS-18 of the General Schedule under section 5332 of Title 5, United States Code;

(B) such members, while engaged in the performance of their duties away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of Title 5, United States Code, for persons employed intermittently in the Government service; and

(C) such members--

(i) who are blind or deaf or who otherwise qualify as handicapped individuals (within the meaning of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. §794)), and

(ii) who do not otherwise qualify for assistance under section 3102 of Title 5, United States Code, by reason of being an employee of an agency (within the meaning of section 3102 (a)(1) of such Title 5),

may be provided services pursuant to section 3102 of such Title 5 while in performance of their advisory committee duties.

(2) Nothing in this subsection shall prevent--

(A) an individual who (without regard to his service with an advisory committee) is a full-time employee of the United States, or

(B) an individual who immediately before his service with an advisory committee was such an employee,

from receiving compensation at the rate at which he otherwise would be compensated (or was compensated) as a full-time employee of the United States.

(e) The Administrator shall include in budget recommendations a summary of the amounts he deems necessary for the expenses of advisory committees, including the expenses for publication of reports where appropriate.

§8. Responsibilities of agency heads; Advisory Committee Management Officer, designation

(a) Each agency head shall establish uniform administrative guidelines and management controls for advisory committees established by that agency, which shall be consistent with directives of the Administrator under section 7 and section 10. Each agency shall maintain systematic information on the nature, functions, and operations of each advisory committee within its jurisdiction.

(b) The head of each agency which has an advisory committee shall designate an Advisory Committee Management Officer who shall--

FEDERAL ADVISORY COMMITTEE ACT

- (1) exercise control and supervision over the establishment, procedures, and accomplishments of advisory committees established by that agency;
- (2) assemble and maintain the reports, records, and other papers of any such committee during its existence; and
- (3) carry out, on behalf of that agency, the provisions of section 552 of Title 5, United States Code, with respect to such reports, records, and other papers.

§9. Establishment and purpose of advisory committees; publication in Federal Register; charter: filing, contents, copy

(a) No advisory committee shall be established unless such establishment is--

- (1) specifically authorized by statute or by the President; or
- (2) determined as a matter of formal record, by the head of the agency involved after consultation with the Administrator, with timely notice published in the Federal Register, to be in the public interest in connection with the performance of duties imposed on that agency by law.

(b) Unless otherwise specifically provided by statute or Presidential directive, advisory committees shall be utilized solely for advisory functions. Determinations of action to be taken and policy to be expressed with respect to matters upon which an advisory committee reports or makes recommendations shall be made solely by the President or an officer of the Federal Government.

(c) No advisory committee shall meet or take any action until an advisory committee charter has been filed with (1) the Administrator, in the case of Presidential advisory committees, or (2) with the head of the agency to whom any advisory committee reports and with the standing committees of the Senate and of the House of Representatives having legislative jurisdiction of such agency. Such charter shall contain the following information:

- (A) the committee's official designation;
- (B) the committee's objectives and the scope of its activity;
- (C) the period of time necessary for the committee to carry out its purposes;
- (D) the agency or official to whom the committee reports;
- (E) the agency responsible for providing the necessary support for the committee;
- (F) a description of the duties for which the committee is responsible, and, if such duties are not solely advisory, a specification of the authority for such functions;
- (G) the estimated annual operating costs in dollars and man-years for such committee;
- (H) the estimated number and frequency of committee meetings;
- (I) the committee's termination date, if less than two years from the date of the committee's establishment; and
- (J) the date the charter is filed.

A copy of any such charter shall also be furnished to the Library of Congress.

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§10. Advisory committee procedures; meetings; notice, publication in Federal Register; regulations; minutes; certification; annual report; Federal officer or employee, attendance

(a)(1) Each advisory committee meeting shall be open to the public.

(2) Except when the President determines otherwise for reasons of national security, timely notice of each such meeting shall be published in the Federal Register, and the Administrator shall prescribe regulations to provide for other types of public notice to insure that all interested persons are notified of such meeting prior thereto.

(3) Interested persons shall be permitted to attend, appear before, or file statements with any advisory committee, subject to such reasonable rules or regulations as the Administrator may prescribe.

(b) Subject to section 552 of Title 5, United States Code, the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying at a single location in the offices of the advisory committee or the agency to which the advisory committee reports until the advisory committee ceases to exist.

(c) Detailed minutes of each meeting of each advisory committee shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the advisory committee. The accuracy of all minutes shall be certified to by the chairman of the advisory committee.

(d) Subsections (a)(1) and (a)(3) of this section shall not apply to any portion of an advisory committee meeting where the President, or the head of the agency to which the advisory committee reports, determines that such portion of such meeting may be closed to the public in accordance with subsection (c) of section 552b of Title 5, United States Code. Any such determination shall be in writing and shall contain the reasons for such determination. If such a determination is made, the advisory committee shall issue a report at least annually setting forth a summary of its activities and such related matters as would be informative to the public consistent with the policy of section 552(b) of Title 5, United States Code.

(e) There shall be designated an officer or employee of the Federal Government to chair or attend each meeting of each advisory committee. The officer or employee so designated is authorized, whenever he determines it to be in the public interest, to adjourn any such meeting. No advisory committee shall conduct any meeting in the absence of that officer or employee.

(f) Advisory committees shall not hold any meetings except at the call of, or with the advance approval of, a designated officer or employee of the Federal Government, and in the case of advisory committees (other than Presidential advisory committees), with an agenda approved by such officer or employee.

§11. Availability of transcripts; "agency proceeding"

(a) Except where prohibited by contractual agreements entered into prior to the effective date of this Act, agencies and advisory committees shall make available to any person, at actual cost of duplication, copies of transcripts of agency proceedings or advisory committee meetings.

(b) As used in this section "agency proceeding" means any proceeding as defined in section 551(12) of Title 5, United States Code.

§12. Fiscal and administrative provisions; record-keeping; audit; agency support services

(a) Each agency shall keep records as will fully disclose the disposition of any funds which may be at the disposal of its advisory committees and the nature and extent of their activities. The

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General Services Administration, or such other agency as the President may designate, shall maintain financial records with respect to Presidential advisory committees. The Comptroller General of the United States, or any of his authorized representatives, shall have access, for the purpose of audit and examination, to any such records.

(b) Each agency shall be responsible for providing support services for each advisory committee established by or reporting to it unless the establishing authority provides otherwise. Where any such advisory committee reports to more than one agency, only one agency shall be responsible for support services at any one time. In the case of Presidential advisory committees, such services may be provided by the General Services Administration.

§13. Responsibilities of Library of Congress; reports and background papers; depository

Subject to section 552 of Title 5, United States Code, the Administrator shall provide for the filing with the Library of Congress of at least eight copies of each report made by every advisory committee and, where appropriate, background papers prepared by consultants. The Librarian of Congress shall establish a depository for such reports and papers where they shall be available to public inspection and use.

§14. Termination of advisory committees; renewal; continuation

(a)(1) Each advisory committee which is in existence on the effective date of this Act shall terminate not later than the expiration of the two-year period following such effective date unless--

(A) in the case of an advisory committee established by the President or an officer of the Federal Government, such advisory committee is renewed by the President or that officer by appropriate action prior to the expiration of such two-year period; or

(B) in the case of an advisory committee established by an Act of Congress, its duration is otherwise provided for by law.

(2) Each advisory committee established after such effective date shall terminate not later than the expiration of the two-year period beginning on the date of its establishment unless--

(A) in the case of an advisory committee established by the President or an officer of the Federal Government such advisory committee is renewed by the President or such officer by appropriate action prior to the end of such period; or

(B) in the case of an advisory committee established by an Act of Congress, its duration is otherwise provided for by law.

(b)(1) Upon the renewal of any advisory committee, such advisory committee shall file a charter in accordance with section 9(c).

(2) Any advisory committee established by an Act of Congress shall file a charter in accordance with such section upon the expiration of each successive two-year period following the date of enactment of the Act establishing such advisory committee.

(3) No advisory committee required under this subsection to file a charter shall take any action (other than preparation and filing of such charter) prior to the date on which such charter is filed.

(c) Any advisory committee which is renewed by the President or any officer of the Federal Government may be continued only for successive two-year periods by appropriate action taken by the President or such officer prior to the date on which such advisory committee would otherwise terminate.

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§15. Requirements relating to the National Academy of Sciences and the National Academy of Public Administration

(a) In General- An agency may not use any advice or recommendation provided by the National Academy of Sciences or National Academy of Public Administration that was developed by use of a committee created by that academy under an agreement with an agency, unless--

(1) the committee was not subject to any actual management or control by an agency or an officer of the Federal Government;

(2) in the case of a committee created after the date of the enactment of the Federal Advisory Committee Act Amendments of 1997, the membership of the committee was appointed in accordance with the requirements described in subsection (b)(1); and

(3) in developing the advice or recommendations, the academy complied with--

(A) subsection (b)(2) through (6), in the case of any advice or recommendation provided by the National Academy of Sciences; or

(B) subsection (b)(2) and (5), in the case of any advice or recommendation provided by the National Academy of Public Administration.

(b) Requirements- The requirements referred to in subsection (a) are as follows:

(1) The Academy shall determine and provide public notice of the names and brief biographies of individuals that the Academy appoints or intends to appoint to serve on the committee. The Academy shall determine and provide a reasonable opportunity for the public to comment on such appointments before they are made or, if the Academy determines such prior comment is not practicable, in the period immediately following the appointments. The Academy shall make its best efforts to ensure that (A) no individual appointed to serve on the committee has a conflict of interest that is relevant to the functions to be performed, unless such conflict is promptly and publicly disclosed and the Academy determines that the conflict is unavoidable, (B) the committee membership is fairly balanced as determined by the Academy to be appropriate for the functions to be performed, and (C) the final report of the Academy will be the result of the Academy's independent judgment. The Academy shall require that individuals that the Academy appoints or intends to appoint to serve on the committee inform the Academy of the individual's conflicts of interest that are relevant to the functions to be performed.

(2) The Academy shall determine and provide public notice of committee meetings that will be open to the public.

(3) The Academy shall ensure that meetings of the committee to gather data from individuals who are not officials, agents, or employees of the Academy are open to the public, unless the Academy determines that a meeting would disclose matters described in section 552 (b) of Title 5, United States Code. The Academy shall make available to the public, at reasonable charge if appropriate, written materials presented to the committee by individuals who are not officials, agents, or employees of the Academy, unless the Academy determines that making material available would disclose matters described in that section.

(4) The Academy shall make available to the public as soon as practicable, at reasonable charge if appropriate, a brief summary of any committee meeting that is not a data gathering meeting, unless the Academy determines that the summary would disclose matters described in section 552 (b) Title 5, United States Code. The summary shall identify the committee members present, the topics discussed, materials made available to the committee, and such other matters that the Academy determines should be included.

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(5) The Academy shall make available to the public its final report, at reasonable charge if appropriate, unless the Academy determines that the report would disclose matters described in section 552 (b) of Title 5, United States Code. If the Academy determines that the report would disclose matters described in that section, the Academy shall make public an abbreviated version of the report that does not disclose those matters.

(6) After publication of the final report, the Academy shall make publicly available the names of the principal reviewers who reviewed the report in draft form and who are not officials, agents, or employees of the Academy.

(c) Regulations- The Administrator of General Services may issue regulations implementing this section.

§16. Effective Date

Except as provided in section 7 (b), this Act shall become effective upon the expiration of ninety days following October 6, 1972.

People Searched	Committee	Years of Service on Committee	2015 Active EPA Grants During Service	2016 Active EPA Grants During Service	2017 Active EPA Grants During Service	Subtotal Dollar Amount of EPA Grants Received During Service	Total Dollar Amount (2015 to present) of EPA Grants Received During Service
Beamer, Paloma	BOSC	2015-2017	R836151	R836151	R836151	R836151 - \$1,500,000	\$1,500,000
Bennett, Deborah Hall	SAB	Nov. 2016-Oct. 2017		R835641	R835641	R835641 - \$900,000	\$900,000
Berhane, Kiros T.	SAB	Dec. 2015-Oct. 2017	R836158C001 R835441	R836158C001 R835441	R836158C001 R835441	R836158C001 - \$1,500,000 R835441 - \$4,146,875	\$5,646,875
Diez Roux, Ana V.	CASAC and SAB	Dec. 2015-Oct. 2017 (SAB) Oct. 2011-Oct. 2017 (CASAC)	NIMHD004			NIMHD004 - \$556,144	\$556,144
Faustman, Elaine	SAB	Oct. 2009-Sept. 2016	R835738 R834514	R835738 R834514	0	R834514 - \$5,417,075 R835738 - \$6,000,000	\$11,417,075
Galloway, James	BOSC	2016-2017		R3563201	R3563201	R3563201 - \$250,000	\$250,000
Harkema, Jack	CASAC	Oct. 2012-Oct. 2017	R834860 R834797C002	R834860 R834797C002		R834860 - \$600,000 R834797C002 - \$7,999,875	\$8,599,875
Johnston, Robert J.	SAB	Oct. 2012-Oct. 2017		R836167	R836167	R836167 - \$799,919	\$799,919
Karr, Catherine J.	SAB	Oct. 2012-Oct. 2017	R834514	R836185 R834514	R836185	R836185 - \$749,999 R834514 - \$9,417,075	\$6,167,074
Kenski, Donna	CASAC and BOSC	2015-2017 (BOSC) Oct. 2007-Sept. 2010 (CASAC) Oct. 2016-Oct. 2017 (CASAC)	LADCO Funds	LADCO Funds	LADCO Funds	LADCO Funds - \$3,253,937	\$3,253,937
Laden, Francine	SAB	Oct. 2012-Oct. 2017	R836156	R836156	R836156	R836156 - \$1,500,000	\$1,500,000
Matsui, Elizabeth C.	SAB	Oct. 2012-Sept. 2015	R836152C002 R836150 R834510			R836152C002 - \$1,200,000 R836150 - \$1,500,000 R834510 - \$4,107,128	\$6,807,128
Mihelcic, James R.	SAB	Nov. 2010-Dec. 2016	RD835569	RD835569		RD835569 - \$3,123,375	\$3,123,375
Nadeau, Kari	SAB	Dec. 2015-Oct. 2017	R835442	R835442	R835442	R835442 - \$4,060,713	\$4,060,713
Sheppard, Elizabeth A. (Lianne)	CASAC	Oct. 2015-Oct. 2017	R834796	R834796	R834796	R834796 - \$8,000,000	\$8,000,000
Somasundaran, Ponisseril	BOSC	2015-2016	R835181	R835181		R835181 - \$500,000	\$500,000
Tolbert, Paige E.	SAB	Oct. 2009-Sept. 2015	R834799			R834799 - \$7,999,779	\$7,999,779
Werth, Charles	SAB	Dec. 2014-Oct. 2017	R835174	R835174		R835174 - \$500,000	\$500,000
Wiesner, Mark	BOSC	2015-2017	RD835580	RD835580	RD835580	RD835580 - \$5,000,000	\$5,000,000
Zhao, Jinhua	BOSC	2015-2017		R836166	R836166	R836166 - \$800,000	\$800,000

Cumulative

\$77,381,894

From: Morning Energy [morningenergy@politico.com]
Sent: 4/27/2018 2:17:06 PM
To: Feeley, Drew (Robert) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=abae82aa36da4d3383eae19a8efa683c-Feeley, Rob]
Subject: POLITICO's Morning Energy: Did Pruitt skate by? — EPA prepping Oversight docs — McConnell tries for West Virginia redemption

By Kelsey Tamborrino | 04/27/2018 10:01 AM EDT

With help from Anthony Adragna

DID PRUITT SKATE BY? EPA Administrator Scott Pruitt had a simple task Thursday: Keep his conservative backers happy - and in turn, keep the president happy. And he may have managed to do just that. While Democrats and environmentalists panned Pruitt's performance, the EPA chief, who is facing a heavy stack of ethical and spending quandaries, left most Republicans pleased enough with his performance that he's probably salvaged his job for now.

But of course, President Donald Trump has yet to weigh in on Pruitt's performance. And on a day that saw Trump's nominee for Veterans Affairs withdraw, triggering a long Trump rant on "Fox & Friends," that could be good news for the EPA chief, POLITICO's Nancy Cook reports. "As long as [Pruitt's] explanations hold and there are no crazy discrepancies or smoking gun or anything like that, I don't think that creates any red flags for Pruitt," said one Republican close to the White House, who predicted Pruitt would survive the scrutiny.

Still, Pruitt's shifting answers about what he knew about controversial raises for two close aides raised a lot of concerns that he hadn't been completely forthright during his interview with Fox News earlier this month. Under lawmakers' questioning, he acknowledged that he had authorized his chief of staff to award pay increases to his aides - but said he did not know how high they would be or that they would circumvent the White House's disapproval. That's different than what he told Fox's Ed Henry when he said he hadn't known about the raises until after the fact and that he did not know who authorized them.

Pruitt used the two hearings to blame his torrent of scandals on career staff, as POLITICO's Anthony Adragna, Annie Snider and Alex Guillén reported, while maintaining the headlines surrounding him aren't painting an accurate picture. "Let me be very clear: I have nothing to hide as it relates to how I've run the agency for the past 16 months," Pruitt said. (In case you missed it, POLITICO's Energy team has the full recap of the key moments here.)

But all in all, his critical audience of House Republicans exited two separate hearings Thursday believing that Pruitt fared well. "I found his responses credible," said Rep. Mike Simpson, a House appropriator. Meanwhile, Rep. Ken Calvert, the chairman of the House Appropriations Interior-Environment subcommittee, said Pruitt did "fine." "He answered our questions," he said. "... He's doing well, he's very professional, he's doing his job." And Illinois' John Shimkus, who chaired Pruitt's first hearing, said he thought Pruitt handled himself well and that Republican members were tough in their questions, Anthony recaps. "Some of it was accountability for policy, so I don't know what more [critics] want," Shimkus said. "I think that he answered the questions in the best way that he could answer them."

Of course, Pruitt's performance did not please everyone. "I think the opprobrium that you've generated on some of these spending decisions is actually warranted," GOP Rep. Ryan Costello, who is retiring from Congress, told Pruitt. Ana Unruh Cohen, managing director of government affairs at the Natural Resources Defense Council said the EPA administrator "demonstrated beyond any doubt that he is unqualified" to lead his

agency. "He should be fired before sundown," she said. And Rep. Marcy Kaptur, a Democratic member of the Appropriations subcommittee that questioned Pruitt, used the term "evasive" to describe the performance. "For someone who has been in the job a year and a half, he didn't seem to command a lot of the details," she said. "... I don't think we know the full extent of what he's done yet."

WHAT COMES NEXT? Keep in mind: Pruitt's under multiple investigations that have yet to fully play out. "We have a committee that's looking into these charges and we'll have a resolution," Calvert said of Pruitt's ongoing scandals. "We'll see what comes of it." Today, for one, marks the deadline set by House Oversight Chairman Trey Gowdy in his expanded probe into the embattled EPA chief's activities. He's called for a host of documents to be delivered and interviews to be scheduled by today. An EPA official said the agency is currently in the process of providing the documents, Anthony reports. The official said the documents will respond to the allegations of lavish spending and unethical conduct and may negate the need for several aides to appear for interviews.

WELCOME TO FRIDAY! I'm your host Kelsey Tamborrino, and no one guessed Alabama - the home state of the first officially designated Democratic floor leader, Oscar Underwood. For today: Name the only senator to be preceded by both of his or her parents. Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](https://twitter.com/kelseytam), [@Morning_Energy](https://twitter.com/Morning_Energy) and [@POLITICOPro](https://twitter.com/POLITICOPro).

POLITICO's Ben White is bringing Morning Money to the Milken Institute Global Conference to provide coverage of the day's events and evening happenings. The newsletter will run April 29 - May 2. **Sign up to keep up with your daily conference coverage.**

PRUITT RAISES UNDONE AFTER FOX INTERVIEW: Amid the deluge of news coming out of the hearings, Pro's Emily Holden and Nick Juliano reported via documents released by EPA that the agency reversed raises for the two top aides to Pruitt the day after his interview with Fox News. Pruitt told Fox he had "corrected them" after finding out about them. A day later, on April 5, Pruitt's chief of staff Ryan Jackson signed personnel forms reverting the aides to their previous pay grades, according to copies of the forms reviewed by POLITICO. Read more here.

McCONNELL'S WEST VIRGINIA REDEMPTION: Amid an increasingly tense GOP primary battle for Democratic Sen. Joe Manchin's seat, coal baron Don Blankenship has focused his efforts into a relentless slash-and-burn campaign targeting Majority Leader Mitch McConnell. Blankenship - who spent a year in prison following the deadly 2010 Upper Big Branch mine disaster - compared his current battle against the McConnell-led Republican establishment to his past legal fight against the federal government, POLITICO's Alex Isenstadt writes. But as the May 8 primary inches closer, McConnell is fighting back with an avalanche of attacks from a super PAC aligned with the Senate leader, among other efforts.

Blankenship's attacks have grown intensely personal. During an interview with POLITICO, Blankenship said that McConnell "has a lot of connections in China," adding that the GOP leader's wife is Transportation Secretary Elaine Chao. And during an appearance on a local radio show, Blankenship described Chao's father as a "wealthy Chinaperson," who was "well-connected in China." Read more.

DOE TO ANNOUNCE FUNDS FOR ADVANCED NUCLEAR: Energy Secretary Rick Perry will announce today the selection of 13 projects that will receive about \$60 million in funding to support cost-shared research and development in advanced nuclear technologies. The selections - broken down into categories pertaining to nuclear demonstration readiness, advanced reactor development, and regulatory assistance grants - are the first under the Office of Nuclear Energy's "U.S. Industry Opportunities for Advanced Nuclear Technology Development" funding opportunity announcement. "Making these new investments is an important step to reviving and revitalizing nuclear energy, and ensuring that our nation continues to benefit from this clean, reliable, resilient source of electricity," Perry said in a statement.

ALL IN THE TIMING: The Office of Management and Budget completed its review of EPA's proposed "secret science" rule Wednesday, E&E News' Sean Reilly reports, even though Pruitt had already signed it by then. The policy that bars the agency from relying on studies that don't publicly disclose all their data got Pruitt's signature on Tuesday, but the Reginfo.gov site showed the review completion date as Wednesday. "While OMB is sometimes slow to update the site, it was unclear why Pruitt would have signed a rule before the review was completed," Reilly writes. EPA spokeswoman Liz Bowman suggested to E&E the fault lay with OMB. "Interagency review concluded before this proposal was signed," she said in a statement. Reilly later tweeted: "[@OMBPress](https://twitter.com/OMBPress) has now changed the date on the <http://Reginfo.gov> site to show that the review of this proposed #EPA rule was completed on April 23, not April 25. A #OMB spokesman won't discuss the reason for the change on the record."

TESTER TESTS TRUMP: The president is coming after Democratic Sen. Jon Tester, in what could be a problematic move for the Montanan as he fights to win reelection. Trump was enraged over Tester's work documenting allegations of malfeasance by Rear Adm. Ronny Jackson, provoking a series of inquiries that ultimately led to Jackson withdrawing his nomination to be VA secretary. POLITICO's Burgess Everett reports Tester is now at a turning point in his relationship with Trump, who railed against him on Thursday morning. "The incident and its fallout underscores how the burly, plain-spoken Tester hasn't exactly tacked to the center in an election year," Burgess writes. "Perhaps he feels emboldened after dodging a big-name opponent; after Ryan Zinke was drafted into the Trump administration and the state attorney general passed on the race, Tester's opposition is made up of lesser known opponents that will compete in a June primary." Read more.

SENATE MAKES POMPEO OFFICIAL: The Senate narrowly confirmed Mike Pompeo on Thursday, shifting him from CIA director to secretary of State. Pompeo was confirmed 57-42, ultimately winning support from Democrats Heidi Heitkamp, Manchin, Joe Donnelly, Bill Nelson, Claire McCaskill and Doug Jones. Supreme Court Justice Samuel Alito swore in Pompeo shortly after the vote Thursday, formally installing Pompeo, who has previously doubted climate science - a point greens jumped onto ahead of the vote. "There's some who think we're warming, there's some who think we're cooling," Pompeo said in 2013.

"Democrats that jumped ship to support this dangerous climate denier must and will be held accountable by the people," Food & Water Watch Executive Director Wenonah Hauter said in a statement. But others cheered the move: Competitive Enterprise Institute director of the Center for Energy and Environment, Myron Ebell, said in a statement he was "pleased." Pompeo, he said, "understands the importance of affordable, reliable energy to Americans' health and ability to provide for our families." Pompeo will be a "forceful advocate" of Trump's decision to remove the U.S. from the Paris climate agreement, Ebell said.

MANCHIN TRIES AGAIN: Manchin sent another letter this week urging Perry and Defense Secretary Jim Mattis to examine use of the Defense Production Act to protect coal-fired power plants. "The ability to produce reliable electricity and to recover from disruptions to our grid are critical to ensuring our nation's security against the various threats facing our nation today - whether those threats be extreme weather events or adversarial foreign actors," he writes. Earlier this month, Manchin similarly wrote to the president on the issue, although, as Pro's Eric Wolff reported, it faces an uphill battle on many fronts. Read the letter.

WATCH: House Speaker Paul Ryan was asked about climate change Thursday - by the 7-year-old daughter of E&E News' Scott Waldman. See it here.

PRUITT FOCUS OF NEW AD: The opposition research firm American Bridge is scheduled to air an ad this morning on "Fox and Friends" focusing on Pruitt's swirling scandals and his previous criticism of the president. Watch it here.

DEMOCRATS COME OUT IN FULL FORCE FOR CPP: Ahead of the comment deadline, eight Democratic senators signed onto a letter led by EPW ranking member Tom Carper opposing EPA's proposal to repeal the Clean Power Plan. The senators write that the law is instrumental in fighting climate change and say

that rescinding it "ignores scientific evidence on the risks of climate change and puts generations of Americans at grave health and economic risk."

- **A coalition of 16 attorneys general and municipalities** submitted a supplemental comment letter to EPA with evidence of what they say are due process violations and ethical issues due to Pruitt's involvement. The group previously wrote to EPA, claiming Pruitt had not had an open mind on CPP. "Since then, the evidence continues to grow that Administrator Pruitt should have been disqualified from participating in this rulemaking before it began," they write. "His involvement has irreparably tainted the current administrative process, and as a result, EPA must withdraw the proposed CPP repeal." Read it [here](#).

MAIL CALL! WE NEED AN EXTENSION: Sens. [Ron Wyden](#) and [Jeff Merkley](#) and Reps. [Peter DeFazio](#) and [Jared Huffman](#) wrote to Interior Secretary Ryan Zinke and Agriculture Secretary Sonny Perdue on Thursday, urging an extension on interim mineral withdrawal protections for the Chetco River in southwest Oregon. Read it [here](#).

- **Sixteen senators, led by Democratic Sen. Tom Udall**, sent [this letter](#) to Zinke asking him to pause any plans for the management of Bears Ears and Grand Staircase-Escalante national monuments until legal challenges related to the president are resolved.

- **The House Biofuel Caucus sent a letter** to Pruitt objecting to Renewable Fuel Standard waivers issued by EPA, demanding Pruitt "immediately cease all waiver activity" and provide lawmakers a "full list" with further details. Read it [here](#).

CSB TO INVESTIGATE HUSKY EXPLOSION: The Chemical Safety Board said Thursday it is sending a four-person investigative team to Superior, Wis., to the scene of the Husky Energy explosion that injured several Thursday morning. The refinery was shutting down in preparation for a five-week turnaround, CSB said, when the explosion occurred. The Superior Police Department [evacuated](#) areas within miles of the explosion, including a small hospital nearby as a precaution. As of the latest count, at least 11 people were injured in the explosion, the Associated Press [reports](#).

CHA-CHING: Following a House Natural Resources hearing Thursday on offshore energy revenue sharing for Gulf-producing states, Interior announced it would disburse nearly \$188 million to four states: Alabama, Louisiana, Mississippi and Texas, as well as their coastal political subdivisions. It is the first disbursement of funds under Phase II of the Gulf of Mexico Energy Security Act of 2006, which comes from oil and gas leasing revenues on the Outer Continental Shelf, according to DOI. See the **massive** check [here](#).

QUICK HITS

- As climate change zaps their snow, winter sports fans seek to change Washington, [McClatchy](#).
- Skinny and sweet: U.S. refiner earnings depend on the oil diet, [Reuters](#).
- India nears power success, but millions are still in the dark, [Bloomberg](#).
- Coal producer Peabody Energy doubles down on share buyback program, [S&P Global](#).
- How Oman's rocks could help save the planet, [The New York Times](#).

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Message

From: Moody, Christina [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=813EB7F985C845EAA91EDC10C6E9A914-CMOODY]
Sent: 8/30/2018 7:12:38 PM
To: Feeley, Drew (Robert) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=abae82aa36da4d3383eae19a8efa683c-Feeley, Rob]
CC: Kime, Robin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7ef7b76087a6475b80fc984ac2dd4497-RKime]; Lovell, Will (William) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3b150bb6ade640f68d744fadcb83a73e-Lovell, Wil]
Subject: Re: Outstanding QFRs

Ok thanks Drew. **Deliberative Process / Ex. 5**

Christina J. Moody
US Environmental Protection Agency
Office of Congressional and Intergovernmental
Relations
Moody.Christina@epa.gov

On Aug 30, 2018, at 3:11 PM, Feeley, Drew (Robert) <Feeley.Drew@epa.gov> wrote:

Hi Christina

Deliberative Process / Ex. 5

Thanks,
Drew

Sent from my iPhone

On Aug 30, 2018, at 12:42 PM, Moody, Christina <Moody.Christina@epa.gov> wrote:

Hi,

Deliberative Process / Ex. 5

Thanks,

Ranking Member Carper:

10: OP/OCSPP: EPA's Science Advisory Board provides independent scientific and technical review, advice and recommendations to the Administrator on the science forming the basis for EPA's actions. In June, the Board wrote to former-Administrator Pruitt announcing that it would like to review the science forming the basis for six controversial rules before they are finalized. The request included the basis for the rule regulating greenhouse gas emissions from cars and SUVs, the rule exempting polluting glider trucks from emissions standards, the rule designed to curb greenhouse gas emissions from the oil and gas industry, the Clean Power Plan, the rule setting greenhouse gas emission standards for power plants, and EPA's proposed

“secret science” rule to ignore some of the world’s best scientific studies when writing regulations.

- a. Will you commit to making sure that the EPA Science Advisory Board gets access to any materials it needs to complete its reviews? If not, why not?
- b. Will you commit to wait to receive and review the advice the Board gives you *before* EPA finalizes any of these rules? If not, why not?

In our July 17, 2018 private meeting, I expressed my concerns about the manner in which EPA is implementing the Toxic Substances Control Act (TSCA). It is my belief that if EPA does not immediately reverse course, it risks having the majority of its TSCA implementation efforts overturned in litigation. I have several questions regarding some of my concerns. The attachments referenced in these questions consist of EPA technical assistance provided to Congress while the law was being negotiated, and are available at <https://www.epw.senate.gov/public/cache/files/f/0/f0729f1a-4385-453f-b7f8-442825a0721c/A681AA266D5CC024C98FCC85A944EB5E.senator-carper-questions-for-the-record-to-epa-nominees.pdf>.

47: OP: Environmental protection requires the use of sound science. The EPA’s own mission states that “national efforts to reduce environmental risks are based on the best available scientific information.” Science is the beating heart of the EPA’s work. You can imagine my concern in April when former Administrator Scott Pruitt proposed a “secret science” rule—or more properly named “censoring science.” Because this proposal would prevent the EPA from using scientific studies that include data that aren’t publicly available.

If the EPA can’t use public health studies that include confidential participant data, it will not be able to properly implement numerous environmental laws under EPA’s jurisdiction, like the Clean Air Act which requires the use of the best available science for implementation. Under the Administrative Procedure Act, the EPA cannot refuse to consider any comment submitted to the agency—including scientific findings based on confidential data. This proposed “censored science” rule allows for such refusal, and it wouldn’t hold up in court.

- a. Will you commit to withdrawing then-Secretary Pruitt’s proposed “censored science” rule, which is a violation of numerous laws?

It appears that EPA staff have been dissuaded from communicating to the public and to other scientists about climate risks. In October 2017, an EPA scientist, research fellow, and consultant withdrew from planned speeches at a workshop about the health of the Narragansett Bay and Watershed. Though former Administrator Pruitt responded to the October 31, 2017 letter sent by New England members of Congress expressing our concern,

that reply was vague.^[1] In this response letter, it was indicated that “[p]rocedures have been put in place to prevent such an occurrence in the future.” When another set of follow-up questions was asked to clarify that statement, the answers provided on May 10, 2018 were incomplete.

- b. What are the exact procedures put in place to ensure that EPA scientists continue to be able to speak at public events about climate science?
- c. How have you evaluated whether these new procedures are successful and staff are not discouraged from participating in similar scientific forums? If no evaluation has been made, why not?

Christina J. Moody | Office of Congressional & Intergovernmental Relations
U.S. Environmental Protection Agency | 1200 Pennsylvania Ave NW (MC-1301A) |
Washington DC | 20460
Moody.Christina@epa.gov

From: Frye, Tony (Robert)
Sent: Thursday, August 30, 2018 12:33 PM
To: Moody, Christina <Moody.Christina@epa.gov>
Cc: Palich, Christian <palich.christian@epa.gov>
Subject: Outstanding QFRs

Hey Christina – The list below is what we have outstanding on the QFRs.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Tony Frye
Special Advisor
Office of Congressional Affairs
Environmental Protection Agency
Cell: 202.603.3225

^[1] “Response Letter from the Environmental Protection Agency on the Narragansett Bay Estuary Program,” December 4, 2017.
<https://www.whitehouse.senate.gov/imo/media/doc/2017-12-04%20EPA%20Response%20to%20NBEP%20Letter.pdf>

Thu May 17 08:52:10 EDT 2018
CMS.OEX@epamail.epa.gov
FW: Minnesota Comments on Strengthening Transparency in Regulatory Science (Docket ID No. EPA-HQ-OA-2018-0259
To: "cms.oex@domino.epamail.epa.gov" <cms.oex@domino.epamail.epa.gov>

From: Hope, Brian
Sent: Thursday, May 17, 2018 12:52:09 PM (UTC+00:00) Monrovia, Reykjavik
To: CMS.OEX
Subject: FW: Minnesota Comments on Strengthening Transparency in Regulatory Science (Docket ID No. EPA-HQ-OA-2018-0259

From: Clarizio, Michele (MPCA) [mailto:michele.clarizio@state.mn.us]
Sent: Wednesday, May 16, 2018 9:04 AM
To: DAYZEROPREFIX Pruitt, Scott <DAYZEROPREFIXpruitt.scott@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>
Subject: Minnesota Comments on Strengthening Transparency in Regulatory Science (Docket ID No. EPA-HQ-OA-2018-0259

Good morning,

The attached correspondence is being sent on behalf of Commissioner John Linc Stine, Minnesota Pollution Control Agency, and Commissioner Jan Malcolm, Minnesota Department of Health.

Michele Clarizio | Executive Aide to the Commissioner

Minnesota Pollution Control Agency (MPCA)

520 Lafayette Road | St. Paul, MN | 55155
Office Phone: (651) 757-2023

michele.clarizio@state.mn.us | www.pca.state.mn.us

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May 15, 2018

The Honorable E. Scott Pruitt, Administrator
U. S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Mail Code 1101A
Washington, D.C. 20460

Re: Comments regarding the U.S. Environmental Protection Agency's proposed rule, "Strengthening Transparency in Regulatory Science", published April 30, 2018 at 83 FR 18768, Docket ID No. EPA-HQ-OA-2018-0259

Dear Administrator Pruitt:

The Minnesota Pollution Control Agency (MPCA) and Minnesota Department of Health (MDH) are deeply disappointed in, and troubled by, the U.S. Environmental Protection Agency's (EPA) proposed rule, "Strengthening Transparency in Regulatory Science," published April 30, 2018, at 83 FR 18768, under Docket ID No. EPA-HQ-OA-2018-0259. This proposed rule to "strengthen transparency" does not provide transparency or clarity at all — rather, it causes confusion and mistrust, and it will threaten the lives of real people. EPA should withdraw this dangerous proposal.

As regulatory agencies whose missions are to protect and improve Minnesota's environment and human health, the MPCA and MDH are appalled by the specious and brazen attack on health sciences research and the field of epidemiology. The proposed rule was clearly designed to undermine and disparage the important epidemiological studies that support public health protection from all pollutants, be they in the air, water, or soil. Simply stated, the proposal was written with the intent to cast doubt on EPA's prior judgement of, and dependence on, health research — and to create suspicion significant enough to deter future use of health-based studies in regulatory decision-making. EPA's proposal flagrantly ignores the reasons for the privacy of health data used for epidemiological studies. Privacy of health data is a foundational ethic for the medical and health science research fields.

While nothing in the proposed rule compels disclosure of personal identifying information (e.g., name, address), disclosure of analytic data sufficient to fully replicate study analysis would effectively breach confidentiality requirements upheld by public and private research through Institutional Review Boards (IRB). It is well documented that privacy assurances are essential to including people in health studies.

From a risk assessment perspective, not including epidemiology studies in regulatory science is not sound or prudent. Laboratory, toxicology, and epidemiology are complementary and necessary pieces of understanding and quantifying effects of a pollutant on human health. Excluding evidence from one of these three essential disciplines threatens the science basis for regulatory decisions and actions. The proposed rule would put regulators tasked with protecting human health in an impossible situation of relying primarily on animal models or in-vivo models that cannot be directly extrapolated to human dose-response estimates.

Minnesota supports open data access and is a national leader in science and regulatory transparency. Our agencies are at the forefront of making environmental and health surveillance data available, providing technical assistance for using data, and engaging partners across communities and research institutions

around effective dissemination and data utilization. Our agencies host multiple platforms for accessing high-quality health surveillance and environmental monitoring data, while protecting privacy and providing essential risk communication and prevention strategies. Detailed data are similarly available for research uses, under the approval and guidance of state IRBs.

Based on the lack of meaningful information and articulated or demonstrated need for the proposed rule, EPA has not made the case for a new regulation at 40 CFR Part 30.

The promulgation of this proposed rule would set a dangerous and potentially life-threatening precedent regarding the use of health-based data, modeling, and research in regulatory decision-making. As proposed, the rule is arbitrary, capricious, unethical, and intellectually dishonest. The EPA should immediately announce that it is withdrawing this proposal.

Our agencies will be submitting additional, substantive comments to the rulemaking record.

Sincerely,



John Linc Stine, Commissioner
Minnesota Pollution Control Agency
520 Lafayette Road
St. Paul, Minnesota 55155



Jan Malcolm, Commissioner
Minnesota Department of Health
625 Robert Street North, Box 64975
St. Paul, Minnesota 55155

Message

From: Rodrick, Christian [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6515DBE46DAE466DA53C8A3AA3BE8CC2-RODRICK, CH]
Sent: 3/9/2018 9:07:01 PM
To: Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]
CC: Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]; Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]; Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]; Feeley, Drew (Robert) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=abae82aa36da4d3383eae19a8efa683c-Feeley, Rob]
Subject: Re: HSST Majority Meeting re. HONEST

All,

I just spoke with Joe and it looks like 4:30 PM on Monday will work best at the moment for the most parties. I will be sending around a calendar invite with call in information shortly.

Thank you all for the quick turnaround and for your flexibility on this.

Christian Rodrick

Sent from my iPhone

On Mar 9, 2018, at 3:58 PM, Yamada, Richard (Yujiro) <yamada.richard@epa.gov> wrote:

Invite Nancy Beck as well - she's optional because I know she's very very busy

Sent from my iPhone

On Mar 9, 2018, at 3:57 PM, Ringel, Aaron <ringel.aaron@epa.gov> wrote:

Deliberative Process / Ex. 5

-Aaron

From: Woods, Clint
Sent: Friday, March 9, 2018 3:32 PM
To: Schwab, Justin <Schwab.Justin@epa.gov>; Rodrick, Christian <rodrick.christian@epa.gov>; Ringel, Aaron <ringel.aaron@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Feeley, Drew (Robert) <Feeley.Drew@epa.gov>
Cc: Yamada, Richard (Yujiro) <yamada.richard@epa.gov>
Subject: RE: HSST Majority Meeting re. HONEST

Monday afternoon works for me (assuming we don't want to wait until there's something more substantive to share)

From: Schwab, Justin
Sent: Friday, March 9, 2018 3:22 PM
To: Rodrick, Christian <rodrick.christian@epa.gov>; Ringel, Aaron <ringel.aaron@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Feeley, Drew (Robert) <Feeley.Drew@epa.gov>; Woods, Clint <woods.clint@epa.gov>
Cc: Yamada, Richard (Yujiro) <yamada.richard@epa.gov>
Subject: RE: HSST Majority Meeting re. HONEST

Of those times, I could do Monday 4:30-5 or Wednesday 12-1.

From: Rodrick, Christian
Sent: Friday, March 9, 2018 3:03 PM
To: Ringel, Aaron <ringel.aaron@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Feeley, Drew (Robert) <Feeley.Drew@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>
Cc: Yamada, Richard (Yujiro) <yamada.richard@epa.gov>
Subject: RE: HSST Majority Meeting re. HONEST

I apologize for the duplicate email. Friday is unavailable.

*Christian Rodrick
Special Assistant
Congressional Affairs U.S. EPA
O: (202) 564-4828*

From: Rodrick, Christian
Sent: Friday, March 9, 2018 3:02 PM
To: Ringel, Aaron <ringel.aaron@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Feeley, Drew (Robert) <Feeley.Drew@epa.gov>; Woods, Clint <woods.Clint@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>
Cc: Yamada, Richard (Yujiro) <yamada.richard@epa.gov>
Subject: HSST Majority Meeting re. HONEST

All,

Richard has requested that we set up a time next week with House Science Committee majority to discuss the HONEST Act. Below are some potential times that might work, please let me know what times might work for you and once we have an option I will offer that to HSST. The intention is for this to be a phone call to the Hill.

According to Scheduling Assistant, I potentially see:

Monday at 4:30PM
Wednesday at 12:00PM-1:00PM or 4:00PM
Friday at 10:00 AM or 4:00PM

If none of these times work for you, please let me know at your earliest convenience so I can work to see what else might be available.

Thank you,

Christian Rodrick

Special Assistant

Congressional and Intergovernmental Relations

U.S. Environmental Protection Agency

O: (202) 564-4828

C: (202) 578-2755

E: Rodrick.Christian@epa.gov

Message

From: Yamada, Richard (Yujiro) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4C34A1E0345E4D26B361B5031430639D-YAMADA, YUJ]
Sent: 3/9/2018 8:57:35 PM
To: Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]
CC: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]; Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]; Rodrick, Christian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6515dbe46dae466da53c8a3aa3be8cc2-Rodrick, Ch]; Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]; Feeley, Drew (Robert) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=abae82aa36da4d3383eae19a8efa683c-Feeley, Rob]
Subject: Re: HSST Majority Meeting re. HONEST

Bingo - thanks much

Sent from my iPhone

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Deliberative Process / Ex. 5

-Aaron

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To: Schwab, Justin <Schwab.Justin@epa.gov>; Rodrick, Christian <rodrick.christian@epa.gov>; Ringel, Aaron <ringel.aaron@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Feeley, Drew (Robert) <Feeley.Drew@epa.gov>
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Cc: Yamada, Richard (Yujiro) <yamada.richard@epa.gov>
Subject: RE: HSST Majority Meeting re. HONEST

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*Christian Rodrick
Special Assistant
Congressional Affairs U.S. EPA
O: (202) 564-4828*

From: Rodrick, Christian
Sent: Friday, March 9, 2018 3:02 PM
To: Ringel, Aaron <ringel.aaron@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Feeley, Drew (Robert) <Feeley.Drew@epa.gov>; Woods, Clint <woods.Clint@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>
Cc: Yamada, Richard (Yujiro) <yamada.richard@epa.gov>
Subject: HSST Majority Meeting re. HONEST

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Friday at 10:00 AM or 4:00PM

If none of these times work for you, please let me know at your earliest convenience so I can work to see what else might be available.

Thank you,

Christian Rodrick
*Special Assistant
Congressional and Intergovernmental Relations
U.S. Environmental Protection Agency
O: (202) 564-4828
C: (202) 578-2755
E: Rodrick.Christian@epa.gov*



APPROPRIATIONS & CROSSCUTTING WEEKLY NEWS

Office of Congressional and Intergovernmental Relations

Week Ending August 30, 2018

Pentagon, Other Agencies Still Face Possible CR, Even Shutdown

Excerpts taken from CQ.com

The Defense Department stands a 50-50 chance of operating under the constraints of a continuing resolution for at least the first couple months of fiscal 2019 and quite possibly beyond, a number of Washington insiders predict. What's more, analysts and lobbyists say, one or more government shutdowns are not out of the question.

If the Pentagon had to operate under a CR, it would be the tenth year in a row that the department's operations would be hamstrung for some or all of the fiscal year. The military brass has vocally opposed CRs because they do not allow new programs to be launched and funding must stay at current levels.

Despite lawmakers' unusual progress lately in passing appropriations bills for fiscal 2019, which starts on Oct. 1, none of those funding measures has been finalized. In just over a month, Congress will likely have to send President Donald Trump a CR for fiscal 2019 that will almost certainly cover multiple departments, such as Commerce, Homeland Security and State, whose funding bills neither chamber has even taken up. That CR may also include the Pentagon, some say, mainly because of the lack of time on the congressional calendar in September to finish a House-Senate conference on Defense appropriations and then vote on it in both chambers.

The all-but-inevitable CR is likely to last until Thanksgiving or even Christmas, experts say, and another, even longer, CR may follow that one. In fact, some analysts think the CR or CRs may not even become law, at least not right away, because the president may shut the government down instead, despite his recent indications to the contrary. His point would be to insist that Congress send him money to build his long-sought wall on the U.S.-Mexico border.

The House has passed six of the 12 spending bills for fiscal 2019, and the Senate has approved nine of them. As for the Pentagon bill ([HR 6157](#)), the House passed its version on June 28, while the Senate passed on Aug. 23 a measure combining its Defense money bill with its Labor-HHS-Education measure. Even before the Senate passed its Defense bill, appropriations aides from both chambers had been working for many weeks to reconcile the Senate and House measures. The two bills have widely different dollar allocations for defense procurement and research, particularly for initiatives such as hypersonics, F-35 fighter jets and shipbuilding. The Senate, unlike the House, would cut billions in aid for foreign militaries.

The differences are hardly irreconcilable, and House and Senate negotiators contend they have made progress on the Pentagon measure. The limited time between now and Oct. 1 is a factor increasing the odds of a CR for most of the government, including possibly the Pentagon. There are just 11 legislative days in September. None of the appropriations bills has made it through conference, and several will not even start a conference.

Congress is eyeing votes in September, if all goes as planned, on three packages of appropriations conference reports. In addition to the Defense and Labor-HHS-Education measure, conferees are working on a second bundle of bills covering Energy-Water, Legislative Branch and Military Construction-VA ([HR 5895](#)) and a third for Agriculture, Transportation-HUD and Financial Services and Interior-Environment bills ([HR 6147](#)).

But debating and voting on the nomination of Judge Brett Kavanaugh to serve as a justice on the Supreme Court will devour much of the Senate's floor time and energy in September. A farm bill conference report is also supposed to come up. If a CR or even final spending bills are presented to the president, it is not clear he will sign them into law, though the Defense bill would be the hardest for him to veto because of GOP support for that measure.

ECOS Meets To Debate Key EPA Policies For States

The Environmental Council of the States (ECOS)—the body that represents state environment commissioners, is holding its fall meeting this week, with a focus on EPA's relationship with states, and in particular several water policy issues. The meeting runs from August 27—30 in Stowe, VT. Open panels are scheduled on drinking water contamination from per- and polyfluoroalkyl substances (PFAS), oil and gas drilling, and cross-cutting issues like cooperative federalism.

Pentagon Challenges 'Secret Science' Proposal

Excerpts taken from E&E News

Add the Defense Department to the ranks of those expressing concern about EPA's plans to restrict the use of scientific research in writing new regulations. "While we agree that public access to information is very important, we do not believe that failure of the agency to obtain a publication's underlying data from an author external to the agency should negate its use," Patricia Underwood, a senior Pentagon official in the Office of the Assistant Secretary of Defense for Energy, Installations and Environment, wrote in recent comments on the EPA proposal. Because it's "improbable" EPA would always be able to obtain such underlying data, Underwood added, "this should not impede the use of otherwise high-quality studies."

The proposed rule — "Strengthening Transparency in Regulatory Science" — would generally limit EPA to using studies for which the underlying research data "are publicly available in a manner sufficient for independent validation," according to the text.

In unveiling the plan this spring, then-EPA Administrator Scott Pruitt touted it as a confidence booster in agency decision making. Critics view that premise as a smokescreen for thwarting consideration of research that would help justify stricter regulations.

After Pruitt resigned last month under White House pressure, an array of advocacy groups opposed to the proposed rule have urged acting EPA Administrator Andrew Wheeler to scrap it (*Greenwire*, Aug. 15). In an interview last month, Wheeler said that he would take "a hard look" at the proposal but added that he believed "the more information we put out to the public as far as what we're basing our regulations on, the better our regulations will be" (*Greenwire*, July 13).

The Defense Department, the largest federal agency when measured by its budget and the size of its civilian workforce, is also a prime sponsor of scientific research. Underwood's comments were among more than a half-million that EPA received on the proposed rule by an Aug. 16 deadline; they were added late last week to the online docket on the Regulations.gov website. Under the draft rule, the EPA administrator could grant exceptions to the data access requirements under specified conditions.

Alongside a host of more technical concerns with the draft rule, Underwood urged EPA to allow for such exemptions when "underlying study data may be difficult to obtain from authors outside the agency." She also suggested that EPA "grandfather" existing analyses unless those studies "are being updated or challenged."

EPA's Kevin Minoli is Leaving the Agency

Kevin Minoli, the Agency's principal deputy general counsel and designated agency ethics official, has announced that he will depart at the end of September for a job in the private sector. Minoli came under the spotlight over the past year as various ethics controversies swirled around former Administrator Scott Pruitt, who resigned last month.

Minoli will join the law firm Alston & Bird LLP as a partner in its environmental law practice in Washington, D.C. Minoli, who has been at EPA for about 18 years, faced questions over actions by agency ethics officials related to Pruitt. He was often called upon to sign off on travel and housing for Pruitt, which would later draw scrutiny. Minoli gave a retroactive written approval in one memo for Pruitt and his staff to take a charter jet from Denver to Durango, Colo., in August last year. He had earlier given his verbal approval on the day of the flight, which is allowed under federal guidelines.

He also drafted two ethics memos regarding Pruitt's rent part of last year of a Capitol Hill condo that was linked to a lobbyist with business before EPA. He wrote the second memo after noting ethics officials were missing "factual information" when he wrote the first. The process behind the two memos seemed to be a bit chaotic, with reporters pouncing on yet another Pruitt scandal.

As EPA's top ethics official, Minoli had to keep track of the growing list of accusations against Pruitt for excessive spending and misuse of his office. Minoli would refer additional allegations against Pruitt to investigators at the EPA Office of Inspector General, according to a letter he sent to the Office of Government Ethics.

Minoli has been part of EPA since the summer of 1999, when he joined the agency as a law clerk. He later held several positions in EPA's law office and was named acting general counsel by the Obama administration to serve during the transition to the Trump administration.

Minoli worked on diversity and inclusion issues for EPA's workforce while at the agency, according to his official biography. He was part of the general counsel's Diversity Dialogue Group and helped recruit the office's first program manager for lesbian, gay, bi-sexual and transgender employees.

SCIENCE ADVISORY BOARD STAFF OFFICE

Established by Congressional directive in 1978 to provide scientific advice to the Administrator, the Science Advisory Board is authorized to:

- *review the quality and relevance of the scientific and technical information being used by the EPA or proposed as the basis for Agency regulations;*
- *review EPA research programs and plans;*
- *provide science advice as requested by the EPA Administrator, and*
- *advise the agency on broad scientific matters.*

Most (though not all) preliminary work of the SAB is done by subcommittees or panels focused on various environmental science topics. These groups are chaired by SAB members. Recommendations of subcommittees and panels are transmitted to the SAB for discussion and deliberation. Recommendations are forwarded to EPA only if the SAB determines that it is appropriate.

GAO Request: The Government Accountability Office (GAO) contacted SABSO to request clarification and an explanation on the peer review process SABSO follows during its review of IRIS assessments as part of its field research under GAO engagement on the Environmental Protection Agency's (EPA) Chemical Management Strategies—code 102673. Earlier this week, GAO sent SABSO eight questions regarding the management of the IRIS program's peer review process. The SABSO will provide written response to these questions. The GAO plans to have a follow up conference call after reviewing the written responses to questions. SABSO has coordinated with NCEA staff regarding the GAO's self-initiated inquiry into demonstrated progress for assessing chemicals through the IRIS program.

UPDATE: Public Meeting: Chartered Science Advisory Board (SAB) Teleconference Meeting September 26, 2018—APPROVED—FRN TO BE PUBLISHED

The SAB Staff Office will host a public teleconference for the Chartered SAB on September 26, 2018, from 1:00pm to 5:00pm. Agenda items include two reviews. The Board will conduct a quality review of the finalized report on: 1) the draft SAB review of Ethyl Tertiary Butyl Ether and Draft Toxicological Review of tert-Butyl Alcohol; and 2) the draft SAB review of EPA's Framework for Assessing Biogenic Carbon Dioxide Emissions from Stationary Sources (2014). The Board will also receive briefings on SAB projects and future topics from EPA program staff.

OFFICE OF RESEARCH AND DEVELOPMENT

Science at EPA provides the foundation for credible decision-making to safeguard human health and ecosystems from environmental pollutants. The Office of Research and Development (ORD) is the scientific research arm of EPA, whose leading-edge research helps provide the solid underpinning of science and technology for the Agency.

ORD supports six research programs that identify the most pressing environmental health research needs with input from EPA offices, partners and stakeholders. Strategic Research Action Plans outline the research under way in the programs. The research is conducted by ORD's three national laboratories, four national centers, and two offices located in 14 facilities across the country and in Washington, D.C.

This week ORD and OW, in partnership with the Association of State Drinking Water Administrators, is hosting the 15th *Annual EPA Drinking Water Workshop: Small Systems Challenges and Solutions*, in Cincinnati, OH. Richard Yamada is attending the workshop. ORD scientists and managers will be delivering several technical presentations and moderating sessions.

Chris Robbins and Jennifer Orme-Zavaleta are in Stowe, VT this week at the 2018 Environmental Council of the States (ECOS) Silver Anniversary Meeting where ORD is showcasing two methods for easily accessing research products (EPA Research website and enhanced Science Inventory). The Environmental Research Institute of the States (ERIS) Board will also meet this week. Agenda topics include feedback on the near final draft ORD Strategic Plan, example proposed outputs to address state needs, and next steps for state engagement in ORD's strategic research planning.

List of the 75 PFAS Selected for Initial Testing by EPA and NTP Released on the EPA CompTox Dashboard

EPA and NTP are collaborating to develop a risk-based approach for conducting PFAS toxicity testing to facilitate PFAS human health assessments. A targeted subset of 75 PFAS were selected for initial testing based on multiple factors including cross-Agency interest, compounds within targeted categories, structural diversity, exposure considerations, procurability and testability, and availability of existing toxicity data.

More information can be found at <https://intranet.ord.epa.gov/ord/news/2018/08/28/weekly-compass-august-28-2018>



OFFICE OF INSPECTOR GENERAL

U.S. Environmental Protection Agency

NOTICE OF SCHEDULED REPORT ISSUANCE

The OIG expects to issue a final report for its audit about the EPA Administrator's Protective Service Detail on September 4, 2018 (morning). This report will be accompanied by a podcast.

U.S. EPA Office of Inspector General
1200 Pennsylvania Avenue, NW (2410T)
Washington, DC 20460
www.epa.gov/oig

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U.S. ENVIRONMENTAL PROTECTION AGENCY
NEWS RELEASE
WWW.EPA.GOV/NEWSROOM

EPA Gears Up for Final PFAS Community Engagement Event in Leavenworth, Kansas Next Week

WASHINGTON (August 30, 2018) – Yesterday, the U.S. Environmental Protection Agency (EPA) released the full agenda for the final per- and polyfluoroalkyl substances (PFAS) community engagement event. The event will take place on September 5, 2018, at the Riverfront Community Center, 123 S. Esplanade, Leavenworth, Kansas. The event is open to the public and includes presentations from EPA experts about PFAS, research, and an overview of PFAS in Kansas, Missouri, Iowa and Nebraska. Starting at 3:30 p.m. CST, EPA will host a community listening session to hear directly from Heartland communities, states, local governments, and tribes about their experiences with PFAS.

“EPA has received more than 60,000 public comments regarding PFAS since our National Summit in Washington, D.C., in May. The Leavenworth event is EPA’s fifth and final community engagement event held in locations across the country. While the Heartland states have seen fewer cases of PFAS contamination compared to other parts of the country, we are looking forward to hearing from our stakeholders and community members as we work together to manage PFAS,” said EPA Regional Administrator Jim Gulliford.

WORKFLOW

(This is not an exhaustive list)

LRMS:

DJM-115-205, HR6550 FedRAMP Authorization Act Federal Risk and Authorization Management Program Reform Act of 2018 (8/27) – no comment.

MJR-115-330, DOI Letter on S664 Navajo Utah Water Rights Settlement Act of 2017 (8/29)

CMB-115-222, OSTP Report on Interagency Funding for Activities of the National Science and Technology Council Report (831)

QFRS:

House Energy and Commerce Budget Hearing QFRs—CLEARED

Senate Appropriations Committee Budget Hearing QFRs— In process

Environment & Public Works Committee Hearing QFRs—In process

Briefings:

Briefing Request: Fall 2018 (TBD), Shimkus' (H) staff requested a bipartisan briefing on the tire crumb report.

Briefing Request: August 29 – within next 2 weeks, Homeland Security and Government Affairs (S) requested a briefing on Computers for Learning Program at EPA.—COMPLETE

Congressional:

Technical Assistance

- HEC/HSST— Chemical Assessment Improvement Act
- CBO— Chemical Assessment Improvement Act
- CRS— Chesapeake Bay 2019 Funding Outlays

Message

From: Doa, Maria [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=99E502A905374B0B890DB9B22E18D92E-MDOA02]
Sent: 8/21/2018 3:52:10 PM
To: Feeley, Drew (Robert) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=abae82aa36da4d3383eae19a8efa683c-Feeley, Rob]
Subject: RE: Hi
Attachments: EPA-SAB-18-003 Unsigned.pdf

Maria J. Doa, Ph.D.
Office of Science Policy
Office of Research and Development
Environmental Protection Agency
Tel. 202.566.0718

From: Feeley, Drew (Robert)
Sent: Tuesday, August 21, 2018 11:48 AM
To: Doa, Maria <Doa.Maria@epa.gov>
Subject: Hi



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON D.C. 20460

OFFICE OF THE ADMINISTRATOR
SCIENCE ADVISORY BOARD

June 28, 2018

EPA-SAB-18-003

The Honorable E. Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Subject: Science Advisory Board (SAB) Consideration of EPA Proposed Rule:
Strengthening Transparency in Regulatory Science

Dear Administrator Pruitt:

As part of its statutory duties, the Environmental Protection Agency's (EPA) Science Advisory Board (SAB) met on May 31, 2018, to discuss whether to review the adequacy of the scientific and technical basis of the planned regulatory actions in the 2017 Unified Regulatory Agendas, as authorized by section (c) of the Environmental Research, Development and Demonstration Authorization Act of 1978 (ERDDAA). During this meeting, the SAB also discussed possible review of the science supporting the proposed rule *Strengthening Transparency in Regulatory Science (RIN 2080-AA14)*. The SAB found that the proposed rule deals with issues of scientific practice and proposes constraints to the use of scientific studies in particular contexts. The proposed rule solicits comment on a number of scientific issues that would benefit from expert advice and comment from the SAB.

Initiating the Screening Review

The ERDDAA requires the EPA to make available to the SAB proposed criteria documents, standards, limitations, or regulations provided to any other Federal agency for formal review and comment, together with the relevant scientific and technical information upon which the proposed action is based. The SAB may then make available to the Administrator, within the time specified by the Administrator, its advice and comments on the adequacy of the scientific and technical basis of the proposed action.

EPA's usual process is to provide the SAB with information about the publication of the semi-annual regulatory agenda and to provide descriptions of major planned actions that are not yet proposed but appear in the semi-annual regulatory agenda, augmented to include proposed regulations, criteria documents, standards, or limitations that are expected to undergo interagency review¹. The EPA's descriptions provide available information regarding the science that is informing these agency actions.

SAB members and the SAB Staff Office were made aware of a proposed rule entitled *Strengthening Transparency in Regulatory Science* (RIN 2080-AA14) through an April 25, 2018, press event and an April 30, 2018, *Federal Register* notice, as well as news articles. The EPA announced the proposed rulemaking with a 30-day public comment period. SAB members had no information regarding the timeline for finalizing the rule and the proposed rule was not identified as a major action in either of the Spring 2017 or Fall 2017 semi-annual Regulatory Agendas.

An SAB Work Group met by teleconference on May 3, 2018, to discuss its recommendations on major planned actions in the Fall 2017 semi-annual regulatory agenda and included the proposed rule *Strengthening Transparency in Regulatory Science* (RIN 2080-AA14) as part of the discussion. That Work Group provided the SAB with a memorandum² documenting the discussions and recommending that the proposed rule merits review by the SAB. Subsequently the SAB became aware that the proposed rule was included in the Spring 2018 semi-annual Regulatory Agenda published on May 9, 2018. A second *Federal Register* notice was published May 25, 2018 extending the public comment period to August 16, 2018 and announcing a public hearing to be held in Washington, DC on July 17, 2018.

The SAB Should Consider the Proposed Rule's Scientific and Technical Basis

During the meeting on the May 31, 2018, the full SAB agreed with the Work Group that the proposed rule merits review by the Board and discussed the scientific issues that should be considered. For example, there are important scientific considerations needed for transparency. The Board recognizes that the long-term trend in most scientific fields is for authors to supply public access to data and analytic methods after scientific findings are published. Such transparency may help to ensure scientific integrity and facilitate robust analysis, as well as allowing supplementary lines of knowledge to be developed from the same data. Some fields of science are moving faster than others in the direction of transparency. For studies published many years ago, it may not be feasible to deliver public access to data and analytic methods.

¹ EPA Memorandum: Coordination with the Science Advisory Board Regarding Proposed Criteria Documents, Standards, Limitations and Regulations. (See page 9 of Attachment A in the Fall 2017 memorandum available at: [https://yosemite.epa.gov/sab/sabproduct.nsf/9263940BB05B89A885258291006AC017/\\$File/WG_Memo_Fall17_RegRevAitsABC.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/9263940BB05B89A885258291006AC017/$File/WG_Memo_Fall17_RegRevAitsABC.pdf))

² Preparations for Chartered Science Advisory Board (SAB) Discussions of Proposed Rule: Strengthening Transparency in Regulatory Science RIN (2080-AA14) Available at: [https://yosemite.epa.gov/sab/sabproduct.nsf/E21FFAE956B548258525828C00808BB7/\\$File/WkGrp_memo_2080-AA14_final_05132018.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/E21FFAE956B548258525828C00808BB7/$File/WkGrp_memo_2080-AA14_final_05132018.pdf)

There are also sensitive situations where public access may infringe on legitimate confidentiality and privacy interests, and where exceptions from complete public access may be appropriate. In addition, there are considerations associated with the cost and effort that would be required in making large and complex existing datasets available within Institutional Review Board requirements, including the issue of who would be responsible for implementing the rule and any additional obligations. Thus, the development of guidelines and rules in this arena requires careful collaboration with the scientific community.

Although the proposed rule cites several valuable publications that support enhanced transparency, the precise design of the proposed rule appears to have been developed without a public process for soliciting input specifically from the scientific community. Nor does the preamble to the rule describe precisely how the proposal builds on previous efforts to promote transparency such as the Information Quality Act and EPA's Information Quality Guidelines.

Other key science issues associated with the proposed rule to increase transparency that may benefit from SAB advice are:

- Considerations related to the use of epidemiologic studies and methods that are based on confidential human subject data while also providing transparency in the underlying data;
- Consideration of the multiple existing methods to assess the validity of prior epidemiologic studies, that do not provide public access to data and analytic methods;
- Consideration of the selection of dose-response models and factors such as biological plausibility, mode of action, or mechanism of action to identify the most scientifically-appropriate model(s);
- The need to clearly define crucial sound science concepts such as “replication” and “validation”; and
- The identification and evaluation of mechanisms used by expert panels in vetting science that do not engage in reanalysis of original data with original methods, yet entail a rigorous review process that goes beyond typical journal peer review procedures.

The SAB recognizes that the EPA has already received thousands of public comments in addition to the large number of comments from grassroots write-in campaigns. The SAB urges the Agency to fully consider those comments and request, receive, and review scientific advice from the SAB before revising the proposed rule.

The EPA has long been a leader in the use of science in decision-making. The proposed rule, *Strengthening Transparency in Regulatory Science*, would focus on the EPA's foundational policies related to the use of science in rulemaking and policy development. Further, the rule has the potential to influence policy development and guidance across the government. The SAB looks forward to defining the set of scientific and technical issues upon which the proposed rule rests and developing a charge for an SAB work group to provide advice and comments on those issues.

On behalf of the SAB, I thank you for the opportunity to support EPA through consideration of the science supporting actions in the Agency's regulatory agenda.

Sincerely,

/s/

Dr. Michael Honeycutt, Chair
Science Advisory Board

Enclosure
(1) Roster of SAB Members

NOTICE

This report has been written as part of the activities of the EPA Science Advisory Board (SAB), a public advisory group providing extramural scientific information and advice to the Administrator and other officials of the Environmental Protection Agency. The SAB is structured to provide balanced, expert assessment of scientific matters related to problems facing the Agency. This report has not been reviewed for approval by the Agency and, hence, the contents of this report do not necessarily represent the views and policies of the Environmental Protection Agency, nor of other agencies in the Executive Branch of the Federal government, nor does mention of trade names of commercial products constitute a recommendation for use. Reports of the SAB are posted on the EPA Web site at <http://www.epa.gov/sab>

U.S. Environmental Protection Agency Science Advisory Board

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Dr. Sue Marty, Senior Toxicology Leader, Toxicology & Environmental Research, The Dow Chemical Company, Midland, MI

Dr. Kristina D. Mena, Associate Professor, Epidemiology, Human Genetics and Environmental Sciences, School of Public Health, University of Texas Health Science Center at Houston, El Paso, TX

Dr. Surabi Menon, Director of Research, ClimateWorks Foundation, San Francisco, CA

Mr. Robert W. Merritt, Independent Consultant, Houston, TX

Dr. Larry Monroe, Independent Consultant, Braselton, GA

Dr. Thomas F. Parkerton, Senior Environmental Associate, Toxicology & Environmental Science Division, ExxonMobil Biomedical Science, Houston, TX

Dr. Robert Phalen, Professor, Air Pollution Health Effects Laboratory, Medicine, Department of

Medicine, University of California-Irvine, Irvine, CA

Mr. Richard L. Poirot, Independent Consultant, Burlington, VT

Dr. Kenneth M. Portier, Independent Consultant, Athens, GA

Dr. Robert Puls, Owner/Principal, Robert Puls Environmental Consulting, Hilton Head Island, SC

Dr. Kenneth Ramos³, Associate Vice-President of Precision Health Sciences and Professor of Medicine, Arizona Health Sciences Center, University of Arizona, Tucson, AZ

Dr. Tara L. Sabo-Attwood, Associate Professor and Chair, Department of Environmental and Global Health, College of Public Health and Health Professionals, University of Florida, Gainesville, FL

Dr. William Schlesinger, President Emeritus, Cary Institute of Ecosystem Studies, Millbrook, NY

Dr. Anne Smith, Managing Director, NERA Economic Consulting, Washington, DC

Dr. Richard Smith, Professor, Department of Statistics and Operations Research, University of North Carolina, Chapel Hill, NC

Dr. Jay Turner, Associate Professor and Vice Dean for Education, Department of Energy, Environmental and Chemical Engineering, School of Engineering & Applied Science, Washington University, St. Louis, MO

Dr. Jeanne M. VanBriesen, Duquesne Light Company Professor of Civil and Environmental Engineering, and Director, Center for Water Quality in Urban Environmental Systems (Water-QUEST), Department of Civil and Environmental Engineering, Carnegie Mellon University, Pittsburgh, PA

Dr. Donald vanderVaart, Independent Consultant, Raleigh, NC

Dr. Kimberly White, Senior Director, Chemical Products and Technology Division, American Chemistry Council, Washington, DC

Dr. Peter J. Wilcoxon, Laura J. and L. Douglas Meredith Professor for Teaching Excellence, Director, Center for Environmental Policy and Administration, The Maxwell School, Syracuse University, Syracuse, NY

Dr. S. Stanley Young, Chief Executive Officer, CGStat, Raleigh, NC

SCIENCE ADVISORY BOARD STAFF

Mr. Thomas Carpenter, Designated Federal Officer, U.S. Environmental Protection Agency, Science Advisory Board Washington, DC

³ Dr. Ramos did not attend the May 31-June 1 meeting.

Message

From: Ringel, Aaron [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1654BDC951284A6D899A418A89FB0ABF-RINGEL, AAR]
Sent: 8/20/2018 7:52:58 PM
To: Feeley, Drew (Robert) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=abae82aa36da4d3383eae19a8efa683c-Feeley, Rob]
CC: Moody, Christina [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=813eb7f985c845eaa91edc10c6e9a914-CMoody]
Subject: 4/26 QFR Follow up from OMB
Attachments: 07-25-2018 - EPA_HEC_4.26_QFR_Pruitt_Responses_OMB V1 - EPA V2.docx

Drew, see attached.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Would like to get this closed out this week finally!

Aaron E. Ringel

Deputy Associate Administrator

Office of Congressional & Intergovernmental Relations

U.S. Environmental Protection Agency

Personal Matters / Ex. 6

Ringel.Aaron@epa.gov

From: Morning Energy [morningenergy@politico.com]
Sent: 8/17/2018 2:04:52 PM
To: Feeley, Drew (Robert) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=abae82aa36da4d3383eae19a8efa683c-Feeley, Rob]
Subject: POLITICO's Morning Energy: What's happening with WOTUS — Keystone fight far from over — Wheeler to Michigan

By Kelsey Tamborrino | 08/17/2018 10:00 AM EDT

With help from Annie Snider, Ben Lefebvre and Alex Guillén

A COUNTRY DIVIDED: Which streams and wetlands are protected under the Clean Water Act? As of Thursday, the answer depends on where you're standing. After a South Carolina District Court [ruling](#) overturning the Trump administration's attempted delay of the Obama administration's Waters of the U.S. rule for failing to offer the public a proper opportunity to comment, the 2015 rule is now officially on the books in 26 states — but not in the other 24 states where other district court injunctions are in place.

"**The agencies refused to engage** in a substantive reevaluation of the definition of the 'waters of the United States' even though the legal effect of the Suspension Rule is that the definition of 'waters of the United States' ceases to be the definition under the WOTUS rule and reverts to the definition under the 1980s regulation," Judge David Norton wrote in Thursday's ruling. "An illusory opportunity to comment is no opportunity at all."

Environmental groups hailed the decision, with Jon Devine of the Natural Resources Defense Council calling it a "sharp rebuke to the Trump administration." Meanwhile, Zippy Duvall, president of the American Farm Bureau Federation, one of the fiercest critics of the Obama-era rule, called on the Trump administration to "to take immediate steps to limit the impact of this dangerous court decision."

But will it hold? The Justice Department is reviewing the decision, a spokesman said, and players on both sides broadly expect an appeal. Separately, EPA said in a statement it and the Army Corps of Engineers "will review the order as the agencies work to determine next steps." But the fate of the delay rule could ultimately become moot if the federal district judge in Texas grants a nationwide injunction request.

And don't forget, this is just the warm-up fight. The battle royale will be over the Trump administration's rule to repeal the 2015 rule, which the agency has not finalized. Geoff Gisler, the Southern Environmental Law Center attorney who brought yesterday's case on behalf of local environmental groups, argued that Thursday's South Carolina court decision has implications for that fight and "should give the agencies pause" as they move forward. "The agencies just aren't telling the public what they're doing," he argued. "What this decision said was you can't just have a comment period, it has to be a meaningful comment period."

WE MADE IT TO FRIDAY! I'm your host, Kelsey Tamborrino. Simon and Company's Jen Covino named the eight senators who formerly served as mayors: [Dianne Feinstein](#), [Cory Booker](#), [Jim Inhofe](#), [Bob Corker](#), [Bernie Sanders](#), [Tim Kaine](#), [Mike Enzi](#) and [Bob Menendez](#). For today: Who are the three current House lawmakers who previously served as ambassadors? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseyam](#), [@Morning_Energy](#) and [@POLITICOPro](#).

FAR FROM OVER: A federal judge's order directing the State Department to conduct a supplemental environmental review for the Keystone XL pipeline's updated path through Nebraska is another setback in nearly a decade full of them for TransCanada. The order is sure to stall construction of the pipeline for months, Pro's Ben Lefebvre [reports](#). Plaintiffs in the case said the review would involve public hearings in Nebraska and consultations with Native American tribes whose land the pipeline would traverse.

Pipeline opponents are hoping to use the new review to push for a broader study of the project, Ben reports. Doug Hayes, a lawyer for the Sierra Club and one of the plaintiffs in the case, said the judge's ruling that the "entire pipeline remains interrelated and requires one [environmental review] to understand the functioning of the entire unit" could open the door for them to seek a new review for the pipeline's entire route. "If they are going back to do a supplemental environmental impact statement, our position is they would need to evaluate all the new impacts of the pipeline," Hayes said. "That would take definitely months."

WHERE'S WHEELER? Acting EPA Administrator Andrew Wheeler travels to Michigan today to discuss issues plaguing the Great Lakes and meet with GOP Rep. Tim Walberg, a member of the Energy and Commerce Committee, and officials from the Michigan Department of Natural Resources and Department of Environmental Quality.

WHEELER DELIVERS MESSAGE ON HARASSMENT: Wheeler reaffirmed EPA's policy against harassment in a memorandum sent to staff Thursday. Wheeler wrote that he expects "all individuals working at the EPA — employees, supervisors and non-employees — will not engage in or be subjected to unlawful and prohibited harassment."

MURKOWSKI: FERC NOMINEE SHOULD GO LITMUS TEST-FREE: Senate Energy Chairman Lisa Murkowski wouldn't comment on POLITICO's report that DOE's Bernard McNamee will be nominated to FERC. But the Alaska Republican said she believes that the next nominee shouldn't face a litmus test over their view of the Trump administration's efforts to prop up coal and nuclear power plants, Pro's Darius Dixon reports. "I worry that this is going to be viewed as, 'If you don't commit to voting against or voting for, then you're not going to have my support,'" Murkowski said. "That's not the way that we should be selecting commissioners for the FERC."

GET YOUR COMMENTS IN: American Petroleum Institute's Frank Macchiarola reiterated the need for Renewable Fuel Standard reform on a call with reporters Thursday outlining the group's comments for EPA's proposed biofuel blending requirements for the coming year under the RFS. "Very simply what we want is an end to this program by 2022," he said. Macchiarola said API is "willing to compromise" on certain policies like a waiver for summertime sales of E15, but only if the program will sunset by 2022. "The problem again is that the ethanol industry has been dug in to not doing anything," Macchiarola said. He added legislation is being drafted to reform the program in both chambers, but noted challenges and lengthy debate are likely ahead. Comments are due today on EPA's proposed volumes, with the final rule due to be released by Nov. 30.

— **API is also looking at the proposed plan** by EPA and the Department of Transportation to freeze fuel efficiency standards for cars and trucks. "It is a very complex proposal to a very complex program," Macchiarola said. "We will say that we appreciate the administration's relooking at CAFE in the light of changing energy market realities."

SECRET'S OUT: Thursday was the last day for comments on EPA's proposed "secret science" rule, which would ban the use of studies that don't publicly disclose all their data. Getting their thoughts in under the wire, Sens. Sheldon Whitehouse, Brian Schatz, Maggie Hassan, Jeff Merkley, Ed Markey, Tammy Duckworth, Kirsten Gillibrand, Tom Carper and Kamala Harris banded together to make their opposition known. "The proposed rule is illegal because it is arbitrary and capricious," they write, adding that "the proposed rule is illegal because it is the result of an effective delegation of rulemaking authority to private interests."

The American Chemistry Council, meanwhile, applauded the proposal in its comment Thursday. "EPA's proposal codifies an important good governance principle — that government agencies should be as transparent as possible, within the bounds of the law, about scientific information relied upon and the justifications for the significant regulatory decisions they make." Still, the trade association also highlighted that implementation of the plan would benefit from better historical context and applicability, and that greater clarity is required on key definitions and regulatory text, among other recommendations.

FIGHTING FIRE WITH A FEDERAL PLAN: The Agriculture Department released a new, aggressive approach to fighting wildfires Thursday, with proactive steps. During a bipartisan press conference, Secretary Sonny Perdue unveiled a plan that emphasizes increased collaboration with states, implementation of mapping and remote sensing tools, and management practices such as prescribed burns and timber sales, Pro's Liz Crampton reports. Though Perdue brushed aside specific questions on climate change's role, he said Interior Secretary Ryan Zinke is on board with the plan and noted further details and costs will be forthcoming from the U.S. Forest Service. "Really a lot of people ... when you talk about climate change, they want to talk about what the causes are," Perdue said. "[What] we're trying to talk about is the impact."

FERC RESTARTS PART OF PIPELINE: FERC modified a stop work order for the Mountain Valley Pipeline this week, allowing construction to restart for around 77 miles of the pipeline's West Virginia route with the exception of a 7-mile area surrounding the Weston and Gauley Bridge Turnpike Bridge Trail, MVP said Thursday. However, the company said about half of its construction workforce has been released due to continued delays. MVP said that it "remains committed to the earliest possible in-service date," though it noted that is now expected to arrive during the fourth quarter of 2019.

GREENS CALL FOR FERC REVIEW: The Southern Environmental Law Center and Appalachian Mountain Advocates petitioned the 4th U.S. Circuit Court of Appeals on Thursday to review FERC's approval of the Atlantic Coast Pipeline. The suit was filed on behalf of 13 other conservation groups. "FERC ordered the ACP construction stopped because the 4th Circuit determined that permits were issued without proper scrutiny," SELC attorney Greg Buppert said in a statement. "On the very same day, FERC rejected a rehearing request in which the conservation groups asserted that it also rushed through its decision to permit a pipeline that we don't need." The 4th Circuit last week vacated two permits issued for the project by the U.S. Fish and Wildlife Service and the National Park Service.

GREENS FILE FOIA SUIT: Environmental group Friends of the Earth filed a lawsuit Thursday against the Interior Department for lack of response to a Freedom of Information Act request. The lawsuit seeks to compel DOI to produce documents related to senior members of the department and the industries they regulate. The suit points to David Bernhardt's work as a lawyer and lobbyist for oil and gas companies and Vincent DeVito's time working as an energy industry representative. Friends of the Earth is being represented by the law firm Meyer Glitzenstein & Eubanks LLP.

AD-ING IT UP: Ahead of Wyoming's gubernatorial primaries Tuesday, a partnership between the Wyoming Wildlife Federation and Rocky Mountain Farmers Union, dubbed the Wyoming Conservation Legacy, will launch a five-figure ad campaign asking candidates to support conservation. The campaign will begin on Saturday and run through Aug. 21 with full-page print ads in the Casper Star Tribune and the Wyoming Tribune Eagle, separate radio buys on Wyoming Public Media programs, and digital ads across the state. See the ads here.

MAIL CALL! ON THE FARM: The National Biodiesel Board sent a letter to farm bill conference committee lawmakers reiterating its support for the inclusion of biodiesel programs in the five-year bill.

STAR-STUDDERED SUMMIT: Attendees of the Global Climate Action Summit in San Francisco in September will hear from former White House officials, including former Vice President Al Gore and Secretary of State John Kerry. The summit announced Thursday night that new delegates will join the event, including Executive Secretary of the United Nations Framework Convention on Climate Change Patricia Espinosa and U.N. Special Envoy for Climate Action Michael Bloomberg. Actor Alec Baldwin and chimpanzee expert Jane Goodall will also attend.

GO NUCLEAR: The American Nuclear Society this week launched a nuclear science educational program for middle schoolers that covers topics like fission and fusion, and detecting radiation. The "Navigating Nuclear:"

Energizing Our World" program is aligned with the Next Generation Science Standards framework, which provides an evidence-based foundation for scientific research.

MOVER, SHAKERS: Jack Cramton, policy adviser for Sen. Bill Cassidy (R-La.), will start Monday as a legislative affairs adviser at the Department of Energy's Congressional and Intergovernmental Affairs Office.

QUICK HITS

- "U.S. energy chief applauds Mexico's plan to end fuel imports," Reuters.
- "Trump's CO2 rule is coming, and industries wonder who's next," E&E News.
- "California fire risk won't abate until November, U.S. warns," Bloomberg.
- "Zinke said he would never sell public land. But Interior is considering it," The Washington Post.
- "Elon Musk confronts a fateful tweet and an 'excruciating' year," The New York Times.

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Subject: POLITICO's Morning Energy: Trump's not-so simple math — Judge orders update of Keystone XL study — States' rights get tricky over water

By Kelsey Tamborrino | 08/16/2018 10:00 AM EDT

With help from Ben Lefebvre and Annie Snider

A NUMBERS GAME: The White House's plan to rewrite the Obama administration's cornerstone climate rule for power plants may be based on some fuzzy math, setting up a potentially brutal court battle for the Justice Department. The legally risky strategy, POLITICO's Alex Guillén and Emily Holden report, calls for redoing the calculations of how much the rule would cost and who would benefit.

EPA's proposed replacement plan is expected to be unveiled any day now and will likely downplay a key feature of the Obama-era greenhouse rule: the money saved by using less electricity. Some expect EPA will also count only a fraction of the improvements in public health from reduced smog and soot pollution, Alex and Emily report, and it won't consider any benefits from slowing climate change outside the U.S.

In doing so, President Donald Trump's EPA will argue that the Obama-era rule had higher costs and fewer benefits than previously stated, a change to help improve the comparison when it unveils its own proposal. The Obama administration had estimated that the benefits from its rule would outstrip the costs by \$26 billion to \$45 billion by 2030, though supporters of that version say those net benefits could be even higher now.

In fact, math could become vital to the success or failure of several of Trump's rules. Critics say similarly fuzzy math underlies other Trump administration proposals to reverse or stymie action on climate change, such as a recent plan by EPA and the Department of Transportation to halt a planned tightening of fuel efficiency standards for cars and trucks. "They are cooking the books on technical analysis to try to justify preconceived conclusions that these regulations are bad," said David Doniger, senior strategic director of the Natural Resources Defense Council's climate program who was influential in the Obama EPA's crafting of the original rule. Read more.

GOOD THURSDAY MORNING! I'm your host, Kelsey Tamborrino. Many of you knew, but ClearView Energy Partners' Mitch Huber was the first to correctly answer that it's Loretta and Linda Sanchez who were the first and only sisters to serve simultaneously in Congress. For today: How many current senators are also former mayors? Bonus points if you can name them. Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](https://twitter.com/kelseytam), [@Morning_Energy](https://twitter.com/Morning_Energy) and [@POLITICOPro](https://twitter.com/POLITICOPro).

DO THAT AGAIN: The Trump administration was ordered Wednesday to update an environmental study of the Keystone XL pipeline despite its contention the alternative route picked last year by Nebraska regulators didn't require an updated environmental impact statement. Instead, Judge Brian Morris of the U.S. District Court for Montana ordered the State Department to go back to its 2014 EIS to take into account the new route, Alex reports for Pros. Morris said the State Department still has a "meaningful opportunity to evaluate" the alternative route that was picked in Nebraska. However, he declined environmentalists' request that Trump's permit be vacated.

STATES' RIGHTS GET TRICKY OVER WATER: The roiling debate over states' right to halt development projects over their water quality effects heads to the Senate Environment and Public Works Committee today. The panel will hold a legislative hearing on a bill from Chairman John Barrasso, S. 3303 (115), the Water Quality Certification Improvement Act of 2018. The measure would limit states' authority under Section 401 of the Clean Water Act, which requires states to certify that projects won't harm their water quality standards before the federal government issues a permit. In recent years a handful of Democratic-led states have used that authority to block natural gas pipelines. Republican Maryland Gov. Larry Hogan is also using the authority to try to force Exelon Corp. to clean up nutrient pollution flowing through one of its dams that harms the Chesapeake Bay.

GOP lawmakers have backed earlier efforts to limit or remove the authority, including in this year's House Appropriations bill, House and Senate energy legislation and standalone bills. But the Western Governors Association, which represents a number of Republican governors, has come out in opposition to reining in states' authority, and the Environmental Council of the States warned Wednesday that such moves could have unintended consequences. **If you go:** The hearing begins at 10 a.m. in 406 Dirksen.

NOMINATIONS ON TAP: Two nominees to the Energy Department will testify before the Senate Energy and Natural Resources Committee this morning: Bill Cooper to be general counsel and Lane Genatowski for director of the Advanced Research Projects Agency-Energy, which the Trump administration has sought to eliminate.

Who are they? Cooper serves as senior counsel and director of the McConnell Valdés law firm. Prior to that he was a subcommittee staff director for House Natural Resources, with a particular policy focus on the National Environmental Policy Act that the White House has sought to change up. Cooper also previously was president of the Center for Liquefied Natural Gas and counsel to the House Energy and Commerce Committee. His credentials have earned him the backing of industry groups, including the Air-Conditioning, Heating, and Refrigeration Institute, the Interstate Natural Gas Association of America, and the Electric Reliability Coordinating Council.

— **Genatowski hails from** a banking background. He's managing partner in investments at Dividend Advisors, a firm he founded in 2012. Genatowski before that was an energy investment banker at JPMorgan Chase and other Wall Street giants. His résumé lines up with others in Rick Perry's Energy Department, which has focused more on businessmen with energy-sector experience. **If you go:** The hearing kicks off at 10 a.m. in 366 Dirksen.

RESCISSIONS — TAKE TWO: The Trump administration is once again weighing a so-called rescissions package to force Congress to roll back federal spending, with just weeks to go until the next budget deadline, Pro's Sarah Ferris and John Bresnahan report. Senate Appropriations Chairman Richard Shelby said Wednesday he was told about the idea: "I heard they were thinking about one, but I haven't seen it." But a Senate leadership source said OMB chief Mick Mulvaney has already begun moving ahead on the effort.

FLORIDA DRILLING BITS: To drill or not to drill off the Florida coast is a question once again heating up the state's election campaigns. Gwen Graham, the current front-runner in the Democratic gubernatorial primary field, sent out a message titled "Drilling 75 Miles off Florida's Beaches is Insane" after a POLITICO report highlighted the idea as one that oil industry lobbyists are pushing to have included in the Interior Department's upcoming offshore drilling plan. Sunshine State Democratic Sen. Bill Nelson took the story to the Senate floor to try to whack current Gov. Rick Scott, who is running to replace him and earlier this year got help from Trump on the drilling issue.

REMEMBRANCE OF TARBALLS PAST: Former Florida Lt. Gov. Jeff Kottkamp is catching heat for his statement at a pro-drilling rally in Tallahassee that oil from the Deepwater Horizon spill "didn't even reach the shores of Florida." The remark, as first reported in the Florida Phoenix, may have surprised those who

remember former Gov. Charlie Crist squatting over oil-stained beaches in Pensacola. Kottkamp, who was speaking as co-chair of Explore Offshore Florida, went on to say "tarballs are naturally occurring." Earthjustice staff attorney Bradley Marshall called it "absurd to claim the Deepwater Horizon spill did not reach Florida" given the damage the state experienced. "That's why so many of Florida's leaders, regardless of what political party they belong to, have been so protective of our coasts all these years," he said in a statement.

WHAT'S THE RISK? EPA acting Administrator Andrew Wheeler delivered a video address at the National Environmental Justice Advisory Council's public meeting in Boston on Wednesday where he acknowledged the need for improvement in risk communication and noted the agency owes it to the American public to improve. "How well or how poorly we communicate risk disproportionately impacts those on the lower end of the socioeconomic ladder," he said. "We have fallen short in the past from our response to the Gold King Mine in Colorado, to the Kanawha River in West Virginia, to Flint, Mich." Watch it here.

CASE CLOSED: Interior's Office of Inspector General has closed its investigation into an allegation made against National Park Service officials. The claim centered around references to human-caused climate change in a report on sea-level rise and storm surge projections that officials allegedly sought to remove. The watchdog office said Wednesday that shortly after it opened the investigation, the NPS "published the report with all original references to human-caused climate change," thus prompting it to close its probe.

'SECRET' AGENTS: Comments are due today on EPA's proposed "scientific transparency" rule, which would ban the use of studies that don't publicly disclose all their data. Experts have said that plan could prohibit the use of vital studies on how pollutants affect human health because researchers typically promise to keep subjects' health information confidential. But conservatives have long accused the agency of relying on "secret science," prompting former Administrator Scott Pruitt to unveil the proposal in the name of transparency.

Under the wire: With the comment deadline approaching, nearly 80 groups, including the Union of Concerned Scientists, Sierra Club and Moms Clean Air Force, signed onto a letter Wednesday calling on Wheeler to withdraw the so-called secret science proposal. Separately, 66 health and medical organizations sent comments to Wheeler in opposition to the proposed rule. That's not to say there isn't support for the proposal; several comments posted Wednesday echoed the refrain that scientists should be required to "show your work."

AFTER THE STORM: The nonprofit Environmental Integrity Project released a new report today leading up to the one-year anniversary of Hurricane Harvey's widespread destruction in Texas. Using records from the Texas Commission on Environmental Quality, the report looks at air pollution during and after the storm as well as the government's and industries' response, and makes recommendations for the future. The "Preparing for the Next Storm" report found that all five of the largest industrial air pollution releases during Harvey were in the Houston area — with the Magellan Galena Park Terminal the biggest polluter, releasing 2,472,402 pounds of air pollution.

Harvey also triggered the release of at least 8.3 million pounds of unpermitted air pollution from petrochemical plants, according to the EIP report. And in the nine months after Harvey, "18 companies revised their air pollution reports to the state to erase 1.7 million pounds of unpermitted emissions during Hurricane Harvey," the report found.

LET'S MAKE A DEAL: Trump might soon strike a deal with Mexico on NAFTA, even as a trade war plays out with the rest of the world, POLITICO's Megan Cassella reports. The apparent turnaround after months of stalemate arrives as Mexican Secretary of Economy Ildefonso Guajardo visited Washington on Wednesday to hammer out some of the most contentious issues on NAFTA. "Both U.S. and Mexican officials now say they could be on the verge of announcing a preliminary agreement on everything from complicated automotive rules to environmental regulations by the end of August," Megan reports.

CATCHING FIRE: Agriculture Secretary Sonny Perdue will join Senate Energy ranking member [Maria Cantwell](#) and Sens. [Steve Daines](#) and [Ron Wyden](#) to unveil a new federal plan for addressing wildfires. Earlier this year, Perdue and Cantwell [worked together](#) on a commitment to use unmanned aircraft technology this fire season, and the Washington Democrat will likely highlight similar tools and technology today. Watch the [livestream here](#).

POLL: CLIMATE A FACTOR FOR MOST: Slightly more than half (53 percent) of U.S. voters believe climate change is a factor in making the ongoing California wildfires more extreme, while 39 percent say it's not, according to a new poll from Quinnipiac University [released](#) Wednesday. Sixty-four percent of voters said they think the country is not doing enough to address climate change, the national poll found. Eighteen percent of voters say the U.S. is doing enough to address the issue, while 10 percent say the U.S. is doing too much.

— **On a related note**, the Natural Resources Defense Council launched [a tracker](#) this week to see where every state's lawmakers stand on offshore drilling.

QUICK HITS

— "A coal company and Interior teamed up to save a power plant," [E&E News](#).

— "FirstEnergy Solutions takes next step toward closure of nuclear power plants," [Akron Business Journal](#).

— "A rising concern? After straws, balloons get more scrutiny," [The Associated Press](#).

— "Will Washington State Voters Make History on Climate Change?" [The Atlantic](#).

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U.S. ENVIRONMENTAL PROTECTION AGENCY
NEWS RELEASE
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EPA Administrator Pruitt Proposes Rule To Strengthen Science Used In EPA Regulations

WASHINGTON (April 24, 2018) - Today, U.S. Environmental Protection Agency (EPA) Administrator Scott Pruitt signed a proposed rule to strengthen the science used in regulations issued by EPA. The rule will ensure that the regulatory science underlying Agency actions is fully transparent, and that underlying scientific information is publicly available in a manner sufficient for independent validation.

“The era of secret science at EPA is coming to an end,” **said EPA Administrator Scott Pruitt.** “The ability to test, authenticate, and reproduce scientific findings is vital for the integrity of rulemaking process. Americans deserve to assess the legitimacy of the science underpinning EPA decisions that may impact their lives.”

This proposed rule is in line with the scientific community’s moves toward increased data sharing to address the “replication crisis”—a growing recognition that a significant proportion of published research may not be reproducible. The proposal is consistent with data access requirements for major scientific journals like *Science*, *Nature*, and *Proceedings of the National Academy of Sciences* as well as recommendations from the Bipartisan Policy Center’s *Science for Policy Project* and the Administrative Conference of the United States’ *Science in the Administrative Process Project*.

The proposed rule builds upon President Trump’s executive orders on regulatory reform and energy independence:

- » **Executive Order 13777**, issued in March 2017, provides that regulatory reform efforts shall attempt to identify “those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard of reproducibility.”
- » **Executive Order 13783**, also issued in March 2017, provides that “It is the policy of the United States that necessary and appropriate environmental regulations comply with the law, are of greater benefit than cost, when permissible, achieve environmental improvements for the American people, and are developed through transparent processes that employ the best available peer-reviewed science and economics.”

Chairman Lamar Smith (R-TX): “Administrator Pruitt’s announcement ensures that data will be secret no more. For too long, the EPA has issued rules and regulations based on data that has been withheld from the American people. It’s likely that in the past, the data did not justify all regulations. Today, Administrator Pruitt rightfully is changing business as usual and putting a stop to hidden agendas.”

Senator Mike Rounds (R-SD): “Sound, reliable science is vital to helping us make important policy decisions that impact the health of American families and their livelihoods. Inserting new levels of transparency in the EPA rulemaking process will help make the agency more accountable to the American people and help everyone understand the impact of EPA’s decisions. Today’s directive is a significant step toward making sure these decisions are not made behind closed doors with information accessible only to those writing the regulations, but rather in the full view of those who will be affected.”

Dr. Edward J. Calabrese, Professor, Environmental Health Sciences, University of Massachusetts: “The proposal represents a major scientific step forward by recognizing the widespread occurrence of non-linear dose responses in toxicology and epidemiology for chemicals and radiation and the need to incorporate such data in the risk assessment process.”

Dr. Louis Anthony (Tony) Cox, President, Cox Associates; Member, National Academy of Engineering; and Editor-in-Chief of the Journal *Risk Analysis*: “I believe that transparency and independent reproducibility of analyses and conclusions are bedrock principles of sound science. Some commentators have expressed concerns that making the data behind policy conclusions and recommendations accessible and transparent might threaten the privacy of individuals. But this concern can be fully met by applying current privacy-protection techniques for data analysis. These techniques have been developed and used successfully for years at the Census Bureau and elsewhere. Thus, we can have the scientific benefits of accessible data while protecting individual privacy.”

Dr. Jason Scott Johnston, Director, Olin Law and Economics Program, University of Virginia School of Law: “EPA’s proposed rule, Strengthening Transparency in Regulatory

Science, is badly needed “Best practice among peer-edited scientific journals is to require that data and statistical routines used in published papers be posted online and/or made publicly available. To apply the same standards to research that EPA says justify regulations affecting billions of dollars in economic activity and millions of human lives is essential for those regulations to truly be scientifically based.”

Bruno Pigott, Commissioner of the Indiana Department of Environmental Management (IDEM): “IDEM supports transparency in rulemaking. Good, sound science leads to better regulations.”

Dr. George Wolff, Principal Scientist, Air Improvement Resource, Inc., and former Chairman of EPA's Clean Air Scientific Advisory Committee (1992 - 1996): “In the development of regulations based on environmental studies, numerous subjective assumptions and choices must be made regarding the selection of data and models that have a profound impact on the strength of any statistical associations and even whether the associations are positive or negative. The appropriateness of the assumptions and choices are not adequately evaluated in the standard peer review process. That is why it is essential that the data and models be placed in the public domain for a more rigorous evaluation by qualified experts. The proposed regulation, Strengthening Transparency in Regulatory Science, will provide an opportunity for such evaluations.”

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Subject: POLITICO's Morning Energy: Pruitt's watershed moment — 'Secret science' policy coming — Blankenship slipping

By Kelsey Tamborrino | 04/24/2018 10:00 AM EDT

With help from Emily Holden

PRUITT'S WATERSHED MOMENT: EPA Administrator Scott Pruitt is approaching his two separate House committee hearings this week with sagging support on the hill. The make-or-break moment is approaching as once-stalwart backers begin to express concern about the controversies that have swirled in recent weeks. Republican Sen. Jim Inhofe (Okla.) - perhaps Pruitt's staunchest ally in Congress - told Pro's Anthony Adragna he thinks it's "appropriate to have a hearing in so far as any accusation having to do with his office is concerned," and he cited a report in The New York Times detailing a sweetheart deal Pruitt received on an Oklahoma City home previously owned by a lobbyist.

Sen. Shelley Moore Capito (R-W.Va.) also thought Thursday's hearings before the House Energy and Commerce and Appropriations committees would prove pivotal for Pruitt's long-term future in the administration. "It's really important," Capito said. "He's going to have to answer some tough questions. I'm sure they'll be put to him by both sides and we'll see what his response is."

And Sen. John Boozman joined his two Republican colleagues in supporting hearings by the Environment and Public Works Committee. Meanwhile, sources told Bloomberg that administration officials privately cautioned lawmakers and other conservative allies to pump the brakes on their defenses of Pruitt.

Publicly, however, the White House stands firm in its commitment to Pruitt. Press secretary Sarah Huckabee Sanders told reporters the administration is "continuing to review a number of the reports" about Pruitt, but noted the EPA chief "has done a good job of implementing the president's policies," particularly on deregulation and energy dominance. White House legislative affairs director Marc Short was more direct earlier Monday: "I think Scott Pruitt is doing a great job and we look forward to keeping him there as EPA administrator," he told MSNBC.

More to come? Earlier Monday, five senior congressional Democrats asked House Oversight Chairman Trey Gowdy to obtain further documents and hold hearings after obtaining new records they say raise "troubling" new questions about Pruitt's security expenditures. EPW ranking member Tom Carper told Anthony he had a good conversation with Gowdy regarding Pruitt, but said there was no formal bipartisan agreement to work together on an investigation. "I just gave him plenty of encouragement that he's doing the right thing," Carper said. Read more.

WELCOME TO TUESDAY! I'm your host Kelsey Tamborrino. Congrats to the Nuclear Energy Institute's Robert Powers, who was first to correctly guess Mary Walker was the first woman to receive the Medal of Honor. For today: Who is the last former senator to appear on a U.S. postage stamp? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter @kelseytam, @Morning_Energy and @POLITICOPro.

POLITICO's Ben White is bringing Morning Money to the Milken Institute Global Conference to provide coverage of the day's events and evening happenings. The newsletter will run April 29 - May 2. **Sign up to keep up with your daily conference coverage.**

BLINDED WITH SCIENCE: EPA's Pruitt is expected to unveil his new science policy that restricts the agency from relying on research that doesn't make public all its available data, a source briefed on the announcement tells Pro's Emily Holden. The proposed rule, which the agency submitted to the White House for review last week, will mirror legislation from House Science Chairman Lamar Smith (R-Texas).

Pruitt argues the change will bolster transparency, but scientists and health advocates say it is an effort to constrain rulemaking. The rollout has been delayed as agency officials tried to determine how to treat industry research used to evaluate the safety of pesticides and toxic chemicals, as Pro's Annie Snider reported last week. While academic studies often can't disclose data that includes personal health records, corporations can't reveal proprietary information either.

SCIENTISTS REACT: Close to 1,000 scientists signed onto a letter to Pruitt Monday, calling on the administrator to reverse course on his plans to revise how the agency considers outside research. "EPA can only adequately protect our air and water and keep us safe from harmful chemicals if it takes full advantage of the wealth of scientific research that is available to the agency," write the scientists, including some former EPA career staffers. Read it here.

A BLANK SLIP: GOP establishment attacks on former coal baron Don Blankenship seem to be taking hold, POLITICO's Alex Isenstadt reports via new polling. With the West Virginia Senate primary a mere two weeks away, a poll out Monday found Blankenship falling behind his more mainstream rivals, GOP Rep. Evan Jenkins and state Attorney General Patrick Morrisey. The poll found Morrisey leading with 24 percent, followed by Jenkins with 20 percent, and Blankenship trailing with 12 percent.

National Republicans have scrambled to intervene in the race, concerned that a Blankenship primary win would destroy their prospects of defeating Democratic Sen. Joe Manchin in November. Blankenship, who spent a year in jail following the deadly 2010 explosion at his Upper Big Branch Mine, has poured nearly \$2 million of his own money into a slash-and-burn style campaign savaging Jenkins and Morrisey as pawns of the establishment, Alex writes. Blankenship has also used the Senate run as a path to clear his name. So far, much of his campaign has been geared toward portraying himself as the casualty of the Obama-era Justice Department, which he says was bent on locking him up.

The new survey, which was conducted April 17-April 19 and has a margin of error of 4.9 percentage points, precedes a GOP debate today, and another that will be hosted by Fox News next week for a nationally televised audience. Read more.

SPECIAL ELECTION TODAY: Arizona voters will decide today who will pick up the seat left vacant by Rep. Trent Franks' departure in the state's 8th District. While neither candidate highlights specific environmental issues on her campaign website, Republican Debbie Lesko and Democrat Hiral Tipirneni have markedly different takes on climate change. Tipirneni's site says she believes "climate change is real and that we need to reduce carbon emissions." Meanwhile, Lesko said during a debate earlier this year that "certainly not the majority" of climate change is human-caused. "I think it just goes through cycles and it has to do a lot with the sun. So no, I'm not a global warming proponent," she said.

RULES TO MEET ON COLUMBIA RIVER BILL: The House Rules Committee will meet at 5 p.m. to formulate a rule on H.R. 3144 (115), which would void the environmental impact statement process for altering the hydropower system along the Columbia and Snake rivers. Earlier this month, the 9th Circuit Court of Appeals sided with the state of Oregon, the Nez Perce tribe and conservation groups, ruling that dam operations on the Columbia and Snake rivers must forgo hydropower production during key times of the year to protect

endangered salmon. An environmental impact statement for the system has been the subject of congressional fights, with Rep. Cathy McMorris Rodgers filing the legislation to void that process.

COAL ASH HEARING TODAY: EPA holds a public hearing today on its proposal to roll back the Obama-era regulation for the cleanup and disposal of coal ash. The hearing will begin at 9 a.m. in Arlington, Va., where there will be three sessions: 9 a.m. until noon; another beginning at 1 p.m. and ending at 4 p.m.; and a final session beginning at 5 p.m. and ending at 8 p.m.

PROMISES, PROMISES: Senate spending leaders vowed to restore chamber-wide debate on amendments to individual appropriations bills, Pro's Sarah Ferris and Kaitlyn Burton report. It's a risky move, ME readers may recall, considering how Democrats blocked a largely noncontroversial Energy and Water bill in 2016 because of a proposed amendment on Iran, and in 2015, House Republicans' Interior-Environment bill was tripped up by an unrelated rider on the Confederate flag. But Senate Appropriations Chairman Richard Shelby and his Democratic counterpart Patrick Leahy told committee members in a closed-door meeting Monday that leadership has agreed to allow amendments on the Senate floor for every individual spending bill. And the two have met with Majority Leader Mitch McConnell and Minority Leader Chuck Schumer in recent days about opening up the floor for debate on spending bills.

JUDGE: ENBRIDGE PIPELINE SHOULD STICK TO PLAN : An administrative law judge recommended on Monday that Minnesota regulators approve Enbridge Energy's proposal for replacing its Line 3 crude oil pipeline. But the court stipulated that the pipeline should follow the existing route, not the company's preferred route, which would carry Canadian tar sands crude from Alberta across areas in the Mississippi River, the Associated Press reports. Administrative Law Judge Ann O'Reilly's recommendation to the Public Utilities Commission sets up further disputes, "because the existing line crosses two Ojibwe reservations where tribal governments have made it clear that they won't consent and want the old line removed altogether." Read more.

A METHANE TO THE MADNESS: The comment period on the Bureau of Land Management's proposal to reverse the Methane Waste Prevention Rule ended Monday, drawing thousands of far-reaching comments. The left-leaning Center for Western Priorities analyzed a random sample of 2,000 comments, it said, finding 99.8 percent of them were opposed to the proposal. The Independent Petroleum Association of America and Western Energy Alliance meanwhile submitted joint comments applauding the move. "We were pleased to see workable changes are being considered to the rule that more accurately represent the scope of power and authority given to the BLM for regulating this type of activity," IPAA's Dan Naatz said in a statement. And, E2, an affiliate of the Natural Resources Defense Council, sent a letter to Interior Secretary Ryan Zinke on Monday, expressing its opposition to BLM's proposal. Close to 400 businesses signed onto that letter, which calls BLM's proposal "a net negative for the American public." Read it here.

MAIL CALL! IN HONOR OF NATIONAL PARKS WEEK: League of Conservation Voters organized 122 groups - including the American Civil Liberties Union and the Human Rights Campaign - in a letter to members of Congress opposing the administration's moves on public lands. National monuments "have helped make our public lands more inclusive," the letter states, before calling on lawmakers to "reject any legislation that would limit the president's authority under the Antiquities Act or codify any unlawful rollbacks of existing national monuments." Read it here.

FOR YOUR RADAR: The House will vote to overhaul the 1988 Stafford Act this week, Pro's Budget & Appropriations team reports. The three-decade-old bill is the main piece of legislation overseeing federal disaster-relief efforts, with proposed tweaks that include new incentives to build "smarter and stronger to better withstand disasters in the future," according to GOP Majority Leader Kevin McCarthy's office. That could equate to big changes on how states spend disaster relief money.

ICYMI: ZINKE DRAWS OLIVER'S IRE: The Interior secretary got the full treatment from HBO host John Oliver on "Last Week Tonight" on Sunday. Oliver hit Zinke for referring to himself as a geologist and said he

"has a real flair for creative license." Of course, Zinke is not the first to draw scrutiny from the HBO host. A judge recently dismissed a defamation lawsuit brought by coal magnate Bob Murray against Oliver, who referred to Murray as a "geriatric Dr. Evil." Watch the Zinke video [here](#).

STATE NEWS - CUOMO INTRODUCES PLASTIC BAG BILL: New York Gov. Andrew Cuomo introduced a [bill](#) Monday to ban the use of plastic bags throughout the state, Pro New York's Danielle Muoio reports. The legislation - a long-sought promise from Cuomo - would give the state Department of Environmental Conservation jurisdiction over all matters concerning plastic bags and recycling, but comes with caveats that left some environmental advocates saying it isn't far-reaching enough. Read [more](#).

QUICK HITS

- Trump administration official says it's a "top priority" to improve American weather forecasting model, [The Washington Post](#).
- Sources: Arrested Chevron workers could face treason charge in Venezuela, [Reuters](#).
- Trump likes coal, but that doesn't mean he's hostile to wind, [Associated Press](#).
- Halliburton writes off investment in crisis-hit Venezuela, [Financial Times](#).
- U.S. coal bailout review slows after Trump faces pushback, [Bloomberg](#).

THAT'S ALL FOR ME!

To view online:

<https://www.politico.com/newsletters/morning-energy/2018/04/24/pruitts-watershed-moment-180878>

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Message

From: Yamada, Richard (Yujiro) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4C34A1E0345E4D26B361B5031430639D-YAMADA, YUJ]
Sent: 5/10/2018 9:17:21 PM
To: Feeley, Drew (Robert) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=abae82aa36da4d3383eae19a8efa683c-Feeley, Rob]
CC: Lovell, Will (William) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3b150bb6ade640f68d744fadcb83a73e-Lovell, Wil]
Subject: FW: Draft FR notice
Attachments: FRN for Hearing and to Extend the Comment Period for Proposed science transp rule.docx; ATT00001.htm

FYI -

From: Sinks, Tom
Sent: Thursday, May 10, 2018 5:16 PM
To: Woods, Clint <woods.clint@epa.gov>
Cc: Siciliano, CarolAnn <Siciliano.CarolAnn@epa.gov>; Sinks, Tom <Sinks.Tom@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Orme-Zavaleta, Jennifer <Orme-Zavaleta.Jennifer@epa.gov>; Cawiezell, Thomas <Cawiezell.Thomas@epa.gov>; Hawkins, CherylA <Hawkins.CherylA@epa.gov>
Subject: FW: Draft FR notice

Deliberative Process / Ex. 5

Tom

From: Siciliano, CarolAnn
Sent: Thursday, May 10, 2018 4:48 PM
To: Sinks, Tom <Sinks.Tom@epa.gov>
Subject: Fwd: Draft FR notice

Carol Ann Siciliano
Associate General Counsel
Cross-Cutting Issues Law Office
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-5489
siciliano.carolann@epa.gov

Begin forwarded message:

From: "Sheppard, Tracy" <Sheppard.Tracy@epa.gov>
Date: May 10, 2018 at 3:52:24 PM EDT

To: "Siciliano, CarolAnn" <Siciliano.CarolAnn@epa.gov>, "Simons, Andrew" <Simons.Andrew@epa.gov>
Subject: RE: Draft FR notice

Attorney Client / Ex. 5

Tracy L. Sheppard, Attorney-Advisor,
US EPA, Office of General Counsel
Sheppard.Tracy@epa.gov
(202) 564-1305 office
(202) 839-2038 mobile

CONFIDENTIAL communication for internal deliberations only; may contain deliberative, attorney-client, attorney work product, or otherwise privileged material; do not distribute outside EPA or DOJ.

From: Siciliano, CarolAnn
Sent: Thursday, May 10, 2018 3:44 PM
To: Sheppard, Tracy <Sheppard.Tracy@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>
Subject: RE: Draft FR notice

Attorney Client / Ex. 5

Carol Ann Siciliano
Associate General Counsel
Cross-Cutting Issues Law Office
Office of General Counsel
U.S. Environmental Protection Agency
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siciliano.carolann@epa.gov

From: Sheppard, Tracy
Sent: Thursday, May 10, 2018 3:43 PM
To: Siciliano, CarolAnn <Siciliano.CarolAnn@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>
Subject: RE: Draft FR notice

Attorney Client / Ex. 5

Tracy L. Sheppard, Attorney-Advisor,
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(202) 564-1305 office
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From: Siciliano, CarolAnn
Sent: Thursday, May 10, 2018 3:30 PM

To: Sheppard, Tracy <Sheppard.Tracy@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>

Subject: RE: Draft FR notice

Attorney Client / Ex. 5

Carol Ann Siciliano
Associate General Counsel
Cross-Cutting Issues Law Office
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U.S. Environmental Protection Agency
(202) 564-5489
siciliano.carolann@epa.gov

From: Sheppard, Tracy

Sent: Thursday, May 10, 2018 3:27 PM

To: Siciliano, CarolAnn <Siciliano.CarolAnn@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>

Subject: Draft FR notice

Attorney Client / Ex. 5

Tracy L. Sheppard, Attorney-Advisor,
US EPA, Office of General Counsel
Sheppard.Tracy@epa.gov
(202) 564-1305 office
(202) 839-2038 mobile

CONFIDENTIAL communication for internal deliberations only; may contain deliberative, attorney-client, attorney work product, or otherwise privileged material; do not distribute outside EPA or DOJ.

From: Morning Energy [morningenergy@politico.com]
Sent: 5/10/2018 2:13:53 PM
To: Feeley, Drew (Robert) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=abae82aa36da4d3383eae19a8efa683c-Feeley, Rob]
Subject: POLITICO's Morning Energy, presented by Anheuser-Busch: Zinke's turn on the Hill — EPA watchdog: Aides slow to turn over docs — House to take up Yucca bill today

By Kelsey Tamborrino | 05/10/2018 10:00 AM EDT

With help from Eric Wolff, Alex Guillén, Anthony Adragna and Jennifer Haberkorn

ZINKE HEADS TO THE HILL: Interior Secretary Ryan Zinke faces his Senate appropriators today to discuss his department's budget request for fiscal 2019. Expect Democrats to bring up familiar topics, such as his plans to reorganize the department and last year's decision to shrink national monuments in Utah. Subcommittee ranking member Tom Udall plans to tell Zinke that until courts weigh in on whether his move was legal, "I believe that moving forward with land management plans that will open these iconic areas to development is reckless."

Subcommittee Chair Lisa Murkowski may be interested in hearing more about Zinke's plans for oil and gas development in Alaska, after Interior kicked off its environmental review of potential drilling in part of the Arctic National Wildlife Refuge thanks to language she got included in last year's tax bill. And Sen. Lamar Alexander, another member of the subcommittee, can follow up on the maintenance backlog for the national parks, an issue the two discussed when Zinke visited Tennessee last week.

Ahead of the hearing, the Coalition to Protect America's National Parks is sending a letter to Zinke, with signatures from current and former employees of the National Park Service, calling on him to support permanent reauthorization of the Land and Water Conservation Fund, an issue with support in both parties.

If you go: The Senate Appropriations Interior-Environment Subcommittee hearing begins at 9:30 a.m. in 138 Dirksen.

- But first: Zinke will join Agriculture Secretary Sonny Perdue at USDA headquarters for an 8 a.m. briefing on the forecast for this year's wildfire season.

WATCHDOG: EPA AIDES SLOW TO SEND DOCS: EPA's internal watchdog complained last year that Administrator Scott Pruitt's aides were taking their sweet time handing over documents related to a probe into their boss' travels, new emails show. Although the standoff between the inspector general's office and Pruitt's staff was resolved a month later, the incident illustrates tensions between political appointees and career oversight officials that developed early on. The IG's office is in the process of conducting multiple reviews into Pruitt's actions.

The new emails, released under a FOIA request from California's Justice Department, show the IG's office was seeking information for its probe of Pruitt's frequent travel to Oklahoma on EPA business, Pro's Alex Guillén reports. That same probe was later expanded to include a wider swath of Pruitt's travel practices, including his first-class flights that cost more than \$100,000. (The investigation is slated to be completed this summer.)

At the time, the agency's assistant inspector general for audits, Kevin Christensen, wrote to a top career official in EPA's finance office to warn of a "potential situation" with the travel audit just two weeks after it began, the emails show. Christensen flagged messages showing Pruitt's chief of staff Ryan Jackson was

"screening" documents before releasing them to the Office of Inspector General. "This does not fit the definition of unfettered access or comply with the Administrator memo on access and providing information to the OIG," Christensen wrote to Jeanne Conklin, EPA's controller who oversees financial management and reporting. "When we are denied access to information until approved for release, it raises the question as to what is being withheld and approved for release."

The emails spotlight concerns about the lack of transparency atop the agency since Pruitt joined. And other emails released to California's Department of Justice also show career ethics officials warning Pruitt's aides about accepting industry awards and attending political events, further exemplifying internal tensions as Pruitt's external problems grow. Read more from Alex [here](#).

- Related reporting: Amid ongoing scrutiny, Pruitt met with industry representatives Wednesday, where a reporter asked if he still had the confidence of the White House. Pruitt said: "I think they've spoken very clearly," Bloomberg [reports](#).

WELCOME TO THURSDAY! I'm your host Kelsey Tamborrino. Bracewell's Frank Maisano was the first to correctly identify Detroit as home to the first paved roadway. Woodward Avenue carries the designation M-1 for its status as the first place to pour a 1-mile patch of concrete roadway. For today: Name the state first lady who simultaneously served as a member of the House. Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](#), [@Morning_Energy](#) and [@POLITICOPro](#).

TRUMP EXTENDS OLIVE BRANCH: President Donald Trump called coal baron Don Blankenship Wednesday to exchange pleasantries and offer up congratulations for waging his campaign, POLITICO's Alex Isenstadt reports. The conversation was described as straightforward, polite and cordial, and comes days after Trump tweeted that voters shouldn't vote for Blankenship in the West Virginia Republican primary. Blankenship also published an [open letter](#) to Trump on Wednesday that in part blamed the president for his loss. "Your interference in the West Virginia election displayed a lack of understanding of the likely outcome of the upcoming general election," Blankenship wrote. But he ended with a note of optimism: "I look forward to meeting with you in the near future." Alex reported the president had also reached out to Rep. [Evan Jenkins](#), who also lost in Tuesday's primary, but had yet to connect with the Republican party's winner, Patrick Morrisey, as of Wednesday evening. Read [more](#).

**** A message from Anheuser-Busch:** Anheuser-Busch announced that America's leading brewer has placed an order for up to 800 hydrogen-electric powered semi-trucks. The zero-emission trucks will be able to travel between 500 and 1,200 miles. Anheuser-Busch aims to convert its entire long-haul dedicated fleet to renewable powered trucks by 2025. [Learn more](#). **

HOUSE GOES NUCLEAR: The House will take up the long-awaited [H.R. 3053 \(115\)](#), the "Nuclear Waste Policy Amendments Act of 2018," for consideration today, with votes expected between 10:45 a.m. and 11:45 a.m. The bipartisan legislation would update how the U.S. handles nuclear waste and promote development of the Yucca Mountain repository in Nevada, among other provisions. The legislation is expected to pass, although it will face a much shakier Senate reception with Sen. [Dean Heller](#) facing a tough re-election race this year. Rep. [John Shimkus](#), who introduced the comprehensive nuclear waste package, previously said he hadn't had any recent talks with Senate counterparts about potentially moving the bill across the Capitol. Still, its appearance today is a victory for Shimkus: [Greg Walden](#) told reporters this week that Shimkus had sent handwritten letters to the homes of every member of leadership during recess encouraging the bill to come up, praising his tenacity.

COURT SAYS CRA IS A-OK: A federal judge in Alaska Wednesday [dismissed](#) an environmental group's lawsuit that called the Congressional Review Act unconstitutional. The Center for Biological Diversity specifically challenged the CRA [resolution](#) successfully passed by Congress last spring that nullified an Interior Department rule regarding hunting in Alaska wildlife refuges.

Judge Sharon Gleason of the U.S. District Court for Alaska, an Obama appointee, noted that both the CRA itself and this specific resolution were passed by both chambers and signed by the president, fulfilling the constitutional requirements for creating laws. Other parts of CBD's argument similarly failed to hold water. "The Court finds that even construing all the facts in favor of CBD, CBD's constitutional claims fail to adequately allege a plausible basis for relief," Gleason wrote.

SUNNY CALIFORNIA: The California Energy Commission voted unanimously Wednesday to require solar panels be installed for all newly built single-family homes and multifamily buildings less than three stories starting in 2020. A CEC study found that installing solar would increase home prices, but that would be more than offset by lower utility bills, according to the Los Angeles Times. The move has been anticipated for years and was supported by much of the home building industry. More from the LAT [here](#).

STEELWORKERS SAY YES TO RFS: The United Steelworkers are supporting Trump's recent decisions on the Renewable Fuel Standard, which include expanding sales of 15 percent ethanol fuels and having EPA and USDA workout some kind of program for biofuel credits on exported ethanol. "While it will continue to review the details, [USW] supports a deal brokered by the President that appears to address the long-running conflict between ethanol producers and oil refiners over federal biofuels mandates," the union said in a press release.

HOUSE GOP DROPS RESCISSIONS PACKAGE: House Majority Leader [Kevin McCarthy](#) unveiled the chamber's batch of [spending cuts](#) Wednesday. Similar to the White House's [request](#), the package makes cuts to Energy Department loan guarantee programs for clean energy and vehicle technologies. The bill is expected to [go directly to the House floor for a vote](#), Pro's Sarah Ferris [reports](#). Senate GOP leaders have said they will consider the bill if and when it passes the House.

MEANWHILE IN BONN: Things aren't going as planned for the second week of climate talks in Bonn, Germany, punting further discussions to another meeting in September. The U.N. Framework Convention on Climate Change [said](#) Wednesday that there would be an additional meeting from Sept. 3-8 in Bangkok amid a stalemate centered in part around clarity on climate finance between developed and developing countries. The new date underscores the pressure negotiators are under to advance talks enough for ministers to strike a deal later this year at the COP24 in Katowice, Poland. "We need to resolve differences on finance, accounting and transparency," Alden Meyer of the Union of Concerned Scientists [told POLITICO Europe's](#) Kalina Oroschakoff.

CALVERT: EPA-INTERIOR COMING SHORTLY: Rep. [Ken Calvert](#), who oversees EPA and Interior on the Appropriations Committee, told ME to expect their fiscal 2019 bill "pretty soon" as work's going well. "We're working on final details now," he said. As for the perennial question, yes, Calvert expects policy riders to be in play: "There's always riders," he quipped.

AUTOMAKERS WANT MORE FUEL EFFICIENCY: The Alliance of Automobile Manufacturers and the Global Automakers, trade associations which together represent most of the automakers who sell cars in the U.S., will tell Trump that they most definitely want increases in fuel efficiency standards, contra that zero increase preference of the Department of Transportation. They also want the federal government to work out a single national standard with California, rather than face either a bifurcated market or a long legal battle. "Automakers are deeply committed to increased fuel economy and safety measures that meet the needs of our customers, and we expect to share the importance of government policies that provide certainty to the auto sector, continue to reduce greenhouse gas emissions, reflect what consumers will buy and result in a national policy that includes California," the two groups said in a statement.

FOLLOW THE MONEY: The Environmental Integrity Project released a database Wednesday of political contributions from companies and conservative organizations that met with Pruitt between Feb. 21, 2017, and April 13 of this year. The database was compiled via EPA calendars, FEC reports and data from the Center for Responsive Politics. See it [here](#).

SAVE THE DATE: BLM scheduled meetings to discuss its plans for an environmental review of planned oil and gas leases in ANWR. Several will be held in Alaska, including one each in Fairbanks and Anchorage on May 29 and May 30, respectively. Another meeting is scheduled for Washington D.C. on June 15. For those who can't make the hearings, BLM plans to live stream the Fairbanks and Anchorage dates.

MAIL CALL! ISN'T IT IRONIC? Six Democratic senators wrote to Office of Information and Regulatory Affairs Administrator Neomi Rao on the office's review and evaluation process for EPA's proposed "secret science" proposal to ban the use of studies that don't publicly disclose all their data. "The review process and rollout of this rule appears to have been rushed and secretive - which is particularly ironic for a proposal that purportedly aims to improve agency transparency and decision-making processes," they write.

Separately, bipartisan Reps. Ryan Costello and Paul Tonko sent a letter to the National Academy of Sciences asking for its input on the proposed rule, which was discussed when Pruitt testified before the House E&C Committee. Read the letter here.

Of course, Pruitt seems pleased with the proposal: Bloomberg's Ari Natter snapped a photo of new signs at EPA that tout the agency's "Strengthening Transparency in Regulatory Science."

ROCK STARS: Access Fund and American Alpine Club are sponsoring their annual "Climb the Hill" event today with professional rock climbers and outdoor recreation advocacy groups, who will hit the Hill today to talk outdoor recreation and public lands. Sen. Maria Cantwell will attend a reception with the group at 3 p.m. in 385 Russell. High-profile members of the rock-climbing community and executives from REI, Patagonia and The North Face will attend.

QUICK HITS

- Pair of investor-pushed resolutions pass at Kinder Morgan, Axios.
- Saudis pledge to "mitigate" loss of Iranian oil exports from U.S. sanctions. But crude prices rise anyway, The Washington Post.
- Emails: Perdue's donors, agency coordinated on biomass, E&E News.
- Hugh Hewitt used his MSNBC gig to praise efforts to weaken a law that his firm's client is accused of violating, Media Matters.
- Emails show Heritage Foundation offered Pruitt flights, hotel, and talking points for its conference, ThinkProgress.

THAT'S ALL FOR ME!

**** A message from Anheuser-Busch:** Anheuser-Busch announced that America's leading brewer has placed an order for up to 800 hydrogen-electric powered semi-trucks from the pioneer in hydrogen-electric renewable technology, Nikola Motor Company. The zero-emission trucks - which will be able to travel between 500 and 1,200 miles and be refilled within 20 minutes, reducing idle time - are expected to be integrated into Anheuser-Busch's dedicated fleet beginning in 2020.

Through this agreement Anheuser-Busch aims to convert its entire long-haul dedicated fleet to renewable powered trucks by 2025.

"At Anheuser-Busch we're continuously searching for ways to improve sustainability across our entire value chain and drive our industry forward," said Michel Doukeris, CEO of Anheuser-Busch. "The transport industry

is one that is ripe for innovative solutions and Nikola is leading the way with hydrogen-electric, zero-emission capabilities. We are very excited by the possibilities our partnership with them can offer."

[Learn more.](#) **

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<https://www.politico.com/newsletters/morning-energy/2018/05/10/zinkes-turn-on-the-hill-209472>

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Sent: 5/10/2018 12:57:26 PM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]; Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]; Feeley, Drew (Robert) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=abae82aa36da4d3383eae19a8efa683c-Feeley, Rob]; Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]; Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]
Subject: RE: FYI - Data Op-Eds

Thanks Clint we can send some of these around as in case you missed it's.

From: Woods, Clint
Sent: Thursday, May 10, 2018 7:15 AM
To: Bolen, Brittany <bolen.brittany@epa.gov>; Feeley, Drew (Robert) <Feeley.Drew@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>
Subject: FYI - Data Op-Eds

<https://www.washingtonexaminer.com/opinion/op-eds/the-epas-new-secret-science-rule-makes-sense-from-a-risk-assessment-perspective>

Begin forwarded message:

From: "Byers, Dan" <DByers@USChamber.com>
Date: May 9, 2018 at 9:24:54 AM EDT
To: "woods.clint@epa.gov" <woods.clint@epa.gov>
Subject: RealClear

FYI

https://www.realclearpolicy.com/articles/2018/05/09/epa_finally_takes_fishbowl_approach_to_regulation.html

From: Morning Energy [morningenergy@politico.com]
Sent: 5/9/2018 2:08:47 PM
To: Feeley, Drew (Robert) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=abae82aa36da4d3383eae19a8efa683c-Feeley, Rob]
Subject: POLITICO's Morning Energy, presented by Anheuser-Busch: Returning to the battlefield over California car rules — Pruitt screens friendly questions — Art of the RFS deal

By Kelsey Tamborrino | 05/09/2018 10:00 AM EDT

With help from Anthony Adragna

IF AT FIRST YOU DON'T SUCCEED: The looming fight between the Trump administration and the state of California over climate change rules for cars will cover some familiar terrain - where the liberal state and its environmentalist allies have won major legal battles in the past, Pro's Alex Guillén reports. The White House strategy appears to mirror the approach that automakers and dealers unsuccessfully pursued more than a decade ago in an attempt to reverse California's strict limits on vehicles' greenhouse gas emissions.

This again? California - which has a waiver under the Clean Air Act to enact stricter standards - is hoping things play out the same way it did the last time around, when two federal district courts upheld its rules, which other states also can choose to follow. "It's sort of déjà vu because it's going to be basically round two," said Kevin Leske, who was an assistant attorney general in Vermont in 2007 when the state fought off an industry lawsuit seeking to block the greenhouse gas rules for cars.

The details: At issue is the interplay between the long-standing Corporate Average Fuel Economy standards that were established under the 1975 Energy Policy and Conservation Act, and the relatively new emissions standards enforced nationally for the first time under the Obama administration. The Trump administration is expected to nullify the waiver granted to California and then try to circumvent any questions by arguing that EPCA preempts California from enforcing its auto emissions standards - essentially the same argument automakers and dealers deployed in multiple lawsuits over a decade ago.

But keep in mind: That strategy fell short the first time around. A U.S. district court judge in California concluded that greenhouse gas standards are too different from fuel economy regulations to fall under EPCA's "related to" preemption language. However, the cases were never appealed after a larger political deal was reached on the car rules, but advocates of the Trump administration's approach say they hope to take the issue to a higher court this time around. Read [more](#).

GOOD WEDNESDAY MORNING! I'm your host Kelsey Tamborrino. Andrew Fasoli of the American Chemistry Council was the first to correctly guess that former President Ronald Reagan was first to watch a major league baseball game from the dugout, at a Baltimore Orioles game. For today: In what city did the nation's first paved roadway appear? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](#), [@Morning_Energy](#) and [@POLITICOPro](#).

BEGS THE QUESTION: EPA Administrator Scott Pruitt and his staff sought extensive control over questions that could be asked to the administrator when he toured the country speaking to industry groups, POLITICO's Anthony Adragna and Emily Holden report. Even seemingly friendly questions got axed by the agency, like, "How often do you get back to Oklahoma?" That question was crossed off a proposed list of questions without an explanation ahead of Pruitt's appearance in December at an event in Iowa, internal emails made public by the Sierra Club through a public records lawsuit show. (At the time, EPA's inspector general was already investigating Pruitt's frequent trips back home.) The emails offer new insight into EPA staff's desires to limit

access by independent journalists, pre-screen questions from friendly interviewers and coordinate Pruitt's message with lobbyists ahead of gatherings with conservative or industry groups. Read the details [here](#).

WHAT HAPPENED AT THAT BIOFUELS POWWOW: President Donald Trump appears to have brokered a deal in the long-running fight between ethanol producers and oil refiners over federal biofuels mandates. At a White House meeting Tuesday with Pruitt, Agriculture Secretary Sonny Perdue and a few Republican senators. Trump reiterated his pledge to allow 15 percent ethanol fuels year-round and rejected a price cap on biofuel credits, called Renewable Identification Numbers. Those are both big wins for the corn crowd, Pro's Eric Wolff [reports](#). But ethanol producers grouched about another proposed aspect of the deal that would lower compliance costs for refiners: allowing ethanol exports to qualify for RINs. Refiners, meanwhile, were wary of a separate proposal for EPA to require large refiners to take on the ethanol-blending requirements for which it issued dozens of waivers to smaller refiners.

IT'S KIND OF INFRASTRUCTURE WEEK: Close to none of Trump's big-ticket [proposals](#) to streamline environmental rules made it into the first major bill infrastructure bill introduced in Congress since his election. America's Water Infrastructure Act of 2018, as the Senate bill is called, is so far the "most significant step lawmakers have taken to help fulfill the president's marquee campaign promise to revitalize the country's transportation arteries," Pro's Annie Snider writes. The bill's authors purposefully set their sights on bipartisanship in light of the fast-approaching midterm elections. "We focus on the 80 percent where we have general agreement, and we're going to get something done," said Sen. [Tom Carper](#) (D-Del.), the top Democrat on the panel and a cosponsor of the measure. Read [more](#).

MORRISEY WINS: West Virginia Attorney General Patrick Morrisey came out on top Tuesday, clinching the Republican nomination to take on Democratic Sen. [Joe Manchin](#) come November. Coal baron Don Blankenship, who was running a controversial campaign against the Republican establishment and Mitch McConnell, ended up in third place in the most-watched race of the night. Blankenship, who was convicted in 2015 of conspiring to skirt mine standards after 29 miners were killed at Massey Energy's Upper Big Branch facility, only [received](#) 19.9 percent of the vote to Morrisey's 34.9 percent, and 29.3 percent for Rep. [Evan Jenkins](#), the other major candidate in the race. Read more on all of Tuesday's primaries [here](#).

NEW DETAILS IN PRUITT SAGA: EPA worked closely with groups such as the Heartland Institute and the CO2 Coalition - both of which dispute the scientific consensus on climate change - when planning Pruitt's proposed "red team, blue team" debate over climate science, The New York Times [reports](#) via new documents released by the NRDC. The emails show that EPA scientists were not involved in the discussion, and that political aides continued to work on the idea even after White House chief of staff John Kelly tried to squelch the plan, according to the Times. In a separate report, the Times got a hold of documents that shed new light on the day security officers, fearing for Pruitt's safety, smashed down his condo door. Read it [here](#).

- **Pruitt's former security chief** Pasquale "Nino" Perrotta told the House Oversight Committee that Pruitt and his staff missed a connecting flight on a trip to Morocco because his security detail's weapons and gear couldn't be transferred between the planes in time, the Associated Press reports, citing anonymous committee aides. The delay forced Pruitt to spend more than 24 hours in Paris, and Perrotta's version of events calls into question the official rationale given by EPA. Read that story [here](#).

**** A message from Anheuser-Busch:** Anheuser-Busch announced that America's leading brewer has placed an order for up to 800 hydrogen-electric powered semi-trucks. The zero-emission trucks will be able to travel between 500 and 1,200 miles. Anheuser-Busch aims to convert its entire long-haul dedicated fleet to renewable powered trucks by 2025. [Learn more](#). **

BARRASSO: 'CLOSELY MONITORING' PRUITT SITUATION: EPW Chairman [John Barrasso](#) told ME he's "closely monitoring" the ongoing ethical woes of Pruitt and continuing with unspecified "oversight" of the

agency. "The job that he's doing - in terms of the job assigned by the president to roll back regulations and overreach by the federal government - he continues to do well," Barrasso said. "We want to make sure taxpayer money is being well spent and appropriately spent." But Barrasso wouldn't specify if he'd sent additional letters to the agency, again deferring to the White House's vague, ongoing review of the situation.

Wait and see: Senior House Republicans overseeing the EPA also appeared to be publicly sticking with Pruitt as well. Rep. John Shimkus, who oversees the EPA on the House Energy and Commerce Committee, told ME he didn't have plans for additional oversight on his subcommittee but deferred to Chairman Greg Walden on whether it was appropriate. Shimkus acknowledged his lack of oversight plans "might disappoint some of my colleagues," including some Republicans who questioned Pruitt's spending at a hearing several weeks ago. A spokesman for the committee didn't respond to requests for comments on its oversight plans.

HEWITT KNEW IT: Conservative radio host Hugh Hewitt responded Tuesday on his radio show to a POLITICO report about a meeting set up by Hewitt between Pruitt and a water utility that sought a Superfund distinction in his hometown - which it ultimately received. "I knew it was going to show up in the FOIA request," Hewitt said of the meeting request. "I just didn't think it was a story." Separately, the liberal media watchdog group Media Matters reported Tuesday, that The Washington Post's Editorial Page Editor Fred Hiatt had not known of ties between EPA and Hewitt's law firm. "Hewitt, who has not written about Pruitt since September, has agreed not to write about him going forward and has assured us that similar incidents won't occur in the future," Hiatt said in an email to the group.

PERRY PULLS UP: Energy Secretary Rick Perry will testify this morning before the House Science Committee on his department's overall budget for fiscal 2019. Members will likely discuss funding for Advanced Research Projects Agency-Energy and Department's Loan Programs, which are terminated under the budget, as well as Perry's recent moves on coal plants. "Termination of these programs will save over \$300 million in FY 2019 alone while significantly reducing financial risk to the taxpayer moving forward," Perry is expected to say. **If you go:** The hearing kicks off at 9 a.m. in 2318 Rayburn. Watch the livestream here.

AT THE SAME TIME: The House Energy and Commerce Committee is slated to hold a markup on five cybersecurity, small-scale LNG bills this morning. Included in the docket: The bipartisan H.R. 5175 (115), the "Pipeline and LNG Facility Cybersecurity Preparedness Act." The slate of bills - which also includes H.R. 4606 (115), H.R. 5174 (115), H.R. 5239 (115), H.R. 5240 (115) - were approved by the subpanel in April. H.R. 4606 - which would allow the expedited approval of small-scale shipments of liquefied natural gas - got a vote of 19-14 over the objections of most Democrats.

CHATTERJEE SEES CHALLENGES: FERC Commissioner Neil Chatterjee called out natural gas pipeline permitting in New York Tuesday, while speaking at the at the Independent Power Producers of New York conference. "The gravest threat we face to resilience and fuel security is in New England and that's not the result of coal and nuke retirements but because of gas constraints due to a lack of adequate infrastructure," Chatterjee told reporters. Read more from Pro New York's Marie French here.

INTERIOR FACES FOIA SUIT: The Wilderness Society will file a lawsuit today to compel Interior to release documents related to the administration's environmental protection plans on public lands. The group says it filed 21 requests under the Freedom of Information Act for documents related to orders issued by Trump and DOI in March 2017 aimed at removing "potential burdens" to energy development on public lands. TWS says it only received responses to two of those requests.

MAIL CALL! The Environmental Protection Network sent this letter to EPA requesting a public hearing and an extension of the 30-day public comment period on the agency's "secret science" proposal to ban the use of studies that don't publicly disclose all their data. "The proposal is far too complex, with effects too broad and indeterminate, and requests comment on far too many issues, for a thirty-day response period," the letter says.

WATCH IT: The American Council for Capital Formation released a new ad on Tuesday calling on the president to uphold the investor-state dispute settlement mechanism in any negotiation of NAFTA. Watch it [here](#).

E2 LAUNCHES CLEAN JOBS CAMPAIGN: Environmental Entrepreneurs launched a nationwide campaign Tuesday, dubbed [Clean Jobs Count](#), "to advance awareness and support of America's fastest-growing energy sector." The campaign includes digital ads in Michigan, Ohio, Illinois and Colorado, and additional ad campaigns are planned throughout the rest of the year in at least half a dozen more states.

MOVER, SHAKER: Exelon [announced](#) Constellation CEO Joseph Nigro was promoted to Exelon senior executive vice president and CFO, succeeding Jack Thayer, who becomes senior executive vice president and chief transformation officer. ComEd President and CEO Anne Pramaggiore was promoted to CEO of Exelon Utilities, succeeding Denis O'Brien. And Joseph Dominguez, the executive vice president of governmental and regulatory affairs and public policy, was promoted to CEO of ComEd Chicago.

- **Power Ledger**, a blockchain-powered renewable energy trading platform, announced Dante Disparte was appointed its strategic adviser and ambassador.

QUICK HITS

- Thousands of Puerto Ricans are still in the dark while U.S. agencies leave, [Bloomberg](#).
- Cassidy charts own course on climate change, [E&E News](#).
- Poll: Majority of voters oppose Trump offshore drilling plan, [The Hill](#).
- Trump's pick for top U.N. migration job gave misleading answers on tweets critical of climate change, [CNN](#).
- EPA's "secret science" rule could undermine agency's "war on lead," [Science](#).
- Due to climate change, hurricanes are raining harder and may be growing stronger faster, [The Washington Post](#).

THAT'S ALL FOR ME!

**** A message from Anheuser-Busch:** Anheuser-Busch announced that America's leading brewer has placed an order for up to 800 hydrogen-electric powered semi-trucks from the pioneer in hydrogen-electric renewable technology, Nikola Motor Company. The zero-emission trucks - which will be able to travel between 500 and 1,200 miles and be refilled within 20 minutes, reducing idle time - are expected to be integrated into Anheuser-Busch's dedicated fleet beginning in 2020.

Through this agreement Anheuser-Busch aims to convert its entire long-haul dedicated fleet to renewable powered trucks by 2025.

"At Anheuser-Busch we're continuously searching for ways to improve sustainability across our entire value chain and drive our industry forward," said Michel Doukeris, CEO of Anheuser-Busch. "The transport industry is one that is ripe for innovative solutions and Nikola is leading the way with hydrogen-electric, zero-emission capabilities. We are very excited by the possibilities our partnership with them can offer."

[Learn more.](#) **

To view online:

<https://www.politico.com/newsletters/morning-energy/2018/05/09/returning-to-the-battlefield-over-california-car-rules-207821>

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From: Morning Energy [morningenergy@politico.com]
Sent: 5/8/2018 2:11:27 PM
To: Feeley, Drew (Robert) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=abae82aa36da4d3383eae19a8efa683c-Feeley, Rob]
Subject: POLITICO's Morning Energy, presented by Anheuser-Busch: Conservative talker has pull with Pruitt — It's primary day in coal country — Trump meets with ethanol

By Kelsey Tamborrino | 05/08/2018 10:00 AM EDT

With help from Eric Wolff and Anthony Adragna

PRUITT GETS TO IT FOR HEWITT: New emails emerged Monday that provide previously unknown details in the ongoing raft of controversies that have plagued EPA Administrator Scott Pruitt - and provide more ammo for onlookers who worry Pruitt spends too much time currying favor with his political allies.

Conservative commentator Hugh Hewitt brokered a meeting that ultimately ended with a polluted California area on Pruitt's personal priority list of Superfund sites, POLITICO's Emily Holden and Anthony Adragna report. Hewitt lives in Orange County, where the Superfund site sits, and has a son who works in EPA's press office. The TV and radio host emailed Pruitt back in September to set up a meeting between Pruitt and the law firm Larson O'Brien, which employs Hewitt and represents the Orange County Water District. "I'll join if the Administrator would like me too or can catch up later at a dinner," Hewitt wrote in the email, which was obtained under a FOIA lawsuit by the Sierra Club. He added that the issues surrounding the Superfund site were "Greek to me but a big deal in my home county."

Weeks later, the Orange County North Basin site in question appeared on Pruitt's list of 21 contaminated areas to address. Pruitt then proposed listing the site on the agency's National Priorities List, making it potentially eligible for long-term federal cleanup funding. Since the meet-up, Hewitt has been a staunch defender of Pruitt, dismissing his recent controversies as "nonsense scandals" on MSNBC in early April. EPA spokesman Jahan Wilcox confirmed that Hewitt helped arrange the meeting at the request of the water district but didn't attend.

The meeting adds to environmentalists' concerns about Pruitt. "The biggest fear we have is that No. 1 the administrator's political priorities and personal ambitions, political ambitions become the primary criteria for action under this program instead of science and health," said Elgie Holstein, senior director for strategic planning at the Environmental Defense Fund who has been tracking EPA's Superfund actions. [Read the story here.](#)

FIRST CLASS MEMO: EPA on Monday also released a copy of a memo written by the former head of Pruitt's security detail justifying his first class flights. "We have observed and increased awareness and at times lashing out from passengers which occurs while the Administrator is seated in coach with [his security detail] not easily accessible to him due to uncontrolled full flights," Pasquale "Nino" Perrotta wrote in the May 1, 2017, memo. "Therefore, we believe that the continued use of coach seats for the Administrator would endanger his life and therefore respectfully ask that he be placed in either business and or first class accommodations." The Washington Post and E&E obtained copies of the memo via a FOIA request. Perrotta retired from the agency last week.

WELCOME TO TUESDAY! I'm your host Kelsey Tamborrino. Congrats to Cummins Inc.'s Patrick Wilson, who was first to identify former House Speaker Nathaniel Banks of Massachusetts as the representative who served 11 terms and ran for election on five different party tickets. He was successful in all but the Liberal

Republican ticket. For today: What president was first to watch a major league baseball game from the dugout? Bonus points if you can name the team. Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](https://twitter.com/kelseytam), [@Morning_Energy](https://twitter.com/Morning_Energy) and [@POLITICOPro](https://twitter.com/POLITICOPro).

BLANKENSHIP'S BIG DAY: We should know by tonight who will face Sen. [Joe Manchin](#) in a West Virginia Senate race that Republicans see as one of their biggest pickup opportunities of the year - that is, unless coal baron Don Blankenship scores a surprise upset in the surprisingly tight GOP primary. President Donald Trump [tweeted](#) Monday that Blankenship "can't win the General Election in your State," though he didn't endorse one of his opponents. That likely didn't ease fears that the two other major candidates - Rep. [Evan Jenkins](#) and state Attorney General Patrick Morrisey - will split the anti-Blankenship vote evenly and allow the former Massey Energy CEO to come out ahead. Blankenship recently was released from a year in jail following an explosion at the Upper Big Branch Mine that killed 29 workers. Blankenship has called the Upper Big Branch disaster the "worst tragedy" of his life, and is working to have his [conviction thrown out](#). (He has previously lost on appeal and failed to convince the Supreme Court to take the case.) For his part, Blankenship said Monday he was confident he would win, POLITICO's Alex Isenstadt [reports](#) from Mount Hope, W. Va.

That's not all: The Mountain State is not alone in kicking the 2018 midterms into gear. Statewide primary elections also are happening today in Ohio and Indiana and North Carolina, including solar energy entrepreneur and Democrat Dan McCready, who is running in North Carolina's 9th District. Vox nicely breaks down today's big races nationwide [here](#) and POLITICO has 7 things to watch [here](#).

SCHNEIDERMAN RESIGNS: New York Attorney General Eric Schneiderman, who has sued Exxon Mobil and fought the Trump administration's deregulatory agenda, [announced](#) his resignation Monday night in the wake of a report from the [New Yorker](#) that four women had accused him of abuse in previous romantic relationships. Two of the women who went on the record "say that they eventually sought medical attention after having been slapped hard across the ear and face, and also choked," according to the magazine. In a statement, Schneiderman disputed the allegations but said they "will effectively prevent me from leading the office's work at this critical time." The resignation takes effect at the close of business today.

Before the New Yorker story broke, Schneiderman and the attorneys general from seven other states called on Pruitt to withdraw his "secret science" proposal to ban the use of studies that don't publicly disclose all their data. Read the letter [here](#).

CHOPPING BLOCK: The White House on Monday [outlined](#) its package of proposed spending cuts, rescinding \$4.3 billion from the Energy Department's Advanced Technology Vehicles Manufacturing loan program, which supports the production of fuel-efficient, advanced technology vehicles. It was part of an overall request for \$15 billion worth of rescissions from previously appropriated funds from prior years. Another package going after the FY18 omnibus is expected later this year. More [here](#).

ON THE GRID: Puerto Rico's electric grid - which failed to provide power for much of the island for several months after last year's hurricanes - will be the focus of a Senate Energy and Natural Resources hearing this morning. The CEO of the Puerto Rico Electric Power Authority Walter Higgins and Bruce Walker, assistant Energy secretary for electricity delivery and energy reliability, are among the names set to testify. "The end goal is a modern and intelligent energy system that can serve as the resilient engine for Puerto Rico's economic revitalization," Walker is expected to say. Officials [say](#) close to 95 percent of power has now been restored on the island. **If you go:** The [hearing](#) kicks off at 10 a.m. in 366 Dirksen.

- **Forty-seven U.S. and international scientific groups** sent a [letter](#) to Puerto Rico Gov. Ricardo Rosselló on Monday, urging him to keep the island's statistical agency, the Puerto Rico Institute of Statistics, and its board of directors fully independent. "To address the challenges posed by its decade-long economic recession and the devastation of back-to-back hurricanes, Puerto Rico must chart its path toward sustainable recovery using reputable and reliable data and statistical methods," the letter says.

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ENERGY-WATER BILL ADVANCES: The House Appropriations Energy-Water subpanel swiftly approved its \$44.7 billion energy and water spending bill on a voice vote Monday, sending the measure to the full committee for consideration. The appropriations bill largely ignores the president's budget request, earning the approval of Democrats, who applauded the boost in funding for the Army Corps of Engineers and DOE thanks to the bipartisan agreement to lift spending caps. [Read more](#).

TRUMP MEETS WITH SENATORS ON RFS: In what could perhaps be the final time, Trump plans to meet today with at least Sens. [Chuck Grassley](#), [Joni Ernst](#), [Ted Cruz](#) and [Pat Toomey](#) to discuss their dueling priorities around federal ethanol policy. Who else will be in the room remains unclear, as sources told ME conflicting stories: An ethanol source said neither Pruitt, nor the Ag secretary, would be present, while a Republican Senate aide said both would be there.

A source said Team Ethanol's main goal is to get Trump to affirm his commitment to year-round sales of 15 percent ethanol, but the rest of the agenda seems to be unclear. A biofuels source said they expect Trump to kick the biofuels battle to Congress, where Sen. [John Cornyn](#) and Rep. [John Shimkus](#) have been trying to write a bill to overhaul the RFS. Cruz said at a Capitol Hill rally last week that he would view that decision as doing nothing. Cruz and Toomey are still seeking Renewable Fuel Standard changes to dramatically lower the program's compliance costs for refineries. Trump is scheduled to meet with Republican senators at 11:15 this morning, according to his public schedule.

- Continuing their push for year-round sales of E15, fuel retailers from 11 states sent a letter to Trump on Monday, calling on him to instruct EPA to immediately follow up on a pledge to allow the year-round sale of E15 before summer restrictions kick in on June 1. [Read the letter here](#). Eighteen other groups, including the Sierra Club and Earthjustice, signed [onto their own letter](#) expressing concern with the administration's openness to the year-round sale of E15. And the American Energy Alliance launched a digital ad campaign Monday urging for the repeal of the RFS. [Watch that ad here](#).

EXPECTING BIG THINGS: Shimkus is expecting broad support from the House when his comprehensive nuclear waste package [H.R. 3053 \(115\)](#) gets a vote Thursday. "I think people are ready to do something rather than nothing," he told reporters Monday. Shimkus said it's been a months-long process to educate members about the importance of the legislation and added he sent texts to Speaker [Paul Ryan](#) and Majority Leader [Kevin McCarthy](#) thanking them for finally bringing the package to the floor.

But he's not crazy: Shimkus said he hadn't had any recent talks with Senate counterparts about potentially moving the bill across the Capitol and he didn't expect they would this year with one of their most vulnerable incumbents (and ardent Yucca opponent), Sen. [Dean Heller](#), locked in a competitive reelection.

WHERE'S PERRY? Perry is slated to speak today during the Washington Conference on the Americas, where Commerce Secretary Wilbur Ross and Deputy Secretary of State John Sullivan, among others, are set to also appear. Perry will deliver remarks on "energy integration in the Americas" at 3:15 p.m. See the full agenda [here](#).

E&C TACKLES EVs: The House Energy and Commerce Environment Subcommittee will listen to discussion today on how fuel vehicles and electric vehicles will coexist as electric vehicles become more popular. The hearing begins at 10:15 a.m. in 2322 Rayburn, or stream it [here](#).

MAIL CALL: A diverse coalition of energy groups - including Advanced Energy Economy, the American Petroleum Institute and the American Wind Energy Association - on Monday urged Perry not to bail out coal and nuclear plants. Read their [letter](#).

INHOFE BACKS JACKSON: An Axios [report](#) that Pruitt chief of staff Ryan Jackson has been frozen out of the EPA chief's inner circle didn't sound right to his former boss, Sen. [Jim Inhofe](#). "I've known him well since he was 18 years old and I don't think they'd be capable of sidelining him," he told ME. Inhofe admitted that if the report is true - "that's an if I'm not willing to accept," he cautioned - it would be deeply concerning.

PRUITT MEETS MOTHERS ON CHEMICAL BAN: Two mothers will meet today with Pruitt, where they will press the administrator to ban paint strippers containing methylene chloride after their sons died using products with the chemical, according to the Environmental Defense Fund. On former President Barack Obama's last day in office, his administration proposed using the updated Toxic Substances Control Act to ban the use of the chemical in most commercial paint removers. Pruitt [told lawmakers](#) recently that he thinks EPA can make a decision on its proposed ban by the end of the year.

QUICK HITS

- Pruitt's Rome trip: More time on tourism than official business, [The Daily Beast](#).
- Steel town that voted for Trump banks on renewables, [E&E News](#).
- Interior sending officers to assist patrolling the U.S., Mexico border, [The Hill](#).
- EPA proposal pushed by ex-coal lobbyist could transform agency's use of science, [S&P Global](#).
- Booming tourism emits 8 percent of greenhouse gases, study shows, [Reuters](#).
- Old-boys' club that ran power world cracking with its model, [Bloomberg](#).

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Through this agreement Anheuser-Busch aims to convert its entire long-haul dedicated fleet to renewable powered trucks by 2025.

"At Anheuser-Busch we're continuously searching for ways to improve sustainability across our entire value chain and drive our industry forward," said Michel Doukeris, CEO of Anheuser-Busch. "The transport industry is one that is ripe for innovative solutions and Nikola is leading the way with hydrogen-electric, zero-emission capabilities. We are very excited by the possibilities our partnership with them can offer."

[Learn more.](#) **

To view online:

<https://www.politico.com/newsletters/morning-energy/2018/05/08/conservative-talker-has-pull-with-pruitt-206682>

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Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 5/4/2018 8:36:44 PM
To: Abboud, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6f5af791a1842f1adcc088cbf9ed3ce-Abboud, Mic]
CC: Feeley, Drew (Robert) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=abae82aa36da4d3383eae19a8efa683c-Feeley, Rob]; Bowman, Liz [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c3d4d94d3e4b4b1f80904056703ebc80-Bowman, Eli]; Wilcox, Jahan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=88fd588e97d3405d869bcae98d391984-Wilcox, Jah]; Block, Molly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=60d0c681a16441a0b4fa16aa2dd4b9c5-Block, Moll]; Daniell, Kelsi [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cd867173479344b3bda202b3004ff830-Daniell, Ke]
Subject: RE: Science Transparency rule

Deliberative Process / Ex. 5

From: Woods, Clint
Sent: Friday, May 4, 2018 4:30 PM
To: Abboud, Michael <abboud.michael@epa.gov>
Cc: Feeley, Drew (Robert) <Feeley.Drew@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>; Block, Molly <block.molly@epa.gov>; Daniell, Kelsi <daniell.kelsi@epa.gov>
Subject: Re: Science Transparency rule

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

On May 4, 2018, at 3:43 PM, Abboud, Michael <abboud.michael@epa.gov> wrote:

Deliberative Process / Ex. 5

From: Armstrong, Annalee [<mailto:Annalee.Armstrong@spglobal.com>]

Sent: Friday, May 4, 2018 3:10 PM

To: Press <Press@epa.gov>

Subject: Science Transparency rule

Hello, this is Annalee Armstrong from S&P Global. The EPA's recently released Science Transparency rule cited the journals Science and Nature as sources of your new policy, and yet those publications have specifically pushed back against the methods adopted by Administrator Pruitt (See editorial from [Science here](#), and [Nature here](#)).

Can you please provide me with comment on whether the EPA consulted experts from these journals, or any scientists in developing the new rule? Do you have any specific response to some of the criticisms leveled by Nature or Science? Science, specifically said of the proposal: "Here, a push for transparency appears actually to be a mechanism for suppressing important scientific evidence in policy-making, thereby threatening the public's well-being."

My deadline for this information will be Monday morning at 10 a.m. Thank you.

Annalee Armstrong

EPA Reporter
Arlington, Va. 571-814-2081
Website: SNL.com
Twitter: @AGKootenay



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Message

From: Morning Energy [morningenergy@politico.com]
Sent: 5/4/2018 2:10:37 PM
To: Feeley, Drew (Robert) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=abae82aa36da4d3383eae19a8efa683c-Feeley, Rob]
Subject: POLITICO's Morning Energy: Heightened vetting for Pruitt-related FOIAs — EPA narrows air permitting guidelines — Coolant industry: Global warming industry is so cool it's hot

By Kelsey Tamborrino | 05/04/2018 10:00 AM EDT

With help from Anthony Adragna, Eric Wolff and Emily Holden

ALL FOIA ONE, ONE FOIA ALL: You may need to have a little patience if you're waiting for EPA to ship over any documents about Administrator Scott Pruitt's activities. Freedom of Information Act requests that relate to Pruitt get an extra layer of vetting before they are released to the public, new internal emails obtained by POLITICO show. Top aides to the administrator, including chief of staff Ryan Jackson, perform the "awareness reviews" on all or most document requests related to Pruitt - on top of the reviews done by career experts. And that is contributing to the slow flow of information released under records requests at EPA, Pro's Alex Guillén reports.

The new vetting processes described in the emails are done before the agency releases essentially any documents involving the administrator. And the emails show Pruitt's political appointees chastising career employees who released documents in accordance with FOIA without letting them screen the records first.

In one exchange from last August, Jackson and Liz Bowman - the head of EPA's Office of Public Affairs who announced on Thursday she was stepping down - expressed concern about documents related to comments Pruitt made on CNBC disputing that carbon dioxide from human activities was the primary cause of climate change. "Why did Kevin Bogardus from E&E all of a sudden get a response to a FOIA today, without any awareness from our FOIA office?" Bowman wrote on Aug. 2, adding later that the deadline wasn't until the end of the month.

ME readers will recall from February that EPA has been flooded with FOIA requests under Pruitt, forcing many groups to sue for the release of documents. But the new emails, which EPA gave to the Natural Resources Defense Council following legal action, shed new light on the cloud of secrecy that surrounds the agency.

While Obama-era EPA officials said the agency sometimes used awareness reviews during their time at the agency when career staff thought documents would generate a lot of interest, FOIA experts say the extra vetting of documents appears to be on the rise under Pruitt. "This does look like the most burdensome review process that I've seen documented," said Nate Jones, director of the FOIA Project at George Washington University's National Security Archive. Read more.

HAPPY FRIDAY! I'm your host Kelsey Tamborrino, and the American Petroleum Institute's Khary Cauthen correctly guessed that Roger Taney - who was nominated for Treasury secretary - was rejected by the Senate, 18-28, in 1834. Not all hope was lost, however, as Taney went on to become a Supreme Court justice. For today: Who was the only member of the Continental Congress to sign all four of the great state papers? Bonus points if you can name all four papers. Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](https://twitter.com/kelseytam), [@Morning_Energy](https://twitter.com/Morning_Energy) and [@POLITICOPro](https://twitter.com/POLITICOPro).

EPA NARROWS GUIDELINES: EPA will alter its interpretation of when related facilities are considered a single source for air permitting purposes in a way that could ease their permitting requirements, Alex reports.

The April 30 memo was sent by EPA air chief Bill Wehrum concerning the so-called common control designation, which says plants located near each other should be aggregated for permitting purposes and subject to stricter standards if they are operated by the same entity. Under the new guidance, that will include entities that can "dictate decisions of the other that could affect the applicability of, or compliance with, relevant air pollution regulatory requirements." The memo concerns a Pennsylvania landfill and nearby biogas processing facility that are owned by different companies. Read more.

ADD ADELSON'S NAME TO THE LIST: Yet another high-profile political ally emerged Thursday to have helped Pruitt arrange an international trip: GOP mega-donor Sheldon Adelson. According to new documents obtained by The Washington Post, Adelson arranged parts of Pruitt's canceled trip to Israel - where he was in part scheduled to unveil an agreement with Water-Gen, an Israeli water purification company championed by Adelson. Read the full report here.

MORE INFO PLEASE: Four senior House Energy and Commerce Democrats - Frank Pallone, Paul Tonko, Diana DeGette and Kathy Castor - sent a letter to Pruitt Thursday asking for the names of three people Steven Hart - a lobbyist who was also married to the EPA chief's landlord - recommended for slots on the agency's Scientific Advisory Board. "Despite your earlier claims that J. Steven Hart had no clients with business before EPA, it is now clear that Mr. Hart did represent clients with business before your agency and, in fact, lobbied you on their behalf," they wrote.

MORE TIME PLEASE: Sixty-four Democrats signed onto a letter to Pruitt calling for a 90-day comment period on a his recent "secret science" proposal to ban the use of studies that don't publicly disclose all their data. "Given the large response from scientists and stakeholders before the rule was officially proposed, a comment period of 30 days will not allow for meaningful engagement from stakeholders," the letter states. Read it here.

'NOT OKAY': Interior's inspector general found a male National Park Service regional office official made unwanted sexual advances toward a female employee on consecutive days that she told him were "not okay." The official retired before a scheduled interview and stopped responding to the IG. Read the report here.

CLOVIS OUT ... AGAIN: Sam Clovis, a former Trump campaign aide who had been serving as the Agriculture Department's liaison to the White House, is departing the department and will return home to Iowa, a USDA official confirmed to POLITICO's Liz Crampton. The president had previously nominated him to be USDA undersecretary for research, education and economics, where he faced backlash for his lack of science credentials and ultimately withdrew his name from consideration for that position in November. Greens had also particularly focused on Clovis for his comments that he did not believe in man-made climate change. Read more.

COOLANT INDUSTRY: GLOBAL WARMING INDUSTRY IS SO COOL IT'S HOT: The White House now has evidence that a global warming treaty limiting coolants would generate thousands of new jobs, and now it must decide whether to send the treaty to the Senate for ratification. A report released Thursday by the Air Conditioning Heating and Refrigeration Institute and the Alliance for Responsible Atmospheric Policy said that the amendment to the Montreal Protocol limiting use of hydrofluorocarbons, a greenhouse gas, would help American manufacturers who produce the bulk of the world's supply of advanced coolants. Ratifying the treaty would produce 33,000 additional jobs and an extra \$12.5 billion of annual manufacturing output.

The report is considered critical to help presidential aides persuade President Donald Trump to advance the treaty to the Senate, despite the president's aversion to multilateral treaties, his predecessor's accomplishments, and anything involving global warming. "U.S. ratification of the Kigali Amendment is good for American jobs, good for the economy, and crucial for maintaining U.S. leadership across the globe," said John Hurst, Chairman of The Alliance, and Vice President of Lennox International. He added, "Over 30 countries have ratified the amendment. America cannot afford to be on the sideline. America must continue to lead."

ZINKE HIRES GOP ADVISER FOR NPS: Interior Secretary Ryan Zinke hired Chuck Laudner, a Iowa Republican political consultant who was an adviser to Trump's campaign, for a position with the National Park Service, an Interior spokeswoman confirmed to Pro's Ben Lefevre. Laudner previously worked with Rick Santorum's presidential campaign in Iowa in 2012 and was executive director for the Iowa Republican Party from 2007-08. Interior hired Laudner "a few weeks ago," spokeswoman Heather Swift said, though she did not say what job he had taken.

MAY THE FOURTH BE WITH YOU: Zinke teased out some "Star Wars" related news on Thursday. In a video featuring the secretary walking alongside motorized BB-8 and R2-D2 toys, the droid rolls over an Interior logo. Zinke tweeted the video with a message: "Tomorrow is a big day. More to come. #MayTheFourthBeWithYou." See it.

BLANKENSHIP ATTACKS McCONNELL'S "CHINA FAMILY": West Virginia GOP Senate hopeful Don Blankenship released another ad on Thursday attacking Majority Leader Mitch McConnell. This time, the spot claims "Swamp Captain Mitch McConnell has created millions of jobs for China people." The ad, which POLITICO's Alex Isenstadt reports on here, is expected to start airing today. It closes with a shot of Blankenship holding two young children, one on each arm as he pronounces, "I will beat Joe Manchin and ditch cocaine Mitch for the sake of the kids." The ad arrives days ahead of the state's May 8 primary.

FOIA WHAT IT'S WORTH: The Montana-based Western Values Project filed a FOIA request to EPA in an effort to make public any communication about Zinke. The request includes all communications between select EPA employees that contain "Zinke," "RZ" or "Interior Secretary" and comes in response to a report in The Atlantic that alleges an EPA press employee planted stories about Zinke in order to distract from his boss. EPA spokesman Jahan Wilcox in a statement to the Atlantic called the allegations "categorically false."

CLIMATE LAWMAKERS REBUT CARBON LEGISLATION: The Citizens' Climate Lobby released a rebuttal to Rep. Steve Scalise's concurrent resolution, H. Con. Res. 119 (115), which expresses the sense of Congress that a carbon tax would be detrimental to the U.S. economy. The climate lobby refutes the resolution, claiming that if done correctly, a tax or fee on carbon could boost the economy. Read the rebuttal here and the bill text here.

MAIL CALL! BIOFUELS WRITE TO EPA ON STRATEGY: A coalition of Midwest biofuels associations sent a letter Thursday to EPA asking it to move administrative time and staff away from Renewable Fuel Standard exemptions and instead toward approvals for cellulosic ethanol. "The discrepancy between the way EPA is handling RFS exemptions and cellulosic ethanol pathway approvals tells you everything you need to know about how this EPA is treating the RFS," said Iowa Renewable Fuels Association Executive Director Monte Shaw in a statement. Read the letter.

- **The Business Council for Sustainable Energy**, a coalition of companies and trade associations, wrote to members of Congress on Thursday, asking that they reauthorize energy title programs in the farm bill, H.R. 2 (115). "It is essential that a healthy, robust bipartisan energy title continue as part of new comprehensive agriculture legislation," writes the group's president, Lisa Jacobson. The letter also lays out potential improvements to the programs. Read it here.

- **Congressional Western Caucus Chairman Paul Gosar led 18 lawmakers** in a letter requesting Pruitt reverse course and proceed with an intention to withdraw the Obama-era EPA's preemptive veto of the Pebble Limited Partnership mining project under Section 404(c) of the Clean Water Act. They write that EPA's January decision not to overturn the preemptive vote "has sowed tumult for interested parties."

VW'S WINTERKORN CHARGED: Former Volkswagen AG leader Martin Winterkorn was charged with conspiracy and wire fraud in connection with the company's long-running emissions cheating scheme, according to an indictment unsealed Thursday by the Justice Department. The indictment, issued by a federal

grand jury sitting in the Eastern District of Michigan, charged Winterkorn with four counts of violating federal law. The first count charges that he conspired with other senior executives and Volkswagen employees to defraud customers, the United States and violate the Clean Air Act by making false representations about the company's supposedly "clean diesel" vehicles. The other three counts concern wire fraud tied to the scheme. More from Pro's Lauren Gardner [here](#).

GOING OUT WEST: New Mexico Sen. [Martin Heinrich](#) delivers a keynote address today at the [Outdoor Economics Conference](#), and he's [expected to discuss](#) his legislation to establish the White Sands National Monument as a national park, as well as discuss the outdoor recreation industry in the region. Watch it live [here](#).

REPORT: GRID RESILIENCY IN THE FACE OF NUCLEAR CLOSURES: A new IHS Markit report released Thursday examines the effect of five nuclear closures in the PJM Interconnection, finding the closures will reduce annual net benefits for consumers from PJM grid-based electricity by about \$8 billion per year over 2013-2016. That "translates into a consumer net benefit per kilowatt-hour of PJM nuclear generation of about 3 cents per kWh," the report found. The report was prepared for Nuclear Matters, an industry-funded organization. Read it [here](#).

MOVER, SHAKER: The Joseph Rainey Center for Public Policy, a think tank focused on sustainable politics and inclusive governance, has named Sarah Hunt its founding CEO. Hunt previously was director at the Center for Innovation and Technology at the American Legislative Exchange Council.

HITTING THE ROADMAP: The Delta Institute released a "Coal Plant Redevelopment Roadmap" on Thursday to provide insight into coal-impacted municipalities and their transition processes. Modules in the roadmap will show economic and environmental impacts, as well as provide information on engagement strategies for such communities, among other topics. See it [here](#).

ON THE POD: NPR's podcast, Embedded, released a new episode Thursday on coal in Buchanan County, Va. Listen [here](#).

QUICK HITS

- Continental Resources' Harold Hamm credits OPEC for boosting oil prices, [Reuters](#).
- Pruitt reimbursed himself \$65,000 from Oklahoma attorney general campaign, [CNN](#).
- Texas officials ignore dioxin spread in Houston waterways, [Associated Press](#).
- Gassy earthquakes near Istanbul may pose new risks to region, [The New York Times](#).

THAT'S ALL FOR ME!

To view online:

<https://www.politico.com/newsletters/morning-energy/2018/05/04/heightened-vetting-for-pruitt-related-foias-203960>

To change your alert settings, please go to <https://secure.politico.com/settings>

POLITICO

This email was sent to feeley.robert@epa.gov by: POLITICO, LLC 1000 Wilson Blvd. Arlington, VA, 22209, USA

Please click [here](#) and follow the steps to unsubscribe.

Message

From: Feeley, Drew (Robert) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=ABAE82AA36DA4D3383EAE19A8EFA683C-FEELEY, ROB]
Sent: 3/19/2018 8:13:09 PM
To: Lovell, Will (William) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3b150bb6ade640f68d744fadcb83a73e-Lovell, Wil]
Subject: FW: Initial Edits to Notice
Attachments: FR Notice on Data Access Guidelines_3.19.2018docx.docx

From: Bolen, Brittany
Sent: Monday, March 19, 2018 3:03 PM
To: Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>
Cc: Woods, Clint <woods.clint@epa.gov>; Feeley, Drew (Robert) <Feeley.Drew@epa.gov>
Subject: Initial Edits to Notice

Richard, Nancy, Justin –

Attached is our first round of edits to the notice based on the feedback received on the 1pm call. Please let me know if you have any questions.

Thanks,
Brittany

Message

From: Feeley, Drew (Robert) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=ABAE82AA36DA4D3383EAE19A8EFA683C-FEELEY, ROB]
Sent: 6/7/2018 10:34:33 PM
To: Nickerson, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=148f2c1c05b54f358e29c59b841664aa-Wnicker]
Subject: Draft QFR response
Attachments: OP EPA.docx

Hi Bill – When you get a chance tomorrow, can you please briefly review the draft qfr response starting on page 3. I know there are various subparts, but it goes fairly quickly. Happy to discuss.

Thanks!

Message

From: Feeley, Drew (Robert) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=ABAE82AA36DA4D3383EAE19A8EFA683C-FEELEY, ROB]
Sent: 6/7/2018 9:29:56 PM
To: Lovell, Will (William) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3b150bb6ade640f68d744fadcb83a73e-Lovell, Wil]
Subject: Draft QFRs
Attachments: OP EPA.docx

Please take a look at pages 1-2. You can look at p.3 too, but no obligation. Plan to consult Bill on those. Thanks!

Appointment

From: Feeley, Drew (Robert) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=ABAE82AA36DA4D3383EAE19A8EFA683C-FEELEY, ROB]
Sent: 1/25/2018 2:10:19 AM
To: Gomez, Laura [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=575BA24FC19D429C8302A05102353238-LGOMEZ]
Subject: Accepted: CONFIRMED: EPA PRE-INTERNAL CALL : HONEST ACT IMPLEMENTATION
Location: DIAL IN: **Personal Matters / Ex. 6**
Start: 1/26/2018 7:00:00 PM
End: 1/26/2018 8:30:00 PM

Recurrence: (none)

Appointment

From: Feeley, Drew (Robert) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=ABAE82AA36DA4D3383EAE19A8EFA683C-FEELEY, ROB]
Sent: 1/18/2018 10:12:43 PM
To: Gomez, Laura [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=575ba24fc19d429c8302a05102353238-lgomez]

Subject: Accepted: PENDING: EPA PRE-PLANNING CALL: HONEST ACT -BRIEFING WITH HSST

Location: DIAL IN: **Personal Matters / Ex. 6**

Start: 1/26/2018 4:30:00 PM
End: 1/26/2018 5:00:00 PM

Recurrence: (none)

Message

From: Feeley, Drew (Robert) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=ABAE82AA36DA4D3383EAE19A8EFA683C-FEELEY, ROB]
Sent: 8/21/2018 2:04:38 PM
To: Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]
Subject: RE: 4/26 QFR Follow up from OMB
Attachments: 07-25-2018 - EPA_HEC_4.26_QFR_Pruitt_Responses_OMB V1 - EPA V2.docx

From: Ringel, Aaron
Sent: Monday, August 20, 2018 3:53 PM
To: Feeley, Drew (Robert) <Feeley.Drew@epa.gov>
Cc: Moody, Christina <Moody.Christina@epa.gov>
Subject: 4/26 QFR Follow up from OMB

Drew, see attached.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Would like to get this closed out this week finally!

Aaron E. Ringel
Deputy Associate Administrator
Office of Congressional & Intergovernmental Relations
U.S. Environmental Protection Agency

W: **Personal Matters / Ex. 6**
RingelAaron@epa.gov

Message

From: Feeley, Drew (Robert) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=ABAE82AA36DA4D3383EAE19A8EFA683C-FEELEY, ROB]
Sent: 1/11/2018 3:46:55 PM
To: Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]
Subject: RE: new initiative on making science available.

Thanks!

From: Yamada, Richard (Yujiro)
Sent: Thursday, January 11, 2018 9:41 AM
To: Feeley, Drew (Robert) <Feeley.Drew@epa.gov>
Subject: Fwd: new initiative on making science available.

FYI -thanks

Sent from my iPhone

Begin forwarded message:

From: "Jackson, Ryan" <jackson.ryan@epa.gov>
Date: January 11, 2018 at 9:32:16 AM EST
To: "Bolen, Brittany" <bolen.brittany@epa.gov>, "Yamada, Richard (Yujiro)" <yamada.richard@epa.gov>
Cc: "Baptist, Erik" <Baptist.Erik@epa.gov>
Subject: new initiative on making science available.

Deliberative Process / Ex. 5

Ryan Jackson
Chief of Staff
U.S. Environmental Protection Agency

(Personal Matters / Ex. 6)

Message

From: Feeley, Drew (Robert) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=ABAE82AA36DA4D3383EAE19A8EFA683C-FEELEY, ROB]
Sent: 5/15/2018 3:29:32 PM
To: Brennan, Thomas [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=78caa4c8d91743c887c1bb5dc8cdb369-Thomas Brennan]
Subject: FW: Meeting Material Request approved for the Web site
Attachments: WkGrp_memo_2080-AA14_final_05132018.pdf

From: Sinks, Tom
Sent: Tuesday, May 15, 2018 11:16 AM
To: Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>; Feeley, Drew (Robert) <Feeley.Drew@epa.gov>
Cc: Sinks, Tom <Sinks.Tom@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Orme-Zavaleta, Jennifer <Orme-Zavaleta.Jennifer@epa.gov>; Hawkins, CherylA <Hawkins.CherylA@epa.gov>
Subject: FW: Meeting Material Request approved for the Web site

I need some guidance. This is a memo from a working group of the EPA SAB related to their assessment of the EPA regulatory agenda and the need for the SAB to discuss this rule. This memo is on the SAB website at [https://yosemite.epa.gov/sab/sabproduct.nsf/E21FFAE956B548258525828C00808BB7/\\$File/WkGrp_memo_2080-AA14_final_05132018.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/E21FFAE956B548258525828C00808BB7/$File/WkGrp_memo_2080-AA14_final_05132018.pdf)

What are the standard operating procedures for including this in the official docket? How is it categorized?

Thanks

From: Carpenter, Thomas
Sent: Tuesday, May 15, 2018 9:52 AM
To: Sinks, Tom <Sinks.Tom@epa.gov>
Subject: RE: Meeting Material Request approved for the Web site

Sorry – sent the secondary info to you. Attached is the memorandum. Direct link is provided in case you need to forward that. I will look for a time today.
[https://yosemite.epa.gov/sab/sabproduct.nsf/E21FFAE956B548258525828C00808BB7/\\$File/WkGrp_memo_2080-AA14_final_05132018.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/E21FFAE956B548258525828C00808BB7/$File/WkGrp_memo_2080-AA14_final_05132018.pdf)
Tom

From: Sinks, Tom
Sent: Monday, May 14, 2018 1:52 PM
To: Carpenter, Thomas <Carpenter.Thomas@epa.gov>
Subject: RE: Meeting Material Request approved for the Web site

Thanks – went to the site and didn't see anything that specified the NPRM

From: Carpenter, Thomas
Sent: Sunday, May 13, 2018 7:32 PM
To: Brennan, Thomas <Brennan.Thomas@epa.gov>; Sinks, Tom <Sinks.Tom@epa.gov>
Subject: FW: Meeting Material Request approved for the Web site

Tom:

I posted the SAB Work Group Memorandum to the Board regarding Strengthening Transparency in Regulatory Science RIN (2080-AA14). It is available at the link below. I will be back in the office Tuesday (5/15).

Tom

From: Thomas Carpenter [mailto:Carpenter.Thomas@epamail.epa.gov]

Sent: Sunday, May 13, 2018 7:24 PM

Subject: Meeting Material Request approved for the Web site

The ***Preparations for Chartered Science Advisory Board (SAB) Discussions of Proposed Rule: Strengthening Transparency in Regulatory Science RIN (2080-AA14)*** Meeting Material, for the Chartered Science Advisory Board Meeting, for 5/31/2018 to 6/1/2018, has been posted to the SAB Web site at this location:

<https://yosemite.epa.gov/sab/sabproduct.nsf/0/7D239353BCECF85B852582600058B716?OpenDocument&Date=5/31/2018>

The ***Preparations for Chartered Science Advisory Board (SAB) Discussions of Proposed Rule: Strengthening Transparency in Regulatory Science RIN (2080-AA14)*** Meeting Material, is also available in the product database:

[Click here to open the Meeting and view the Meeting Material under Meeting Materials](#)

Message

From: Feeley, Drew (Robert) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=ABAE82AA36DA4D3383EAE19A8EFA683C-FEELEY, ROB]
Sent: 2/23/2018 5:46:24 PM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]
Subject: RE: exemptions/waivers
Attachments: data_access_memo V4 (002) cw 2-20.2.docx

Deliberative Process / Ex. 5

From: Woods, Clint
Sent: Friday, February 23, 2018 12:37 PM
To: Feeley, Drew (Robert) <Feeley.Drew@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>
Subject: RE: exemptions/waivers

Deliberative Process / Ex. 5

From: Feeley, Drew (Robert)
Sent: Friday, February 23, 2018 12:28 PM
To: Beck, Nancy <Beck.Nancy@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Woods, Clint <woods.clint@epa.gov>
Subject: RE: exemptions/waivers

DELIBERATIVE/DRAFT

Deliberative Process / Ex. 5

From: Beck, Nancy
Sent: Thursday, February 22, 2018 7:31 PM
To: Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Feeley, Drew (Robert) <Feeley.Drew@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Woods, Clint <woods.clint@epa.gov>
Subject: exemptions/waivers

From the OMB peer review bulletin:

https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/omb/fedreg/2005/011405_peer.pdf

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Nancy B. Beck, Ph.D., DABT
Deputy Assistant Administrator
Office of Chemical Safety and Pollution Prevention
P: 202-564-1273
M: Personal Matters / Ex. 6
beck.nancy@epa.gov

Message

From: Bloomberg Environment - Environment & Energy Report
[bloomberg@bna.com]
Sent: 8/21/2018 11:49:11 AM
To: Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-
Jackson, Ry]
Subject: First Move: Energy Primaries • 'Secret Science' • Fire Retardant Explained

What you
need to
know to
start your
day.

**Bloomberg
Environment**

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Energy Primaries • 'Secret Science' • Fire Retardant Explained



By [Chuck McCutcheon](#)

Energy-producing giants Alaska and Wyoming hold primaries today, with large fields of candidates for governor in both states.

In Alaska, incumbent Gov. Bill Walker, an independent, is seeking re-election. His recent restructuring of the Permanent Fund—the annual payout that Alaskans get from the state's oil wealth—dramatically reduced the budget deficit and restored the state's credit rating, he says.

Seven Republicans are seeking the state chief executive's job, with ex-Lt. Gov. Mead Treadwell—a former chairman of the U.S. Arctic Research Commission—and former state Sen. Mike Dunleavy seen as the leading candidates. Both have spoken out against future cutting of Permanent Fund dividends, and each has promised to promote new oil exploration.

Former U.S. Sen. Mark Begich is running in the Democratic primary for governor, vowing to market Alaska as “a global leader” in addressing climate change.

In Wyoming, six Republicans are running to replace term-limited GOP Gov. Matt Mead. Several—including businessman Sam Galeotos, state Treasurer Mark Gordon, and natural-resources lawyer Harriet Hageman—have drawn oil and gas industry support.

One of the GOP candidates, party megadonor Foster Friess, has come out against transferring federal public lands to the state—a hot-button issue in the rural West. He argues it will be easier for special interests to lobby the state to turn public-access lands into privately controlled ones.

Wyoming’s lone House member, GOP Rep. Liz Cheney, faces two primary challengers but is strongly favored. Likewise, Republican Sen. John Barrasso, who heads the Senate’s environment committee, has five token opponents. Bloomberg Government’s [Greg Giroux](#) is monitoring.

SECRET SCIENCE: The EPA’s controversial plan to limit the types of science it uses to back up regulations has won plaudits from industry and states—but even some of them say the idea needs work.

Then-EPA Administrator Scott Pruitt unveiled the proposal in April to bar the use of scientific research including data that isn’t or can’t be made public. Pruitt called it an effort to remove “secret science” from the agency’s decision-making.

The Texas Commission on Environmental Quality, which backs the proposal’s intention, says the EPA should create a work group or review panel of experts to help develop crucial details about the plan. Two steel associations supporting the proposal also are calling for the EPA’s rulemaking process to be “vetted through a rigorous analytical process.”

[Sylvia Carignan](#) has more details in a [story](#) out today.

OTHER STORIES WE’RE COVERING

- EPA Acting Administrator Andrew Wheeler at 10 a.m. holds a press briefing to unveil the administration’s replacement for the Clean Power Plan. [Abby Smith](#) and Bloomberg News are tracking.
- CVS’s infamously long receipts have been the butt of jokes, but the pharmacy giant also is being held up as a poster child for an issue

spanning the entire retail sector: toxic chemicals used on cash-register paper, [Adam Allington](#) says in a [story](#) out today.

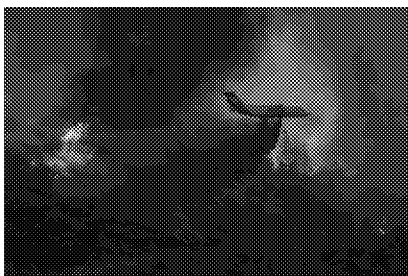
- The Senate's energy committee [explores](#) the energy efficiency of blockchain and similar technologies and the cybersecurity possibilities for energy industry applications. [Rebecca Kern](#) is covering.
- Heavy hitters in the air pollution and climate change fields meet in Baltimore for an Air & Waste Management Association [conference](#). Steven Winberg, assistant secretary of fossil fuel programs at the Energy Department, and Mandy Gunasekara, a top official at the EPA's air office (and one of the Trump administration's first appointees to the agency early last year), are expected to speak. [David Schultz](#) is tracking.

QUOTE OF THE DAY

"Unless Andrew Wheeler significantly changes the way EPA has been doing business in this administration, he can expect more of the same from the courts."

—Georgetown law professor Lisa Heinzerling, a former Obama-era EPA official, [assessing](#) the agency's three recent legal losses.

ALL ABOUT: FIRE RETARDANT



A firefighting plane drops retardant at the Holy Fire near Lake Elsinore, Calif., on Aug. 7.
Photographer: David McNew/AFP/Getty Images

Soot and ash aren't the only things California's wildfires are leaving behind—the red fire retardant dropped from planes is coating homes and cars.

The retardant affects a wildfire's progress by coating vegetation and lowering the temperature of plants that could become fuel, reducing the fire's intensity and speed. The color makes the retardant more visible to firefighters.

A widely used retardant, known by the brand name Phos-Chek, washes off vehicles and isn't known to cause long-term health effects, according to the manufacturer, Perimeter Solutions of St. Louis. The ingredients can irritate eyes and skin and be fatal to some aquatic life. The EPA has rated the retardant

“practically non-toxic” for humans and other mammals.

The main ingredient in one of Phos-Chek’s retardants, diammonium phosphate, is also the world’s most widely used phosphorus fertilizer, according to potash and fertilizer producer Mosaic Co.

The U.S. Forest Service maps out environmentally sensitive areas—including waterways, reservoirs, and endangered species habitats—that firefighters must avoid when dropping fire retardant from aircraft. Certain concentrations of ammonia can create algae blooms and disfigure or kill fish, according to a 2011 Forest Service report. —*Sylvia Carignan*

AROUND THE WEB

- Flushing [old contact lenses](#) in the toilet, or down the sink, could add to the growing problem of microplastic pollution.
- Bitcoin’s [annual carbon footprint](#) is equal to that of Ireland’s.
- Texas’ environmental commission names ex-commissioner [Toby Baker](#) as executive director and former EPA Region 6 official [Emily Lindley](#) as a commissioner.

TODAY’S EVENTS

- **All Day • Nuclear** • The Nuclear Energy Institute opens its [Regulatory Affairs Forum](#) in Bethesda, Md. Nuclear industry representatives will discuss federal regulation and the Nuclear Regulatory Commission’s “transformation” efforts. NRC officials will speak, but NEI spokesman John Keeley told Bloomberg Environment that the forum is closed to reporters.
- **9:30 a.m. • Pentagon** • Senate Armed Services Committee [holds hearing](#) on several Pentagon nominees, including Alex Beehler to be assistant secretary of the Army for energy, installations, and environment.
- **2:30 p.m. • Cyber** • Senate Judiciary Committee’s crime and terrorism panel [holds hearing](#) on cyber threats to infrastructure.

For all of today’s Bloomberg Environment headlines, visit [Environment & Energy Report](#)

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Message

From: Lyons, Troy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=15E4881C95044AB49C6C35A0F5EEF67E-LYONS, TROY]
Sent: 6/7/2018 11:51:12 AM
To: Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]
CC: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: Re: Morning Energy: Another mess for Pruitt — Virgin Islands party boss: Zinke ties improved hurricane response — Coal magnate delivered draft orders to Trump

Personal Matters / Ex. 6

Sent from my iPhone

On Jun 7, 2018, at 6:12 AM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

Personal Matters / Ex. 6

Ryan Jackson
Chief of Staff
U.S. EPA

Personal Matters / Ex. 6

Begin forwarded message:

From: "POLITICO Pro Energy" <politicoemail@politicopro.com>
Date: June 7, 2018 at 5:43:57 AM EDT
To: <jackson.ryan@epa.gov>
Subject: Morning Energy: Another mess for Pruitt — Virgin Islands party boss: Zinke ties improved hurricane response — Coal magnate delivered draft orders to Trump
Reply-To: "POLITICO subscriptions" <reply-fe8913757762017a73-630326_HTML-786581600-1376319-0@politicoemail.com>

By Kelsey Tamborrino | 06/07/2018 05:41 AM EDT

With help from Darius Dixon, Anthony Adragna and Annie Snider

ANOTHER MESS FOR PRUITT: Scott Pruitt has an appetite for food from the White House mess — a U.S. Navy-run restaurant for use only by White House officials, Cabinet members and other dignitaries. In fact, he loves eating there so

much, the White House asked him to stop coming by so often, POLITICO's Emily Holden, Andrew Restuccia and Anthony Adragna report.

The message was clear, according to one person close to Pruitt: "We love having Mr. Pruitt, but it's not meant for everyday use." A member of the White House's Cabinet affairs team told agency chiefs of staff last year that their bosses shouldn't treat the mess like their personal dining hall — a comment that came in response to Pruitt's recurring use of the restaurant, sources said.

Pruitt's allies privately disputed that the warning about overuse of the mess was aimed squarely at him, but nobody contests that he's a frequent presence at the establishment in the basement of the West Wing. The White House did not respond when asked about his lunch habits, and EPA declined to comment.

A billing statement from July 2017 offered a glimpse into Pruitt's trips to the mess, racking up a bill of \$400 over nine trips that month — a relative bargain in downtown Washington considering the menu. A cheeseburger at the White House runs just \$6.35, according to Pruitt's bill. Compare that to the \$17 you'd pay for a burger from another favorite Pruitt spot, French bistro Le Diplomate. Read more.

Support for Pruitt is also falling on Capitol Hill, Anthony and Emily report, in the wake of this week's news that Pruitt sought to buy a used mattress from the Trump Hotel and inquired about securing a Chick-fil-A franchise for his wife. Two more top aides to Pruitt — scheduler Millan Hupp and counsel Sarah Greenwalt — also are leaving the agency. "I'm not going to come down here, just because he happens to be a nominee of a president I support or a nominee from my party, and try to defend the indefensible," Sen. John Neely Kennedy said. More here.

On the other hand, Cory Gardner, who heads the Senate GOP campaign arm, told reporters he doesn't think Pruitt's ongoing ethics woes will harm his party in the midterms. "The states like Missouri, Indiana, North Dakota have benefited from a regulatory approach this administration has taken," Gardner said.

Environmentalists' "Boot Pruitt" campaign will gather a "group of cows" outside the Capitol South Metro station today from 8 a.m. to 9:15 a.m. to hand out fake Chick-fil-A coupons for a free chicken sandwich with a donation to Pruitt's legal defense fund. They'll hold signs reading: "Breeth Mor Carhun" and "What the Cluck, Pruitt?"

VIRGIN ISLANDS BOSS PLAYS UP ZINKE RELATIONSHIP: The head of the Virgin Islands Republican Party suggested his fundraising group's longstanding relationship with Interior Secretary Ryan Zinke helped improve the department's response to last year's hurricanes that struck the island territory, Pro's Ben Lefebvre reports. John Canegata said he had direct access to Interior officials after the storm thanks to money his group raised for Zinke when he was a member of Congress.

Calling Zinke a "close friend," Canegata boasted of his connections in a televised appearance that aired in the Virgin Islands last month but has not received widespread attention outside of the territory. While numerous officials played a role in helping the islands recover from hurricanes Maria and Irma,

"behind the scenes, trust me, a lot of telephone calls, a lot of maneuvering was going on because, I think, some of the relationships we built," Canegata said of Zinke.

Interior acknowledged that officials contacted Canegata after the hurricanes but said they did so as part of a wider effort to contact business leaders based in the territory and Zinke did not call him personally. Canegata works for Cruzan Rum, but a company representative told Ben he was not involved in coordinating its relief efforts. Interior expedited the reimbursement of taxes on Virgin Islands rum following the storms, but it was unclear whether Canegata influenced that decision; he did not respond to a request for comment.

For his part, Zinke has known Canegata since at least 2015, Ben reports. The secretary previously came under fire for a fundraiser for the VIGOP, as the group is known, during an official trip to the islands in his first month in President Donald Trump's Cabinet. Read more.

IT'S THURSDAY! I'm your host Kelsey Tamborrino. NRECA's Dan Riedinger correctly identified John Tyler as the only president to have not been a resident of the U.S. when he died. Tyler resided in Virginia at the time, which was part of the Confederate States of America. Today's question: Which Congress had the largest number of veterans in office? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](https://twitter.com/kelseytam), [@Morning_Energy](https://twitter.com/Morning_Energy) and [@POLITICOPro](https://twitter.com/POLITICOPro).

POLITICO convened leading thinkers and policymakers to look closely at the financial well-being of future American retirees. Explore the latest issue of The Agenda to dig more into this important topic and download the Working Group Report to see what potential solutions are being proposed to solve the country's retirement puzzle. *Presented by Prudential*

Join the Global Public Affairs Club, a new global community dedicated to **C-level public affairs professionals** launched by POLITICO's sister company, DII. Members receive the **GPAC weekly newsletter**, including original reporting and analysis on **new transparency standards, recent lobbying regulation, risk management and industry best practices**. In addition, members have access to the Global Public Affairs Forum on Sept. 28 in Paris. For additional information on GPAC, email Chloé Mimault-Talagrand at cmimault@dii.eu.

MURRAY DELIVERED EXECUTIVE ORDERS TO TRUMP: Coal magnate Bob Murray handed off drafts of six executive orders that would roll back Obama-era environmental regulations to Trump during the beginning of his administration, according to documents from DOE released under FOIA. The documents include a letter to Energy Secretary Rick Perry from Murray praising Trump's March 2017 energy independence executive order, and included a note where Murray wrote, "we have developed the enclosed materials for your review and consideration, consisting of: six (6) Executive Orders further rescinding anti-coal regulations of the Obama administration; and one (1) memorandum outlining the legal rationale for each of these action, and others."

While Trump did not sign those exact orders, the administration has moved to enact similar policies, Pro's Darius Dixon reports. The documents, which were

sent to DOE the day Trump signed his energy independence order and one day before Murray met with Perry and DOE chief of staff Brian McCormack, also included concepts about grid security and "resiliency" that Perry later touted as part of his push to stop coal power plants from closing. Read more.

BAILOUT ON HIS MIND: In private remarks given during his visit to FEMA headquarters Wednesday, Trump mentioned a slew of topics that had nothing to do with hurricanes, The Washington Post reports, while only briefly mentioning Puerto Rico. Trump instead encouraged Perry to make an announcement about rescuing economically struggling coal and nuclear power plants, the Post reports. "I'd love to put it out — 'clean coal, nuclear,' it's a very important message," he said, telling Perry he needed to hold a news conference.

WRDA MOVES AHEAD: The House passed the Water Resources Development Act of 2018 (H.R. 8 (115)) last night, marking the first major piece of infrastructure legislation to move under the Trump administration, Pro's Annie Snider reports. Lawmakers signed off on the measure on a broadly bipartisan vote of 408-2. The bill — markedly narrower than the Senate's measure — would authorize six new Army Corps of Engineers projects and enact a suite of policy reforms at the red tape-laden agency.

What about the Senate? For those wondering, EPW Chairman John Barrasso told ME he'd not yet locked down a time for the Senate to consider its broader version of the water resources infrastructure legislation. Separately, Sen. Tammy Baldwin sent this letter to Trump, calling on him to urge Congress to include a permanent Buy America provision in the legislation.

MUM'S THE WORD: Barrasso, whose state produces a lot of coal and uranium, told ME he isn't ready to back Trump's proposed bailout for coal and nuclear power plants. "I've read the article but I want to actually see what the proposal is," he said. DOE is still formulating the details of how it would intervene to save the struggling plants.

RESCISSIONS VOTE TODAY: The House is set to vote today on Trump's \$15 billion rescissions bill, Pro's Sarah Ferris reports. The House Rules Committee teed up the bill, H.R. 3 (115), on Wednesday, a quick turnaround that surprised even some GOP lawmakers.

ALL ABOARD: After the rescissions package, the House is ready to start debate on its "minibus" appropriations package, which includes energy and water, legislative branch and military construction-VA spending bills, Pro's Kaitlyn Burton reports. The Rules Committee has set up floor votes on 50 amendments to the energy and water title. A final vote on the overall bill is expected Friday.

SHIMKUS SPEAKS: Rep. John Shimkus, one of the most ardent Yucca Mountain champions in Congress, said his loud floor dispute with Paul Ryan on Tuesday was simply a dispute over "strategy going forward." Other members suggested it had to do with the timing of the Energy-Water bill, since Shimkus thinks delaying until after the midterms might allow Yucca language to make it into the title. The Senate has avoided tackling Yucca due to Sen. Dean Heller's close reelection contest.

POWER OF THE PEN: The House Appropriations Committee agreed to bar EPA from spending more than \$50 on a fountain pen. The amendment — an apparent reference to the \$1,560 Pruitt spent on a dozen fancy writing implements — passed on a voice vote at Wednesday's markup. The panel cleared its version of the fiscal 2019 EPA-Interior bill, on a vote of 25-20. Committee Republicans blocked an effort from Democrats to boost EPA's Office of Inspector General by \$12 million, but approved an amendment that would change revenue sharing for drilling in the Arctic National Wildlife Refuge. And while the pen amendment passed, the committee shot down another amendment from Democratic Rep. Mike Quigley related to Pruitt's travel.

MEETING WITH A FULL DECK: The last time the leadership of FERC and the Nuclear Regulatory Commission got together, there were just enough commissioners between the two agencies to fill one five-member board. Fast-forward to today, and it's a full house for the first time in years thanks to confirmation of two new NRC leaders last month. The get-together is slated to run for just over two hours. An agenda hasn't been released but the meetings usually involve staff presentations on grid reliability — and how it might be impacted by the retirement of nuclear plants — and cybersecurity regulations. Finding the areas where an economic regulator overlaps with a safety watchdog isn't always obvious. The meeting is slated to run from 9 a.m. to 11:15 a.m. at FERC headquarters, and will be webcast.

ROYALTY RUMPUS: Interior's Royalty Policy Committee approved recommendations Wednesday aimed at expanding energy lease sales and lowering royalty rates, Ben recaps. But during the advisory committee's meeting, two members questioned whether it had the power to suggest changes to federal environmental review. "NEPA is not referred to in the [committee] charter," Rod Eggert, a professor at the Colorado School of Mines, said during the meeting. "The text in the charter refers to royalties and collections of royalties." Read more here.

Later Wednesday, BLM sent out a memo instructing field offices to look for ways to speed up permit processing, including by using categorical exclusions, Ben reports.

— **Meanwhile, the Central Arizona Project will meet today** on proposals for sourcing cheaper power to run the Navajo Generating Station. The Bureau of Land Reclamation last week sought to delay the coal-fired power plant's closure, arguing that a 1968 law gives Zinke the authority to require the Arizona water project buy energy from the power plant. Reuters has the rundown here.

GROUPS WARY OF INTERIOR DRAFT BILL: A coalition of sportsmen's groups is concerned about draft legislation that appeared before the House Natural Resources Energy Subcommittee on Wednesday. According to the draft bill, it would enable Interior to recover the costs of administrative protests to oil and gas lease sales, drilling permits and other applications. The bill, they say, would make it more difficult for sportsmen and women to comment on oil and gas lease sales on public land.

BLANKENSHIP IS BACK: Former coal baron Don Blankenship hasn't given up hope to take on the establishment and earn himself a spot in the Senate. After

losing a primary bid to West Virginia Attorney General Patrick Morrisey, Blankenship's campaign announced Wednesday it is petitioning to gain ballot access for the general election as the nominee for the Constitution Party.

BIPARTISAN LETTER ASKS PRUITT TO DROP 'SECRET SCIENCE':

More than 100 lawmakers — including Republican Reps. Brian Fitzpatrick, Carlos Curbelo, Ryan Costello and Ileana Ros-Lehtinen — signed onto a letter to Pruitt today, asking him to withdraw EPA's so-called secret science proposal to bar EPA from using studies that don't make public all their data. Read the letter here.

DEMS WARN AGAINST E15: Democratic Sens. Tom Udall and Peter Welch are calling on EPA to abide "by all legal and regulatory requirements" as the Trump administration weighs the year-round sale of 15 percent ethanol blends of gasoline. "We are very concerned that career EPA officials may be being directed to reverse over 25 years of the agency's position to manufacture legal and scientific justifications for a politically-directed decision on E15," they write. Read the letter.

MAIL CALL! RELEASE THE STUDY: A coalition of environmental groups will send this letter today to HHS Secretary Alex Azar, calling on him to release the controversial federal chemical pollution study blocked by EPA officials.

— **Nineteen environmental groups filed a letter** to the House in opposition of H.R. 5895 (115), the so-called minibus, which they say sets up an improper use of water and natural resources, and undermines safe nuclear waste disposal. Read it here.

FOR YOUR RADAR: The International Wildlife Conservation Council, which came under fire for the big-game trophy hunters added to its ranks, will hold its next meeting June 19 in Atlanta, according to the Federal Register.

ON THE WEB: The Center for American Progress is launching a new website today that is dedicated to tracking legal challenges to the Trump administration's conservation agenda. See it here.

QUICK HITS

— The heat is back on high: May smashes U.S. temperature records, Associated Press.

— Man dies at Randolph County mine, Charleston Gazette-Mail.

— Hurricanes are traveling more slowly — which makes them even more dangerous, The Washington Post.

— Trump falsely claims "We're now exporting energy for the first time," The New York Times.

— Trump's move to please farmers on biofuels reform draws refinery union ire, Reuters.

HAPPENING TODAY

8:00 a.m. — Exchange Monitor holds Decommissioning Strategy Forum, Nashville

8:30 a.m. — New Energy Update holds U.S. Offshore Wind conference, Boston

9:00 a.m. — The Atlantic Council and the American Council on Renewable Energy discussion on "The State of America's Energy Transition: Renewable Energy Policy Network for the 21st Century Renewable Global Status Report," 1030 15th Street NW

9:00 a.m. — Industry Exchange holds Mexico Gas Summit, San Antonio, Texas

9:00 a.m. — The Federal Energy Regulatory Commission and the Nuclear Regulatory Commission joint meeting, 888 First Street NE

11:00 a.m. — House Energy and Commerce Committee hearing on "Improving the Hydropower Licensing Process," 2123 Rayburn

11:00 a.m. — House Transportation Coast Guard and Maritime Transportation Subcommittee hearing on "Maritime Transportation in the Arctic: The U.S. Role," 2167 Rayburn

12:00 p.m. — Hill briefing on "The Export Subsidy RIN: A Valueless Dead End," 608 Dirksen

12:30 p.m. — Women of Renewable Industries and Sustainable Energy lunch and learn, 1501 M St NW

1:00 p.m. — House Science Energy Subcommittee hearing on the electric grid, 2318 Rayburn

2:00 p.m. — House Natural Resources Oversight Subcommittee hearing on "Wildfire Risk, Forest Health, and Associated Management Priorities of the U.S. Forest Service," 1324 Longworth

THAT'S ALL FOR ME!

To view online:

<https://subscriber.politicopro.com/newsletters/morning-energy/2018/06/another-mess-for-pruitt-244517>

Stories from POLITICO Pro

Another mess for Pruitt: Overstaying his White House welcome at lunch
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By Emily Holden, Andrew Restuccia and Anthony Adragna | 06/06/2018 10:17 PM EDT

EPA Administrator Scott Pruitt loves eating at the White House mess, an exclusive U.S. Navy-run restaurant open only to White House officials, Cabinet members and other dignitaries.

But apparently he liked it too much, and the White House asked him to please eat elsewhere sometimes.

In response to Pruitt's recurring use of the restaurant next to the Situation Room in the basement of the West Wing, a member of the White House's Cabinet affairs team told agency chiefs of staff in a meeting last year that Cabinet members shouldn't treat the mess as their personal dining hall, according to three people with knowledge of the issue.

The message was clear, according to one person close to Pruitt: "We love having Mr. Pruitt, but it's not meant for everyday use." Another person added that the White House asked Cabinet members to visit the mess only occasionally because there are few tables available.

A renovation to update the West Wing HVAC last August included the mess kitchen and may have limited space, one person said. The renovation came shortly after the president tapped John Kelly as chief of staff, and he implemented several day-to-day changes to bring order to the White House.

The White House did not respond to a request for comment and EPA declined to comment. Pruitt's allies privately disputed that the warning about overuse of the mess was aimed squarely at him, but nobody contests that he's a frequent presence at the White House for lunch.

Pruitt has been known to complain that EPA headquarters has no cafeteria of its own and no private dining quarters, according to multiple sources, who said Pruitt still often heads to the White House for lunch. One source said EPA officials called the White House to explain that Pruitt didn't have a place to eat at EPA and would like to continue to visit. Pruitt's EPA office is only a few blocks up Pennsylvania Avenue from the White House.

A billing statement from July 2017 offered a glimpse into Pruitt's use of the mess, showing the EPA chief or people linked to him dined at the mess at least nine times that month, racking up a bill of \$400, a relative bargain in downtown Washington. Pruitt and his guests dined on dishes like "cowboy" skirt steak, popcorn chicken and waffles, spinach strawberry salad and beer-braised brisket tacos.

While the food is considered to be top-notch, the prices are a real bargain. Skirt steak runs just \$10.25, while coriander beef kabobs were just \$11.95 each. And a cheeseburger runs just \$6.35, according to his bill. The burger at another of Pruitt's haunts, French bistro Le Diplomate, runs \$17.

Records obtained through a Sierra Club Freedom of Information Act request also show Pruitt often sought to bring friends from Oklahoma to the White House mess.

Five friends from Tulsa — Charlie Polston, Carlyn Mattox, David Mattox, Bob Wagoner and Jerry Dillon — were invited for a September lunch there with him, though it didn't appear in Pruitt's detailed calendar obtained through FOIA.

That lunch came just two weeks after Pruitt made a lunch date there with Bob Funk, a wealthy Oklahoma Republican with whom he bought a major stake in the minor league Oklahoma City RedHawks baseball team back in 2003.

"Please have Mr. Funk arrive at EPA building at 11:40am to ride with Administrator Pruitt to the WH," Lincoln Ferguson, a senior adviser for public affairs, wrote in an email. There was no entry in Pruitt's calendar for the time when the lunch was to have taken place.

Calendars from Pruitt's senior aides show he made frequent use of the space in the month following his February 2017 Senate confirmation. He dined there on Feb. 27, March 2 and met with Ivanka Trump, the president's daughter and West Wing adviser, on March 13. Chief of staff Ryan Jackson's calendar also lists a lunch in the "Mess" on March 16.

Pruitt also hosted representatives from the Oklahoma Farm Bureau on March 29, according to Jackson's calendar. And he returned for lunch with Mike Catanzaro, a senior White House energy aide, and several senior aides on April 7.

Pruitt and his guests also seemed to have a sweet tooth, partaking of a dessert called "Chocolate Freedom" on multiple occasions. As POLITICO reported in January 2017, the dish — a molten cake made with imported French chocolate that must be ordered at the beginning of lunch because of the baking time — was also popular among Obama administration staffers on their way out the door.

Chocolate Freedom has garnered rave reviews online, and once prompted comedian Zach Galifianakis to ask whether it was also the staff's nickname for former President Barack Obama.

Also available to diners: boxes of red, white and blue M&Ms featuring the presidential seal.

Alex Guillén contributed to this report.

To view online [click here](#).

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Pruitt wanted to buy 'old mattress' from Trump International Hotel [Back](#)

By Anthony Adragna | 06/04/2018 10:43 AM EDT

Two senior House Oversight Democrats are demanding Chairman Trey Gowdy (R-S.C.) subpoena Scott Pruitt for documents after one of his closest aides told congressional investigators the EPA administrator had her book a personal flight

to the Rose Bowl, search for housing for him and try to buy him an "old mattress" from the Trump International Hotel.

Ranking member Elijah Cummings (D-Md.) and Gerry Connolly (D-Va.) demanded that Gowdy compel Pruitt to turn over all documents related to the potential mattress purchase, efforts to secure personal flights, and work that agency employees performed on non-EPA tasks for Pruitt that have been withheld from an earlier April Democratic request. That followed a May 18 transcribed interview with Millan Hupp, Pruitt's scheduler.

"If Ms. Hupp's statements to the Committee are accurate, Administrator Pruitt crossed a very clear line and must be held accountable," they wrote. "Federal ethics laws prohibit Administrator Pruitt from using his official position for personal gain and from requesting and accepting services from a subordinate employee that are not part of that employee's official duties."

As part of its investigation into Pruitt, the Oversight Committee said it has conducted several transcribed interviews and obtained 2,350 pages of documents, and a spokeswoman criticized the release of Hupp's testimony.

"Selectively releasing portions of witness interview transcripts damages the credibility of our investigation and discourages future witnesses from coming forward. The Committee will continue conducting a serious, fact-driven investigation, and therefore will wait until the conclusion of our investigation to release our findings," committee spokeswoman Amanda Gonzalez said in a statement.

White House Press Secretary Sarah Huckabee Sanders said Monday the administration is "looking into" the issues in the Democrats' letter, but didn't outline any more specific steps.

"I couldn't comment on the specifics of the furniture use in his apartment and certainly would not attempt to," she said, referring to Pruitt's interest in the mattress.

According to the Democrats' letter, Hupp told Oversight staff she worked with the managing director of the Trump International Hotel in hopes of securing an old mattress. She said Pruitt had told her someone at the hotel indicated he could purchase the mattress, though she did not know why he wished to do so and did not know if he ultimately bought it.

In addition, Hupp said she sent several emails to real estate agents over a period of several months last summer during work hours to help Pruitt find housing after he verbally asked for her help. She said she visited a "probably more than 10" properties during her lunch hour over the course of several months. Hupp said she didn't use work email for the searches and was not paid for her efforts.

Pruitt and his wife ultimately settled on an apartment on 13th and U streets, but left it shortly afterwards because "they were not comfortable in the area," according to Hupp.

Democratic lawmakers have honed in on Pruitt's admission during a May 16 Senate subcommittee hearing that Hupp had searched for housing for him without pay on her own personal time.

"It doesn't cut it that they're a friend or that kind of thing," Sen. Tom Udall (D-N.M.) told Pruitt at the hearing, because having a subordinate staff member voluntarily conduct tasks on personal time would constitute a gift.

"That's in violation of federal law," Udall told Pruitt.

An EPA spokesman said the agency continued to give the information it was seeking.

"We are working diligently with Chairman Gowdy and are in full cooperation in providing the Committee with the necessary documents, travel vouchers, receipts and witnesses to his inquiries." EPA spokesman Jahan Wilcox said in a statement.

According to the Democrats' letter, Hupp said around Christmas she used a personal credit card from Pruitt in her possession to arrange his personal trip to the Rose Bowl in California to watch the Oklahoma Sooners football team play. She did not know why Pruitt, who sent her the details for the trip, and couldn't book the flight on his own.

"He just sent me the flights details and asked me to book for him," Hupp said.

Hupp indicated she considered Pruitt a personal friend, which was why she did these tasks for him. She said the two had met for dinners that were attended by just the two of them.

"We worked very closely together and spent a lot of time together," she said. "I traveled with him, so naturally a friendship developed."

To view online [click here](#).

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Republicans losing patience with scandal-scarred Pruitt [Back](#)

By Anthony Adragna and Emily Holden | 06/06/2018 05:37 PM EDT

Republicans on Capitol Hill are growing frustrated with EPA Administrator Scott Pruitt — and many are now publicly questioning whether he can hang on to his job amid the unending stream of scandals.

Several GOP lawmakers said their patience was running thin after this week's news that Pruitt sought to buy to buy a used mattress from the Trump Hotel and inquired about securing a Chick-fil-A franchise for his wife. And Pruitt's circle of confidantes inside the agency appeared to be shrinking as well, with two of his closest aides set to depart in the coming days.

"The constant drip needs to stop so the agency can get its footing and focus back," House Energy and Commerce Chairman Greg Walden (R-Ore.) told reporters. "They're doing some really good work in the environmental front, but this needs to stop."

"Sometimes people get tripped up on other things besides the core mission, and I think that's what you're seeing," Sen. Shelley Moore Capito (R-W. Va.) told reporters.

Pruitt's scheduler, Millan Hupp, is resigning following her interview by the House Oversight Committee during which she disclosed that she helped her boss find housing and inquired about purchasing a used mattress for him from the Trump International Hotel.

And his top legal counsel, Sarah Greenwalt, will also depart, according to sources. Both women had worked for Pruitt in the Oklahoma attorney general's office and both were among the staff that received raises that had been rejected by the White House.

"I think it's extremely fair to say her and Millan both are tired of the daily grind here," one EPA official said. "Everybody is painfully aware of that."

While acknowledging that President Donald Trump would ultimately make any decision about Pruitt's job, several Republicans indicated Pruitt's support was waning in their conference.

"I'm not going to come down here, just because he happens to be a nominee of a president I support or a nominee from my party, and try to defend the indefensible," Sen. John Kennedy (R-La.) said. "I thought that Mr. Pruitt would have learned his lesson."

Kennedy added: "I said the same thing about Tom Price," referring to Trump's former HHS secretary who resigned after spending lavishly on military and private jets.

Trump reaffirmed his support for Pruitt on Wednesday when they participated in a briefing on the 2018 hurricane season with several Cabinet officials.

"EPA is doing really, really well," Trump said. "You know, somebody has to say that about you a little bit. You know that, Scott."

But even staunch Pruitt allies like Sen. Jim Inhofe (R-Okla.) said the mounting scandals had them rethinking their support.

"Some are true, some are not true. Whether he can weather the storm, I'm not sure," Inhofe said. "The accusations are all troubling. They are."

A few Republicans stood by Pruitt, arguing he's been targeted by an environmental community and press corps eager to take him down.

"I like him," Sen. Roger Wicker (R-Miss.) said. "He is a target because he's keeping the president's campaign promises."

But a more common view among GOP lawmakers was the collective stream of scandals were taking their toll and making Pruitt's position untenable.

"Take a thousand cuts and [there's] not much energy left," Senate Appropriations Chairman Richard Shelby (R-Ala.) told reporters.

Rep. John Shimkus (R-Ill.), who leads the Energy and Commerce subcommittee overseeing EPA, joked he "can't keep up" with the flood of allegations and said he's concerned they haven't stopped.

"These unforced errors are unforced errors," he said. "I don't like being asked all the time about this."

But he raised a possible reason why Republicans weren't abandoning Pruitt: getting a replacement confirmed by the Senate would be nearly impossible.

"Are you going to promise me we could even get an administrator?" he said. "I think that's another concern."

In a video posted by a Nexstar Wednesday, Pruitt defended his attempts to set his wife up with a Chick-fil-A franchise Wednesday, while the president reaffirmed his support in the administrator.

Pruitt said that his wife is "an entrepreneur herself" and that the pair loved the fast-food franchise. As he has in the past, Pruitt dismissed criticism of his behavior as being driven by opposition to the Trump administration's deregulatory policies.

"With great change comes, I think, opposition," he said in a clip the reporter posted to Twitter.

Pruitt did not directly address whether he had asked an EPA aide to reach out to Chick-fil-A President Dan Cathy to inquire about his wife opening up her own restaurant, as the Washington Post first reported Tuesday.

"Chick-fil-A is a franchise of faith and it's one of the best in the country, so that was something we were very excited about," he told the Nextstar reporter Wednesday. "We need more of them in Tulsa, [Okla.]. We need more of them across the country."

Kelsey Tamborrino contributed to this report.

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Trump's Interior chief 'hopping around from campaign event to campaign event' [Back](#)

By Ben Lefebvre and Esther Whieldon | 10/05/2017 05:01 AM EDT

Republican donors paid up to \$5,000 per couple for a photo with Interior Secretary Ryan Zinke at a fundraiser held during a taxpayer-funded trip to the U.S. Virgin Islands, according to documents reviewed by POLITICO — raising questions about his habit of mixing official government business with political activism.

The new details about Zinke's March trip to the Caribbean, including the previously undisclosed invitation to the Virgin Islands Republican Party fundraiser, emerged after weeks of scrutiny of the former Montana GOP congressman's travels. The nearly two-hour event was one of more than a half-dozen times Zinke has met with big donors or political groups while on department-paid trips, Interior travel records and other documents show.

Ethics watchdogs say Zinke is combining politics with his Interior duties so frequently that he risks tripping over the prohibitions against using government resources for partisan activity, even though his appearance at the Virgin Islands event seems to have been legal. Democrats have also seized on the issue, including 26 House members who wrote in a letter Tuesday that Zinke's travels "give the appearance that you are mixing political gatherings and personal destinations with official business."

Zinke has said all his actions have obeyed the law, dismissing concerns about his travel as "a little BS."

But some ethics advocates say Zinke's attendance at a fundraiser during his first month as secretary is not in line with past administrations' conduct, even if he crossed no legal red lines.

"It happens on occasion with other Cabinet secretaries, perhaps even a little more often as you get near the election, but it is not a very common practice for Cabinet members to be hopping around from campaign event to campaign event like we're seeing with Zinke," said Craig Holman, government affairs specialist for government watchdog Public Citizen.

The secretary is already under investigation by his department's inspector general over his use of taxpayer-funded private planes for some of the trips, and the Office of Special Counsel is looking into an activist group's allegations that he violated the Hatch Act, the law limiting political activism by federal employees. The White House has cracked down on Cabinet members' travel habits following former HHS Secretary Tom Price's resignation on Friday, which occurred after POLITICO reported on his own expensive flights.

Zinke visited the Virgin Islands from March 30 to April 1 on an official trip related to the Interior Department's role overseeing the U.S. territory. On his first day, following a "veterans meet and greet" and a reception with Gov. Kenneth Mapp, he appeared in his personal capacity at a March fundraiser for the local

Republican Party at the patio bar of the Club Comanche Hotel St. Croix, department records show.

Tickets for the fundraiser ranged from \$75 per person to as much as \$5,000 per couple to be an event "Patron," according to Zinke's official calendar and a copy of the invitation. Patrons and members of the host committee, who paid \$1,500 per couple, could get a photo with Zinke at the start of the event, which was attended by local party members and elected officials.

The following day, Zinke took a \$3,150 flight on a private plane, paid for by the department, from St. Croix to official functions on St. Thomas and returned later that evening. Interior Department officials said there was no other way to accommodate his schedule, which included official events on both islands commemorating the 100th anniversary of the Dutch government transferring control of the islands to the United States.

Zinke is allowed to engage in partisan political activity in a "purely personal (not official) capacity," so long as he does not use government resources, according to Interior Department guidelines on the Hatch Act and other federal laws. The invitation to the GOP fundraiser did not identify Zinke by his official title and included a disclaimer that the money is being solicited by the local party and "not by any federal official."

All told, Zinke has spent around \$20,000 for three charter flights as secretary, nowhere near the \$1 million tab Price racked up on non-commercial trips. But he has on numerous occasions attended political receptions, spoken to influential conservative groups or appeared alongside past campaign donors during trips has taken outside of Washington, D.C., for official department business.

In one instance, Zinke gave a motivational speech for a professional hockey team owned by a major campaign contributor that he said was official business — and which required him to charter a \$12,000 flight to Montana for an appearance at the Western Governors Association the next day.

In another case, during a speech to the Western Conservative Summit in Denver, he was introduced via a recorded voice as the Interior secretary and Zinke proceeded to talk about the agency's priorities. The summit was organized by the Centennial Institute, which bills itself as Colorado Christian University's think tank and is a part of the State Policy Network of organizations that collectively push for conservative state-level legislation.

An Interior spokeswoman said Zinke always follows the law but declined to answer specific questions about his appearance at the Virgin Islands fundraiser, nor say whether he would keep raising political money. The agency also has yet to post Zinke's trip expenses involving any of the political events.

"The Interior Department under the Trump Administration has always and will always work to ensure all officials follow appropriate rules and regulations when traveling, including seeking commercial options at all times appropriate and feasible, to ensure the efficient use of government resources," spokeswoman Heather Swift said in a statement.

Swift did not respond to questions about whether the department had gotten reimbursement for the political portion of Zinke's three-day Virgin Islands trip, as the head of one watchdog group says it should have.

"Some of this travel is clearly political and that part of the travel should have been paid for by the RNC, NRCC, state political parties, a campaign committee or Zinke personally," said Daniel Stevens, executive director of the Campaign for Accountability.

No payments to the department are listed in the Virgin Islands Republican Party's FEC records.

Zinke is not the first Interior secretary, or Cabinet member, to have his activities questioned.

In 2012, a watchdog group called Cause of Action urged the Office of Special Counsel to investigate whether President Barack Obama's then- Interior Secretary Ken Salazar had violated the Hatch Act while taking an Obama reelection campaign RV tour of Colorado with a couple of lawmakers and the state lieutenant governor. Local organizers of one stop on that tour had billed Salazar on its online events calendar as attending the political rally in his official role. OSC would not say whether its investigation uncovered any problems, but travel records Interior has posted show that one of Salazar's aides had told the tour's coordinator the schedule "should not refer to (Salazar as) 'secretary.'" Salazar did not respond to a request for comment.

A former Salazar aide, who was not authorized to speak on the record, said the Obama administration generally tried to avoid scheduling political events that coincided with official travel because it was difficult to divvy up what expenses should be reimbursed by a campaign.

The special counsel's office found Obama HHS Secretary Kathleen Sebelius in violation of the Hatch Act in 2012, saying she had made "extemporaneous partisan remarks" by endorsing a candidate for North Carolina governor during a speech she made in her official capacity. Sebelius tried to scrub the violation by reclassifying the appearance as political and reimbursing the Treasury Department for costs associated with the trip.

Sally Jewell, who was Interior secretary during Obama's second term, said Zinke was within his rights to appear at the fundraiser in the Virgin Islands. Jewell said she once appeared at a fundraiser for Democratic Sen. Maria Cantwell while in Obama's Cabinet, though she paid her own way to Washington state and was not identified by her official title.

"If he had legitimate business while he's on the island, to do a political thing on the side, I don't think that is that unusual," Jewell said in an interview.

EPA Administrator Scott Pruitt canceled his scheduled appearance at a fundraiser for the Oklahoma Republican Party in April because an invitation had identified him by his official title and said he would discuss his work at the agency. EPA ethics officials said he would have been cleared to attend the event if not for that language on the invitation.

Watchdog groups say Zinke's behavior fits a pattern for Trump's Cabinet.

"These government resources have been abused by this administration," said Virginia Canter, an executive branch ethics counsel for Citizens for Responsibility and Ethics in Washington who previously worked as an ethics official for Presidents George H.W. Bush, George W. Bush and Obama. "To the extent that some of that supports their political ambitions is inconsistent with the intent of this authority."

The Campaign for Accountability called on Interior's inspector general and the Office of Special Counsel to investigate whether Zinke violated the Hatch Act or department ethics rules with his speech to the hockey team, which the group said appeared to be a favor for a donor. Interior's IG office announced its investigation earlier this week, and OSC told the Campaign for Accountability that it was looking into the group's complaint, according to an email shared with POLITICO. The OSC declined to comment.

Reps. Raúl Grijalva (D-Ariz.) and Donald McEachin (D-Va.) have asked Interior's IG to also look into any trips on which the secretary was accompanied by his wife, Lola Zinke, who is chairing the campaign of Montana Republican Troy Downing, a candidate to unseat Democratic Sen. Jon Tester next year. Swift said Lola Zinke was not in the Virgin Islands and has paid her own way whenever she has traveled with her husband on official trips.

Many who know him see Zinke's travels as an attempt to keep in touch with political contacts as he contemplates what he will do after leaving the Trump administration. Back home, the 55-year-old former Montana congressman is seen as an attractive candidate for the open-seat governor's race in 2020, when Democratic Gov. Steve Bullock will have to step down because of term limits.

"I think he's definitely got political aspirations; that's one of the reasons why he is where he is at right now," said Land Tawney, executive director of Backcountry Hunters and Anglers, a Montana-based sportsman group that supported Zinke's bid for Interior secretary. "You don't go from being a Montana legislator to a first-term congressman to [Interior] secretary without having ambition."

The Virgin Islands trip was Zinke's first interaction with big donors or influential conservative groups during his travel as Interior secretary.

A weeklong trip in May that took Zinke through Montana, Utah and California also offered a chance to squeeze in some political events.

Zinke delivered the keynote speech at the RNC spring meeting on May 11 in Coronado, Calif. Zinke had flown to California the previous night, after several days touring monuments in Utah, and the RNC speech was his only event in the state aside from a meeting earlier that afternoon with Rep. Amata Radewagen, the Republican delegate from American Samoa, and members of the American Tunaboat Association.

The next day, Zinke flew back to Montana, where he joined Sen. Steve Daines (R-Mont.) and Vice President Mike Pence to tour a coal mine on the Crow Indian reservation operated by the Westmoreland Coal Co.

The trip offered Zinke and Pence an opportunity to tout the Trump administration's work to promote new coal mining on federal lands — and it allowed them to make a brief detour to promote Zinke's congressional replacement. That Friday night, Zinke, Pence and Daines attended a political rally for GOP candidate Greg Gianforte, and Zinke attended a get-out-the vote event for the Montana GOP the next day.

Zinke apparently paid for his return trip to Washington out of his own pocket — it was marked "personal travel" on his calendar, a designation not applied to the other flights on that trip.

Gianforte, whose wife is a major political donor in Montana, won the May 25 special election to take over Zinke's House seat.

Greg and Susan Gianforte donated more than \$10,000 to Zinke's 2016 congressional campaign and another \$10,000 to a joint Zinke-Daines PAC, according to federal records. The couple donated \$5,000 for his earlier run for Congress.

Zinke met with big influencers and donors in June as well.

On June 25, he flew from D.C. to Reno, Nev., where his only scheduled event was a meeting of the Rule of Law Defense Fund, a group of Republican attorneys general that has been linked to the Koch brothers, where he spoke and took questions for about 30 minutes, according to his schedule.

After his remarks, he sat at a dinner table with Montana's attorney general, the government relations specialist for the Venetian Resort Hotel Casino and Las Vegas Sands, and Koch Industries lobbyist Allen Richardson, Interior documents show.

The next day, Zinke flew to Las Vegas for an event on public lands in nearby Pahrump, Nev., and a speech that night to the National Hockey League's Vegas Golden Knights. Bill Foley, the team owner and chairman of Fidelity, introduced Zinke. Foley donated \$7,800 to Zinke's 2014 campaign, while employees and PACs associated with Fidelity and related companies gave another \$180,000. Interior officials said the speech to the NHL team was part of Zinke's official duties, and they pointed to scheduling conflicts it created to justify his use of a \$12,000 private plane to get to a Western Governors Association meeting in Montana the next day.

In July, Zinke spoke to several conservative groups in Colorado during a three-day trip that also included tours of Interior Department facilities in the state. He flew into Denver on July 20 so he could appear that evening at a closed-door reception for the American Legislative Exchange Council, a group of conservative state legislators, lobbyists and industry groups that has pushed for more state control over federal lands.

And over the next two days, he was a featured speaker at a Republican committee roundtable and attended the Western Conservative Summit in Denver.

Eric Wolff contributed to this report.

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Zinke's political ties to Virgin Islands improved Interior's hurricane response, party boss says [Back](#)

By Ben Lefebvre | 06/07/2018 05:11 AM EDT

The top GOP official in the U.S. Virgin Islands suggested his fundraising group's "behind the scenes" relationship with Interior Secretary Ryan Zinke helped influence the department's response to last year's hurricanes in the island territory.

John Canegata, the head of the Virgin Islands Republican Party, said he had direct access to Interior officials after the storm thanks to money his group raised for Zinke, whom he described as a "close friend." Zinke, a former congressman, has known Canegata since at least 2015, and the secretary was at a [fundraiser](#) for the VIGOP, as the group is known, during an official trip to the islands in his first month in President Donald Trump's Cabinet.

Interior officials acknowledged reaching out to Canegata, who also works for a major rum distiller in the territory, although they said it was part of a wider effort to contact business leaders based in the territory and Zinke did not call him personally. However, a representative of the distiller said Canegata was not involved in their relief efforts, and a spokesman for the Virgin Islands' House delegate disputed Canegata's involvement in the hurricane response.

The department expedited reimbursements of rum taxes as part of its response to the hurricanes, although it's unclear whether Canegata's connection influenced that decision. Interior has jurisdiction over U.S. territories including the Virgin Islands but not Puerto Rico, which suffered more extensive devastation.

Disaster response experts say it would be inappropriate for Canegata's political connections to influence Interior's efforts in the Virgin Islands.

"These are processes that are supposed to be transparent and supposed to be above the board," said Eric LeCompte, executive director of Jubilee USA, an anti-poverty group that has been involved in hurricane disaster relief efforts. "So, it would not be something a political party would be part of."

VIGOP is not a typical political party and faces frequent inquiries from the FEC to better explain its fundraising practices and expenses. Some critics, including past Republican clients, say the group bilks conservative donors with promises to fight Democrats while spending the bulk of its money on overhead instead of political advocacy. The group spends the [vast majority of its money](#) on a small group of Washington-area political consultants who have also done work for Zinke's campaign and leadership PACs.

Zinke was introduced to the VIGOP in 2015 by a Washington fundraising consultant who also did work for his campaigns, and as a member of Congress he

has traveled to at least two political conferences in the Virgin Islands sponsored by the group, POLITICO reported last year. Zinke and Canegata are seen together during a prior trip in a photo posted to Facebook.

Canegata boasted about his Zinke ties in a televised appearance on WTJX Virgin Islands Public Broadcasting that aired last month but has not received widespread attention outside of the territory.

"We were in direct connection with the Department of Interior," Canegata said in the broadcast.

"Secretary Zinke, happens to be, I wouldn't say a personal friend, but a close friend," Canegata continued. "Prior to him being the secretary of Interior, we spent some time in Washington, we spent some time here in the Virgin Islands. We supported him when he was a congressman and, behold, he becomes the secretary of Interior."

While Canegata credited other officials with their part in aiding the island's response, he said the pre-existing connection to Zinke was key.

"Obviously, we have our congresswoman, our governor doing their job," Canegata continued. "But behind the scenes, trust me, a lot of telephone calls, a lot of maneuvering was going on because, I think, some of the relationships we built."

The Office of Special Counsel on Tuesday closed its investigation into Zinke's appearance at the Virgin Islands fundraiser in March 2017, finding that he had not violated the Hatch Act because he was there in his official capacity and VIGOP reimbursed Interior for its expenses. Interior's inspector general also recently said the appearance at the fundraiser was not inappropriate. It is unclear whether either of those investigations addressed any link between VIGOP and Interior's hurricane response; both offices declined to comment.

Interior's Office of Insular Affairs, which oversees the Virgin Islands, "reached out to dozens of local government employees as well as major private sector employers in the USVI to check their power status and to see how the office could help," Interior spokeswoman Heather Swift said in an email. Canegata "was contacted by those Insular Affairs officials because he works for one of those major private employers, Cruzan Rum."

Canegata, a supply chain specialist at the rum distillery, had no role in the company's disaster relief efforts, according to Cruzan Rum human resources manager Ayanda Daniels.

"He wasn't part of the coordination," Daniels told POLITICO. "Maybe he had a conversation with someone in order to do something, but we had another team for company response."

James Norton, a former Department of Homeland Security Deputy official during the George W. Bush administration, said it is important for disaster response efforts to be handled through the appropriate channels.

"As a matter of proper procedure, it would only be appropriate for all federal actions to be dealt with solely with official authorities at the Department of Defense, Interior, Homeland Security, FEMA, etc., and those local officials on the ground," said Norton, who is now head of the consulting agency Play-Action Strategies. "Anything other than raising awareness and reaching out to get an update on what's happening would be inappropriate, as a political party or other organization doesn't have command and control authority, nor would they be the designated principal federal official on the ground directing rescue operations."

A spokesman for Stacey Plaskett, the Democratic House delegate from the Virgin Islands, disputed Canegata's version of events.

"I cannot honestly remember hearing them or seeing them do anything to that effect," Plaskett's spokesman Mike McQuerry said. "The congresswoman was the person here in D.C. that worked extremely hard during that time to get those funds to the Virgin Islands."

Canegata did not respond to a request for comment this week.

Interior expedited reimbursement of \$223 million in taxes on Virgin Islands rum imported into the mainland and provided a \$567,500 grant to help with a post-hurricane finance audit. Other hurricane relief funds would have come from FEMA, an Insular Affairs spokesperson said.

Otherwise, Zinke and Insular Affairs head Doug Domenech met with Virgin Islands Gov. Kenneth Mapp to discuss recovery efforts, the Insular Affairs spokesperson said. In November, Domenech also met representatives of Cruzan Rum's parent company, Beam Suntory, to discuss the rum tax reimbursements Interior makes to the territory. Beam Suntory donated \$1.5 million to hurricane relief efforts the previous month.

Swift said Zinke did not personally reach out to Canegata. "The only official in the USVI the Secretary called was Governor Mapp," she said.

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Murray had early access to Perry to share coal plan [Back](#)

By Eric Wolff | 12/07/2017 04:22 PM EDT

Coal magnate Bob Murray pitched Energy Secretary Rick Perry on his plan to throw an economic lifeline to coal companies less than a month before Perry set in motion plans to aid the industry, according to newly disclosed photographs that show the two meeting.

The liberal magazine In These Times obtained pictures of Murray and Perry from a March 29 meeting at Energy Department headquarters, less than a month after

Perry was sworn in. Several other officials were in attendance, including Andrew Wheeler, who at the time was a lobbyist for Murray and has since been nominated as EPA's No. 2 official.

The meeting puts Murray and Perry together at a crucial moment in the timeline of the Trump administration's push to save the struggling coal industry, an effort that would benefit Murray Energy in particular while hiking electricity prices for potentially millions of people. A month before the meeting, one of Murray's biggest customers, FirstEnergy Corp., had told investors it was seriously considering sending its merchant division, FirstEnergy Solutions, into bankruptcy, a move which would likely void its supply contracts with Murray's coal mines.

Three weeks after Murray's visit, Perry would order a grid study that later became part of the justification for a proposed rule to reward coal and nuclear power plants for providing "grid resiliency." FERC, which has jurisdiction over the proposal, must make a decision on it by Monday.

At the time of the meeting, Wheeler was already the leading candidate to become the deputy administrator for EPA. Wheeler, who represented Murray as a lobbyist for Faegre Baker Daniels, would not be officially nominated for months. Wheeler, who has acknowledged participating in meetings on Murray's coal plan at DOE and on Capitol Hill, cleared committee last week and is awaiting Senate confirmation.

Murray is an outspoken supporter of President Donald Trump and held a fundraiser for him during the 2016 campaign.

DOE did not dispute the validity of the photos.

"Industry stakeholders visit the Department of Energy on a daily basis," DOE spokeswoman Shaylyn Hynes said, when asked about the meeting. "The DOE proposal to FERC was about the future and resiliency of the nation's power supply, an issue much bigger than one industry or company."

The photographs show Perry sitting at the head of a table in the Department of Energy, with Bob Murray, CEO of Murray Energy, to his left, and Wheeler down the table from Murray.

"Enclosed is an Action Plan for achieving reliable and low cost electricity ... and to assist in the survival of our Country's coal industry, which ... power grid reliability and low cost electricity," Murray writes in a cover letter to Perry, parts of which are visible in one photo from the meeting.

Though the document has never been publicly released, DOE critics say Murray's plan appears to have inspired DOE's grid study and the proposed rule Perry sent FERC in September. Copies are visible at the seats of most of the participants, including Perry and Murray. Wheeler, who told members of the Senate Environment Committee he had only seen the memo briefly, is not holding a copy in the photos obtained by In These Times. Murray told Greenwire in November he "didn't have any involvement" in writing the rule.

Murray has acknowledged sharing the plan with Trump.

"I gave Mr. Trump what I called an action plan very early," Murray said in a recent [PBS Frontline](#) documentary on EPA. "It's about three-and-a-half pages and — of what he needed to do in his administration. He's wiped out page one."

The meeting appears to have been successful for all. [One of the photos](#) shows Perry and Murray in a big bear hug.

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Murray delivered executive orders on coal rules to Trump administration

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By Darius Dixon | 06/06/2018 07:05 PM EDT

Coal magnate Bob Murray delivered six draft executive orders ready for President Donald Trump to sign to roll back Obama-era environmental regulations in the early weeks of the administration, according to newly released Energy Department documents.

The [documents](#) released Wednesday after a Freedom of Information Act request include a letter to Energy Secretary Rick Perry from Murray praising Trump's March 2017 energy independence executive order, which largely aimed to help the coal industry. And to bolster that effort, Murray wrote, "we have developed the enclosed materials for your review and consideration, consisting of: six (6) Executive Orders further rescinding anti-coal regulations of the Obama administration; and one (1) memorandum outlining the legal rationale for each of these action, and others."

Those executive orders were also sent to EPA Administrator Scott Pruitt, whose agency had jurisdiction over most of the issues they involved, such as ozone rules and regulations on coal ash.

Trump has not signed executive orders resembling Murray's, but the administration has moved to enact the policies, such as pulling U.S. out of the Paris climate agreement. The documents, which were sent to DOE the day Trump signed his energy independence order and one day before Murray met with Perry and DOE chief of staff Brian McCormack, also included concepts about grid security and "resiliency" that Perry later touted as part of his push to stop coal power plants from closing.

"The Department of Energy ("DOE") must issue an emergency directive to have an immediate study done of the security and resiliency of our electric power grids," the document states. "DOE will direct that no power plants having an available fuel supply of at least forty-five (45) days be closed during the study period, or a minimum of two (2) years."

Perry later ordered his staff to write a study about the electric grid that was eventually tied to a regulatory proposal that FERC create financial rewards for

power plants with a 90-day supply of fuel on-site. That condition would have overwhelmingly benefited coal and nuclear generators, but it was shot down by FERC in January.

Critics have said Murray would be the biggest beneficiary of Trump's efforts, since his company supplies coal to many of the power plants at risk of closing because of stiff competition from cheap natural gas and renewable power as well as lagging electricity demand from consumers.

Murray spokesman Gary Broadbent confirmed the company had submitted the documents to Perry "to assist in the reversal of the illegal, job-killing, anti-coal regulations of the Obama Administration."

"Mr. Murray has always sought to secure reliable, low-cost electricity for all Americans, as well as to preserve and protect the jobs and family livelihoods of thousands of coal mining families," he said in a statement. "We applaud the actions taken by President Trump's Administration, to date, to protect these jobs and to advance the energy security of the United States."

Murray has repeatedly called on DOE to issue must-run orders for FirstEnergy power plants that consume his coal, and he blasted the FERC commissioners who opposed the on-site fuel proposal.

On Tuesday, a top DOE official said the agency is still formulating a plan to keep struggling coal and nuclear power plants from closing, and it had no deadline to meet Trump's demand to rescue them.

"We are evaluating options," Energy Undersecretary Mark Menezes told reporters. Last week, Trump called on DOE to take "immediate steps" to stop a wave of coal and nuclear power plant retirements, and like Perry, he cast the shutdowns as a threat to national security.

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House passes WRDA bill [Back](#)

By Annie Snider | 06/06/2018 09:42 PM EDT

The House has overwhelmingly approved the Water Resources Development Act of 2018, H.R. 8 (115), the first major infrastructure legislation to move under the Trump administration.

Lawmakers signed off on the measure on a broadly bipartisan vote of 408-2. The bill would authorize six new Army Corps of Engineers projects and enact a suite of policy reforms at the red tape-laden agency. It is significantly narrower than the Senate's measure, which would also make changes to EPA drinking water and wastewater programs.

And it includes a provision that could stir some controversy with the Senate, ordering a study of whether the Army Corps' civilian work should remain within the Department of Defense.

But House leaders dodged provisions that could have derailed the bill by blocking controversial amendments from floor consideration. Those included efforts to repeal the Obama administration's Waters of the U.S. rule, allow firearms at Army Corps recreational sites and exempt pesticide spraying from Clean Water Act permitting requirements.

WHAT'S NEXT: The Senate is expected to consider its version of the WRDA bill, America's Water Infrastructure Act of 2018, [S. 2800 \(115\)](#), this summer.

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Trump calls for coal, nuclear power plant bailout [Back](#)

By Eric Wolff | 06/01/2018 02:29 PM EDT

President Donald Trump pressed for a quick regulatory bailout for struggling coal power plants on Friday — a move that would buoy a mining industry that offered him crucial support in 2016, but is riling other energy companies and even some free-market conservatives.

The White House called on Energy Secretary Rick Perry to take immediate steps to keep both coal and nuclear power plants running, backing Perry's claim that plant closures threaten national security. An administration strategy to do that laid out in a memo to the National Security Council circulated widely among industry groups on Friday, but it was not clear that intervention could survive the inevitable political and legal challenges.

It was the latest step in more than a year of efforts by the administration to compel power companies to keep operating the money-losing plants that are suffering from the rise of competing energy sources like natural gas. Those proposals have drawn opposition from most utilities, along with environmentalists, gas producers, power grid operators and conservatives who say it would be an unwarranted intrusion to the energy markets.

The White House statement calling for action came after days of Trump making similarly aggressive moves on international trade, slapping tariffs on the European Union, Canada and Mexico to protect U.S. industries like aluminum and steel. In this case, the president is acting on behalf of what he likes to call "beautiful, clean coal," a once-dominant fuel that still plays a major role in his stump speeches.

Trump "has directed Secretary of Energy Rick Perry to prepare immediate steps to stop the loss of these resources," White House press secretary Sarah Huckabee Sanders said in a statement Friday, referring to coal and nuclear plants.

She added that Trump believes "keeping America's energy grid and infrastructure strong and secure protects our national security... Unfortunately, impending retirements of fuel-secure power facilities are leading to a rapid depletion of a critical part of our nation's energy mix, and impacting the resilience of our power grid."

The statement came five months after federal energy regulators rejected Perry's call that they adopt his proposal to keep the struggling coal and nuclear power plants operating. That proposal would have overwhelmingly benefited mining magnate Bob Murray, an outspoken Trump supporter whose operations supply coal to several endangered plants in the Midwest and Northeast, according to a POLITICO analysis.

Trump's National Security Council gathered Friday to discuss the draft memo that lays out arguments why the administration should use federal authority to keep the money-losing power plants open — despite the assurances from some of the nation's grid operators that no such emergency exists.

"Any federal intervention in the market to order customers to buy electricity from specific power plants would be damaging to the markets and therefore costly to consumers," said the PJM Interconnection, which operates the nation's largest power grid and stretches from the Midwest the Atlantic Coast, in a statement. "There is no need for any such drastic action."

A broad swath of trade associations representing oil and gas, wind and solar power, consumer groups and advanced energy technologies slammed the plan, and they were joined by some congressional Democrats.

"This would be an egregious abuse of power," Sen. Ron Wyden (D-Ore.) said in a statement. "I fought this proposal before, and I will continue to fight this corrupt scheme to prop up the coal industry at the expense of American consumers."

That new 41-page memo, first revealed by Bloomberg News on Thursday evening, says that under the 2015 highway and transit bill known as the FAST Act, DOE must identify critical energy infrastructure, a process the agency is undertaking now with the help of its national labs. But because that is likely to take two years, DOE in the meantime should use the 1950 Defense Production Act and the Federal Power Act to require the plants to keep operating, the memo says.

Power sector experts have said using the two laws to keep specific plants operating would stretch both those measures, and would certainly trigger a major legal fight. Critics of the administration's strategy said the memo appears to signal that the White House is preparing for a fight.

"One way to view the release of this draft is that it is a trial balloon to see how fierce and fast the opposition will be," said Dena Wiggins, CEO of the industry lobby group Natural Gas Supply Association, which opposes the DOE plan. "We've known for some time that all of these federal authorities ... were in play, so the fact that we've now seen it in writing doesn't really change anything. It does, however, underscore how hard it is to cobble together a sound legal rationale to bail out otherwise uneconomic coal and nuclear plants."

And critics say the push to bail out the plants is simply Trump's effort to reward backers like Murray, the coal baron, and live up to his campaign promise to revive coal country. Perry first began work on the power plant issue in March 2017, when he met with Murray at DOE, and Trump himself personally directed Perry to take action on the issue since last summer.

Murray's coal mines have been a major supplier for power plants owned by FirstEnergy Solutions, a unit of Ohio-based utility giant FirstEnergy that sank into bankruptcy this spring. FirstEnergy Solutions has said it plans to close or sell five of its money-losing coal and nuclear power plants.

But the Federal Energy Regulatory Commission and the grid operator have said that even with the planned closures, the region has ample power to supply the market's needs. Stagnant power consumption growth, coupled with the rise of natural gas and renewable power sources like wind, has displaced many of the older coal and nuclear facilities in the markets.

The memo also calls for establishing a new requirement for the electric grid based on "resilience," a term Perry injected into the regulatory conversation last fall with a proposed rule that would have rewarded plants that could keep 90 days of fuel on site. FERC rejected that rule, but it also created a new proceeding to try to define "resilience," which some in the industry say pertains to the grid's ability to withstand and recover from a physical or cyberattack.

The memo largely focuses on the issue of resilience, which it says would suffer if coal and nuclear power plants retire. It specifically targets natural gas as a weakness, because the plants that burn the fuel rely on pipelines that could be disrupted, while coal and nuclear power plants can keep months' worth of fuel on site.

"Natural gas pipelines are increasingly vulnerable to cyber and physical attacks," the memo says. "The incapacitation of certain pipelines through the United States would have severe effects on electric generation necessary to supply critical infrastructure facilities."

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House to vote Thursday on Trump's spending cuts plan [Back](#)

By Sarah Ferris | 06/06/2018 05:32 PM EDT

President Donald Trump's prized deficit-reduction package is rolling toward the House floor this week, though its prospects in the Senate remain in doubt — with little time to spare.

House leaders have set a vote Thursday on the Trump administration's roughly \$15 billion rescissions bill, according to a GOP aide, nearly a full month after the proposal was first delivered to Capitol Hill.

The House Rules Committee will tee up the bill, [H.R. 3 \(115\)](#), on Wednesday evening, a lightning turnaround that surprised even some GOP lawmakers.

The last-minute scheduling change comes after the White House [agreed this week](#) not to slash hundreds of millions of dollars from politically sensitive programs, like Hurricane Sandy aid, which helped [secure votes](#) from numerous GOP holdouts.

Even with some of those unpopular cuts reversed, several House Republicans remain anxious about the plan's optics — specifically, cuts to the ultra-popular Children's Health Insurance Program.

At a closed-door meeting of House Republicans Wednesday, several GOP lawmakers stood up to complain that the kids' health cuts could hit hard on the campaign trail, despite assurance from neutral budget experts that the cuts wouldn't harm the program.

In fact, the vast majority of the White House's proposed spending cuts would exist only on paper. The bill would save only \$1 billion over a decade, [according](#) to the CBO, which is far less than 1 percent of the size of Congress' last spending bill, [H.R. 1625 \(115\)](#).

Next, the White House will have to sell the bill to the Senate, where a single Republican "no" vote could sink the package.

Budget chief Mick Mulvaney has already met with Sen. [Lisa Murkowski](#), an Alaska Republican who has raised issues with the cuts to CHIP. Sen. [Susan Collins](#) of Maine, another GOP moderate, has not yet said whether she supports the bill.

If the House clears the bill Thursday, the Senate will have roughly two weeks to send the measure to Trump's desk before its filibuster-proof powers expire June 22.

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Minibus spending package ready for House floor action [Back](#)

By Kaitlyn Burton | 06/06/2018 07:46 PM EDT

The House Rules Committee today teed up a three-bill spending bundle for floor consideration as soon as Thursday.

All in all, the panel approved 50 Energy-Water amendments, 22 Military Construction-VA amendments and seven Legislative Branch amendments, setting them up for floor votes.

While the minibus, [H.R. 5895 \(115\)](#), will likely pass, House Democratic leaders threw a wrench in things when they urged lawmakers to oppose the bill, POLITICO [reported](#) Tuesday evening.

Votes on the package are expected to come after a separate [Thursday vote](#) on the White House's rescissions measure, [H.R. 3 \(115\)](#). Conservatives, including the Republican Study Committee, asked for the spending cuts to be taken up first, according to a House GOP aide. The Rules Committee teed up the rescissions proposal in a 9-3 vote tonight, allowing no amendment votes.

The minibus would be the first House-passed fiscal 2019 funding measure.

Sarah Ferris contributed to this alert.

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House appropriators advance \$35B Interior-EPA spending package [Back](#)

By Alex Guillén | 06/06/2018 05:04 PM EDT

The House Appropriations Committee today approved its \$35 billion Interior-EPA spending bill by a party-line vote of 25-20.

Committee Republicans [blocked](#) an effort from Democrats to boost EPA's Office of Inspector General by \$12 million, saying the watchdog already has "robust" appropriations. The bill funds the OIG at \$12 million less than his request, but higher than the amount requested by the White House.

The committee voted down an [amendment](#) that would have required EPA's administrator and deputy administrator to report public details of travel costs within 10 days of a trip, along with various amendments targeting a repeal of the Waters of the U.S. rule and other policy riders, along with EPA's proposed science transparency policy, offshore drilling and other standard policy disputes.

Lawmakers approved an [amendment](#) that would change revenue sharing for drilling in the Arctic National Wildlife Refuge. The approved amendment would send 50 percent of revenue to the federal government, 47 percent to the state and 3 percent to the Alaskan Native claims settlement fund.

They also backed a tongue-in-cheek [amendment](#) from Rep. [Marcy Kaptur](#) (D-Mich.) that would limit EPA from spending more than \$50 on any one fountain pen, a response to a recent Washington Post [report](#) that Pruitt spent \$1,560 for a dozen personalized fountain pens. The amendment passed with no "nay" votes.

WHAT'S NEXT: Lawmakers hope to have the bill before the full House sometime this summer, but it is unclear whether the Senate will act on a similar

timeframe. Like most other appropriations bills in recent years, Congress has passed an omnibus rather than conferencing directly.

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GOP blocks funding increase for EPA watchdog probing Pruitt activities

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By Alex Guillén | 06/06/2018 03:06 PM EDT

House Republicans today blocked a Democratic effort to increase funding for EPA's Office of Inspector General to help the watchdog deal with the increased workload stemming from Administrator Scott Pruitt's spending and ethics scandals.

Rep. [Mark Pocan](#) (D-Wis.) and a bloc of Democrats on the House Appropriations Committee pushed an [amendment](#) that would have boosted OIG funding for fiscal 2019. It ultimately was voted down on a party-line vote of 21-26.

"It's hard to imagine that there is a more overworked inspector general than at the EPA these days," Pocan said. "This is not a Democrat/Republican thing, this should be a good government thing."

Interior-EPA Appropriations Chairman [Ken Calvert](#) (R-Calif.) said the bill "already includes robust support for EPA's inspector general."

The House Interior-EPA spending package would provide the OIG funding of just over \$50 million, about flat with 2018's level. Most of that is appropriated directly, though some of it is pulled from the Superfund program for OIG's work on Superfund-specific issues. Pocan's amendment would have drawn the extra \$12 million from EPA's "workforce reshaping" account inside the \$2.5 billion environmental programs.

In a February [letter](#), EPA Inspector General Arthur Elkins said the president's proposed OIG budget of \$46 million would "substantially inhibit the OIG from performing the duties of the office." He asked instead for a budget of \$62 million. That request came before an avalanche of congressional requests to review various Pruitt-related issues on spending and ethics.

WHAT'S NEXT: The committee will vote later today on the full spending bill.

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Interior advisory committee recommends streamlining environmental reviews for drilling [Back](#)

By Ben Lefebvre | 06/06/2018 06:31 PM EDT

An Interior Department advisory board on Wednesday approved a slew of recommendations aimed at expanding energy lease sales and lowering royalty rates, even as some members questioned whether it had the power to suggest changes to federal environmental reviews.

The Royalty Policy Committee wrapped up its latest meeting in New Mexico after approving nine recommendations for Secretary Ryan Zinke to change how the department collects payments from energy production on federal land. Most of the suggestions would benefit oil and gas companies operating on federal acres, while two recommendations were aimed at boosting renewable energy production.

Two committee members disagreed with a recommendation for the Bureau of Land Management to issue "categorical exclusions" for certain oil and gas projects, allowing those projects to forgo full environmental reviews under the National Environmental Protection Act.

"NEPA is not referred to in the [committee] charter," Rod Eggert, a professor at the Colorado School of Mines, said during the meeting. "The text in the charter refers to royalties and collections of royalties."

Committee member Monte Mills of the University of Montana agreed that recommending categorical exclusions fell outside of the committee's scope.

Western Energy Alliance President Kathleen Sgamma, another member of the committee, defended the recommendation, saying it would increase royalty payments to Interior by making it easier for companies to drill on public land.

"We're trying to increase competitiveness of federal lands," Sgamma said during the meeting. "NEPA is often the aspect of the federal process that takes the longest and decreases the competitiveness of public lands the most."

Ultimately, the committee approved the recommendation and deferred further discussion about the scope of its charter until its next meeting, yet to be scheduled.

The committee also suggested Interior make it easier for companies to pay lower royalty rates for mature oil and gas wells and those "difficult" to operate. And it recommended Zinke ask Congress to amend the Outer Continental Shelf Lands Act with language allowing Interior to hold offshore energy project lease sales in Guam and other U.S. territories.

The committee's two renewable power suggestions were that Interior offer annual lease sales for 2 gigawatts of offshore wind power every year for a decade starting in 2024; and to instruct BLM to reduce fees and streamline permit requirements for solar projects.

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BLM tells field office to expedite drilling permit reviews [Back](#)

By Ben Lefebvre | 06/06/2018 08:20 PM EDT

The Bureau of Land Management instructed field offices to prioritize the use of old environmental reviews or categorical exclusions to expedite drilling permit applications for sites where work is already underway, according to a memo released today.

The bulletin posted on the BLM website said those methods will allow officials to process the applications "in the most expeditious and appropriate manner" under the National Environmental Policy Act.

The BLM bulletin directed its field offices that existing environmental analysis for new projects proposed for old sites "should be used to the greatest extent possible" instead of starting a new environmental review process.

If the old analysis isn't sufficient, field offices should determine whether the application falls under an existing categorical exclusion, meaning a new NEPA review would not be required. Criteria to determine whether an exclusion would be available include whether a similar project has already occurred on the same site within the previous five years.

BLM posted its memo soon after Interior's Royalty Policy Committee recommended earlier today that the agency increase its use of categorical exclusions.

WHAT'S NEXT: The environmental review priority list goes into effect immediately.

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White House, EPA headed off chemical pollution study [Back](#)

By Annie Snider | 05/14/2018 12:43 PM EDT

Scott Pruitt's EPA and the White House sought to block publication of a federal health study on a nationwide water-contamination crisis, after one Trump administration aide warned it would cause a "public relations nightmare," newly disclosed emails reveal.

The intervention early this year — not previously disclosed — came as HHS' Agency for Toxic Substances and Disease Registry was preparing to publish its

assessment of a class of toxic chemicals that has contaminated water supplies near military bases, chemical plants and other sites from New York to Michigan to West Virginia.

The study would show that the chemicals endanger human health at a far lower level than EPA has previously called safe, according to the emails.

"The public, media, and Congressional reaction to these numbers is going to be huge," one unidentified White House aide said in an email forwarded on Jan. 30 by James Herz, a political appointee who oversees environmental issues at the OMB. The email added: "The impact to EPA and [the Defense Department] is going to be extremely painful. We (DoD and EPA) cannot seem to get ATSDR to realize the potential public relations nightmare this is going to be."

More than three months later, the draft study remains unpublished, and the HHS unit says it has no scheduled date to release it for public comment. Critics say the delay shows the Trump administration is placing politics ahead of an urgent public health concern — something they had feared would happen after agency leaders like Pruitt started placing industry advocates in charge of issues like chemical safety.

Sen. Maggie Hassan (D-N.H.) called the delay "deeply troubling" on Monday, urging Pruitt and President Donald Trump "to immediately release this important study."

"Families who have been exposed to emerging contaminants in their drinking water have a right to know about any health impacts, and keeping such information from the public threatens the safety, health, and vitality of communities across our country," Hassan said, citing POLITICO's reporting of the issue. Details of the internal discussions emerged from EPA emails released to the Union of Concerned Scientists under the Freedom of Information Act.

Sen. Jeanne Shaheen, a fellow New Hampshire Democrat, called the delay "an egregious example of politics interfering with the public's right to know. ... [I]t's unconscionable that even the existence of this study has been withheld until now."

The emails portray a "brazenly political" response to the contamination crisis, said Judith Enck, a former EPA official who dealt with the same pollutants during the Obama administration — saying it goes far beyond a normal debate among scientists.

"Scientists always debate each other, but under the law, ATSDR is the agency that's supposed to make health recommendations," she said.

The White House referred questions about the issue to HHS, which confirmed that the study has no scheduled release date.

Pruitt's chief of staff, Ryan Jackson, defended EPA's actions, telling POLITICO the agency was helping "ensure that the federal government is responding in a uniform way to our local, state, and Congressional constituents and partners."

Still, Pruitt has faced steady criticism for his handling of science at the agency, even before the recent spate of ethics investigations into his upscale travels and dealings with lobbyists. In his year leading EPA, he has overhauled several scientific advisory panels to include more industry representatives and recently ordered limits on the kinds of scientific studies the agency will consider on the health effects of pollution.

On the other hand, Pruitt has also called water pollution one of his signature priorities.

The chemicals at issue in the HHS study have long been used in products like Teflon and firefighting foam, and are contaminating water systems around the country. Known as PFOA and PFOS, they have been linked with thyroid defects, problems in pregnancy and certain cancers, even at low levels of exposure.

The problem has already proven to be enormously costly for chemicals manufacturers. The 3M Co., which used them to make Scotchguard, paid more than \$1.5 billion to settle lawsuits related to water contamination and personal injury claims.

But some of the biggest liabilities reside with the Defense Department, which used foam containing the chemicals in exercises at bases across the country. In a March report to Congress, the Defense Department listed 126 facilities where tests of nearby water supplies showed the substances exceeded the current safety guidelines.

A government study concluding that the chemicals are more dangerous than previously thought could dramatically increase the cost of cleanups at sites like military bases and chemical manufacturing plants, and force neighboring communities to pour money into treating their drinking water supplies.

The discussions about how to address the HHS study involved Pruitt's chief of staff and other top aides, including a chemical industry official who now oversees EPA's chemical safety office.

Herz, the OMB staffer, forwarded the email warning about the study's "extremely painful" consequences to EPA's top financial officer on Jan. 30. Later that day, Nancy Beck, deputy assistant administrator for EPA's Office of Chemical Safety and Pollution Prevention, suggested elevating the study to OMB's Office of Information and Regulatory Affairs to coordinate an interagency review. Beck, who worked as a toxicologist in that office for 10 years, suggested it would be a "good neutral arbiter" of the dispute.

"OMB/OIRA played this role quite a bit under the Bush Administration, but under Obama they just let each agency do their own thing...", Beck wrote in one email that was released to UCS.

Beck, who started at OMB in 2002, worked on a similar issue involving perchlorate, an ingredient in rocket fuel — linked with thyroid problems and other ailments — that has leached from defense facilities and manufacturing sites into the drinking water of at least 20 million Americans. Beck stayed on at OMB into the Obama administration, leaving the office in January 2012 and going to work

for the American Chemistry Council, where she was senior director for regulatory science policy until joining EPA last year.

Yogin Kothari, a lobbyist with the Union of Concerned Scientists, called Beck's January email "extremely troubling because it appears as though the White House is trying to interfere in a science-based risk assessment."

Environmentalists say such interference was routine during the Bush administration.

"It's why the Obama administration issued a call for scientific integrity policies across the federal government," Kothari said in an email to POLITICO. "Dr. Beck should know firsthand that the Bush administration sidelined science at every turn, given that she spent time at OMB during that time."

Soon after the Trump White House raised concerns about the impending study, EPA chief of staff Ryan Jackson reached out to his HHS counterpart, as well as senior officials in charge of the agency overseeing the assessment to discuss coordinating work among HHS, EPA and the Pentagon. Jackson confirmed the outreach last week, saying it is important for the government to speak with a single voice on such a serious issue.

"EPA is eager to participate in and, contribute to a coordinated approach so each federal stakeholder is fully informed on what the other stakeholders' concerns, roles, and expertise can contribute and to ensure that the federal government is responding in a uniform way to our local, state, and Congressional constituents and partners," Jackson told POLITICO via email.

Pruitt has made addressing per- and polyfluoroalkyl substances, or PFAS, a priority for EPA. The unpublished HHS study focused on two specific chemicals from this class, PFOA and PFOS.

States have been pleading with EPA for help, and experts say that contamination is so widespread, the chemicals are found in nearly every water supply that gets tested.

In December, the Trump administration's nominee to head the agency's chemical safety office, industry consultant Michael Dourson, withdrew his nomination after North Carolina's Republican senators said they would not support him, in large part because of their state's struggles with PFAS contamination. Dourson's previous research on the subject has been criticized as too favorable to the chemical industry.

Shortly after Dourson's nomination was dropped, Pruitt announced a "leadership summit" with states to discuss the issue scheduled for next week.

In 2016, the agency published a voluntary health advisory for PFOA and PFOS, warning that exposure to the chemicals at levels above 70 parts per trillion, total, could be dangerous. One part per trillion is roughly the equivalent of a single grain of sand in an Olympic-sized swimming pool.

The updated HHS assessment was poised to find that exposure to the chemicals at less than one-sixth of that level could be dangerous for sensitive populations like infants and breastfeeding mothers, according to the emails.

Dave Andrews, a senior scientist with the Environmental Working Group, said those conclusions line up with recent studies on the health effects of PFAS.

"They are looking at very subtle effects like increased risk of obesity for children exposed in womb, lowered immune response, and childhood vaccines becoming not as effective," Andrews said.

The HHS document at issue is called a toxicological profile, which describes the dangers of a chemical based on a review of previous scientific studies. It would carry no regulatory weight itself, but could factor into cleanup requirements at Superfund sites.

EPA scientists, including career staffers, were already talking with the HHS researchers about the differences in their two approaches to evaluating the chemicals when officials at the White House raised alarm in late January, the emails show. Those differences, according to the correspondence, stemmed from the agencies' use of different scientific studies as a basis, and from taking different approaches to accounting for the harm that the chemicals can do to the immune system — an area of research that has burgeoned in the two years since EPA issued its health advisory.

Enck, the former EPA official, said she sees one troubling gap in the emails: They make "no mention of the people who are exposed to PFOA or PFOS, there's no health concern expressed here."

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[Washington Examiner - Republicans mostly hold their fire on Scott Pruitt, stand by him in nod to Trump](#)

[Politico - Inhofe 'reassured' by Pruitt's congressional testimony](#)

[Washington Examiner - Scott Pruitt says courts 'struck down' climate rules he is repealing](#)

[Politico - EPA delivers first batch of travel documents to Gowdy's panel](#)

[E&E News PM - First-class travel became 'distraction' — Pruitt](#)

[Wall Street Journal - Pruitt Says Attacks Are Driven by Opposition to Trump](#)

[Politico - 'Embarrassment' or 'McCarthyism': Key moments as Pruitt faces lawmakers](#)

[Reuters - Grilled by U.S. lawmakers, Trump's EPA chief calls ethics scandals lies](#)

[New York Times - Scott Pruitt, on Capitol Hill, Deflects Blame for Ethical Lapses](#)

[Washington Post - Scott Pruitt admits little culpability in EPA controversies, mostly blames aides and staff](#)

[AP - At hearings, EPA chief seeks to divert blame for ethics woes](#)

[Bloomberg - Pruitt's Capitol Hill Defense: Don't Blame Me](#)

[Politico - EPA prepping documents in response to Oversight probe](#)

[Daily Caller - SCOOP: EPA Memo Suggests Pruitt Did Not Lie To Fox News About Staff Raises](#)

[Politico - Documents: EPA reversed raises one day after Pruitt's Fox interview](#)

[Politico - EPA says chief of staff had authority to raise salaries without Pruitt's review](#)

[Politico - McCollum questions Pruitt justification for security costs](#)

[Politico - Pruitt distances himself from LNG promotion on Morocco trip](#)

[Washington Examiner - Scott Pruitt blames ambassador for talking up energy exports in Morocco](#)

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[ABC News - Highlights from Pruitt's marathon day on Capitol Hill](#)

[The Hill - Five takeaways from Pruitt's big testimony](#)

[The Hill - Christine Todd Whitman: Scott Pruitt is unfit to run the EPA \(*Op-Ed\)](#)

[Washington Post - Scott Pruitt's feisty defense of himself may have been good enough to save his job of destroying the earth! \(*Op-Ed\)](#)

[Washington Post - Robert Redford: The biggest Scott Pruitt scandal is the one right in front of us](#)

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[Daily Signal - Scott Pruitt's Effort to Expose 'Secret Science' Has Environmentalists Scared Stiff](#)

[E&E Greenwire - OMB backdates completion date for 'secret science' review](#)

[The Hill - EPA approved aide to work for GOP firm, Florida lawmaker](#)

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Mother Jones

<https://www.motherjones.com/environment/2018/04/house-republicans-on-scott-pruitt-were-with-him/>

House Republicans on Scott Pruitt: We're With Him

By Rebecca Leber, 4/26/18, 4:18 PM

One of the reasons Scott Pruitt has probably survived this long at the Environmental Protection Agency is that he still has key Republican support in Congress. It was clear Thursday that House Republicans were still willing to defend him, when Pruitt appeared before the House Energy and Commerce and the House Appropriations subcommittees.

The hearings followed a pattern. Democrats grilled Pruitt on the ethical problems surrounding his administration—or spent their remaining time with monologues about his actions. Republicans were less interested in getting answers from Pruitt on what subcommittee chair Rep. John Shimkus (R-Ill.) called his “stewardship” of the agency, and spent more time focusing on the “policy” they agreed with. Despite Pruitt’s innumerable and well-documented ethical violations and questionable spending patterns, many Republicans in the hearing used their time to offer support for the embattled EPA head.

“It’s shameful today that this hearing has turned into a personal attack hearing and a shameful attempt to denigrate the work that’s being done at the EPA,” Rep. Bill Johnson (R-Ohio) said.

Rep. Gregg Harper, (R-Miss.) complained of the “political bloodsport to destroy anyone who is affiliated with this administration.”

Rep. Joe Barton (R-Texas) called Pruitt a “victim” of Washington politics. “If you can’t debate the policies in Washington, you attack the personality. And that’s what’s happening to you.”

“I apologize for the abrasiveness of some of my colleagues who would rather tarnish your reputation than address the problems facing the nation,” Rep. Jeff Duncan (R-S.C.) said after a heated line of questioning from the other side of the aisle.

And as the Huffington Post pointed out, Rep. David McKinley called the criticism a “classic display of innuendo and McCarthyism.”

“I have, high, high, high confidence in his personal integrity,” Rep. Tom Cole (R-Ok), who comes from Pruitt’s home state, added in the second hearing of the day.

In between the hearings, Shimkus told reporters Pruitt’s answers were “a little vague” but maintained that only the White House had the power to decide the EPA administrator’s fate.

Washington Examiner

<https://www.washingtonexaminer.com/policy/energy/republicans-mostly-hold-their-fire-on-scott-pruitt-stand-by-him-in-nod-to-trump>

Republicans mostly hold their fire on Scott Pruitt, stand by him in nod to Trump

By Josh Siegel, 4/26/18, 6:40 PM

One Republican apologized to embattled Environmental Protection Agency Administrator Scott Pruitt.

"I apologize for the abrasiveness of some of my colleagues trying to tarnish your image," said Rep. Jeff Duncan, R-S.C., a conservative in the House Freedom Caucus.

Another cleared him of wrongdoing, as more than 10 federal investigations into Pruitt's spending and ethics continue.

"The greatest sin you have committed is you have actually done what President Trump ran on," said Rep. Kevin Cramer, R-N.D., who is running for Senate in his red state and who was Trump's energy adviser during his presidential campaign.

More than a few GOP lawmakers described Pruitt as a victim, blaming his critics for his problems.

"You're not the first person to be a victim of Washington politics," said Rep. Joe Barton, R-Texas. "That is what is happening to you."

An old friend from back home was chummy, reflecting on their shared history.

"I have known the administrator for over 20 years and I have high, high confidence in his personal integrity and ability, and certainly if a mistake was made, I'm sure it will be acknowledged and corrected because I've seen you do it over and over again over the course of a long and very distinguished career of public service," said Rep. Tom Cole, R-Okla.

And many others thanked Pruitt for his work on "saving" coal jobs, rolling back former President Barack Obama's Clean Power Plan and the Waters of the U.S. rule, and promoting "transparency" with his "secret science" rule.

Republicans who questioned Pruitt Thursday during his first testimony on Capitol Hill since a swirl of scandals put his job in jeopardy showed again why the EPA administrator may survive.

Even as some Republicans question Pruitt's fiscal integrity and judgment, his die-hard supporters — who share the constituents that form Trump's base — stand by him because he is carrying out Trump's deregulatory agenda.

Perhaps Rep. Evan Jenkins, a Republican from the coal state of West Virginia, best exemplified the competing impulses of a GOP party that prides itself on fiscal discipline but also abhors government regulations that harm industry.

Jenkins, seated next to Pruitt at a conference table in the more intimate setting of the second of two House subcommittee hearings, swiveled his body right and looked the EPA administrator in the eye, thanking him for beginning to roll back Obama-era environmental rules targeting coal-fired power plants.

"Your administration is restoring hope to the people of West Virginia," Jenkins said during an afternoon hearing held by the House Appropriations interior subcommittee. "I'm not apologizing for any of the actions you have taken with regards to secure communications or travel. Those are issues you will have to be held accountable for and address. The litany of misdeeds [by the prior administration] put us out of business in West Virginia. Today, we are back in business because of this administration. I appreciate the fact you are respecting the rule of law."

To be sure, Pruitt did not emerge unbruised from his hearings.

"Did he pay a price today? Half the questions were about his stewardship [of the EPA]," Rep. John Shimkus, R-Ill., who is chairman of the House Energy and Commerce subcommittee that hosted the first hearing, said in a huddle with reporters after it ended.

Shimkus noted that some of Pruitt's answers to questions were "a little vague."

"It's never a good idea to blame your staff," he said.

Pruitt opened his morning testimony vowing to "take responsibility" for various ethics and spending accusations, assuring lawmakers he will "make changes."

But he ended up downplaying his role, often blaming career staff for acting without his knowledge or approval.

The roster of issues under federal investigation include Pruitt's \$50-per-night condo rental deal with the wife of an energy lobbyist who had business before the EPA, his spending of more than \$3 million on security, his \$43,000 secure phone booth, frequent first-class travel, and allegations that he retaliated against employees who questioned his judgment.

Those problems drew criticism from several Republicans.

"You have not demonstrated the requisite good judgment of an elected official," said Rep. Ryan Costello, R-Pa., specifically referring to Pruitt's use of EPA security for personal travel.

"When folks read about trips to Disney or the Rose Bowl, and a security detail related to that, that doesn't sit well with a lot of people."

Rep. Leonard Lance, R-N.J., challenged Pruitt about the EPA's purchase of the \$43,000 phone booth for his office, which the Government Accountability Office said violated federal law.

"I do not think it was appropriate, and I think it was a waste of funds," Lance said. "I am concerned about what I believe is overspending."

Pruitt replied that he agreed the spending was excessive, but said he did not approve the purchase. He said he would have stopped the transaction if he knew about it.

The EPA administrator later said there is "no truth" to the reports that some EPA employees have faced retaliation after disagreeing with his spending or management decisions.

"I'm not aware of that ever happening," he said.

One Republican was not happy with that answer.

"Even the implication of retaliation can harm morale [at the EPA]," said Rep. Gregg Harper, R-Miss.

When Pruitt's full day of reckoning was nearly over, Rep. Betty McCollum, D-Minn., ended her questioning as several Democrats before her had, telling Pruitt he should resign.

The few Republicans left sitting around Pruitt at the conference table could be seen chuckling at that unlikely prospect.

Politico

<https://www.politicopro.com/energy/whiteboard/2018/04/inhofe-reassured-by-pruitts-congressional-testimony-1127258>

Inhofe 'reassured' by Pruitt's congressional testimony

By Anthony Adragna, 4/27/18, 12:27 PM

Sen. Jim Inhofe (R-Okla.) said in a statement today he feels "reassured" about EPA Administrator Scott Pruitt's behavior following the two congressional hearings held on Thursday.

"After a full day of mudslinging and partisan questioning from the Democratic members of the committees, it is clear that the only fault they could find with Scott Pruitt is that he's successfully ending the EPA's history of overreach and overregulation," Inhofe said in a statement.

Inhofe, along with multiple other colleagues on the Senate Environment and Public Works Committee, said they favored holding a hearing with Pruitt after a report in the New York Times alleging the EPA chief got a sweetheart deal on an Oklahoma City home while serving in the state legislature. Those allegations were not discussed at length during Thursday's congressional hearings.

Washington Examiner

<https://www.washingtonexaminer.com/policy/energy/scott-pruitt-says-courts-struck-down-climate-rules-he-is-repealing>

Scott Pruitt says courts 'struck down' climate rules he is repealing

By John Siciliano, 4/26/18, 6:28 PM

Environmental Protection Agency chief Scott Pruitt said Thursday that the courts had struck down President Barack Obama-era climate rules for coal power plants, despite a midnight Thursday deadline for filing comments on the agency's proposal to repeal those very rules.

"There were two efforts made by the previous administration to regulate CO2, and both of them were struck down by the courts," Pruitt said at an afternoon hearing of the House Appropriations Committee's interior subcommittee.

Rep. Chellie Pingree, D-Maine, fired back, thinking he was talking about fuel efficiency and greenhouse gas rules for cars, known as the CAFE standards.

"CAFE standards were not struck down by the courts," Pingree said.

"That's not the issue we're talking about here," Pruitt said. "The tailoring rule that the previous administration adopted with respect to CO2, and then the Clean Power Plan."

It became clear that Pruitt, Oklahoma's former attorney general, had conflated a Supreme Court stay of the power plan with it actually being struck down. The Clean Power Plan was "stayed by the U.S. Supreme Court," which "was unprecedented," he said.

Although Pruitt and others had read the February 2016 stay as a victory on the merits of the case, the Supreme Court's action did not address any of their arguments. It is still up to the lower D.C. Circuit Court of Appeals to address the actual legal arguments made by 28 states, including Oklahoma.

The D.C. Circuit agreed to hold its ruling in abeyance as Pruitt moves forward with his plan to repeal the regulation, which the EPA is looking to replace with a yet-to-be-determined new rule.

The deadline for submitting comments on the proposed repeal of the plan ends at midnight. Both proponents of repeal and defenders of the climate plan have dumped tens of thousands of comments into the EPA's online docket.

Pingree said the legal status of the rules "doesn't allow us to say we're not going to deal with this issue."

Pruitt fired back, "I haven't said that," explaining that he "can only take the steps that Congress authorizes me to take." He said the fault of the Obama administration was it tried to get around Congress and decide the climate strategy for the U.S. through regulation.

"I have actually introduced an advanced notice of proposed rulemaking in the marketplace to solicit comment on our authority to regulate [greenhouse gas emissions]," he said.

Pruitt will seek to craft a rule through a narrow interpretation of section 111(d) of the Clean Air Act, which governs existing power plant emissions. The Obama EPA used the section to regulate emissions on a state-by-state basis, instead of a plant-by-plant basis. Oklahoma and other states argued in the D.C. Circuit that the interpretation of the law was an illegal overreach. None of that has been settled by the courts.

Politico

<https://www.politicopro.com/energy/whiteboard/2018/04/epa-delivers-first-batch-of-travel-documents-to-gowdys-panel-1126819>

EPA delivers first batch of travel documents to Gowdy's panel

By Anthony Adragna, 4/27/18, 11:48 AM

EPA has delivered copies of travel vouchers of the EPA employees who took overseas trips with Administrator Scott Pruitt to the House Oversight Committee, which expects a second production of documents later today, according to a committee spokeswoman.

EPA is expected to give the panel a "much larger batch of documents" responding to Chairman Trey Gowdy's (R-S.C.) April 13 request later today, spokeswoman Amanda Gonzalez told POLITICO.

Not included in the agency's initial response were travel records for Pruitt's security detail that came along on the trips to Italy and Morocco, though EPA "said they will allow Committee staff to review those documents at EPA, as they are security sensitive," according to Gonzalez.

A senior agency official told POLITICO on Thursday the agency's response to Gowdy's request would show the allegations made by former senior EPA aide Kevin Chmielewski contained "exaggerations" that might mitigate the need for transcribed interviews with four senior EPA aides. Gowdy had requested those aides sit for interviews in his April 13 letter.

Gowdy has been the Republican most aggressively looking into a host of allegations of lavish spending and unethical behavior dogging Pruitt. He requested the documents be provided and interviews scheduled no later than today.

In the most recent letter, Gowdy demanded records related to the decision to increase Pruitt's security to round-the-clock protection, contracts to sweep Pruitt's office for electronic surveillance, his trips to Italy and Morocco and the hiring of an Italian security firm, among others. He's also been investigating Pruitt's prior first-class travel arrangements and \$50-a-night Capitol Hill condo agreement with a Washington lobbyist couple.

E&E News PM

<https://www.eenews.net/eenewspm/2018/04/26/stories/1060080243>

First-class travel became 'distraction' — Pruitt

By Kevin Bogardus, 4/26/18

EPA Administrator Scott Pruitt tried to win lawmakers' confidence today with assurances that he's already made changes in response to allegations of pricey travel and security expenses.

Appearing before the House Environment, Interior and Related Agencies Appropriations Subcommittee this afternoon, Pruitt went through a litany of stories about his time at EPA. Asked by Chairman Ken Calvert (R-Calif.) to respond to the charges, Pruitt addressed many directly, saying he wanted to make sure that process is followed at the agency.

"I commit to make those changes prospectively to ensure they are followed in the future," Pruitt said.

The EPA chief said he's no longer looking to fly first class and noted he was flying coach early in his time at the agency. Given the number of threats against him, it was recommended he sit in the front of the plane when he travels.

"That was something that was predicated on a security assessment," Pruitt said on why he flew first class. "That dictated changes in my travel."

The administrator said the media focus on his more expensive flights had become "a distraction" and it was better to return to economy class.

"I recently made changes to that because I felt like from an optics and perception standpoint, it was creating a distraction, and I thought it was best to go in another direction," Pruitt said.

The administrator also said he has taken back pay raises given to two of his aides that attracted scrutiny. Pruitt also said he would have not have gone forward with the installation of a secure phone booth in his office if he was aware of the cost.

"The expenditure of \$43,000 on secure communication should not have been made, and I would not have made the decision if I was aware of it," he said.

As he did in this morning's hearing before the House Energy and Commerce Environment Subcommittee, Pruitt again faced criticism from Democrats over various alleged ethical lapses at EPA (Greenwire, April 26).

"Your decisions and actions have displayed a disregard for the ethical standards to which all public officials should adhere," said Rep. Betty McCollum (D-Minn.), the subcommittee's ranking member.

Rep. Nita Lowey (D-N.Y.), the full committee's ranking member, took issue with President Trump's fiscal 2019 budget plan for EPA of \$6.15 billion, which would be a nearly \$2 billion cut from the agency's fiscal 2018 funds. She said in turn Pruitt had upped his own costs while looking to cut EPA's budget.

"It is shocking to me that you're not sparing any expense to spend on yourself," said Lowey on his first-class travel and "a glorified phone booth."

Several Republicans stuck to policy questions for this afternoon's hearing. Some, like Rep. Tom Cole (R-Okla.), praised Pruitt for his work at EPA.

Cole said he had high confidence in the administrator.

"I'm sure if a mistake was made that you will correct it accordingly, which you have done over a long and distinguished career," Cole said.

Wall Street Journal

<https://www.wsj.com/articles/pruitt-says-attacks-are-driven-by-opposition-to-trump-1524754373?mod=searchresults&page=1&pos=2>

Pruitt Says Attacks Are Driven by Opposition to Trump

By Heidi Vogt and Louise Radnofsky, 4/26/18, 6:52 PM

WASHINGTON— Scott Pruitt, the head of the Environmental Protection Agency, fought back Thursday against Democratic criticism of his spending and policies, asserting that the attacks were driven by opposition to President Donald Trump's agenda.

In largely partisan House subcommittees hearings, Mr. Pruitt said he recognized the "very troubling reports" on his travel, housing and personnel actions, but that much of what had been reported was twisted. "Let me be clear, I have nothing to hide," he said.

The EPA administrator is under investigation for his spending on office furnishings, personnel moves, travel costs and destinations, security practices and the link between his rental housing in Washington and a lobbyist. The White House, inspector general of the EPA, House oversight committee and Government Accountability Office have been looking at the issues.

Mr. Pruitt, who as the Oklahoma attorney general sued the Obama administration over its environmental policies, was tapped for the EPA post to lead the rollback of regulations Republicans deemed burdensome.

On Thursday, Mr. Pruitt said he reversed course on several of the issues now under investigation when he became fully aware of them or if they became a distraction.

On his first-class air travel, he reiterated it had been dictated by security threats—some of which he read aloud— but subsequently opted to stop it after concluding it was creating a distraction for reasons of "optics."

Challenged about a \$43,000 secure phone booth he had installed in his office, Mr. Pruitt said that he had simply told staff he needed a method of secure communication. He said it had been agency career staff members who decided to spend the money and made the judgment it wasn't necessary to notify Congress. He said he wouldn't have made the decision if he had been aware of the cost.

He maintained that he was "not at any time aware" of the amounts involved or the process used to award pay raises that now are under scrutiny as they didn't go through the normal approval process by the White House. He added that when found out the details, he rescinded them

Where Mr. Pruitt was unapologetic, Democrats were unforgiving.

"Your actions are an embarrassment to President Trump and distract from the EPA's ability to effectively carry out the president's mission," said Rep. Frank Pallone (D-N.J.) "And if I were the president I wouldn't want your help, I'd just get rid of you."

Rep. Tom Cole, a fellow Oklahoman, said he had high confidence in Mr. Pruitt's integrity and he believed the president's confidence in Mr. Pruitt would remain intact.

"He really performs for the president; that's a presidential decision," Mr. Cole said after the second hearing. "I don't think anything that happened today would undermine that."

Mr. Trump has been supportive of Mr. Pruitt, including publicly, though some administration officials have been more skeptical. On Thursday, an administration official was critical of Mr. Pruitt's performance in the two hearings, but said he probably benefited from attention being directed at Ronny Jackson's withdrawal from the Veterans Affairs secretary nomination and an interview the president gave on Fox News Thursday morning.

"It wasn't necessarily a forest fire—more like a small little burn," the official said of Mr. Pruitt's hearings.

Mr. Pruitt chalked up some of his missteps to a learning curve but said that responsibility for identifying and making changes “rests with me and nobody else,” He also said that the criticisms targeted toward him largely stemmed from policies he had pursued.

“They want to attack and derail the president’s agenda,” he said. “I am simply not going to let that happen.”

At both hearings, Republicans came to his defense while Democrats offered sharp-edged critiques of his policy priorities at the agency and Mr. Pruitt’s actions.

“You’re not sparing any expense on yourself,” said Rep. Nita Lowey of New York, who is the top Democrat on the Appropriations Committee. That panel’s environment subcommittee questioned Mr. Pruitt later on Thursday.

“You have failed as a steward of American taxpayer dollars and our environment,” Mr. Tonko said at the earlier hearing.

But Republican David McKinley of West Virginia decried what he called a “classic display of innuendo and McCarthyism” in criticisms of Mr. Pruitt.

GOP Rep. Joe Barton of Texas also said that he believed Mr. Pruitt was being subjected to ad hominem attacks, “a victim, for lack of a better word, of Washington politics.”

Where Republicans did address ethical issues, they did so in a relatively friendly fashion.

Mr. Barton asked Mr. Pruitt if his condo lease in Washington, which critics have said was improperly below market rates and had ties to an energy lobbyist, was cleared by his agency’s ethics officer, or if he had done anything illegal by flying first class on commercial airliners. Mr. Pruitt said the housing arrangement had been approved twice, and that his travel was also cleared by two teams at the EPA, but that he had subsequently made changes.

Mr. Pruitt emphasized EPA ethics officials cleared his lease. The ethics office has since said it is revisiting the issue. He compared his spending to numerous Obama administration officials to make the argument he has been thrifty, saying many of them had spent more on international travel than he.

A number of Democratic lawmakers asked Mr. Pruitt about the recently proposed rule to require that any study used in shaping EPA regulation must include raw data. Many scientists have panned the move, saying it would exclude much needed research. “This was an effort to ensure transparency,” Mr. Pruitt said.

Mr. Tonko asked whether Mr. Pruitt had confidence in the American Association for the Advancement of Science, which has criticized the rule. “I’m sure their opinion is credible,” he said, but “the actions that we take at the agency are different from their responsibilities.”

Politico

<https://www.politico.com/story/2018/04/26/scott-pruitt-hearing-takeaways-555942>

'Embarrassment' or 'McCarthyism': Key moments as Pruitt faces lawmakers

By Quint Forgey, Anthony Adragna, Alex Guillen, and Annie Snider, 4/26/18, 1:40 PM, Updated 5:10 PM

Scott Pruitt, the scandal-ridden administrator of the Environmental Protection Agency, appeared on Capitol Hill on Thursday for back-to-back House committee hearings on his agency’s budget request.

But the only spending most lawmakers wanted to discuss were reports of Pruitt’s taxpayer-funded air travel, the sweetheart condo lease he secured from a lobbyist, and the numerous other allegations of misappropriating funds and unethical management that have tarred his tenure at the EPA.

Here are key moments from the contentious hearings, held by subcommittees of the House Energy and Commerce and House Appropriations committees:

A defiant Pruitt says he has nothing to hide. The former Oklahoma attorney general argued his critics were simply attempting to undercut the “transformational change” he’s making at the agency on behalf of President Donald Trump. “Let’s have no illusions about what’s really going on here: Those who have attacked the EPA and attacked me are doing so because they want to attack and derail the president’s agenda and undermine this administration’s priorities,” he said at the outside of the day’s first hearing, in front of a House Energy and Commerce subcommittee. “I’m simply not going to let that happen.” Pruitt maintained had “nothing to hide,” and suggested some of the reports regarding his behavior were inaccurate. “Facts are facts and fiction are fiction,” he said. “And a lie doesn’t become truth just because it appears on the front page of a newspaper.”

Pruitt acknowledged he authorized pay raises for his key aides. But he said he didn’t know how much they were, or that his chief of staff — who took the blame for signing off on the salary hikes — circumvented the White House to award them. “I was not aware of the amount, nor was I aware of the bypassing or the [Presidential Personnel Office] process not being respected,” Pruitt told lawmakers. Pruitt had earlier said on Fox News that he hadn’t known about the raises and that the aides should not have received them. A preliminary report from EPA’s inspector general found that chief of staff Ryan Jackson signed off on multiple large raises using Safe Drinking Water Act authority, which allows the agency to move forward without White House sign-off. The raises totaled as much as 72.3 percent.

But he blamed EPA’s career staff for his \$43,000 privacy booth. He said career employees signed off on the expensive soundproof phone booth installed in his office — and maintained he would have refused it if he’d known about the cost. “I did have a phone call that came in of a sensitive nature and I did not have access to secure communication,” he said. “I gave direction to my staff to address that and out of that came a \$43,000 expenditure that I did not approve.” The Government Accountability Office has said the agency violated spending laws by not informing Congress about the booth beforehand. To Pruitt’s critics, the booth has come a prominent symbol of his reputation for high-spending and extreme secrecy. Pruitt later said he uses the booth only “rarely,” and that “it depends on the nature of the call and how urgent the call is.”

Pruitt also had trouble explaining the expensive biometric locks recently installed in his office. They require a code for him to enter, but he wouldn’t say whether the locks feature fingerprint scanners or some other type of identification system. When Pruitt said career staffers made the decision to install the locks, Rep. Peter Welch (D-Vt.) wasn’t impressed. “It’s really starting to seem like there’s something on the desk with a motto, ‘The buck stops nowhere,’” he quipped.

It’s still not clear whether one of Pruitt’s top aides came to work for three months. “I’m not aware that she did or did not appear for work. So that’s something that is being reviewed at this point,” Pruitt said of Samantha Dravis, the associate administrator in charge of EPA’s Office of Policy. Sen. Tom Carper (D-Del.) has alleged that Dravis largely did not work the months of November through January, and EPA’s inspector general has agreed to review her attendance. Dravis said several weeks ago that she planned to resign, and her last day was reportedly April 20. Pruitt’s comments Thursday were a shift from EPA’s past statements that the no-show accusation is “completely baseless and absurd.”

Democrats pounded him early and often. Those included top Energy and Commerce Democrat Frank Pallone of New Jersey, who said the scandals enveloping Pruitt are “an embarrassment to President Trump and distract from the EPA’s ability to effectively carry out the president’s mission. And if I were the president, I wouldn’t want your help. I’d get rid of you.”

Some Republicans also warned Pruitt he needs to answer questions. Environment subcommittee Chairman John Shimkus (R-Ill.) said he considered much of the media narrative surrounding the EPA chief’s scandals to be “a distraction,” but the committee “cannot ignore” reports of Pruitt’s impropriety. “As public servants, our jobs are not based solely on the things we do, or the things we have done, but also on the way we conduct our business,” Shimkus said in his opening statement. “It is no secret that there have been many stories in the press about the management and

operations of the agency and your dealings with potentially regulated sectors.” And full Energy and Commerce Chairman Greg Walden (R-Ore.) expressed concerns that Pruitt’s progress on policy is being “undercut” by the allegations. “These issues are too persistent to ignore,” said Walden, a member of House Republican leadership.

But other GOP lawmakers came to his rescue, and one likened the criticism to “McCarthyism.” Rep. Joe Barton, a former Energy and Commerce chairman, and Rep. David McKinley (R-W.Va.), a staunch Pruitt ally, blamed Democrats and toxic partisanship for Pruitt’s precarious professional standing. “If you can’t debate the policies in Washington, you attack the personality, and that’s what’s happening to you,” Barton lamented. McKinley accused Democrats on the panel of not being able to “resist the limelight” and said Pruitt’s detractors were simply grandstanding. “I think this has been a lot of classic display of innuendo and McCarthyism that we’re seeing too often here in Washington, that I think unfortunately works against civility and respect for people in public office,” McKinley said.

Rep. Bill Johnson (R-Ohio) also jumped to shield Pruitt. “I think it’s shameful today that this hearing has turned into a personal attack hearing and a shameful attempt to denigrate the work that’s being done at the EPA and with this administration,” he said. Public officials should have ethical standards “beyond reproach,” Johnson said, “but so should members of Congress.”

Staffers moved or dismissed under Pruitt weren’t being punished, he said. “There’s no truth to the assertion that decisions have been made about reassignments or otherwise as far as employment status based upon the things you reference. I’m not aware of that ever happening, and it’s something I want to make very, very clear,” Pruitt said, vowing he would not retaliate against civil servants who flag wrongdoing. The New York Times reported this month that several top staffers were reassigned or demoted after questioning Pruitt, and POLITICO reported that the agency’s deputy homeland security chief was dismissed after signing off on a report questioning Pruitt’s security spending.

One Republican ripped into Pruitt with particular gusto. “I think the opprobrium that you’ve generated on some of these spending decisions is actually warranted,” Ryan Costello (R-Pa.), who is retiring from Congress, told the EPA chief. “I’ve reviewed your answers and I find some of them lacking or insufficient. And I believe you’ve not demonstrated the requisite good judgment required of an appointed executive branch official on some of these spending items.” He went on to ask specifically about reports of retaliation against employees who questioned Pruitt, as well as whether security threats against him were “warranted or credible.”

Pruitt: I only took that controversial trip to Morocco because the country’s ambassador invited me. “There was a free trade agreement that is in existence with Morocco and the ambassador of Morocco invited me to Morocco to negotiate the environmental chapter on that free trade agreement,” Pruitt told lawmakers. The EPA administrator’s December jaunt to the North African nation came under intense scrutiny when the agency, in a news release after the fact, described the trip as dual-purpose: to discuss updates to a U.S.-Morocco Free Trade Agreement “and the potential benefit of liquified [sic] natural gas (LNG) imports on Morocco’s economy.” Later on Thursday, Pruitt attempted to downplay his role in promoting American natural gas exports. “There was a lot of reference made to LNG only because the ambassador [of Morocco] asked me to share that with individuals when I was in country,” he said.

Pruitt the leaker? After facing questions about the severity of the threats the EPA chief has faced in office — which the agency has cited to justify his pricey security budget — Pruitt read part of a report from the inspector general’s office that documented threats directed at him and his family. Asked whether EPA Inspector General Arthur Elkins Jr. had written the report he cited, Pruitt replied, “I’m looking at the document that says inspector general.” But a spokeswoman for the IG’s office said Thursday that it came from another official, not Elkins himself. “It was an internal memo from Assistant IG for Investigations Patrick Sullivan,” OIG spokeswoman Tia Elbaum said in an email. “It was leaked without authorization. It will be released in the near future as part of an OIG FOIA response.”

By the time Pruitt was finished, Shimkus was “just glad he showed up.” The Illinois Republican, who chaired Pruitt’s first hearing, said he thought the administrator handled himself well and that GOP members were suitably tough in their questioning. “Some of it was accountability for policy, so I don’t know what more [critics] want,” Shimkus told POLITICO of Pruitt’s performance. “I think that he answered the questions in the best way that he could answer them.” Shimkus declined to speculate about potential next steps the House Energy and Commerce Committee or the Environment

subcommittee would take, and didn't specifically state whether he thought questions remain unanswered after today's grilling. "I knew it would be painful," he said.

Reuters

<https://www.reuters.com/article/us-usa-epa-pruitt/grilled-by-u-s-lawmakers-trumps-epa-chief-calls-ethics-scandals-lies-idUSKBN1HX0GQ>

Grilled by U.S. lawmakers, Trump's EPA chief calls ethics scandals lies

By Valerie Volcovici, 4/26/18, 1:07 AM, Updated 8:00 PM

WASHINGTON (Reuters) - U.S. Environmental Protection Agency chief Scott Pruitt on Thursday rejected a litany of ethics complaints against him as lies intended to derail President Donald Trump's agenda, and put much of the blame for any agency missteps on his staff.

During two tense congressional hearings, Pruitt faced tough questions from Democrats and even some fellow Republicans in marathon high-stakes testimony as he seeks to avoid becoming the latest in a long list of Cabinet members and senior White House officials to have either been fired by Trump or quit.

"Facts are facts and fiction is fiction," the embattled agency chief told a House of Representatives panel. "And a lie doesn't become true just because it appears in the front page of the newspaper."

"Those who attack the EPA and attack me are doing so because they want to attack and derail the president's agenda and undermine this administration's priorities," Pruitt testified.

The hearings were scheduled to discuss the EPA budget, but mainly focused on Pruitt's performance.

Trump's inner circle has become frustrated by the torrent of news reports about Pruitt including his costly first-class air travel and around-the-clock security, pay raises given to aides and his rental of a room in a high-end Washington condo linked to an energy lobbyist.

Pruitt remained even-tempered and unapologetic throughout more than five hours of testimony, often avoiding being pinned down on specifics or deflecting responsibility for clear missteps onto his staff - a strategy that drew mixed reviews.

It remains to be seen how Trump will view his performance.

"It's never good to blame your staff. If you do it, do it behind closed doors," said Republican Representative John Shimkus of Illinois after the first hearing.

Democrats were more blunt. "You are unfit to hold public office," Representative Frank Pallone of New Jersey told Pruitt.

Democratic Representative Paul Tonko of New York ripped Pruitt for his "seemingly endless misconduct" and "what appears to be a propensity for graft." Democrats also castigated Pruitt for rolling back environmental regulations the Trump administration has said hinder economic growth.

There are nearly a dozen pending investigations of Pruitt's conduct covering a range of allegations. The Government Accountability Office completed one this month that said the EPA violated two laws by installing a \$43,000 soundproof phone booth for his office without telling lawmakers first.

Pruitt testified he requested the secure line, but said his staff never told him the cost and that he would not have made the expenditure had he known.

Pruitt has been among Trump's most controversial Cabinet members. He has drawn praise from conservatives and scorn from environmentalists for rolling back Democratic former President Barack Obama's policy to curb greenhouse gas emissions from power plants and other green regulations opposed by industry.

The tumult in the Trump administration was underscored on Thursday when the president's physician Ronny Jackson withdrew from consideration to head the Department of Veterans Affairs amid allegations of misconduct.

Some 170 Democratic lawmakers have demanded Pruitt's resignation. Five Republican lawmakers joined the call in recent days. But several Republicans expressed support for Pruitt at the hearings, praising his EPA accomplishments.

Representative David McKinley of West Virginia called the criticism of Pruitt a "classic display of innuendo and McCarthyism," a reference to a 1950s-era campaign to root out communists.

Fellow Republican Gregg Harper of Mississippi decried the "political bloodsport" of going after Trump administration officials. But Harper, like several Democrats, raised concerns about reports that whistleblowers who brought some of Pruitt's spending issues to light were removed or reassigned.

"There's no truth to the assertion that positions have been reassigned. I'm not aware of that ever happening," Pruitt said.

Republicans Ryan Costello of Pennsylvania and Leonard Lance of New Jersey quizzed Pruitt on EPA spending for his first-class flights - estimated to have cost taxpayers more than \$100,000 - and security team.

"I've reviewed your answers and find some of them have been lacking or insufficient," Costello said.

Pruitt said he recently decided to stop flying first-class despite the EPA previously saying it was a necessary measure to protect him from the public. And he justified his 24-hour security team by reciting some of the personal threats he has received. He said the EPA inspector general's office has documented the threats and deemed them "unprecedented."

Pruitt also deflected a flurry of questions about his role in granting big raises to two of his aides - one of them amounting to more than 50 percent - over objections from the White House. Pruitt said he had given his chief of staff authority hand out salary increases without White House approval under an obscure provision of a clean water regulation, but was unaware of any of the other specifics.

Regarding his \$50-per-night condo lease from an energy lobbyist's wife, Pruitt said the arrangement received ethics approval and noted that the EPA inspector general's office had found it to be roughly market rate.

The EPA's inspector general's office has since said its review was based on incomplete information, and did not address the question of whether the lease broke other federal ethics regulations.

During the second hearing, Ohio Democrat Marcy Kaptur raised Pruitt's first-class 2017 travels to Italy and Morocco, and questioned why he declined an invitation to visit Ohio to discuss pollution in Lake Erie.

"Do you know how much a flight to Toledo costs?" Kaptur asked.

https://www.nytimes.com/2018/04/26/climate/congress-pruitt-epa-ethics.html?ref=collection%2Ftimestopic%2FEnvironmental%20Protection%20Agency&action=click&contentCollection=timestopics®ion=stream&module=stream_unit&version=latest&contentPlacement=1&pgtype=collection

Scott Pruitt, on Capitol Hill, Deflects Blame for Ethical Lapses

By Coral Davenport and Lisa Friedman, 4/26/18

WASHINGTON — Scott Pruitt, the Environmental Protection Agency chief, had an easier time than expected on Capitol Hill on Thursday as he deflected Democrats' pointed questions about accusations of ethical infractions and lavish personal spending at the taxpayers' expense.

He insisted that the charges were false and that decisions involving illegal actions had been made by his staff members without his knowledge.

"I have nothing to hide," Mr. Pruitt said. Republicans were largely sympathetic.

His performance, supporters said, may have saved his job and his standing with President Trump.

"It's an audience of one, and Pruitt acquitted himself well," said Frank V. Maisano, a principal at the law firm Bracewell, which represents energy companies that lobby the E.P.A.

Mr. Pruitt, whose job security has appeared perilous recently as allegations of ethical improprieties have increased, gave a restrained performance before two House committees. His responses, however, rarely offered direct answers to questions about accusations of excessive spending or conflicts of interest.

While Democrats, who have called for his resignation, sought to force Mr. Pruitt to accept culpability for a variety of ethical missteps, he denied knowledge of or responsibility for the actions in question. Republicans, after briefly chastising Mr. Pruitt in their opening remarks, asked friendly questions that appeared calculated to allow him to talk about his policy proposals.

As reports about Mr. Pruitt have continued to increase, some White House staff members have urged Mr. Trump to fire the E.P.A. chief. Some Republican leaders have called for his resignation, and many in Mr. Pruitt's own party have called for investigations into his actions. But analysts who watched his performance on Thursday said he did well.

Representative Ken Calvert, Republican of California and chairman of the appropriations subcommittee where Mr. Pruitt testified in the afternoon, called the administrator's appearance "very professional."

Asked if Mr. Pruitt should resign he said, "No."

Ultimately, of course, the only opinion about Mr. Pruitt's fate that matters is the president's.

"I think his effort will be well received by the president," Mr. Maisano said. He has more explaining to do, but it was a good effort to mend fences. There were no lethal blows."

Mr. Pruitt is now the subject of 10 federal investigations, including questions about his office's illegal purchase of a secure phone booth, his condominium rental agreement with the wife of an energy lobbyist, and accusations that he demoted or sidelined E.P.A. employees who questioned his actions.

Committee Democrats queried him sharply about the reports of his ethical lapses and pressed Mr. Pruitt on his rollbacks of environmental rules, in particular, a new policy, proposed this week, that would limit the E.P.A.'s use of scientific research in crafting new health and environmental rules. Scientists have deplored the proposed rule, saying that it would significantly limit the agency's use of rigorous science.

“Administrator Pruitt has brought secrecy, conflicts of interest and scandal to the E.P.A.,” said Representative Frank Pallone Jr. of New Jersey, the ranking Democrat on the House Energy and Commerce Committee, where Mr. Pruitt testified Thursday morning. “You are unfit to hold public office and undeserving of the public trust,” he said. “Every indication we have is you really should resign.”

Greg Walden, Republican of Oregon and the chairman of the House Energy committee, offered light criticism before moving on to praising Mr. Pruitt for his efforts to roll back environmental regulations. “I am concerned that the good progress being made on the policy front is being undercut by allegations of your management of the agency and use of its resources,” he said. “These issues are too persistent to ignore.”

Conservative lawmakers from fossil-fuel producing states, who have long pushed for the rollback of E.P.A. regulations, bypassed even slight criticism of Mr. Pruitt, attributing the scrutiny on his actions to a political witch hunt.

Representative David B. McKinley, Republican of West Virginia, told Mr. Pruitt sympathetically that the attacks on him “have an echo of McCarthyism.”

In many ways, the past 14 months of Mr. Pruitt’s tenure has been building to this moment.

As Oklahoma’s attorney general, he made a name for himself aggressively battling the agency he now leads. Mr. Pruitt’s confirmation was fiercely opposed by Democrats, environmentalists and even E.P.A. employees. Since taking the helm of the agency, Mr. Pruitt has worked to strip the E.P.A. of funding, reduce its staff and curb its ability to develop new regulations on fossil fuel pollution.

No E.P.A. director in history has achieved Mr. Pruitt’s level of notoriety. Since the agency was formed, its administrators have been second-tier Washington figures. But Mr. Pruitt’s antagonism toward climate science has made him a nationally-prominent and divisive figure.

Critics said that more than the ethical and spending issues, the real damage to the E.P.A. has been Mr. Pruitt’s systematic weakening of the agency’s ability to protect the environment and public health. While Mr. Pruitt’s performance in Thursday’s hearings may make or break his future within the Trump administration, many said his legacy was already set.

“It’s just been a flagrant, shameless series of calculated decisions to dismantle the country’s most successful domestic enterprise,” William K. Reilly, who led the E.P.A. under the first President George Bush, said of Mr. Pruitt’s leadership. “It’s really a national tragedy,” he said.

At Thursday morning’s hearing, Representative Joe Barton of Texas, who has long denied the overwhelming evidence of human effects on climate change, offered sympathy. “Mr. Pruitt, you’re not the first victim of Washington politics,” he said.

Democrats unsuccessfully sought to pin down Mr. Pruitt on questions about his expenditures, and to force him to accept culpability for some the actions now under investigation.

Representative Tony Cárdenas, a California Democrat, asked about Mr. Pruitt’s soundproof booth, installed in his E.P.A. office at a cost of \$43,000. The Government Accountability Office has ruled that the expenditure broke the law.

“I was not aware of the approval of the \$43,000,” Mr. Pruitt told him, “and if I had known about it, congressman, I would not have approved it.”

Mr. Cárdenas responded that “if someone was spending \$43,000 in my office, I would know about it.”

Representative Diana DeGette, a Colorado Democrat, launched into questions about Mr. Pruitt's involvement in real estate deals in Oklahoma that have been reported in The New York Times, referring to the purchaser of his home as a "shell company."

"It's not a shell company," he said quickly, and added that such financial structures were commonly used to purchase real estate in Oklahoma.

She then asked Mr. Pruitt whether he had paid taxes on rent he received. He said the issue had been handed over to an accountant.

"I'm not doing this to hassle you. I'm doing this as an elected official," Ms. DeGette said as she ended her questions. "Everything we do has to be to the highest ethical standards."

Representative Paul Tonko, the ranking Democrat on the House Energy's subcommittee on the Environment, pressed Mr. Pruitt on his claims that he was unaware that the E.P.A. had used an obscure legal provision to grant hefty raises to political appointees, bypassing approval by the White House. Mr. Pruitt has said the decision was taken by his chief of staff, Ryan Jackson.

"Did you authorize Mr. Jackson to sign those documents for you?" Mr. Tonko asked.

"I was not aware of the amount and I was not aware of the bypassing that was going on," Mr. Pruitt replied.

Even some Republicans criticized Mr. Pruitt for repeatedly blaming his staff.

"If you say give me a phone booth, and your staff does it, you should say, I'm at fault," said Representative John Shimkus, Republican of Illinois, the chairman of the House Energy subcommittee, speaking to reporters after the morning hearing. "It's never good to blame your staff. Or at least do it behind closed doors."

And Representative Anna G. Eshoo, a California Democrat, used her turn at questioning to try to get Mr. Pruitt to accept culpability. "You have a solid record of violating ethics rules from the state level to the federal government," she told Mr. Pruitt. "I think it's an embarrassment." And then she asked, "Do you have any remorse? Yes or no?"

Mr. Pruitt responded: "I think there are changes I've made already. I've made a change from first class to coach travel." Ms. Eshoo returned to her call for a yes-or-no answer, and asked Mr. Pruitt whether he would reimburse the government. He launched into a long response, but she cut him off.

"With all due respect, I may be elected, but I'm not a fool," she said. "This is not 'dodge-question' day."

Washington Post

https://www.washingtonpost.com/news/energy-environment/wp/2018/04/26/scott-pruitt-braces-for-tough-questions-at-double-hearings-on-capitol-hill/?utm_term=.3a2ff128b3e1

Scott Pruitt admits little culpability in EPA controversies, mostly blames aides and staff

By Brady Dennis and Juliet Eilperin, 4/26/18, 10:37 PM

Scott Pruitt gave little ground Thursday as he testified before two House panels about controversial spending and management decisions he has made while at the helm of the Environmental Protection Agency, blaming aides for exorbitant spending and saying career officials signed off on other controversial decisions.

Bolstered by Republican lawmakers, who praised his push to unravel Obama-era regulations and cut the agency's workforce, Pruitt suggested that the censure he's faced in recent months stems largely from opponents who want to stall President Trump's environmental policies.

"Those who have attacked the EPA and attacked me are doing so because they want to derail the president's agenda. I'm not going to let that happen," Pruitt told members of the House Energy and Commerce environment subcommittee during the morning. "A lie doesn't become true just because it appears on the front page of the newspaper."

Whether Pruitt's composed performance will be enough to preserve his job remains unclear, but there were few signs Thursday that House Republicans were ready to abandon him. Few GOP lawmakers — among them, Rep. Ryan Costello (Pa.), who is retiring, and Rep. Leonard Lance (N.J.), who is locked in a tough reelection fight — criticized Pruitt during more than five hours of questioning.

Three White House officials said Pruitt's testimony — while "not good," in the words of one — did not deliver a knockout blow to his tenure. The EPA chief has little support among senior aides there, and the president has voiced more concern as allegations and investigations involving Pruitt have accelerated. Multiple probes are underway by the agency's inspector general, as well as by the House Oversight Committee, the Government Accountability Office and the White House itself.

Trump did not watch much of the administrator's testimony live, one official with direct knowledge of his schedule said, but will likely view segments later along with media coverage.

Democratic lawmakers pushed Pruitt hard on several fronts, prompting him to concede that he had known in advance of an aide's pay hike, that he had not sought an ethics ruling on his rental of a condo from a lobbyist and that a costly soundproof phone booth installed in his office did not constitute the kind of secure communications facility commonly used by federal officials for classified discussions.

"I'm not afraid to admit that it has been a learning process," he said.

Pruitt repeatedly faulted staff for spending decisions that have drawn intense heat and denied that he had reassigned or demoted anyone who questioned those expenditures. Several people — including Pruitt's former deputy chief of staff for operations, Kevin Chmielewski — have charged that they faced retaliation after challenging plans to spend taxpayer funds on first-class travel, office upgrades and other perks for him.

The EPA chief insisted there was "no truth" to such reports, adding, "I'm not aware of that ever happening."

He also said he had no idea that his request to install a secure phone line in his office would lead to the customized phone booth costing \$43,000. "I was not aware of the approval of the \$43,000," Pruitt said at one point, "and if I had known about it, congressman, I would not have approved it."

Mid-afternoon, Pruitt moved over to a House Appropriations subcommittee and was again pressed on how that phone booth came about. The decision to install it "should not have been made," he said.

Referring more broadly to management and spending missteps at the agency, Pruitt told the panel, "If there are processes that have not been followed internally . . . I commit to make those changes prospectively."

He addressed questions about his first-class travel by saying that, even with ongoing security concerns, he had returned this year to flying coach. "I recently made changes to that because I felt like, from an optics and perception standpoint, it was creating a distraction," he said.

He said he was aware of the move to give agency senior counsel Sarah Greenwalt a raise but did not push for it. She and another staffer received significant raises this spring over the objections of officials in the White House Personnel Office. "I was aware of one of those individuals" receiving a raise, Pruitt told Costello.

Greenwalt got a 52 percent increase last month, while Millan Hupp, director of scheduling and advance, got a 33 percent boost. The Washington Post first reported last week that Greenwalt had emailed a colleague in EPA's human resources department that the raises had been "discussed" with the administrator in advance. Each woman had worked for Pruitt in Oklahoma before coming to Washington.

Earlier, when Rep. Paul Tonko (D-N.Y.) asked Pruitt if he had authorized chief of staff Ryan Jackson to sign the raises, Pruitt had replied, "I was not aware of the amount, nor was I aware of the [Personnel Office] process not being respected." He said he had delegated authority to Jackson to review and approve such personnel actions — a move that was documented by a March 2017 memo the agency released Thursday.

Jackson reversed both raises on April 5, according to EPA documents.

While Costello and Lance bore in on his spending on security and travel, other Republicans lauded his aggressive actions to roll back regulations, most prominently the Obama administration's signature effort to cut carbon emissions from power plants.

"The greatest sin you've committed, if any, is you've actually done what President Trump ran on, won on and what he's commissioned you to do," Rep. Kevin Cramer (R-N.D.) told Pruitt during the first hearing.

Rep. Joe Barton (R-Tex.) mounted a defense on Pruitt's behalf. "You're not the first person to be the victim, for lack of a better term, of Washington politics," the lawmaker told him. Referring to the fact that the administrator frequently traveled in first class during his first year at EPA, Barton inquired, "Is it illegal to fly first class?"

Pruitt said that those tickets had been approved by the agency's travel and security offices, prompting Barton to reply, "But it's not illegal. It may look bad, but it's not illegal."

Rep. David B. McKinley (R-WVa.) described the myriad allegations Pruitt faces as "a classic display of innuendo and McCarthyism," adding that he was disappointed his colleagues across the aisle couldn't restrict their questions to ones about policy. "Some just can't resist the limelight, the opportunity to grandstand," he accused.

The EPA's press office issued a news release shortly before the second hearing, with quotes from Pruitt's congressional supporters, including Cramer's comment: "I never cease to be impressed by the level of detail you know."

But Democrats were unsparing in their criticism. Tonko, the House Energy and Commerce subcommittee's top Democrat, delivered a fusillade as Pruitt looked on impassively. After ticking off several allegations about the administrator's personal financial dealings and professional decisions, the lawmaker said, "In almost all cases, the more we have learned, the worse they get."

He concluded by telling Pruitt, "You have failed as a steward of American taxpayer dollars and of the environment."

Rep. Frank Pallone Jr. (N.J.), the Energy and Commerce's top Democrat, was even harsher. "You are unfit to hold public office, and you are undeserving of the public trust," he told Pruitt.

Pallone pressed Pruitt on whether he had retaliated against employees who questioned some of his spending decisions. "Has it always been your practice to fire people who disagree with you?" he asked.

Pruitt rebutted the charge. "I don't ever recall a conversation to that end," he said.

The administrator did retreat some during an exchange with Rep. Diana DeGette (D-Colo.). Previously, EPA officials had likened the privacy phone booth to a Sensitive Compartmented Information Facility (SCIF) that Pruitt needed for secure conversations with the White House and other officials. A recent GAO report did not assess the booth's security merits but said Pruitt violated federal spending laws by spending more than \$5,000 upgrading his office without advance notice to Congress.

The phone booth “is actually not a SCIF,” Pruitt said, even as he rejected the GAO’s conclusion. He acknowledged that he has only used the booth sparingly. “It’s for confidential communications, and it’s rare,” he added.

At times, he professed to be unfamiliar with some of the technology his aides had installed in his office.

“What is a biometric lock?” Rep. Peter Welch (D-Vt.) asked.

“I don’t know,” the administrator replied. “I just put a code in.”

AP

<https://apnews.com/dd43296ebf6c4c3ab851de09dcf78d2e/At-hearings,-EPA-chief-seeks-to-divert-blame-for-ethics-woes>

At hearings, EPA chief seeks to divert blame for ethics woes

By Michael Biesecker and Ellen Knickmeyer, 4/27/18

WASHINGTON (AP) — Environmental Protection Agency chief Scott Pruitt, yet another Trump administration official with his job on the line over ethical concerns, took heat from lawmakers over his profligate spending and lobbyist ties and tried to divert responsibility to underlings.

The EPA administrator said “twisted” allegations against him were meant to undermine the administration’s anti-regulatory agenda, and he denied knowing details of some of the extraordinary spending done on his behalf at the agency.

The public grilling at back-to-back House hearings on Thursday, convened to consider EPA’s budget, came as support has appeared to erode for Pruitt among fellow Republicans after revelations about unusual security spending, first-class flights, a sweetheart condo lease and more. Even Republicans who heartily support Pruitt’s policy agenda said his apparent lapses had to be scrutinized.

Democrats excoriated him.

“You are unfit to hold public office,” said Rep. Frank Pallone of New Jersey.

“You’ve become the poster child for the abuse of public trust,” said Rep. John Sarbanes of Maryland.

Although most of the Republican lawmakers at the hearings rallied around Pruitt, reviews were mixed. Rep. John Shimkus of Illinois, chairman of the first panel that questioned Pruitt, said afterward the EPA chief was “a little vague,” adding, “It’s never a good idea to blame your staff in public.”

Democratic lawmakers assailed EPA chief Scott Pruitt on Thursday for the ethics and spending scandals that have prompted multiple calls for his ouster. The chairman of the panel that is questioning Pruitt called the allegations a “distraction but one this committee cannot ignore.” (April 26)

Asked whether Pruitt should resign, he said that’s not his call and suggested it’s up to President Donald Trump.

Thursday’s hearings were Pruitt’s first major appearance since a Fox News interview in early April that was widely considered to be disastrous within the West Wing.

Before Congress, the administrator demonstrated his background as a lawyer, giving clipped answers and sticking to repeating rehearsed talking points.

He visibly bristled as Democrats pressed about the many financial allegations against him, then relaxed when Republicans on the panel gave him openings to expand on his policy steps at EPA.

Mocking Pruitt's opponents, Republican Rep. Kevin Cramer of North Dakota said that as far as the EPA chief's critics were concerned, "I think the greatest sin you've done is you've actually done what President Trump ran on."

"It's shameful that this day has turned into a personal attack," GOP Rep. Bill Johnson of Ohio said.

Trump has stood by his EPA chief, but behind closed doors, White House officials concede Pruitt's job is in serious jeopardy.

Pruitt has faced a steady trickle of revelations involving pricey trips in first-class seats and unusual security spending, including a \$43,000 soundproof booth for making private phone calls. He also demanded 24-hour-a-day protection from armed officers, resulting in a 20-member security detail that blew through overtime budgets and racked up expenses approaching \$3 million.

The EPA chief acknowledged under sharp questioning that he did, in fact, know something about huge pay raises given to two women on his staff, at least one of them a friend, after insisting weeks ago that he didn't approve the raises and didn't know who did. After his initial denial, documents emerged showing that EPA chief of staff Ryan Jackson signed off on the raises and indicating he had Pruitt's consent.

Pruitt said Thursday he delegated authority to Jackson to give the raises but didn't know the exact amounts. Senior legal counsel Sarah Greenwalt received a raise of more than \$66,000, bringing her salary to \$164,200, and scheduling director Millian Hupp saw her salary jump from \$48,000 to \$114,590.

Under questioning, Pruitt appeared to acknowledge that Hupp helped him find accommodations in the capital but said her search apparently did not cost taxpayers. "I'm not aware of any government time being used," he said. "She is a friend."

As he has previously, Pruitt sought to deflect questions about any missteps by blaming subordinates.

—On the communications booth: "I was not involved in the approval of the \$43,000, and if I had known about it, Congressman, I would not have approved it."

—On flying first class at taxpayer expense: "Security decisions at the agency are made by law enforcement personnel, and I have heeded their counsel."

—On the pay raises to the two women: "I was not aware of the amount provided or the process that was used in providing that."

At several points, he spoke of decisions made by "career individuals at the agency."

"You're the guy in charge," Democratic Rep. Peter Welch of Vermont countered. "It really seems like there's something on your desk with the motto: 'The buck stops nowhere.'"

Pruitt drew an unusual rebuke from the office of EPA's inspector general, Arthur Elkins, while he was still testifying. A spokesman for Elkins, Kentia Elbaum, said he never signed off on an internal review of security threats that Pruitt cited at the hearing to explain why he needed unusual arrangements for his safety.

Elbaum said the summary was prepared by Patrick Sullivan, an assistant inspector general, and provided to Pruitt's security team but said it was later "leaked without authorization."

Pruitt read aloud from two security threats, one from a man who tweeted that he planned to shoot Pruitt. Investigators determined that the person who wrote the tweet "is currently believed to be living in India."

Democratic Rep. Betty McCollum of Minnesota was unmoved, saying: "We all receive threats on our Facebook page."

The same document Pruitt cited also recounted similar threats against Obama EPA Administrator Gina McCarthy, who routinely flew in coach and didn't require full-time protection.

Pruitt's troubles began in earnest last month, when ABC News first reported he had leased a Capitol Hill condo last year for just \$50 a night that was co-owned by the wife of a veteran fossil fuels lobbyist whose firm had sought regulatory rollbacks from EPA.

Both Pruitt and the lobbyist, Steven Hart, denied he had conducted any recent business with EPA. But Hart was forced to admit last week he had met with Pruitt at EPA headquarters last summer after his firm, Williams & Jensen, revealed he had lobbied the agency on a required federal disclosure form.

Asked Thursday whether he had received any other gifts from lobbyists seeking favors from EPA, Pruitt replied, "I'm not aware of any instances."

Bloomberg

<https://www.bloomberg.com/news/articles/2018-04-26/pruitt-s-challenge-convince-congress-he-should-keep-epa-job>

Pruitt's Capitol Hill Defense: Don't Blame Me

By Jennifer A Dlouhy and Ari Natter, 4/26/18, 4:00 AM, Updated 4/27/18, 4:00 AM

Environmental Protection Agency Administrator Scott Pruitt made it through nearly six hours of grilling on Capitol Hill on Thursday by mostly blaming subordinates for the swirl of ethics allegations that have endangered his tenure.

The EPA chief asserted in back-to-back House hearings that he was not aware of the size of the pay raises that were granted to two top aides over White House objections; didn't ask to fly first-class; and didn't know that the secure phone booth installed in his office was going to cost \$43,000.

"If I had known about it, I would not have approved it," Pruitt said when asked about the phone booth.

He stayed calm and lawyerly, managing to avoid any gaffes that could further jeopardize his job. But he didn't appear to win any converts who could aid his political survival. White House officials have cautioned Republican lawmakers and other conservative allies to temper their defense of Pruitt, in a sign administration support for him may be waning.

"It's never good to blame your staff," Illinois Representative John Shimkus, the Republican chairman of the House Energy and Commerce environment subcommittee, told reporters after the hearing. "Or you do it behind closed doors and you talk to them -- but not publicly."

Pruitt, 49, has drawn fire -- and at least nine formal investigations -- for frequent travel to his home state of Oklahoma; questionable spending decisions at the EPA; the raises, which amounted to tens of thousands of dollars; and allegations that some employees were sidelined after questioning his decisions.

Democrats dinged Pruitt for not being able to definitively say whether he had paid taxes on earnings tied to Oklahoma real estate or whether an associate administrator had reliably shown up for work before resigning earlier this month.

"For someone who has been in the job for a year and half, he didn't seem to be in command of a lot of details," Representative Marcy Kaptur, an Ohio Democrat, observed after the afternoon appropriations subcommittee hearing with Pruitt.

Representative Betty McCollum, a Democrat from Minnesota, came right out at the hearing and told him he should resign.

"He could have taken personal responsibility," McCollum said afterward.

Representative Anna Eshoo, a Democrat from California, ticked through the allegations before asking Pruitt: "Do you have any remorse?"

Pruitt cast aside the controversies as "a distraction to our agenda," and called them "half truths, or, at best, stories that are so twisted they do not represent reality."

"Those who attack the EPA and attack me are doing so because they want to attack and derail the president's agenda and undermine this administration's priorities," Pruitt said. "I have nothing to hide with how I ran the agency over the past 16 months."

Pruitt stressed he has made changes in response to some concerns, such as returning to flying coach when his first-class airline travel drew criticism. He said the costlier fares were chosen by security officials concerned about threats against him.

Travel Optics

"I felt like from an optics and perception standpoint it was creating a distraction," Pruitt said, in explaining the downgrade.

Some -- but not all -- Republicans provided a friendlier welcome, with several extolling Pruitt's performance at the EPA, at least one apologizing for colleagues' "abrasive" questions and two casting the deluge of accusations against the administrator as McCarthyism.

"It appears that it has become a political blood sport to try and destroy anybody with the Trump administration," observed Representative Gregg Harper, a Republican from Mississippi.

Representative David McKinley, a West Virginia Republican, said Pruitt had been the target of a "classic display of innuendo and McCarthyism that we're seeing too often here in Washington." Some lawmakers "just can't resist the limelight, the opportunity to grandstand," McKinley said.

Representative Leonard Lance, a Republican from New Jersey, said he was troubled by the allegations of overspending and singled out the phone booth acquisition. The EPA building in Washington already has a secure room where classified information can be shared, so why did we need to spend taxpayer funds on another, Lance asked. "I think it was a waste of funds."

"I gave a simple communication to my leadership team" asking for a secure phone line, Pruitt explained. "It turned into a 40,000-plus expenditure on this phone booth."

From beginning to end, that purchase was handled by EPA career staff, Pruitt said. "Those were all career individuals that were part of that process," Pruitt said.

Some Republicans said Pruitt deftly fielded questions, answering them about as well as he could have. "I think he did fine. I see no reason to change," said Representative Ken Calvert, a California Republican. "We have a committee that is looking into these charges and we'll have a resolution to it."

Politico

<https://www.politicopro.com/energy/whiteboard/2018/04/epa-prepping-documents-in-response-to-oversight-probe-1125125>

EPA prepping documents in response to Oversight probe

By Anthony Adragna, 4/26/18, 8:11 PM

EPA staff is in the process of providing documents to the House Oversight Committee that it believes will respond to allegations of lavish spending and unethical conduct by Administrator Scott Pruitt and may negate the need for several aides to appear for interviews, according to a senior EPA official.

The agency staffers believe the documents will show former Trump campaign aide Kevin Chmielewski, who served as a senior aide to Pruitt, made a number of “exaggerations” when he spoke with Democratic and Republican lawmakers, according to the official.

Senior staffers at the agency are also willing to sit for interviews with Oversight staff if desired, the official said. Those officials include: Pasquale “Nino” Perrotta, Pruitt’s security chief; Ryan Jackson, Pruitt’s chief of staff; Millan Hupp, a scheduling and advance aide; and Sarah Greenwalt, a senior counsel to Pruitt.

House Oversight Chairman Trey Gowdy (R-S.C.) expanded his probe into the embattled EPA chief’s activities one day after his staff sat down with Chmielewski. In an April 13 letter, Gowdy requested a host of documents and that the interviews be scheduled by April 27.

In addition, an Oversight Committee aide said earlier this week the committee had informally requested on April 16 that Samantha Dravis, formerly one of Pruitt’s closest aides, appear for a transcribed interview with committee staff. Dravis had not been included in Gowdy’s original letter because it was thought she left the agency, but her resignation was actually effective April 20, according to the aide.

A spokeswoman for the Oversight Committee did not respond to request for comment today.

Daily Caller

<http://dailycaller.com/2018/04/27/pruitt-likely-didnt-lie-on-staff-raises/>

SCOOP: EPA Memo Suggests Pruitt Did Not Lie To Fox News About Staff Raises

By Michael Bastasch, 4/27/18, 10:43 AM

Environmental Protection Agency Administrator Scott Pruitt told Congress he “delegated” authority over controversial raises to his chief of staff, and some reporters took that as a subtle admission he lied.

However, an EPA memo obtained by The Daily Caller News Foundation shows Pruitt delegated personnel authority to Chief of Staff Ryan Jackson more than one year ago, not around the time of the controversial raises. TheDCNF first revealed the existence of the EPA memo in a Thursday tweet.

Based on the document and Pruitt’s testimony, he was not saying he gave Jackson authority to grant the two raises in question.

Democratic lawmakers grilled Pruitt during two hearings on Thursday, including on reports he authorized big salary raises for two close aides over White House objections. Democratic New York Rep. Paul Tonko’s exchange with Pruitt got the most attention.

Tonko asked Pruitt for a response to reports in The Atlantic he, or his staff, authorized raises for two staffers who followed the administrator from Oklahoma. The raises were rejected by White House staffers, so EPA used a provision of federal law to go around the oval office.

“Those were delegated to Mr. Jackson and the Inspector General did reference that in his management alert,” Pruitt responded to Tonko.

“There were delegations giving him that authority,” Pruitt added.

Fox News correspondent John Roberts interpreted Pruitt’s delegation of authority to Jackson as “contradicting what he told” Fox’s Ed Henry earlier in April.

Pruitt told Henry he’d only found out about the raises given to two staffers when The Atlantic reported on the incident the day before, on April 3. Pruitt also told Henry he did not know who on his staff authorized the pay raises over White House objections.

The Atlantic reported that Pruitt himself approached the White House about the raises for two staffers, the authorized the raises using a provision of the Safe Drinking Water Act after PPO shot him down.

Roberts and others claimed this showed Pruitt changed his story on the raises, essentially lying to Fox News a few weeks earlier.

But the memo obtained by TheDCNF shows he delegated Jackson authority over personnel decisions under the Safe Drinking Water Act in March 2017 — one year before EPA approached the White house about the raises.

The “delegated” authority Pruitt referred to happened months ago, not as the raises for two staffers were being sought, based on the memo.

Jackson later admitted he authorized the pay raises, and EPA’s Office of Inspector produced a report showing Jackson did indeed sign off on them “for Scott Pruitt.” According to the memo, Pruitt had given Jackson the authority to make such personnel decisions about one year earlier.

Politico

<https://www.politicopro.com/energy/whiteboard/2018/04/document-epa-reversed-raises-one-day-after-pruitts-fox-interview-1125002>

Documents: EPA reversed raises one day after Pruitt’s Fox interview

By Emily Holden and Nick Juliano, 4/26/18, 6:45 PM

EPA reversed raises for two top aides to Administrator Scott Pruitt the day after his interview with Fox News, according to documents shared by the agency today.

Pruitt told Fox his staff had authorized the raises and he had “corrected them.” A day later, on April 5, Pruitt’s chief of staff, Ryan Jackson, signed personnel forms reverting the aides to their previous pay grades, according to copies of the forms reviewed by POLITICO. Jackson signed the documents “for Scott Pruitt,” as he had on forms authorizing the initial pay bumps a few days earlier, according to documents previously released by EPA’s inspector general.

Sarah Greenwalt, senior counsel to Pruitt, received a \$56,765 increase in her annual salary on April 1, and Millan Hupp, director of scheduling and advance, saw a \$28,130 increase that same day, according to the earlier IG documents.

Jackson reversed those moves on April 5, bumping Greenwalt's salary back to \$109,900 per year, and Hupp's to \$88,450, according to the new documents.

Pruitt signed a memo in March 2017 delegating to Jackson the ability to make hiring and salary decisions using a special section of the Safe Drinking Water Act.

"Administrator Pruitt has consistently said he was not aware of the amount of the raises or the process that was used, as he said both today and in prior interviews," EPA spokesman Jahan Wilcox said in a statement. "He was aware one of the individuals was receiving changes to job responsibilities and might be asking for a raise, but had no further involvement in the discussions, negotiations or approvals, because he had authorized his Chief of Staff and other EPA officials to handle all personnel matters."

Politico

<https://www.politicopro.com/energy/whiteboard/2018/04/epa-says-chief-of-staff-had-authority-to-raise-salaries-without-pruitts-review-1123943>

EPA says chief of staff had authority to raise salaries without Pruitt's review

By Emily Holden, 4/26/18, 4:18 PM

EPA chief of staff Ryan Jackson has had blanket authorization since the beginning of Administrator Scott Pruitt's tenure to handle hiring and raises under the Safe Drinking Water Act, according to an agency document shared by spokesman Jahan Wilcox.

In a memo dated March 7, 2017, Pruitt delegates to Jackson "the authority to approve all personnel actions for personnel appointed under the Safe Drinking Water Act." According to the memo, Pruitt says he will "retain the right to exercise or withdraw" that authority.

The law has allowed EPA to hire and increase salaries for political appointees without White House consent. Pruitt, under fire after key aides got raises of up to 72 percent, has said he was unaware of the specifics of the salary changes.

He acknowledged to lawmakers on the House Energy and Commerce Environment Subcommittee earlier today that he had delegated authority to Jackson but did not say when.

Pruitt also said staffers were responsible for his \$43,000 secure phone booth and biometric locks installed in his office. He said his security team made decisions about his air travel, which has cost at least \$163,000, including first-class, charter and military flights.

Politico

<https://www.politicopro.com/energy/whiteboard/2018/04/mccollum-questions-pruitt-justification-for-security-costs-1123434>

McCollum questions Pruitt justification for security costs

By Alex Guillen, 4/26/18, 4:50 PM

Rep. Betty McCollum (D-Minn.) questioned the severity of the threats EPA Administrator Scott Pruitt has faced in office, which the agency has cited to justify his heavy spending on security.

At a House Energy and Commerce subcommittee hearing this morning, Pruitt cited a report from the inspector general's office that documented threats directed at him and his family in social media posts, emails and letters. The document was first reported earlier this month by CBS.

Later, at Pruitt's second hearing of the day, before a House Appropriations subcommittee, McCollum said the IG's office had disputed Pruitt's characterization of the document and expressed skepticism about the seriousness of its findings.

"We all receive death threats on our Facebook page," McCollum said after Pruitt read aloud a threat sent to his daughter via social media.

McCollum asked Pruitt whether EPA Inspector General Arthur Elkins Jr. had written the report he cited. "I'm looking at the document that says inspector general," Pruitt replied.

But a spokeswoman for the IG's office said today said it came from another official, not Elkins himself.

"It was an internal memo from Assistant IG for Investigations Patrick Sullivan," OIG spokeswoman Tia Elbaum said in an email. "It was leaked without authorization. It will be released in the near future as part of an OIG FOIA response."

After the hearing, McCollum said she was disappointed with Pruitt.

"He could have taken personal responsibility and really meant it," she told reporters. "Instead he messed up in that he got caught up in thinking he needed more security than he needed, and that when employees pushed back on him, he did retaliate."

Politico

<https://www.politicopro.com/energy/whiteboard/2018/04/pruitt-distances-himself-from-lng-promotion-on-morocco-trip-1122333>

Pruitt distances himself from LNG promotion on Morocco trip

By Anthony Adragna, 4/26/18, 3:38 PM

EPA Administrator Scott Pruitt today downplayed the role promoting liquefied natural gas exports played in his December trip to Morocco, saying he was there for negotiations over the environmental chapter of a free trade agreement with that country.

While EPA at the time described the purpose of the trip as twofold, Pruitt told members of Congress today that promoting LNG was not his idea.

"There was a lot of reference made to LNG only because the ambassador [of Morocco] asked me to share that with individuals when I was in country," Pruitt told Rep. Chellie Pingree (D-Maine) at an Appropriations subcommittee hearing, his second appearance on Capitol Hill of the day.

EPA did not announce Pruitt's trip in advance, but a press release announcing it after the fact said he discussed both the trade agreement and "the potential benefit of liquified [sic] natural gas (LNG) imports on Morocco's economy."

Critics argue the trip fell well-outside the portfolio of the EPA administrator.

"I can't for the life of me imagine why an EPA administrator would be over there promoting energy sales," Pingree said. "We have a Department of Energy."

Washington Examiner

<https://www.washingtonexaminer.com/policy/energy/scott-pruitt-blames-ambassador-for-talking-up-energy-exports-in-morocco>

Scott Pruitt blames ambassador for talking up energy exports in Morocco

By John Siciliano, 4/26/18, 4:17 PM

Environmental Protection Agency chief Scott Pruitt downplayed his trip to Morocco last year, saying the only reason he discussed natural gas exports there was because he was asked to by the Moroccan ambassador to the United States.

The primary purpose of the trip was to hash out the environmental component of a free-trade deal the U.S. finalized with Morocco in February, he said at a hearing Thursday afternoon before the House Appropriations Committee's interior subcommittee.

"There is a free-trade agreement, the ambassador of Morocco actually met with me in advance of the free-trade agreement that was being negotiated and completed in February of this year," Pruitt explained, after being prodded by Democratic Rep. Chellie Pingree of Maine on why an EPA chief would be promoting fossil fuels in another country.

"We were there in December to defend the environmental chapter" of the trade deal, Pruitt said. The EPA inspector general is investigating the trip's costs, which amounted to \$40,000.

The inspector general's office added the Morocco trip to a previous investigation it was undertaking on Pruitt's lavish domestic travel and security costs in response to a letter by Sen. Tom Carper of Delaware, the top Democrat on the Environment and Public Works Committee. Carper also asked the EPA watchdog to probe the focus of Pruitt's trip and his focus on liquefied natural gas exports from the United States.

"Well, it's certainly been portrayed in another way and it's certainly raised a lot of concerns," Pingree said after hearing Pruitt's response. "I would not like to think that you were promoting fossil fuels or fossil fuel sales outside the country."

The EPA issued a press release on Dec. 12, after his visit, that stated that he was in Morocco to outline "U.S. environmental priorities for updating the environmental work plan under the U.S.-Morocco Free Trade Agreement and the potential benefit of liquefied natural gas (LNG) imports on Morocco's economy. "

Some media reports have noted that the energy lobbyist whose wife Pruitt rented a Capitol Hill condo from was a lobbyist for Cheniere Energy, a top exporter of LNG.

The Hill

<http://thehill.com/policy/energy-environment/385065-ig-threat-memo-cited-by-pruitt-isnt-from-ig>

IG: Threat memo cited by Pruitt isn't from IG

By Timothy Cama, 4/26/18, 4:13 PM

The Environmental Protection Agency's (EPA) Office of Inspector General (OIG) pushed back Thursday against EPA head Scott Pruitt, saying he misrepresented a memo about the threats against him in testimony to the House.

In two separate hearings Thursday, Pruitt presented to lawmakers a "threat assessment" that he said came from Inspector General Arthur Elkins detailing various death threats against him.

He used the memo to justify his security costs, including the purchase of first-class airline tickets and the employment of a 24/7 security detail.

But the OIG says the document wasn't from Elkins.

"The memo that he read from was not from Inspector General Elkins. It was an internal memo from Assistant IG for Investigations Patrick Sullivan," OIG spokeswoman Kentia Elbaum said in a statement.

"It was leaked without authorization," Elbaum said, adding that the OIG plans to release it soon in response to a Freedom of Information Act (FOIA) request.

Elbaum's statement described Pruitt as "waving a document he said was from the Inspector General."

At the afternoon hearing with the House Appropriations Committee's subcommittee with authority over the EPA's budget, Rep. Betty McCollum (Minn.), the subpanel's top Democrat, repeatedly asked Pruitt whether the document was from Elkins.

"The document says 'inspector general,'" Pruitt replied. He similarly claimed earlier to the House Energy and Commerce Committee that the inspector general wrote the report.

Sullivan has told multiple news outlets that Pruitt has gotten far more death threats than previous EPA administrators.

"We have at least four times — four to five times the number of threats against Mr. Pruitt than we had against Ms. [Gina] McCarthy," he told CNN.

The New York Times reported this month that Sullivan was spotted drinking at a bar near the EPA's headquarters with Pasquale "Nino" Perrotta, the head of Pruitt's security detail and the impetus behind much of Pruitt's high-level security.

That spurred Citizens for Responsibility and Ethics in Washington to ask that the OIG look into their relationship and whether Sullivan should be involved with investigations involving Pruitt or Perrotta.

ABC News

<http://abcnews.go.com/Politics/amid-reports-misconduct-pruitt-faces-house-panels-live/story?id=54747126>

Highlights from Pruitt's marathon day on Capitol Hill

By Stephanie Ebbs and Lucien Bruggeman, 4/26/18, 7:53 PM

Environmental Protection Agency chief Scott Pruitt insisted he has "nothing to hide" and shifted blame for some of the agency's spending decisions to staffers during six hours of grilling on Capitol Hill Thursday.

Asked how the White House viewed Pruitt's performance, one administration official told ABC News that he still "has no support in the building except from the president."

Some Republicans defended Pruitt, saying that Democratic critics were trying to shoot the messenger and that he was a victim of "Washington politics" while Pruitt himself said some of the accusations of ethical misconduct were just untrue.

Pruitt faced an array of questions about his decisions to roll back environmental policies since taking over the agency, whether he granted controversial raises to two of his aides and the cost of his security detail and travel.

Pruitt had addressed some of the allegations and ongoing investigations in a Fox News interview that aired earlier this month but Thursday was the first time he was questioned about reports that he retaliated against EPA employees that

expressed concerns about his spending at the agency as well as claims from an EPA whistleblower, described in a letter from Democrats, that his security detail exaggerated threats against him to justify increased spending and first-class seating on flights.

Pruitt appeared before a House Energy and Commerce subcommittee Thursday morning and then before a House Appropriations subcommittee in the afternoon.

Here are some highlights from the two hearings.

A member of the House Appropriations subcommittee raised questions about one of Pruitt's trips abroad, a recent visit to Morocco during which Pruitt promoted U.S. natural gas exports – typically within the Energy Department's purview.

"I can't for the life of me imagine why an EPA administrator would be over there promoting energy sales," Rep. Chellie Pingree, D-Maine, said.

Pruitt defended the trip as a preliminary meeting for the U.S.-Morocco Free Trade Agreement where "there was a lot of reference to LNG" – shorthand for liquefied natural gas – "only because the ambassador asked me to share that with individuals while I was in country."

It wasn't immediately clear which ambassador Pruitt was referring to.

ABC News has previously reported that Pruitt recorded only one meeting on the first day of the costly trip to the Saharan country.

An initial agenda for the trip reviewed by ABC News included four redacted pages.

The afternoon hearing began much in the same way as the Energy and Commerce subcommittee's morning hearing ended, with Democratic ranking member Rep. Betty McCollum, D-Minn., holding Pruitt's feet to the fire about security and travel expenditures.

As Pruitt read aloud threats made against him – referring to a document he says was provided to him by the EPA's inspector general – in an effort to justify higher security costs – McCollum pushed back, telling Pruitt that "we all receive death threats on our Facebook page."

McCollum revealed that the committee reached out to the EPA's inspector general ahead of the hearing and said the inspector general, Arthur Elkins, "disputed" some of Pruitt's claims.

Pruitt insisted the document was from the inspector general, and McCollum asked that the document be submitted for the hearing's official record.

When ABC News reached out to the inspector general's office, a spokesperson confirmed Rep. McCollum's assertion that Elkins disputed Pruitt's claim.

"The memo that [Pruitt] read from was not from Inspector General Elkins," a spokesperson for the inspector general said, adding, "It was an internal memo from Assistant IG for Investigations Patrick Sullivan. It was leaked without authorization. It will be released in the near future as part of an OIG FOIA response."

After nearly four hours of questioning, the House Energy and Commerce subcommittee hearing ended the way it began, with exasperated Democratic lawmakers peppering Pruitt with questions about reports of unethical behavior and lavish spending – and criticizing Republicans on the panel for refraining from doing so.

Asked whether he has any remorse for what Rep. Anna Eshoo, D-Calif., called “excessive spending,” Pruitt said he’s already made changes, citing his decision to fly in coach after reports emerged that Pruitt flew in first class.

“This is not a dodge question day... I don’t really find you forthcoming,” Eshoo added.

Vermont Democrat Peter Welch again questioned Pruitt about the purchase of a \$43,000 soundproof phone booth, pointing to the two secure spaces already within the EPA to communicate sensitive information.

Pruitt reiterated that his staff coordinated the purchase of the secure phone booth, adding that the two other secure spaces are “not that close to my office.”

With regard to his chain of command and delegating the phone booth purchase to staff, Pruitt conceded that “in this instance, the process failed.”

In the waning moments of the hearing, Rep. Kathy Castor, D-Fla., expressed disappointment in her Republican colleagues for letting Pruitt “off the hook” by avoiding questions about his conduct.

“It’s embarrassing that most of the Republicans refuse to take this committee’s oversight responsibility seriously,” Castor said.

Pruitt shifted blame onto “career EPA officials” for erecting a private phone booth in the administrator’s office that cost more than \$43,000.

“I did not have access to secure communications, I gave directions to my staff to address that,” Pruitt said, adding that staffers had “made expenditures that I did not approve.”

The EPA spent more than \$43,000 to install a “secure phone booth” in Pruitt’s office last year, according to agency documents obtained by American Oversight, a watchdog group founded by former Obama administration officials.

Pruitt confirmed that the phone booth was not certified as a SCIF – a facility used for secure communications to discuss classified information. The EPA already has two SCIFs elsewhere in its headquarters, according to the GAO report.

Earlier this month, the Government Accountability Office found that the EPA violated federal law by failing to notify Congress before spending more than \$5,000 on the phone booth.

In a letter to the GAO, the EPA also argued that spending on the booth did not need to comply with the appropriations law because it was not an “aesthetic improvement,” but an expense to facilitate agency business. A decision by EPA’s general counsel disagreed with that finding, saying that it was a functional improvement and not just aesthetic.

Pruitt said the EPA is investigating that matter internally.

Pruitt told the committee that he gave a top aide permission to give at least two EPA employees big raises, deviating from how he characterized authorization for these raises in the past.

A report from the EPA’s internal watchdog found that it was Pruitt’s chief of staff, Ryan Jackson, who signed off on raises for 30-year-old senior legal counsel Sarah Greenwalt and 26-year-old scheduling director Millian Hupp under a little-known provision of the Safe Drinking Water Act.

Thursday, Pruitt confirmed that he delegated that authority to Jackson.

In an interview that aired on Fox News earlier this month, Pruitt said he didn’t know anything about the raises and that he has taken action to reverse the decision.

ABC News previously reported that two sources confirmed Pruitt pushed for the raises of two staffers but has not confirmed the amounts paid to these employees.

A small number of protesters wielding signs in the hearing room gallery disrupted the hearing.

Environmental subcommittee chairman Rep. John Shimkus stopped a line of hearing to address the protesters, warning them to remain quiet or get kicked out.

Protesters quieted when Capitol Police officers approached the gallery.

The Energy and Commerce Committee's ranking member, Rep. Frank Pallone, D.N.J., called Pruitt's conduct in office "an embarrassment" when referring to reports that Pruitt has acted in retaliation against EPA officials who disagreed with his agenda or questioned the legitimacy of threats against the administrator.

In response to Rep. Pallone's line of questioning, Pruitt said he did not recall taking retaliatory action against aides.

But the committee's vice chairman, Rep. Joe Barton, R-Texas, defended Pruitt, saying that he's a victim of "Washington politics," and Rep. David McKinley, R-W.Va., scolded his Democratic colleagues for "grandstanding" and engaging in "McCarthyism" by attacking Pruitt over news reports.

In the second hearing of the day a Republican from West Virginia, Rep. Evan Jenkins, said that the EPA's decisions under Pruitt and President Donald Trump have brought his state "back to life."

"When you don't like the message, you shoot the messenger," Jenkins said.

Administrator Pruitt addressed the slew of media reports directed at his conduct as agency chief in opening remarks to the committee.

"I recognize there have been very troubling media reports over the last few weeks," Pruitt said, deviating from the prepared remarks released by the Committee on Wednesday. "I promise you that I, more than anyone, want to address the questions surrounding these reports."

Pruitt called the media reports an attack on the administration and an effort to derail the agency's agenda.

"A lie doesn't become truth just because it's on the front page of the newspaper," Pruitt said.

The Hill

<http://thehill.com/policy/energy-environment/385105-five-takeaways-from-pruitts-day-of-testimony>

Five takeaways from Pruitt's big testimony

By Miranda Green and Timothy Cama, 4/26/18, 7:17 PM

Scott Pruitt, the administrator of the Environmental Protection Agency (EPA), faced a barrage of tough questions from lawmakers Thursday as he testified in front of two House committees.

Pruitt, who has been embroiled in controversy for weeks, fought back aggressively against his critics and dismissed the negative headlines about his tenure as "fiction."

Here are five takeaways from his big day on Capitol Hill.

He escaped disaster.

Pruitt testified for nearly six hours, a grueling task for any Cabinet member, and seemed to mostly escape unscathed.

The hearings lacked fireworks, even as Democrats took turns excoriating the EPA chief and, in some cases, calling for him to resign.

Pruitt came prepared to answer questions about his spending and other ethics controversies. He tackled reports of his costs head-on in his opening statement, blaming the media for taking attention away from his regulatory work.

"Facts are facts and fiction is fiction. A lie doesn't just become the truth because it's on the front page of a newspaper," Pruitt said in both of his opening statements.

The former Oklahoma attorney general appeared to have an answer prepared for every question thrown at him, ranging from his use of a privacy booth to his spending on his round-the-clock security team to raises approved for EPA staffers.

Pruitt didn't once raise his voice or appear to be frazzled by the round of at times rapid-fire questions thrown at him.

But by the final panel, lawmakers appeared to run out of steam, at times referring, and yielding, to answers Pruitt gave at the day's earlier hearing.

If any lawmakers were expecting apologies or contrition from Pruitt, they didn't get it.

Pruitt shifted blame for the controversies at the EPA to other people, including for his use of first-class travel, his unauthorized staff raises, his construction of a privacy booth and his use of a 24/7 security detail.

Speaking in the afternoon to lawmakers on the House Appropriations Committee subpanel, Pruitt said he decided to change from flying coach to first-class due to threats against his life.

Pruitt cited two examples written in a leaked memo from the deputy inspector general as to why his around-the-clock security team was necessary. Two members of his security team sat directly behind him in the hearing room during the testimony, one wearing an earpiece.

The administrator suggested that he no longer flies first-class, calling news surrounding it "a distraction." He said he made a change.

On the agency's approval to provide substantial pay raises to two EPA staffers who had moved from Oklahoma with Pruitt — one who Pruitt described at the earlier hearing as a "close friend" — the chief said he was not aware of the type or amount of the raises. He admitted, however, that he was aware of the raises, contradicting what he'd previously said in an interview to Fox News.

Pruitt said after media reports surfaced, he directed his chief of staff, Ryan Jackson, to stop the raises. Jackson has previously taken responsibility for the pay increases. The EPA released a document during Pruitt's hearings that showed the administrator had in March 2017 transferred authority to Jackson to hire employees under the Safe Drinking Water Act.

Pruitt also asserted that he was not aware of the nearly \$43,000 cost of a privacy booth installed in his office last year. He said he had mentioned to staff not being able to take a phone call securely, but did not sign off on the booth and blamed "career staffers" who were involved "from the beginning to the end."

The Government Accountability Office (GAO) last week found that the privacy booth's construction yielded a number of violations.

Pruitt pledged to ensure that the EPA avoids further missteps.

"My objective to speak with you today is to provide confidence, and recognize faults where they have occurred and make sure they don't happen in the future," he said.

It wasn't all a walk in the park for Pruitt when it came to questioning from Republican lawmakers. While many focused their questions on policy decisions, others offered up harsh criticism over proposed EPA budget cuts that would gut or severely diminish a number of key programs in their states.

Rep. Ken Calvert (R-Calif.) opened the Appropriations Committee hearing by sharply criticizing Pruitt's proposal to cut around 25 percent from the EPA's budget.

"While some reductions may be in order, cuts of this magnitude put important programs at risk," the chairman of the subcommittee said, pointing to eliminations or cuts the Trump administration is proposing to state grants, programs to clean up major waterways and grants to clean up diesel pollution.

For those lawmakers who did venture to question Pruitt about the controversies, they focused on his spending.

Rep. Ryan Costello (R-Pa.) expressed concerns over the costs of Pruitt's security detail.

"When folks read about trips to Disneyland, professional basketball games, the Rose Bowl, and the additional security detail related to that, that doesn't sit well with a lot of people," Costello said.

Costello, who is leaving Congress after this year, said he thought the EPA chief lacked "good judgment."

"I believe you've not demonstrated the requisite degree of good judgment required of an appointed executive branch official on some of these spending items."

Rep. Gregg Harper (R-Miss.) asked Pruitt to promise that he would take whistleblower concerns seriously.

"Assure me and employees of EPA that all whistleblower complaints will be taken seriously at EPA," Harper asked Pruitt.

Pruitt responded: "This is not one of those situations, but absolutely that is something I can commit to you and will commit to you."

Numerous Republicans rushed to Pruitt's defense, not just applauding him for his work at the EPA, but portraying him as the victim.

Rep. David McKinley (R-W.Va.) called the Democrats' rhetoric "a classic display of innuendo and McCarthyism that unfortunately ... I think works against civility and respect."

"I'm hoping we would be able to stay on policy as much as we could, but some, I see, just can't resist the limelight, the opportunity to grandstand," he added.

Rep. Joe Barton (R-Texas) said it was another case of "Washington politics."

"Republicans do it when it's a Democratic president, Democrats do it when it's a Republican president," he said.

Rep. Jeff Duncan (R-S.C.) apologized to Pruitt.

"I apologize for the abrasiveness of some of my colleagues who would rather tarnish your character than really try to delve into the issues facing this great nation."

Some of his statements could come back to haunt him

Pruitt made a number of statements that contrasted with his past statements and those of others.

For example, Pruitt testified that he knew about controversial raises given to two close aides, but said he didn't know the amount nor that his chief of staff bypassed White House procedures to approve them.

Pruitt previously told Fox News's Ed Henry during a combative interview that he didn't know about the raises and that it was all done by a member of his staff without his knowledge.

In another instance, defending his security detail, Pruitt quoted the text of a letter that he said was an official "threat assessment" from the inspector general's (IG) office. And he stayed by his claims, despite questioning from Rep. Betty McCollum (D-Minn.) about whether the letter did come directly from EPA Inspector General Arthur Elkins.

Elkins's office has since disputed that, saying the letter Pruitt used was instead from Patrick Sullivan, the assistant inspector general for investigations. The office also said the letter was leaked without authorization.

Pruitt also said he did not sign off on the \$43,000 soundproof booth installed in his office, nor did he know its cost.

"Career individuals at the agency took that process through and signed off on it all the way through," Pruitt told Rep. Tony Cárdenas (R-Calif.). "I was not involved in the approval of the \$43,000, and if I'd known about it, congressman, I would have refused it."

The White House Office of Management and Budget and the EPA's IG are both looking into the booth purchase.

"If something happens in my office, especially to the degree of \$43,000, I know about it before, during and after," Cárdenas said.

The Hill

<http://thehill.com/opinion/energy-environment/385134-christine-todd-whitman-scott-pruitt-is-unfit-to-run-the-epa>

Christine Todd Whitman: Scott Pruitt is unfit to run the EPA (*Op-Ed)

By Christine Todd Whitman, 4/27/18, 7:30 AM

Scott Pruitt's ethical tone deafness has, ironically, come across loud and clear. The rule he signed this week targeting what he called "secret science" serves as yet further evidence of his inability to run the Environmental Protection Agency (EPA) with ethical integrity. In fact, the new rule is a surefire way to kill science at the agency as it de-incentivizes the private sector to share proprietary studies with the EPA.

This may sound counterintuitive and does not fit within the sound bite media culture in which we currently find ourselves. By touting "transparency" at the agency, the untrained observer might think he was doing something good for the future of the EPA and by extension, human health and the environment. But proprietary studies and scientific data from the private sector act as a balance for the agency's scientific data. The EPA needs these studies to prove or disprove its own hypotheses and establish sound, well-informed regulations.

Regulations from the EPA are not based on politics (though I'd argue that Pruitt's term as administrator has varnished the EPA in political bias). On the contrary, regulations from the EPA are rooted in science, and the agency needs sound scientific data — including proprietary studies — to make informed decisions and enact regulations that protect the environment and human health.

Pruitt's proposed rule — requiring the EPA to publish the underlying scientific data used to support the studies that inform the agency's clean air and clean water regulations — unleashes a host of issues. The rule will compromise patient privacy with regard to medical studies, and private sector companies will be deterred from sharing proprietary studies with the agency.

Most importantly, the EPA won't be able to come forward with new regulations because they won't have enough data. And that's just what the administration wants. No new regulations. This idea of "open science" will actually shut down science. This rule will turn the agency on its head and render it completely ineffective, which poses an extraordinary threat to science, to the environment, and to human health at large. Contrary to what the current administration might like us to believe, the EPA's regulations aren't just red tape for businesses and industries; they're enacted to protect the health of our citizens.

This new rule is just one of the many sound policies that Pruitt has dismantled as administrator of the EPA. He has revised authority for the Clean Water Act — taking what was previously in the hands of regional EPA administrators and consolidating in his office. He rolled back the Clean Power Plan, which was also aiming to reduce the very pollution that harms our most vulnerable citizens in particular. He lifted fuel economy and emissions standards that keep cars from further polluting our air. Pollution kills three times more people than AIDS, malaria and tuberculosis put together and yet Pruitt is making it easier for automakers to pollute and American citizens to get sick.

In addition to his policy dismantling, Pruitt's ethical lapses not only make him a questionable spokesperson, but also a detriment to the agency. His private phone booth creates an atmosphere of distrust. He sequesters himself, interacting only with a select group of people, and he doesn't engage with staff. On one hand, Pruitt touts "open science" and on the other hand he fosters an environment of secrecy and distrust. Even the "secret science" rule was announced while limiting access to reporters and scientists at the event.

Scott Pruitt is unfit to run the EPA because he lacks ethical integrity — a quality that is of the utmost importance when entrusted with protecting the environment and public health.

Christine Todd Whitman is the former administrator of the Environmental Protection Agency under President George W. Bush. She previously served as the governor of New Jersey and now runs her own consulting firm.

Washington Post

https://www.washingtonpost.com/news/opinions/wp/2018/04/27/scott-pruitts-feisty-defense-of-himself-may-have-been-good-enough-to-save-his-job-of-destroying-the-earth/?utm_term=.455af6fd9efe

Scott Pruitt's feisty defense of himself may have been good enough to save his job of destroying the earth! (*Op-Ed)

By Tom Toles, 4/27/18, 8:55 AM

There are times when what you are watching is so far out of line with what is actually happening and what actually matters that you know that somebody is screamingly bonkers.

Watching the testimony of Environmental Protection Agency Executioner Scott Pruitt yesterday was one of those times, although "those times" are just about "all the time" these days. Here you had a hours-long examination of the top environmental official in which the largest environmental crisis of human history is not the subject. The United States has removed the "environ" part of this environmental case, leaving just a mental case.

Pruitt deflected blame. Booyah. Deflected so well he may have saved his job. Huh? Is this really the story? The ceaseless pouring of a gas into the atmosphere that is known and recognized by all the world's scientists to be putting catastrophe squarely in the path of humanity's future, and we're doing a fine calibration of how effectively one of the principal bad actors deflected blame in a minor tawdry bit of official corruption? Hey, Trump likes a combative attitude! Pruitt scored some points for himself! Stop it! Please, just please make this stop!

The United States is pathetic. Just pathetic. The rest of the world watches us the way one watches a multi-car pileup to see our indulgence of infantile, make-believe posturing, diversion, evasion and lies that nobody believes. Foreign leaders come here and see how best to baby-talk to our baby-king. Does he like flattery? Holding hands? Don't make him too angry!

Congress is pathetic. The media, to the degree that we don't headline the climate disaster until we address it, is pathetic.

When does this bad dream end? It's about a half-year now until November.

Tom Toles is the editorial cartoonist for The Post and writes the Tom Toles blog. See all of his cartoons here.

Washington Post

https://www.washingtonpost.com/opinions/robert-redford-the-biggest-scott-pruitt-scandal-is-the-one-right-in-front-of-us/2018/04/26/849085f0-498c-11e8-8b5a-3b1697adcc2a_story.html?utm_term=.6c7b0f200235

Robert Redford: The biggest Scott Pruitt scandal is the one right in front of us

By Robert Redford, 4/26/18, 7:36 PM

Robert Redford is an actor, director, producer and trustee of the Natural Resources Defense Council.

President Trump should follow the suggestion of many — including some within his own party, and reportedly even his chief of staff — and replace Environmental Protection Agency Administrator Scott Pruitt.

Pruitt's conduct as head of the EPA is beyond disappointing; it's disgraceful. The list of indefensible actions grows each week: from sweetheart condo deals with the wife of an energy lobbyist, to unfair raises for favored appointees and apparent punishments for those who defy him, to a \$43,000 soundproof phone booth.

These seemingly daily revelations dominate the headlines. But Pruitt's failings in ethics and judgment are only part of a much larger problem: Pruitt has failed at the core responsibility of his job.

He's not protecting the environment. Pruitt has become a one-man public-health risk to the air we breathe, the water we drink and the food we eat. From day one, he has worked to gut the EPA and hamstring its ability to protect the environment and public health. He works on behalf of the fossil-fuel industry and other industrial polluters, not the American people. That's the greatest scandal — and the reason, first and foremost, he's got to go.

And he actively promotes one of the gravest threats to our future — misinformation. To hear Pruitt tell it, the rising seas, widening deserts and raging wildfires Americans are experiencing are reasons to debate the science on climate change, not take action against it.

Pruitt led Trump's charge to withdraw the United States from the 2015 Paris climate accord. I was in Paris when that agreement was reached. It was a triumph of American leadership. We were doing what was best for our country: cutting carbon pollution today so our kids would have a more predictable climate and a better future. The Trump administration has broken our promise to the world by announcing that we will back out of the Paris accords.

Unfortunately, that's not all. Pruitt has been working to weaken standards designed to clean up dirty power plants and to walk back fuel standards for cars. He has put a hold on vital safeguards that would limit the amount of mercury, arsenic, lead and other toxic chemicals that industry can spew into the air or dump into our rivers. Speaking of water, he's working to repeal the clean water rule that ensures protection for wetlands, rivers and streams that provide drinking water to a third of all Americans.

Meanwhile, he has ignored research from scientists at the agency and refused to ban dangerous chemicals, such as the pesticide chlorpyrifos. Instead, he hired a lobbyist connected with one of the manufacturers of the chemical and then reduced fines levied against the company for violating regulations.

He also attacked science itself, proposing policies in the guise of transparency that would limit the research that the agency could use to make decisions.

Americans deserve better. The EPA was established to protect the environment and public health for everyone. It's something America got right, and it is up to us to defend it.

Pruitt should be replaced by a principled leader who will do what the EPA was intended to do: protect America from men such as Pruitt.

Daily Caller

<http://dailycaller.com/2018/04/26/scott-pruitt-inconvenient-truth-obama-carbon-emissions/>

Pruitt Points Out 'An Inconvenient Truth' About Obama's Attempts To Regulate Carbon Emissions

By Tim Pearce, 4/26/18, 4:51 PM

Environmental Protection Agency Administrator Scott Pruitt pointed out a seldom discussed issue on Wednesday with former-President Barack Obama's climate policy.

Pruitt sat before the House Committee on Appropriations to defend the EPA's 2019 budget Wednesday afternoon after getting grilled in another hearing that morning. Democrat Rep. Chellie Pingree questioned Pruitt's stance on climate change and rebuked the EPA administrator for rolling back regulations intended to cut carbon emissions.

In the debate on carbon regulations, arguments over economics and the fate of the world usually take the forefront. Emissions regulations overly burden businesses and are less effective than market-driven technological advancement, Republicans generally argue. Democrats tend to stress the need for action to combat climate change and protect the Earth from irreparable harm from severe weather events and rising oceans.

During a line of questioning from Pingree, Pruitt took a different tact. He focused on the process through which the EPA enacts regulations and the extent of the EPA's authority.

Early in the exchange, Pingree began reading letters from children in her district lamenting their futures if climate change continues unabated. One child said his family tradition of camping out and eating lobster on one of Maine's islands would soon be impossible because of climate change.

"If the oceans keep warming and pushing lobsters north, there will most likely not be the same island culture that there is today," Pingree quoted. "Lobster fishermen will be replaced by tourists, and there will be no reason for me to return to the island with my children."

"That might be through the eyes of children; but if you're not going to listen to scientists, who are you going to listen to?" The congresswoman asked.

"What's lost in this discussion is what authority does the EPA have to regulate," Pruitt said.

"There were two efforts made by the previous administration to regulate CO2, and both of them were struck down by the courts," Pruitt continued. "The tailoring rule that the previous administration adopted with respect to CO2 and the

Clean Power Plan was stayed by the U.S. Supreme Court, and it was unprecedented. That had never happened for the U.S. Supreme Court to issue a stay while a case was pending at a lower court level."

"That does not allow us to say we are not going to deal with this issue," Pinegree responded.

"I can only take the steps that Congress authorizes me to take," Pruitt said, faulting the Obama administration for trying to "pinch-hit" for Congress.

The congresswoman followed up, saying what was done in the past is irrelevant to the present, and she wanted action from Pruitt. Pruitt has made statements in the past regarding climate change, she also pointed out and took issue with what those implied about the action(s) he would take to combat it going forward.

E&E Greenwire

<https://www.eenews.net/greenwire/stories/1060080343/search?keyword=EPA>

New Source Review rulemaking possible — Pruitt

By Sean Reilly, 4/27/18

EPA is contemplating an overhaul of its perennially contentious New Source Review permitting program, Administrator Scott Pruitt said yesterday.

"What we want to do is provide clarity," Pruitt told Rep. Bill Johnson (R-Ohio) at the hearing of the House Energy and Commerce Subcommittee on Environment. "Overall, we're looking at a comprehensive rule that will address New Source Review." The purpose, he continued, is to assure companies that they "are not going to face new permitting requirements under the Clean Air Act" as they make investments to reduce pollution.

Pruitt, who also termed New Source Review "one of the greatest issues" facing EPA, did not give a timetable for the undertaking. Late last year, he had announced "an assessment of opportunities" to streamline the program, but stopped short of saying he would attempt a major rewrite.

Asked today for more details, EPA spokeswoman Liz Bowman in an emailed response appeared to hedge: "We are taking a comprehensive look at the program and plan to make a number of targeted changes that, altogether, will produce significant improvement."

The New Source Review (NSR) program, a pillar of the act, requires manufacturers, utilities and other industries to get preconstruction permits before building a new plant or embarking on major changes to an existing facility.

Businesses have long complained that NSR requirements are a drag on economic development and may even discourage efforts to curb emissions. The program "is impeding modernization and growth in the U.S. manufacturing sector," Paul Noe, a top official of the American Forest and Paper Association, said at a February hearing of the same subcommittee.

NSR defenders, pointing to the economy's current health, say major changes could lead to more pollution and that industry in any case is laying out a false choice. Clean air and growth "go hand in hand," George Washington University environmental law professor Emily Hammond said at the February hearing.

Relaxing NSR requirements is also a long-standing priority for EPA air chief Bill Wehrum. After pursuing sweeping changes with mixed success during an earlier stint at the agency during the George W. Bush administration, Wehrum said in December that he planned a more "targeted" strategy.

"Last time around, we swung for the fences," he told EPA's Clean Air Act Advisory Committee, resorting to a baseball analogy. "This time around, what I'd like to do is hit a bunch of singles and maybe a couple of doubles, and if we keep that up, we're going to start scoring some runs."

It was not immediately clear how Wehrum's small-ball game plan would jibe with the broader revamp that Pruitt suggested yesterday is in the works. Environmental groups are already alarmed by two changes to NSR requirements imposed by Pruitt in recent months in guidance memos that sidestepped public notice-and-comment requirements that would accompany a formal rulemaking.

Under the first, EPA no longer challenges the preconstruction estimates of expected emissions increase from a particular project (Greenwire, Dec. 8, 2017). The second condenses the emissions forecasting process for planned plant expansions or other significant changes to a major industrial emitter (E&E News PM, March 13).

Still more contentious has been Wehrum's decision to drop the "once in, always in" policy that — while not directly related to NSR — had maintained strict hazardous air pollutant standards for major pollution sources even after their releases fell below the thresholds that originally triggered those standards (Greenwire, Jan. 26).

The state of California and an array of environmental groups are now suing to reverse Wehrum's decision. In a letter earlier this week, Rep. Debbie Dingell (D-Mich.) and 86 other House Democrats urged Pruitt to reinstate the policy (E&E Daily, April 26).

At yesterday's E&C Environment Subcommittee hearing, Dingell queried Pruitt on whether the agency had done any advance analysis of the potential health effects of the decision to scrap the policy on children, pregnant women and other groups. "That's something we'll have to assess and provide," Pruitt responded.

BNNA

http://esweb.bna.com/eslw/display/no_alpha.adp?mode=si&frag_id=132869137&item=408&prod=deln&cat=AGENCY

EPA Working on Legal Basis for Year-Round Biofuels Sales: Pruitt

By Jennifer A Dlouhy, 4/27/18

EPA Administrator Scott Pruitt said the agency is working to justify issuing a waiver that would allow year-round sales of gasoline containing 15 percent ethanol.

The Environmental Protection Agency is "trying to ensure the legal basis is sound, because there will be litigation," Pruitt told Rep. Dave Loebsack (D-Iowa) in a House Energy and Commerce subcommittee hearing. "I intend to finish that process very soon."

The EPA regulates the vapor pressure of gasoline sold at retail stations from June 1 to Sept. 15 to reduce emissions and mitigate the effects of ozone-related health problems.

More than 25 waivers have been issued to small refineries exempting them from 2018 renewable fuel quotas so far, Pruitt said.

Applications are still pending in 2018, but "it's over that number for 2018 as I understand it," he told Loebsack.

Pruitt said he wasn't sure if CVR Energy Inc., a refiner majority owned by billionaire Carl Icahn, sought a waiver exempting any of its refineries.

Under the federal Renewable Fuel Standard, about 38 refineries that use no more than 75,000 barrels of crude a day are eligible for those waivers, regardless of the size of their parent companies; a federal court ruling last year made it easier to get waivers.

Politico

<https://www.politicopro.com/agriculture/whiteboard/2018/04/pruitt-leaves-door-open-to-lake-erie-tmdl-1124375>

Pruitt leaves door open to Lake Erie TMDL

By Annie Snider, 4/26/18, 5:03 PM

EPA Administrator Scott Pruitt left the door open to issuing a pollution diet for Lake Erie, a controversial step that farmers across the Great Lakes region have fought vehemently.

In response to questioning today from Rep. Marcy Kaptur (D-Ohio), Pruitt said that there has been a commitment to dealing with Lake Erie's phosphorus problem "through cooperation," but admitted that "certain states need to do more." Pruitt was testifying to a House Appropriations subcommittee, his second congressional hearing of the day.

"I think that we have to look at TMDL opportunities to address that if states refuse to take the steps that they're supposed to take," Pruitt said, referring to Total Maximum Daily Loads that would likely place a greater burden on farmers in the watershed to reduce their polluted runoff.

Great Lakes environmental groups have sought a TMDL for Lake Erie akin to the landmark Chesapeake Bay cleanup plan. The lake suffers annual toxic algae blooms, including one in the summer of 2014 that fouled the water intake for the city of Toledo for a full weekend.

The state of Ohio initially refused to list its portion of Lake Erie as impaired, the first step towards drafting a TMDL, but backtracked earlier this year following a lawsuit from environmentalists and pressure from EPA.

Under the Clean Water Act, states are supposed to draft TMDLs for all impaired waters, but because the process is complex and time-consuming, there is a large backlog.

BNA

http://esweb.bna.com/eslw/display/no_alpha.adp?mode=si&frag_id=132869144&item=408&prod=deln&cat=AGENCY

Pruitt and His Air Chief Diverge on Industrial Expansion Permits

By Jennifer Lu, 4/27/18

The EPA is looking at a "comprehensive rule" to address air permits for facilities that plan to expand or upgrade their operations, Administrator Scott Pruitt said April 26.

The EPA chief made the comment during a House Energy and Commerce subcommittee hearing that mainly focused on Pruitt's spending and ethics issues. His emphasis on an air permit rulemaking appears to depart from earlier statements by his air chief who said the agency would be relying on non-binding guidance.

Pruitt didn't elaborate on when or how the Environmental Protection Agency would move forward with a rule on the permitting program, known as New Source Review. The program governs what pollution controls are required when power plants, industrial boilers, and other pollution sources make operational modifications that go beyond routine maintenance.

Changing Tune

His assertion that a rule was planned diverges from earlier statements of his air chief, William Wehrum, who recently told Bloomberg Environment that the agency would rely on guidance to address what are called “preconstruction permits.”

“We can provide clear guidance through guidance,” Wehrum said in an April 13 interview with Bloomberg Environment. “Our strategy is to tell people sooner rather than later how we think the program should be implemented.”

The EPA under Pruitt has changed how facilities tally upgrade-related emissions that trigger new pollution controls under the program.

Costly Controls, Expanded Plants

The permit program requires factories and power plants to install costly new air pollution controls when they expand or make modifications that increase their emissions. Industry groups sought changes that in many cases would exclude them from having to add the controls.

So far, the EPA has made the changes in three non-binding guidance documents released in December, March, and April.

Although relying on guidance can effect changes quickly, another administration can easily reverse them.

Environmental critics have said that making policy through guidance circumvents the public notice and comments process that's required in rulemaking.

If, as Pruitt indicated, the agency does pursue a rulemaking, it could run into obstacles set by legal precedents that reversed some of Wehrum's rulemaking efforts when he served as acting air chief during the George W. Bush administration. The U.S. Court of Appeals for the District of Columbia Circuit revoked most of the changes made during those rulemaking efforts.

The Daily Signal

<https://www.dailysignal.com/2018/04/26/scott-pruitts-effort-to-expose-secret-science-has-environmentalists-scared-stiff/>

Scott Pruitt's Effort to Expose 'Secret Science' Has Environmentalists Scared Stiff

By Diane Katz, 4/26/18

A proposed rule announced Tuesday by Scott Pruitt, administrator of the Environmental Protection Agency (EPA), is intended to bring much-needed transparency to agency rulemaking.

The environmental lobby is positively apoplectic about the proposal (naturally), even though it aligns perfectly with their long-held commitment to the public's “right to know” principle.

The proposed regulation would require EPA to ensure that the scientific data and research models “pivotal” to significant regulation are “publicly available in a manner sufficient for validation and analysis.”

Despite existing rules on government use of scientific research, federal agencies routinely mask politically driven regulations as scientifically based imperatives. The supposed science underlying these rules is often hidden from the general public and unavailable for vetting by experts. But credible science and transparency are necessary elements of sound policy.

The opposition from greens and much of the media greeting Pruitt's announcement is, frankly, hypocritical in the extreme. Opponents claim that EPA's regulatory power would be unduly restricted if the agency is forced to reveal the scientific data and research methodologies used in rulemaking.

But that is precisely the point. The EPA should no longer enjoy free rein to impose major regulations based on studies that are unavailable for public scrutiny.

Their claim that research subjects' privacy would be violated is groundless. Researchers routinely scrub identifying information when aggregating data for analysis. Nor is personal information even relevant in agency rulemaking.

Meanwhile, the EPA and other federal agencies are duty-bound to protect proprietary information.

Transparency in rulemaking is vital to evaluating whether regulation is justified and effective. It is also essential to testing the "reproducibility" of research findings, which is a bedrock principle of the scientific method.

It takes real chutzpah for the champions of environmental "right-to-know" laws to now claim that the EPA should not be required to make public the scientific material on which regulations are based.

The public's "right to know" was their rallying cry in lobbying for a variety of public disclosure requirements on the private sector as well as state and local governments, including informational labeling; emissions reporting; workplace safety warnings; beach advisories; environmental liabilities; and pending enforcement actions, to name a few.

The proposed rule is hardly radical. It aligns with the Data Access Act, which requires federal agencies to ensure that data produced under grants to (and agreements with) universities, hospitals, and non-profit organizations is available to the public through the Freedom of Information Act.

However, the implementation guidance from the Office of Management and Budget has unduly restricted application of the act.

Moreover, the Information Quality Act requires the Office of Management and Budget "to promulgate guidance to agencies ensuring the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by federal agencies."

However, the act's effectiveness has been limited by a lack of agency accountability. Courts have ruled that the act does not permit judicial review of an agency's compliance with its provisions. The proposed rule is also consistent with the Office of Management and Budget's Information Quality Bulletin for Peer Review.

The proposal also mirrors legislation passed by the House last year to prohibit EPA from "proposing, finalizing, or disseminating a covered action unless all scientific and technical information relied on to support such action is the best available science, specifically identified, and publicly available in a manner sufficient for independent analysis and substantial reproduction of research results."

A Senate companion measure failed to advance to a vote.

EPA regulation has expanded exponentially every decade since the 1970s at tremendous expense to the nation. Secret science underlies some of the most expansive regulatory initiatives.

President Donald Trump has focused significant attention on re-establishing the constitutional and statutory boundaries routinely breached by the agency. The special interests that thrive on gloom and ever-increasing government powers are attempting to block the administration's reforms at every turn.

But their opposition to the proposed transparency rule sets a new low for abject hypocrisy.

E&E Greenwire

<https://www.eenews.net/greenwire/stories/1060080331/search?keyword=EPA>

OMB backdates completion date for 'secret science' review

By Sean Reilly, 4/27/18

The White House has altered an official timeline to show that a required review of a proposed EPA science rule was finished one day before agency Administrator Scott Pruitt signed it this past Tuesday.

The Reginfo.gov site had previously shown that the proposal cleared Office of Management and Budget on Wednesday, indicating Pruitt went forward with the signing before the interagency review was complete.

OMB backdated that to Monday after E&E News reported the discrepancy yesterday (Greenwire, April 26).

Coalter Baker, a spokesman for the budget office, would not provide an on-the-record explanation as to the reason for the change. At EPA, spokeswoman Liz Bowman had earlier said in a statement that the review was finished before the signing, adding that "any questions about the management" of the Reginfo.gov site should be addressed to OMB.

"This is all highly irregular," Paul Billings, senior vice president for advocacy at the American Lung Association, said later in an interview. "Either it speaks to a significant lack of competence at EPA or OMB, or there is some sort of funny business or cover-up going on." The association, which has been critical of the proposal, closely tracks EPA rulemakings related to air quality issues.

The proposed rule, which has already sparked considerable controversy, would effectively bar EPA from using scientific research in crafting new regulations unless the underlying data are made public.

"I think it enhances transparency and the confidence of the American people as we do rulemaking," Pruitt said in the proposal's defense at a hearing yesterday of the House Energy and Commerce Subcommittee on Environment.

Critics say the aim is to keep EPA from tapping studies that could signal the need for tighter pollution regulations.

"The result will be policies and practices that will ignore significant risks to the health of every American," almost 1,000 scientists and technical experts said in a letter to Pruitt earlier this week released by the Union of Concerned Scientists.

Lawmakers on both sides of the aisle quizzed Pruitt on the proposal at yesterday's hearing, with Republicans praising his approach and Democrats panning it. EPA is set to open a 30-day public comment period on the draft rule Monday, according to an upcoming Federal Register notice.

The purpose of the OMB reviews is to get feedback on regulatory proposals from other agencies and outside groups. The Reginfo.gov site serves as a clearinghouse on the status of rulemakings across government.

At a separate hearing two weeks ago, Sen. Maggie Hassan (D-N.H.) had sought to pin down Neomi Rao, head of the Office of Information and Regulatory Affairs, on her views of the appropriate handling of scientific research (E&E Daily, April 13). Asked by Hassan whether she would "generally support agencies changing their procedures in ways that prevent them from using the best available evidence in making these decisions," Rao responded, "No, I would not."

Assuming that the revised completion date on the site is now accurate, however, Rao's office hustled the proposed science rule back to EPA only four days after receiving it on April 19 (Greenwire, April 20.) Under the long-standing executive order that governs the reviews, they can typically last as long as 90 days. Of the half-dozen other EPA

regulatory measures still at OMB, most have been under review for approximately two weeks or more, according to the Reginfo.gov site.

Hassan is "deeply concerned" that Rao signed off so quickly on a draft regulation that "could have far-reaching impacts" on the public and the environment, spokeswoman Ricki Eshman said in a statement yesterday. She "will continue urging Pruitt to reconsider this senseless proposal."

Baker, the OMB spokesman, did not reply to an emailed request for comment.

The Hill

<http://thehill.com/policy/energy-environment/385230-epa-approved-aide-to-work-for-gop-consultancy-firm-and-florida>

EPA approved aide to work for GOP firm, Florida lawmaker

By Miranda Green, 4/27/18, 2:56 PM

The Environmental Protection Agency (EPA) approved one of Administrator Scott Pruitt's political aides to do outside consulting work for a Republican firm, internal documents obtained in a Freedom of Information Act (FOIA) request show.

EPA ethics officials approved John Konkus to work for Jamestown Associates, a Washington, D.C.-based political consulting firm, and a Florida state representative while he was still employed at the agency, E&E News first reported Friday.

EPA did not release the name of the Florida lawmaker. Jamestown Associates boasts on its website that it helped Donald Trump's presidential campaign win and buoyed Chris Christie's 2013 New Jersey gubernatorial race.

The document dated Aug. 1, 2017, from EPA ethics official Justina Fugh approved Konkus's request to partake in the paid outside work. The letter also acknowledged the Konkus had plans to add additional clients in the "next six months." The letter stated that Konkus could not earn more than \$27,765 through outside compensation.

"We have determined that providing consolatory media advice is not a fiduciary role, and you will be providing those services directly as opposed to through any corporation," the letter read.

The ethics office approved Konkus to advise clients about "strategy, mail and media production."

Another internal letter obtained by E&E news found that Konkus never performed outside work in 2017.

In a public financial disclosure report for Konkus's 2017 wages, Fugh wrote a note on April 25, 2018, that read, "Even though Mr. Konkus had sought prior approval of anticipated outside activity, he indicated that he did not in fact engage in any outside activity at all during calendar year 2017. Therefore, he has no outside income or position to report."

Konkus's arrangement was first revealed in a letter the EPA sent in January to Rep. Frank Pallone Jr. (N.J.), the top Democrat on the House Energy and Commerce Committee.

But the agency redacted the names of the clients Konkus was approved to work for.

At the time, Pallone and his Democratic colleagues questioned whether Konkus's outside employment raised a conflict of interest.

"A political appointee cutting millions of dollars in funding to EPA grant recipients on what appears to be a politically motivated basis, while at the same time being authorized to serve as a paid media consultant to unnamed outside

clients, raises serious concerns of potential conflicts of interest," Pallone wrote along with Democratic Reps. Diana DeGette (Colo.), Paul Tonko (N.Y.) and Kathy Castor (Fla.).

E&E Daily

<https://www.eenews.net/eedaily/stories/1060080271/search?keyword=konus>

Pruitt aide approved to work for GOP firm, Fla. lawmaker

By Kevin Bogardus, 4/27/18

John Konkus, one of EPA Administrator Scott Pruitt's political aides, was approved by ethics officials to work outside the agency for a Republican political consulting firm and a Florida state representative.

E&E News won a Freedom of Information Act appeal to reveal that Konkus' "two likely clients" were a former employer, Jamestown Associates, and an unnamed state lawmaker from the Sunshine State, according to an unredacted copy of the ethics memo approving his outside activity.

Under the memo dated last August, Konkus, the deputy associate administrator in EPA's public affairs office, was allowed to advise clients about "strategy, mail and media production."

Other EPA records obtained by E&E News, however, indicate that Konkus never did any work for his prospective clients.

"Even though Mr. Konkus had sought prior approval of anticipated outside activity, he indicated that he did not in fact engage in any outside activity at all during calendar year 2017. Therefore, he has no outside income or position to report," reads a note from Justina Fugh, EPA's senior counsel for ethics, on Konkus' financial disclosure report for 2018.

In addition, in an email sent to Konkus last Friday, Fugh memorialized a conversation with him from earlier that day.

"Your report will not include any income from any outside clients because, as we discussed today, you never did engage in any outside activity for any clients in [calendar year] 2017," Fugh said.

"I approved you for the possibility of outside activity, but given the demands of your EPA duties, you never took on any clients at all. What you will be reporting in your [financial disclosure report] is that fact that you never had any clients after all, so have nothing to enter as additional income or outside positions on your financial disclosure report."

In addition, Konkus' approval from EPA to do work outside the agency has now been pulled back.

"You informed me that you simply do not have any time or inclination to consider any outside activity in the future. Thus, this note confirms that you no longer need the prior approval of outside activity. We will consider that approval to be rescinded since it's unnecessary," Fugh said in her April 20 email to Konkus.

EPA spokeswoman Liz Bowman said, "As the EPA ethics officer indicated, John followed the law, and furthermore never did any outside work."

Konus declined to comment for this story when contacted by E&E News, including when asked who the Florida state representative was as one of his "likely clients."

Barney Keller, a partner with Jamestown Associates, confirmed to E&E News that Konkus has done no work for the firm.

"You're correct that John does no work for Jamestown since joining the Trump administration," Keller said. "As far as the state representative, I can't disclose that. But I am sure he wants to make America great again!"

Keller also told E&E News last month that Konkus had not worked for the firm after leaving it for federal service (Greenwire, March 5).

Also now unredacted in the memo is the name of another firm. Konkus was told not to contact the federal government on its behalf.

"You cannot contact the US government on behalf of Saint Luke Solutions LLC or any of your clients," said the EPA memo, which was also signed by Fugh. Konkus is a registered agent for a Saint Luke Solutions in Palm Harbor, Fla., according to state records.

Konkus' initial redacted memo approving his outside work attracted scrutiny from Democrats on Capitol Hill.

Last month, members of the House Energy and Commerce Committee sent a letter to Pruitt asking the EPA chief for the names of Konkus' clients and questioned whether he could be impartial in his service at EPA.

The lawmakers — Reps. Frank Pallone (D-N.J.), Diana DeGette (D-Colo.), Paul Tonko (D-N.Y.) and Kathy Castor (D-Fla.) — also noted his prior work at Jamestown Associates and noted that President Trump's 2016 campaign was one of the firm's clients.

Konkus, the Florida Panhandle field office manager for Trump's presidential campaign, also served as Pruitt's "media sherpa" for the incoming administration's transition team. Konkus joined EPA and in an unusual move for a political appointee was put in charge of reviewing its grant solicitations.

EPA, under the Trump administration, has had other financial ties to Republican consulting firms.

Go BIG Media Inc., which has worked on behalf of GOP campaigns and groups, contracted with EPA to help draft the agency's year-end report praising Pruitt.

Definers Corp., a Republican-run public affairs firm, also signed a media clipping services contract with EPA that was canceled after it garnered attention (Greenwire, March 9).

Daily Caller

<http://dailycaller.com/2018/04/26/free-market-groups-end-clean-power-plan/>

Free Market Groups Call For Clean Power Plan To End

By Jason Hopkins, 4/26/18, 6:24 PM

The Competitive Enterprise Institute, along with a host of other libertarian and free market organizations, came out in strong support of the EPA's bid to repeal the Clean Power Plan, releasing a detailed report Thursday regarding issues the Obama-era regulation has wrought onto the energy industry.

"The Clean Power Plan results in more potential harms than benefits for Americans and should be repealed. By undermining states' authority over their energy markets, the CPP traps Americans under a harmful policy that will raise their electricity bills and eliminate interstate competition that enables citizens to vote with their feet and escape burdensome regulatory and tax policies," wrote CEI senior fellow Marlo Lewis, who served as the report's lead author.

"And for what?" Lewis continued. "The CPP's climate impact is vanishingly small — a hypothetical and likely undetectable 0.018°C reduction in average global temperatures by 2100. Such a small change would make no discernible difference in weather patterns, sea levels, or even polar bear populations by century's end. The climate 'benefits' in 2030 at the end of the CPP compliance period would be even more miniscule."

The 42-page report goes into meticulous detail on why CPP is “unlawful, economically destructive, and attempts to make the EPA into a national climate policy legislator and energy czar.”

CEI was joined by numerous like-minded groups, including Americans for Prosperity, Freedom Works, Americans for Tax Reform, among others. All of their leaders had long sought an end to the Clean Power Plan, but their wishes have come closer to reality with the entrance of President Donald Trump’s administration, where officials have announced they will be undoing it.

The outgoing regulation was a hallmark of former President Obama’s climate legacy. The 44th president first proposed the rule in 2014 and finalized it in 2015. CPP places a limit on the amount of greenhouse gases power plants can emit and aims to reduce carbon dioxide emissions from power plants 32 percent below 2005 levels by 2030. CPP is regarded by the fossil fuel industry as needlessly stringent, placing harsh demands on producers while resulting in negligible environmental gains. Critics have also referred to the rule as a part of Obama’s “war on coal.”

Environmental Protection Agency administrator Scott Pruitt would sign a proposed rule to repeal the CPP, the administrator announced on October 10, 2017. Undoing the rule will save Americans \$33 billion in compliance costs, despite the previous administration claiming it would only cost \$8.4 billion and save millions through public health benefits, according to EPA estimations.

Although the current administration is moving ahead, the federal regulatory process will likely slow finalization of repeal for a couple of years. The process could take longer if environmental groups successfully block a rollback in court.

Los Angeles Times

<http://www.latimes.com/politics/la-na-pol-mileage-20180427-story.html>

Trump administration aims to block California on fuel economy targets

By Evan Halper, 4/27/18, 10:20 AM

The Trump administration is speeding toward all-out war with California over fuel economy rules for cars and SUVs, proposing to revoke the state's long-standing authority to enforce its own, tough rules on tailpipe emissions.

The move forms a key part of the Environmental Protection Agency's fuel economy proposal, which the agency plans to submit to the White House for review within days.

The EPA plan would freeze fuel economy targets at the levels required for vehicles sold in 2020, and leave those targets in place through 2026, according to federal officials who have reviewed the plan. That would mark a dramatic retreat from the existing law, which aimed to get the nation's fleet of cars and light trucks to an average fuel economy of 55 miles per gallon by 2025.

The EPA plan remains a draft, and White House officials could decide to back away from a direct fight with California and like-minded states.

EPA spokesperson Liz Bowman declined to comment on the details of the draft plan, which the agency is writing together with the National Highway Transportation Safety Agency.

"The Agency is continuing to work with NHTSA to develop a joint proposed rule and is looking forward to the interagency process," she wrote in an email.

Environmental groups and California officials already have vowed to fight the administration in court. But if the EPA plan prevails, it would be a crippling blow to efforts in California and other states to meet aggressive goals for climate action as well as for cleaning their air.

Under federal law, California has long been allowed to set tougher tailpipe emission rules than the federal government. Other states are allowed to adopt California's standards, and a dozen states currently do. Those states account for more than a third of cars and trucks in the country.

The administration proposal would revoke the ability of any state, including California, to impose rules different from those made in Washington.

The radical rollback of mileage targets the draft document envisions being imposed nationwide goes further even than the auto industry has sought, and it threatens to disrupt their business. The plan would be destined for years of costly litigation, creating uncertainty for carmakers.

"Rather than pursuing a reasonable compromise, the Trump administration is crafting a proposal that is dramatically weaker than any automobile manufacturer has requested and that also deliberately seeks to embark on a legal collision course with the state of California — a scenario that automakers, lawmakers and the state of California have all repeatedly urged the administration to avoid," said Sen. Tom Carper (D-Del.), the ranking member of the Environment and Public Works Committee.

"If enacted, this proposal would be a loss for the environment, a loss for consumers, a loss for the state of California and a loss for the auto industry, which is why all parties must come together immediately to find a workable solution that we know is very much within reach."

The Hill

<http://thehill.com/policy/energy-environment/385240-dem-states-say-pruitt-must-recuse-himself-from-climate-rule-repeal>

Dem AGs renew call for Pruitt to recuse himself from climate rule repeal process

By Timothy Cama, 4/27/18, 3:10 PM

Democratic state attorneys general are renewing their call for Environmental Protection Agency (EPA) head Scott Pruitt to recuse himself from the process of repealing the agency's climate change rule for power plants.

The group of AGs representing 16 states, cities and counties argue Pruitt has demonstrated that he doesn't have an open mind on the Clean Power Plan, thus violating the expectations of due process and fairness in regulatory proceedings.

"The American people are entitled to an impartial decision-maker. EPA Administrator Pruitt simply cannot be that person," California Attorney General Xavier Becerra (D), who is leading the charge, said in a statement.

"He must be recused from any involvement in the EPA's attempt to repeal the Clean Power Plan."

Before taking the helm of the EPA last year, Pruitt was attorney general of Oklahoma where he led numerous initiatives to fight the Obama administration's EPA, including lawsuits against the Clean Power Plan.

Becerra's coalition previously asked Pruitt to recuse himself in January from the deregulatory process, renewing their call this week for him to do so.

The newest filing, made late Thursday, cites new evidence to back up their claim, like Pruitt saying the EPA "acted outside of rule of law, and they acted outside of the scope of authority given to them by the U.S. Congress" in February and saying just this week that "by repealing and replacing the so-called Clean Power Plan, we are ending a one-size-fits-all regulation on energy providers and restoring the rule of law."

The EPA did not respond to a request for comment.

Thursday marked the deadline for the public and stakeholders to file comments on the EPA's plan to repeal its climate change rule for power plants.

The Hill

<http://thehill.com/policy/energy-environment/385163-new-york-threatens-to-sue-trump-over-epa-climate-rule-repeal>

New York threatens to sue Trump over EPA climate rule repeal

By Timothy Cama, 4/27/18, 10:29 PM

New York state will sue the Trump administration if it carries out its proposal to repeal the Environmental Protection Agency's (EPA) climate-change rule for power plants.

Eric Schneiderman (D), New York's attorney general, led a coalition of 26 Democratic states, cities and counties late Thursday in filing formal comments objecting to EPA head Scott Pruitt's plan to repeal the Clean Power Plan.

"The law and the science are clear. The Trump EPA's efforts to dismantle this vital measure once again demonstrate that they're more committed to pleasing the fossil fuel industry than protecting the health, safety, and wallets of New Yorkers and Americans," Schneiderman said in a statement Friday.

"As we've made clear, if the Trump EPA refuses to protect those they serve and abandons this unlawful and unsupported repeal of the Clean Power Plan, we'll see them in court."

New York and other Democratic states have sued the Trump administration over numerous policy changes.

They have had a number of successes in the energy and environmental policy space, with lawsuits seeking to stop rollbacks or delays of policies on methane emissions, energy efficiency, vehicle fuel efficiency and more.

In the coalition letter filed on Thursday — the deadline for public comments on the EPA's proposal — the states, cities and counties argued that the EPA is obligated to aggressively regulate greenhouse gas emissions from power plants, as it did in the Clean Power Plan.

"The statute requires EPA to set limits on carbon pollution from existing power plants, yet the agency is proposing to repeal the Clean Power Plan without replacing it with any alternative rule, much less a substitute that requires equivalent or greater pollution reductions," they wrote.

In proposing the repeal in October 2017, the EPA argued that the Obama administration exceeded its legal authority when it wrote the original rule.

Pruitt is separately proposing to replace the Clean Power Plan with a more industry-friendly alternative focused on smaller emissions reductions that coal plants could make.

The Hill

<http://thehill.com/homenews/administration/385127-epa-removes-international-priorities-page-from-site>

EPA removes 'international priorities' page from site

By Julia Manchester, 4/26/18, 10:35 PM

The Environmental Protection Agency (EPA) removed an "international priorities" page from its website in December, according to a report released this week by the Environmental Data & Governance Initiative (EDGI).

The page had listed climate change, clean air, clean water, e-waste, toxic chemicals, and strong environmental institutions among its international priorities.

EDGI also reports the agency removed its "International Grants and Cooperative Agreements" and "International Cooperation" pages.

The "International Cooperation" page said the EPA sought to "promote sustainable development, protect vulnerable populations, facilitate commerce, and engage diplomatically around the world" with "global and bilateral partners."

An EPA spokesperson told Think Progress that the agency continually updates its website to reflect new initiatives.

"Of course the site will be reflective of the current administration's priorities – with that said, all the content from the previous administration is still easily accessible and publicly available through the banner across the top of the main page of the site," the spokesperson said.

This is not the first time the agency has removed references from its website, with the EPA under the Trump administration removing various references to climate change from its website in the past.

AP

<https://apnews.com/0f4d70467f0c4ffe967777df355bc757/Smoke-from-Wisconsin-refinery-explosion-poses-health-risk>

Smoke from Wisconsin refinery explosion poses health risk

By Matthew Brown, 4/27/18

An explosion and asphalt fire at a Wisconsin oil refinery sent huge plumes of smoke into the air that pollution experts said almost certainly contained large amounts of toxins, posing a serious health risk to those living downwind.

Asphalt is a petroleum product that when burned emits chemicals in gaseous form and small particles that can linger long after the smoke dissipates, said Wilma Subra, a chemist with the Louisiana Environmental Action Network who has examined past refinery accidents.

The gases include so-called volatile organic compounds, or VOCs, which can cause symptoms ranging from dizziness, breathing problems and nausea to liver damage and cancer, depending on the level and length of exposure, according to the U.S. Environmental Protection Agency.

Also present in asphalt smoke are microscopic particles of chemicals that stick together as visible smoke.

Those particles carry cancer-causing benzene and other contaminants that can lodge deep in the lungs when inhaled. From there, they can pass directly into a person's bloodstream, said Neil Carman, a former refinery inspector for the Texas Commission on Environmental Quality, now with the Sierra Club.

"Anybody breathing that stuff should be very concerned about what's getting into deep tissue, into the bloodstream," Carman said. "When you see that kind of smoke, it means you're getting a lot of unburned hydrocarbons. ... Those particles are loaded with carcinogens."

Officials ordered an evacuation of a wide area around the Husky Energy refinery to reduce the public's exposure to the plume. The fire Thursday was later put out, and residents were told they could return to their homes. But then authorities announced the evacuation order would remain and be re-evaluated throughout the night.

Government agencies planned to conduct air monitoring tests to gauge the hazard, refinery manager Kollin Schade said during an evening press conference.

The duration and extent of the toxic hazard depends on a variety of factors, such as wind direction and speed, proximity to the refinery and weather events that can trap pollution close to the ground, said Elena Craft, senior health scientist for the Environmental Defense Fund.

Federal officials did not immediately respond to questions about the health risks from the smoke. A spokeswoman for the Wisconsin Department of Health Services referred questions to local officials in Douglas County, who could not be reached for comment.

Bloomberg

<https://www.bloomberg.com/news/articles/2018-04-27/tesla-s-foe-in-fight-over-electric-vehicle-rebate-utilities>

Tesla's Foe in Fight Over Electric Vehicle Rebate: Utilities

By John Lippert and Mark Chediak, 4/27/18, 7:13 AM

Early adopters of the electric car often band together in what can seem, in the age of Donald Trump and resurgent sport utility vehicles, like a lonely defense of an unloved technology. But today in California, the state doing the most to cultivate emission-free driving through lucrative incentives, the businesses trying to profit from electric vehicles will be fighting each other.

At issue during a California Air Resources Board hearing in Sacramento on Friday will be rebates the state pays to EV buyers using proceeds from the sale of Low Carbon Fuel Standard credits. Under the program, energy producers who fail to meet the state's low-carbon fuel targets buy credits from those who've already complied. Following state guidelines, the sellers use a portion of the proceeds to pay rebates that range from \$50 to \$599 for each electric vehicle, which are paid out by the utilities who provide electricity for residential and workplace recharging.

Tesla Inc. and Ford Motor Co. have urged the state's powerful emissions regulator to let automakers pay out the rebate at the moment they sell the car, as a way to boost sales, instead of making consumers wait for a check from their utility or a credit on their bill. Ken Morgan, Tesla's director of business development, said the electric carmaker might even boost the rebate beyond what utilities offer.

Tesla's proposal comes as Model 3 production delays are draining its cash and the company is close to exhausting the availability of a \$7,500 federal tax credit. But whoever doles out the rebates would be required to use all money earmarked for low-carbon rebates to pay consumers or associated expenses. "This gives us no direct benefit other than to help everybody sell more electric cars," Morgan said in an interview.

Even so, passing out free money is a great way to build brand loyalty, and Tesla and utilities are elbowing each other hard for the privilege. Eileen Tutt, executive director of a trade association whose board includes California utilities, said she's "adamantly opposed" to letting automakers pay out the rebates. She said the utilities should continue doing so, though she's meeting with Tesla and others to discuss possible improvements.

California certainly wants to help Tesla, Ford and other automakers sell EVs—and already levies stiff penalties if they don't. But utilities have also emerged as aggressive advocates of electric transportation, since ratepayer-funded charging stations represent their first big new revenue opportunity in decades.

Tutt said she's opposed to letting automakers pay out the rebates because, for one thing, their financial disclosures are skimpy compared to those of heavily regulated utilities. "The automakers are saying, 'Just trust us,'" said Tutt, executive director of the California Electric Transportation Coalition in Sacramento.

In a report last month, the ARB staff sided with utilities. But Sam Wade, chief of the agency's transport fuels program, said he likes the idea of distributing rebates when people are at showrooms buying cars and hopes to work with Tesla and utilities to make this happen. Eventually, he said, the state's low-carbon rebates for battery-only cars could reach \$1,500.

At Friday's meeting, ARB will vote on whether the staff should change direction on this and other issues during a formal rulemaking. A final vote is scheduled for September.

California started on a path toward writing its own clean-air rules in 1972 when Mary Nichols, now the ARB chair, argued the first federal lawsuit to make the U.S. Environmental Protection Agency enforce the Clean Air Act. A dozen other states have opted to model their own clean-air rules after California. This has prompted the current EPA administrator, Scott Pruitt, to warn that California shouldn't be allowed to "dictate" clean air policies for the rest of the nation.

Tesla has been a major beneficiary of California's clean-energy push, which also targets automakers. Since 2008, the company has sold more than \$1.3 billion in regulatory credits to other automakers who don't meet the state's requirements for zero-emission vehicles or greenhouse-gas emission reductions.

The debate comes as California prepares its first major update to its low-carbon fuels standard since 2009. Among other things, the state wants to boost the required low-carbon content of its transport fuels to 20 percent by 2030, from 5 percent this year. This would take the state about a tenth of the way toward its legislative mandate of cutting overall carbon dioxide emissions by 40 percent from 1990 levels by 2030.

Companies comply with the standard by blending low-carbon fuels into their existing gasoline or diesel supplies, or by buying credits from those who don't need them. The credits are getting more expensive as California's emission targets get tougher. On March 20, the credits sold for a record \$152 per metric ton, about five times more than the price three years earlier, according to ARB data.

By 2030, the program could be generating credits worth \$3.75 billion a year, up from \$1.4 billion this year, according to Jeremy Martin, an analyst with the Union of Concerned Scientists in Washington, D.C. Since 2009, this potential windfall has helped spark investments worth \$2 billion in low-carbon fuels, said Simon Mui, director of clean vehicles and fuels at the Natural Resources Defense Council.

California policies have started changing the state's fuel supply. Renewable sources like biomass and bio-methane now make up about 20 percent of all diesel sales, state figures show. Corn-based ethanol producers are switching to natural gas and other lower-carbon heat sources, and as a result the carbon intensity of this fuel has dropped by 21 percent. Aera Energy LLC and GlassPoint Solar Inc. are building the state's largest solar farm to generate steam for oil extraction near Bakersfield. By 2030, the state plans to triple the amount of low-carbon electricity used as a transport fuel.

Drivers of conventional vehicles have felt the impact. Gasoline costs about \$3.60 per gallon in California, or 80 cents more than the national average, according to AAA. The low-carbon credits account for about a dime's worth of this difference, state figures show.

Critics include the Western States Petroleum Association. "These standards are still too aggressive," wrote Catherine Reheis-Boyd, the group's president, in a filing prior to Friday's hearing. Poet LLC, a South Dakota-based ethanol producer, has been battling the low-carbon credits in court for years, accusing the state of undercounting nitrogen oxide emissions from low-carbon diesel. As a result, the state plans to delay further increases in the diesel portion of the requirement for about a year.

The rest of the state's low-carbon regime will get tougher, though, even as President Trump attacks what he calls California's "out of control" state policies. California Governor Jerry Brown will wrap up his final term in January, and his replacement will be left with the task of overseeing regulations for low-carbon jet fuel and for carbon capture and storage at ethanol plants—measures that would be new even in California, which is at the vanguard of U.S. environmental policy.

With the EPA currently sidelined by Trump's anti-regulatory agenda, California will play an even greater role in providing a model to other states such as Oregon—and even countries such as Canada and Brazil—that are now writing their own low-carbon fuel mandates, Martin said.

Politico

<https://www.politico.com/story/2018/04/26/trump-chaos-pompeo-jackson-macron-557053>

Ronny Jackson drama overshadows Pompeo success for White House

By Nancy Cook, 4/26/18, 6:05 PM

White House aides were reveling in the pomp of French President Emmanuel Macron's state visit, viewing it as a welcome reprieve from the chaos of Cabinet confirmations, an intensifying Russia probe and a boss with a short fuse. Then reality hit.

President Donald Trump's pick for Veterans Affairs Secretary Ronny Jackson finally withdrew from the confirmation process amid escalating allegations of misconduct, and Trump called into the TV show Fox and Friends to deliver an unscripted interview touching on everything from the Russia probe and the investigation of his personal attorney Michael Cohen to fan-tweets from Kanye West—all before 10 a.m.

The day also included the confirmation of Mike Pompeo, previously Trump's CIA director, as secretary of state—an unexpectedly hard-fought victory that was overshadowed by routine House hearings featuring testimony from EPA Administrator Scott Pruitt, who has been accused of a string of ethics violations.

"The state visit was cool for folks in the White House and fun distraction for one hour from stories about Scott Pruitt or Michael Cohen before everyone got back to the shitshow," said one former White House official.

The president often publicly frames these hectic junctures as a White House unduly under siege from the press or other opponents. About Jackson's nomination, Trump said on Thursday: "He's a great man, and he got treated very, very unfairly. He got treated really unfairly. And he's a hell of a man."

The lack of vetting and Trump's tendency to name top-level nominees with little scrutiny dates back to the presidential transition in the fall of 2016. It's a pattern that surprises few insiders, even as it creates headaches for the White House and the nominees.

"Generally, White House aides are blaming the president from shooting from the hip and without giving it any thought, but this is how every decision he has made has gone," said the former White House official.

On Wednesday, the night before Jackson dropped out of consideration, a number of administration aides and Republicans close to the White House gathered at the Trump International Hotel for after-work drinks—and a few aides kept hoping aloud that Jackson would announce he was dropping out on TV, so no one would have to run back to the White House and everyone could keep drinking, according to one attendee.

The biggest beneficiary of this week's chaos was Pruitt, who started out the week under great scrutiny and disdain from several disparate circles of White House staffers and then ultimately skated through his two Capitol Hill hearings with

little incident. Earlier in the week, those hearings were seen as a make-or-break moment for the EPA Administrator and ones that the president would pay attention to.

“As long as his explanations hold and there are no crazy discrepancies or smoking gun or anything like that, I don’t think that creates any red flags for Pruitt,” said one Republican close to the White House, who predicted Pruitt would survive the scrutiny.

What helps Pruitt and other Cabinet nominees who frustrate the White House or Trump is the math in the Senate. The Republicans do not have a large or cohesive enough majority to easily confirm new Cabinet secretaries , and the drama surrounding Jackson’s departure puts a damper on creating any new vacancies to fill.

“In the ideal situation, the only headlines coming out of the agencies are the policy decisions advancing the president’s agenda,” said one senior administration aide, speaking about the spate of bad headlines surrounding Pruitt’s leadership at the EPA. “That is the clear direction from the top, and we’ve communicated that.”

But many White House officials—and the president himself—have adopted the view that the administration is unfairly maligned, no matter what it does.

Many aides were surprised that Pompeo’s confirmation process seemed so shaky at certain points, given the White House’s huge, upcoming foreign policy decisions on meeting with North Korea, keeping troops in Syria, and deciding the fate of the U.S.’s role in the Iran deal. The White House’s Director of Legislative Affairs Marc Short devoted most of his time over the past few weeks to ensuring Pompeo got confirmed.

“We can only pick so many battles, and Pompeo has got to get done as quickly as possible,” said one White House official.

Washington Times

<https://www.washingtontimes.com/news/2018/apr/27/steve-king-democrats-raised-the-standards-too-high/>

Rep. Steve King: Democrats raised the standards too high for Cabinet appointments

By Sally Persons, 4/27/18

Rep. Steve King said Friday that Democrats have raised the standards too high for Cabinet appointments.

“The standards have been raised to a place here that I would say to the Democrats you better remember how you’re conducting yourselves today because one day you might well be back in the majority and trying to confirm and sustain appointments to the Cabinet for a Democrat president,” Mr. King, Iowa Republican, said on CNN.

He was referring to Environmental Protection Agency Administrator Scott Pruitt who appeared on Capitol Hill on Thursday. Mr. Pruitt answered questions for his behavior including pay raises for friends of his in the department.

Mr. King said Mr. Pruitt did not come out of the hearing “unseared,” but he said Democrats ought to keep in mind that they are setting the standard for future Cabinet appointments and secretaries.

“If these standards are applied to the next president, it’s going to be really hard to get anybody to serve in the next administration,” Mr. King said.

Mr. Pruitt has also faced questions about his housing arrangement in Washington, where he was renting a nightly room from an energy lobbyist, and his travel expenses.

From: POLITICO Pro Energy [politicoemail@politicopro.com]
Sent: 4/20/2018 9:45:23 AM
To: Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]
Subject: Morning Energy: Interior rejected staff advice on casino, docs show — Pruitt's science directive slowed by industry concerns — Francis Brooke: Rookie of the year

By Kelsey Tamborrino | 04/20/2018 05:43 AM EDT

With help from Anthony Adragna

YOU NEVER KNOW WHAT YOU'RE GONNA GET: Interior officials reversed course on plans from two American Indian tribes to build a casino last year, new documents show. The heavily redacted documents released via FOIA show officials rejected recommendations from federal experts on Indian gaming, Pro's Nick Juliano reports, raising further questions about whether Interior Secretary Ryan Zinke and his political appointees caved to lobbying pressure from MGM Resorts International.

The tribes' treatment is now the subject of an Interior inspector general investigation, a spokeswoman told Nick. And while the documents don't reveal the contents of the internal deliberations by the staff of the Bureau of Indian Affairs' Office of Indian Gaming, they do show that the career staffers were circulating what they labeled as "approval" letters just 48 hours before their bosses refused to either OK or reject the tribes' application, leaving the casino in legal limbo.

No direct effort by MGM to lobby experts in BIA's Indian gaming office can be seen in the docs, but they show a timeline that indicates Interior officials closest to gaming issues were ready to side with the tribes after about six weeks of internal review. The department arrived at the opposite conclusion less than 48 hours after their recommendations went to Associate Deputy Secretary James Cason, a veteran of three Republican administrations, who was one of President Donald Trump's first hires at the department.

The emails also indicate even Interior career staff were unsure how they would explain the sudden about-face from higher-ups. "As for why we didn't approve the Mohegan compact amendment, you say the letter speaks for itself," Troy Woodward, a senior policy adviser in the Office of Indian Gaming, wrote to a colleague who wondered how he should answer questions. And "like Forrest Gump, say: 'that's all I've got to say about that.'" Read more.

WELCOME TO FRIDAY! I'm your host Kelsey Tamborrino, and NRECA's Kirk Johnson knew all the states with just one representative in the House: Alaska, Delaware, North Dakota, South Dakota, Montana, Vermont and Wyoming. For today: Who was the Senate majority leader whose father served as chief justice? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](https://twitter.com/kelseytam), [@Morning_Energy](https://twitter.com/Morning_Energy) and [@POLITICOPro](https://twitter.com/POLITICOPro).

POLITICO Space is our new weekly briefing on the policies and personalities shaping the second space age. Sign up today.

CONCERN ON ALL FRONTS: Scientists aren't the only ones expressing concern with EPA Administrator Scott Pruitt's plans to revise how the agency considers outside research, emails show. As the administrator weighs next steps on a scientific transparency directive announced earlier this year — which is expected to require that the raw data for all studies be publicly available and peer-reviewed — members of Pruitt's staff expressed concern it could block their own use of industry data, Pro's Annie Snider reports.

Emails between EPA officials obtained by the Union of Concerned Scientists show that Nancy Beck, the top political official in the agency's chemicals office, voiced concerns after she received a draft of the not-yet-released policy on Jan. 31. The directive in question has origins in legislation introduced by Rep. Lamar Smith during the Obama administration, but its requirements would exclude a great deal of data about pesticides and toxic chemicals that Beck's office considers when determining whether a substance is safe or must be restricted. "These data will be extremely valuable, extremely high quality, and NOT published," Beck wrote in an email to an official in EPA's office of research and development. "The directive needs to be revised." Read more here.

THE ROOKIE: The energy industry is unsure what to make of the relatively unknown Francis Brooke, who will soon replace Mike Catanzaro as the top White House energy aide. A 28-year-old former baseball pitcher, Brooke spent the last year in Vice President Mike Pence's office serving in a junior role to Catanzaro and George David Banks. But Pro's Ben Lefebvre and Eric Wolff report energy lobbyists worry his promotion could leave them without steady hands to steer the White House as big decisions on the coal industry, biofuels and energy trade pile up — especially in the crucial run-up to the midterm elections. "It shows you this administration doesn't care about these issues," said one lobbyist who works extensively with the administration on energy policy. "I expect agencies are now going to have to play a bigger role. There's not going to be a lot of policy issues that will be determined over the next eight months or so." Read more.

WHAT'S THE HOLD UP? House Natural Resources Chairman Rob Bishop says a comprehensive GOP energy bill is "being held up" until the Pentagon weighs how offshore drilling near Florida could affect national security, following backlash from the offshore proposal that led two Florida Republicans to pursue a permanent moratorium. A pending energy bill, H.R. 4239 (115), is one potential vehicle to extend that moratorium. Bishop told Anthony he is waiting for a Defense Department report on how expanded drilling near Florida would affect "mission compatibility." A committee spokeswoman said the results of the study would help determine next steps on the moratorium.

— **On the anniversary of the Deepwater Horizon oil spill**, New Jersey Gov. Phil Murphy is expected to sign into law today a bill that bans offshore drilling in state waters. The Center for American Progress, in anticipation of the legislation, cheered the move. Florida Sen. Bill Nelson, meanwhile, marked the anniversary by joining legislation Thursday intended to block the oil industry from rolling back Interior drilling safety rules adopted in response to the spill.

TRAVEL COMPANIONS: In preparation for a planned trip that was later canceled because of Hurricane Harvey, Pruitt spent nearly \$45,000 to fly five people to Australia, according to Reuters. While not a violation of government policy, Reuters reports two of Pruitt's aides and three security agents flew on business-class tickets costing roughly \$9,000 to set up advance meetings for the administrator. Pruitt was scheduled to participate in environment-related meetings with Australian officials.

Agency officials did not dispute the figures. EPA spokesman Jahan Wilcox told Reuters Hurricane Harvey, which caused major flooding in Texas, caused him to cancel the trip and instead go to Corpus Christi to assess the agency's relief efforts. "This is not news," he said, adding Pruitt's team was "adhering to the federal government's travel policy."

WHAT ABOUT HIS EMAILS? EPA told Senate Environment and Public Works Chairman John Barrasso that all of Pruitt's four emails were searched whenever there was a FOIA records request, but that a "full review" is being conducted just to make sure. "As long as EPA Administrators have had secondary email accounts, EPA staff have routinely searched requested accounts in response to FOIA and Congressional inquiries," Steve Fine, EPA's deputy chief information officer, wrote in a letter released by Barrasso.

DEMS WADE INTO WEST VIRGINIA PRIMARY: Republicans aren't the only ones trying to meddle in West Virginia's Senate primary. National Democrats are also jumping into the game, POLITICO's Alex Isenstadt reports, with an effort launched Thursday that could be designed to help coal baron Don Blankenship

win the Republican nomination. Washington-based super PAC Duty and Country has begun airing ads hitting the other two GOP contenders in the field: Rep. [Evan Jenkins](#) and state Attorney General Patrick Morrisey, ahead of the state's May 8 primary. But Blankenship was notably omitted from their target list, Alex writes. [Read more.](#)

— **Fox News Channel announced Thursday** its "America's Election Headquarters 2018" midterm election series would kick-off in West Virginia, with a GOP Senate primary debate on May 1. Candidates will need to reach a 10 percent threshold in a Fox poll next week to be invited to the debate.

ABOUT THAT CRA THREAT: Sen. [Lisa Murkowski](#) doesn't sound super gung-ho about using the Congressional Review Act on a 2016 plan from the Bureau of Land Management (that GAO [concluded](#) last year met the definition of a federal rule). "Obviously, we've got some issues that need to be resolved in the Tongass and whether this is the best way to do it is something we've been analyzing," she told reporters. Of course, floor time in the Senate is a valuable commodity so carving out time for the Alaska-centric issue may be a heavier lift. Background [here](#) on the Senate Republicans' new novel push to undo federal rules.

IT'S ALMOST EARTH DAY: Sunday marks Earth Day, where the Earth Day Network is using the date to promote its goal of [ending plastic pollution](#). The organization says more than 1 billion people from 192 countries will take part in the event on April 22. For its part, EPA promotes a list of Earth Day events [here](#).

CFA FLAGS FUNDRAISER AT PRUITT CONDO: Washington-based watchdog group Campaign for Accountability filed a complaint Thursday with the FEC against GOP Sen. [Mike Crapo](#) and Vicki Hart, the lobbyist co-owner of the controversial condo where Pruitt lived. The complaint alleges Crapo and Hart violated the Federal Election Campaign Act and FEC regulations when they failed to disclose improper in-kind contributions. Read it [here](#).

GOING PUBLIC: The Sierra Club filed a lawsuit for documents related to EPA's Office of Public Affairs after EPA failed to respond to its FOIA requests concerning whether the agency improperly — and potentially illegally — used the Office of Public Affairs' staff time to promote topics outside the scope of the office. Read it [here](#).

MAIL CALL! BIRD IS THE WORD: Sixty-two Democrats, led by Rep. [Alan Lowenthal](#), sent a letter to Zinke on Thursday regarding Interior's interpretation of the Migratory Bird Treaty Act. "We ask that you continue to enforce this foundational bird conservation law as every administration from across the political spectrum has done for more than forty years," the [letter](#) says.

— **Thirty-one outdoor businesses** will send [this letter](#) to Zinke today, calling on DOI to acknowledge the role of the outdoor recreation industry in its proposal to reverse the Methane Waste Prevention Rule. They request best practices are implemented to improve air quality in oil fields across the country, among other issues.

SPEAKING OF METHANE: Earlier this week BP released its "[advancing the energy transition](#)" report, [committing](#) to near-term carbon reductions and setting a target methane intensity of 0.2 percent and holding it below 0.3 percent. The Environmental Defense Fund [highlights](#) the report Thursday in a post arguing on the next frontier of methane targets, as annual shareholder resolution meetings are on the horizon.

SOLAR BILL SPOTLIGHT: Democratic Rep. [Jacky Rosen](#) introduced the bipartisan "Protecting American Solar Jobs Act," [H.R. 5571 \(115\)](#) this week, which would repeal tariffs introduced by the Trump administration on imported solar panels. It would undo increases in duty and a tariff-rate quota on certain crystalline silicon photovoltaic cells.

QUICK HITS

- Explosion reported at Valero oil refinery in Texas, [NBC](#).
- Girl Scouts to press EPA on coal ash, [WCIA](#).
- Wehrum: EPA "still thinking about" Obama mercury standards, [E&E News](#).
- Otter poop helps scientists track pollution at a Superfund site, [Scientific American](#).
- Trump's looming trade war gives Democrats an opening in farm country, [Reuters](#).
- Forget rising interest rates, banks are still loving solar power, [Bloomberg](#).

HAPPENING TODAY

8:30 a.m. — Elemental Excelerator holds [Earth Day Energy Summit](#), Hawaii

8:45 a.m. — Brookings holds a [discussion](#) on "A new EIB bond product in support of the Global Goals: Building a sustainable financial system," 2175 K St NW

9:00 a.m. — The George Washington University Elliott School of International Affairs [discussion](#) on "The French Leadership on Global Climate Actions," 1957 E Street NW

12:00 p.m. — Environmental Law Institute [conference](#) of lawyers committed to addressing the climate emergency, 2000 H Street, NW

12:30 p.m. — John Hopkins School of Advanced International Studies [discussion](#) on renewable energy's future in Puerto Rico, 1619 Massachusetts Avenue NW

1:00 p.m. — Global American Business Institute [discussion](#) on Korea's long-term natural gas plan, 1001 Connecticut Avenue NW

1:30 p.m. — House Transportation and Infrastructure Water Resources and Environment Subcommittee [field roundtable](#) on "America's Water Resources Infrastructure: Concepts for the Next Water Resources Development Act, Part II," Coos Bay, Ore.

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Zinke's agency held up Indians' casino after MGM lobbying [Back](#)

By Nick Juliano | 02/01/2018 05:00 AM EDT

Two casino-owning American Indian tribes are accusing Interior Secretary Ryan Zinke of illegally blocking their plans to expand operations in Connecticut — a delay that stands to benefit politically connected gambling giant MGM Resorts International.

The Interior Department's refusal to sign off on the tribes' plans for a third Connecticut casino came after Zinke and other senior department officials held numerous meetings and phone calls with MGM lobbyists and the company's Republican supporters in Congress, according to a POLITICO review of Zinke's schedule, lobbying registrations and other documents. The documents don't indicate whether they discussed the tribes' casino project.

Federal law gives Interior just 45 days to issue a yes-or-no verdict after a tribe submits proposed changes to its gaming compact with a state, as the Mohegan and Mashantucket Pequot tribes note in a suit they filed against Zinke and the department. But the department declined to make any decision in this case, an inaction that raises questions about whether an intensive lobbying campaign by one of the gambling industry's biggest players muscled aside the interests of both the tribes and the state of Connecticut.

"I think the Department of Interior has been derelict in failing to give approval" to the tribes' request, Sen. Richard Blumenthal (D-Conn.) told POLITICO. "We asked for a meeting, but they were unresponsive. They never even responded."

Meanwhile, MGM and its allies had direct access to Interior. Zinke had multiple conversations last year with Sen. Dean Heller and Rep. Mark Amodei — two Nevada Republicans whose state is a major center of employment for MGM, and who have each tried to impede the tribes' casino plans. The company also doubled its lobbying spending and assembled a team that includes Bush-era Interior Secretary Gale Norton and Florida-based Trump fundraiser Brian Ballard.

The proposed Connecticut casino would sit on non-tribal land just across the border from a billion-dollar casino that MGM is planning in Springfield, Massachusetts. The Pequot tribe's Foxwoods Casino in Connecticut previously provoked the ire of former New Jersey casino owner Donald Trump, who complained during a 1993 congressional hearing that "they don't look like Indians to me."

An Interior spokeswoman did not respond to requests for comment, but the department is due to respond by next week to the suit the tribes filed in November. MGM has sought to join the suit on Interior's side.

MGM and its supporters say the tribes are trying to circumvent restrictions on "off-reservation" gambling while still maintaining their exclusive access to Connecticut's lucrative casino market, and that the new property would provide unfair competition to its Springfield project.

Interior officials sent the tribes encouraging signals as recently as May. But by mid-September the department reversed course, saying it would be premature to either approve or reject the plans.

"It's 100 percent about delaying us for as long as they possibly can," said Andrew Doba, a spokesman for the joint enterprise the tribes created for their new project.

The case is far from the first legal dispute to arise from Interior's role as the overseer of Indian tribes' gambling agreements with the states. Clinton-era Secretary Bruce Babbitt faced a special prosecutors' investigation after Interior rejected three Wisconsin tribes' plans for a casino that other, Democrat-supporting tribes opposed — though he ultimately was cleared. Indian gambling also played a key role in the George W. Bush-era Jack Abramoff scandal.

In the Connecticut case, the tribes have been operating two casinos — the Pequot tribe's Foxwoods and the Mohegan Sun — since the early 1990s. Their success in the market between Boston and New York provided competition to casinos in Atlantic City, including the formerly Trump-owned Taj Mahal.

As gambling spread across the U.S. in recent decades, MGM and other casino developers — including Trump — pursued projects in Connecticut but were ultimately unsuccessful. State law there limits casino ownership to the two in-state tribes and their new joint venture.

The tribes say they are fully complying with state law and the federal Indian Gaming Regulatory Act, which allows federally recognized tribes to operate casinos on their reservations or lands held in trust by the federal government. The casino they want to open is technically a commercial project that would be operated by MMCT Venture, a company jointly owned by the tribes that owns the casino site in East Windsor and entered into a development agreement with the town.

Connecticut Gov. Dannel Malloy and the state legislature signed off on that arrangement last year, so long as the tribes agreed to amend their gaming compacts that guaranteed a certain share of slot revenues would go to the state. The Indian Gaming Regulatory Act requires Interior to approve such compact amendments after a brief review window, unless the amendments violate the terms of the federal law.

The lawsuit seeks to force approval of the contract, arguing that the law does not allow Interior to refuse to render a verdict.

"IGRA and its implementing regulations leave the Secretary with no discretion to proceed in any other manner," Connecticut and the tribes argue in their lawsuit, filed in U.S. District Court for the District of Columbia on Nov. 29.

At one point, Interior seemed inclined to agree with the tribes' interpretation of the law. In a May 12 technical guidance letter to the tribes, Associate Deputy Interior Secretary James Cason acknowledged that the Indian Gaming Regulatory Act provides for a 45-day review period for compact amendments and that the department may disapprove them only for violating the act, other federal laws or trust obligations to the tribes.

While Cason stressed that his advice was nonbinding and did not constitute a preliminary decision, he endorsed earlier guidance from the Obama administration that the Connecticut amendment reflected the "unique circumstances" at play and that opening a new casino would not affect the tribes' exclusivity agreement with the state.

But the tribes' request drew opposition from out-of-state lawmakers like Heller and Amodei.

"Under that framework, the tribes seek to expand off-reservation gaming without going through the procedures mandated by" the Indian Gaming Regulatory Act, Amodei wrote in a July 28 letter to Cason, following up on a discussion earlier that day. Amodei asked whether Interior planned to allow the 45-day review period to lapse, which would allow the amendments to be "deemed approved."

Ultimately, Interior decided against approval. Acting Assistant Secretary for Indian Affairs Michael Black told the tribes in a Sept. 15 letter that approving or disapproving the amendment to their gaming compact was "premature and likely unnecessary," and said Interior had "insufficient information" to make a decision. However, he did not cite any legal justification for that move, nor did he outline what additional information the department would need.

Interior has on at least one occasion returned a gaming compact amendment rather than make a yes-or-no decision, although the circumstances were slightly different at the time. In 2013, the department told the Cheyenne-Arapaho tribes in Oklahoma that it could not process their amendments because of incomplete information. But in that case, the department replied in less than 30 days rather than wait for the entire review period to elapse, and it cited specific regulations and outlined what additional information it needed from the tribes.

Black copied Amodei and Heller on his letter but did not include any Connecticut lawmakers. (He did say a separate letter was going to Malloy, the Connecticut governor.) Zinke and Heller also spoke on the phone on Sept. 15, according to an entry on Zinke's calendar. And the day before Black sent the letter, Zinke and Cason were scheduled to meet at the White House with deputy chief of staff Rick Dearborn, although Zinke's calendar does not list the subject of the meeting.

Ahead of the decision, MGM "participated in Interior's review" through meetings and correspondence in which the company urged Interior to either return the amendments without making a decision or to disapprove them for violating the Indian Gaming Regulatory Act, according to a statement filed in court by Uri Clinton, MGM's senior vice president and legal counsel.

MGM brought on heavyweights including Norton — who disclosed her work for the company just last month — as well as Ballard, a lobbyist who has helped raise millions for Trump's campaign. MGM's spending on lobbyists for all issues more than doubled last year, to \$1.5 million spread across five outside firms and its own newly formed in-house team.

An affiliated company, MGM Public Policy LLC, also paid \$270,000 last year to hire a team of lobbyists from Brownstein Hyatt Farber Schreck LLP to work on issues including gaming. That's the firm at which Deputy Interior Secretary David Bernhardt worked until he joined the administration last year, though he has agreed to recuse himself from matters involving former clients of his firm without prior authorization.

"MGM Resorts last year established a public policy office in Washington to engage more directly on Federal legislative and policy issues," an MGM spokesman said in a statement. "Our advocacy activity reflected that increased engagement. As the largest employer in Nevada, part of that advocacy is routinely engaging our elected representatives."

Heller and Amodei each had multiple meetings and phone calls with Zinke last year, according to the secretary's calendar, although it's unclear whether they discussed the Connecticut casinos. On one occasion, Zinke joined Heller for dinner at a Las Vegas steakhouse on July 30, when he was in the state touring national monuments, one of several pieces of Interior's portfolio of interest to Nevada.

A Heller spokeswoman did not respond to a request for comment. But the senator has tried to advance MGM's interests in the past: In 2016, he offered an amendment to a defense bill that would have prevented Indian tribes from operating commercial casinos in the same state where they operate casinos on the reservation — precisely what the Connecticut tribes are trying to do. The amendment never came to a vote, and Heller does not appear to have ever discussed it publicly.

MGM employees and the company's political action committee have given \$96,000 this cycle to Heller's reelection campaign and leadership PAC, making the company his largest single source of contributions, according to the Center for Responsive Politics. Amodei has received no donations from company employees or its PAC.

Interior's Sept. 15 decision came two weeks after Zinke invited several lobbyists for MGM to join him and other guests for a social visit on his office balcony, which overlooks the National Mall. They included, according to Zinke's calendar, Ballard and other lobbyists from his firm Florida-based firm Ballard Partners, which opened its first Washington, D.C., office in 2017. Also present were Zinke's former family attorney and a major GOP fundraiser, according to copies of the secretary's calendar.

MGM hired Ballard in March and paid the firm \$270,000 last year, according to disclosure filings. Ballard was Florida finance chairman for Trump's 2016 campaign and helped organize a fundraiser at the Trump International Hotel in Washington last summer at which donors gave \$35,000 to attend or \$100,000 to join the host committee.

Ballard declined to discuss his work for MGM or any other client and said he could not recall the details of that particular meeting, which took place Aug. 29, according to Zinke's calendar. But Ballard said he had met Zinke and thinks "the world of him."

In October, MGM brought on Norton, who served as Interior secretary from 2001 to 2006, to lobby on issues related to the Connecticut tribes. Norton began lobbying for MGM on Oct. 25, according to disclosures filed Jan. 19.

The next day, Oct. 26, Interior officials spoke to the tribes and asked them to explain why the department was obligated to weigh in on their casino since it was being built by a commercial entity and not on tribal land.

In a brief interview last week, Norton said she did not know why her disclosure form was filed so late — lobbyists are required to file disclosures within 45 days — and she did not respond to follow-up inquiries.

Meanwhile, a new state legislative session begins in February in Connecticut. MGM plans to ask legislators there to allow an open bidding process for new casinos in the state, arguing that Interior's refusal to act shows that the state's attempt to limit casino ownership to the tribes would not work.

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Interior rejected staff advice when scuttling tribes' casino, documents suggest [Back](#)

By Nick Juliano | 04/20/2018 05:02 AM EDT

Trump administration officials rejected recommendations from federal experts on Indian gaming policy when they blocked two American Indian tribes from opening a casino last year, documents obtained by POLITICO indicate.

The heavily blacked-out documents add to questions about whether Interior Secretary Ryan Zinke and his political appointees buckled to lobbying pressure from MGM Resorts International, a gambling industry giant that is planning its own casino just 12 miles from the project proposed by the Mohegan and Mashantucket Pequot tribes.

Interior's inspector general is investigating the department's handling of the tribes' casino application, a spokeswoman told POLITICO, after Connecticut lawmakers asked the internal watchdog to look into the matter.

The documents, released under the Freedom of Information Act, don't reveal the contents of the internal deliberations by the staff of the Bureau of Indian Affairs' Office of Indian Gaming. But they show that the career staffers were circulating what they labeled "approval" letters just 48 hours before their political bosses reversed course and refused to either OK or reject the tribes' application — a nondecision that left the Indians' East Windsor project in legal limbo.

To fight off the potential competition, MGM [spent heavily on lobbyists](#), including George W. Bush-era Interior Secretary Gale Norton and firms with ties to the Trump administration, while enlisting the assistance of friendly lawmakers such as Sen. [Dean Heller](#) and Rep. [Mark Amodei](#). MGM lobbyists and the two Nevada Republicans

held a handful of meetings and conversations with Associate Deputy Secretary James Cason in the months and days before he edited Interior's letter holding up the tribes' plans.

A spokesman for the tribes' casino project said they were caught off guard by Interior's about-face and are glad to see the department's internal watchdog probing the matter.

"We are grateful there's an IG investigation into this issue because since last fall, none of the department's actions have passed the smell test," said Andrew Doba, a spokesman for MMCT Venture, the company the tribes formed to own and operate the new casino. "Something clearly happened to pollute the process, which should be problematic for an administration that promised to drain the swamp."

The tribes have also sued, arguing that Zinke ignored his responsibilities under the Indian Gaming Regulatory Act to either approve or reject their application in a timely manner and to act to protect the tribes' interests.

Cason and spokespeople for Interior and the Bureau of Indian Affairs did not respond to requests for comment this week.

But the emails show that even Interior's career staff was unsure how they would explain the sudden about-face.

"As for why we didn't approve the Mohegan compact amendment, you say the letter speaks for itself," Troy Woodward, a senior policy adviser in the Office of Indian Gaming, wrote in a Sept. 26 email to a colleague who anticipated having to answer questions about it at a gaming industry conference. And "like Forrest Gump, say: 'that's all I've got to say about that.'"

The dispute is complicated by the peculiarities of federal law on Indian gaming, which seeks to promote tribes' economic development but also discourages the spread of off-reservation gambling. The two Connecticut tribes, which already operate two lucrative casinos on their reservations, are exploring a gray area with their proposed third casino, which a jointly owned private company would operate on nonreservation land.

MGM, which plans to open a casino later this year in nearby Springfield, Mass., says the tribes' approach would set a worrisome precedent for other states.

"This is an unusual situation, and we're kind of pushing the bounds on IGRA," says Kathryn Rand, dean of the University of North Dakota School of Law and a co-director of its Institute for the Study of Tribal Gaming Law and Policy. Rand is not affiliated with MGM or the Connecticut tribes.

The newly released documents do not show any effort by MGM to make its case to experts in BIA's Indian gaming office. They also indicate that Interior officials closest to Indian gaming issues were ready to side with the tribes after about six weeks of internal review.

Instead, Interior reversed course with little official explanation less than 48 hours after their recommendations went to Cason, a veteran of the previous three Republican administrations who was one of President Donald Trump's first hires at the department.

On Sept. 11, Woodward emailed around copies of "the edited letters for Pequot and Mohegan," which he said had "been through the surname process," a system for internal review. The contents of the letters were redacted, but each was about two pages long, and file names referred to both as "draft approval" letters.

The following day, Woodward alerted colleagues that "Jim wants some changes," referring to Cason. But on Sept. 13, Woodward still sent "approval" letters "for Mike Black's signature," referring to the then-acting

assistant secretary for Indian affairs, along with a notice the department was required to publish in the Federal Register. Again, the attachments were redacted, but each was two pages long.

A day later, "Jim's edits" came back, and the documents were no longer referred to as "approval" letters.

Instead, Black signed a one-page letter on Sept. 15 informing the tribes that it would be "premature and likely unnecessary" to weigh in on their gaming applications at all.

Returning the applications without approving or disapproving them appears to be an option Interior officials did not consider until earlier that day. A pair of redacted memos circulated that morning, including one "regarding Secretarial Authority to not act on a compact," according to its title.

It is unclear precisely what happened over those days, but by then Cason had received ample input from MGM and its allies. As early as June, Cason met with a senior adviser to Zinke and a lobbyist from Ballard Partners, a Trump-connected firm MGM hired last year, to discuss issues related to the company, according to his calendars. And he was in touch with MGM supporters several more times over the intervening months up to the days before Interior's response was being finished.

On Sept. 13, Cason met with Amodei, and the following day he had a teleconference with Heller, according to Cason's calendar. MGM is a major employer in Nevada, and both lawmakers had previously raised concerns about the Connecticut tribes' proposals and the potential expansion of off-reservation gambling.

Cason's Sept. 14 meeting with Heller included some officials who were working on the Connecticut case, according to his calendar and the BIA emails. Later that day, Cason joined Zinke at a meeting at the White House with Rick Dearborn, Trump's deputy chief of staff for policy.

The president has his own history of clashes with the Mashantucket Pequot, whose Foxwoods Casino competed with his Atlantic City properties to draw gamblers from New York City. "They don't look like Indians to me," Trump infamously declared in a 1993 congressional hearing.

Several weeks after Interior released its decision, Norton sent Zinke a 24-page memo outlining legal arguments in support of the decision on behalf of MGM. Among the evidence she cited was Trump's congressional testimony, though not that particular phrase.

"Supreme Court precedent and President Trump's testimony counsel against approving Connecticut's discriminatory framework, the sole function of which is to grant MMCT, a private corporation, a monopoly over commercial, off-reservation, state-regulated gaming," the former Interior secretary wrote in her Oct. 30 memo to Zinke.

Black's ambiguous Sept. 15 letter, which Cason had edited, left the tribes unable to proceed with their planned casino.

The tribes' lawsuit is pending in U.S. District Court for the District of Columbia, and MGM has asked to intervene in the case, although both Interior and the tribes say it does not have standing to do so.

The case hinges on dueling interpretations of the goals of the Indian gaming law — essentially, whether more weight should be given to IGRA's goal of supporting tribes' economic prospects or its prohibitions on off-reservation gaming in most circumstances.

In court filings, Interior has also stressed the importance of procedural differences between the two tribes' prior gaming agreements, which it says should prevent the Mashantucket Pequot from participating in the case at all.

While the Mohegan tribe was operating under a state gaming compact, the Mashantucket were never able to reach an agreement with Connecticut officials back in the 1980s — so Foxwoods has been operating under the terms of "secretarial procedures" authorized under a different section of the law.

The law says amendments to gaming compacts, such as the Mohegan's, must be approved within 45 days unless Interior can demonstrate that their terms violate federal law or the department's trust responsibilities to the tribe. But it contains no such deadline for secretarial procedures such as the Mashantucket Pequot's.

Interior and MGM say that because the department has no obligation to act on the Pequot's proposed amendment, the entire case is effectively moot. However, the newly disclosed emails suggest that career officials were aware of that distinction throughout their review and did not see it as a reason to deny the tribes' request.

Rand, the law school dean, said courts have not previously grappled with the issue. "That I think is a real interesting and open question that we wouldn't have a whole lot to go on," she said.

This case is also unusual because of the nature of the two tribes at issue and the lucrative market the two sides are battling over.

"That might be a bit implicit in MGM's arguments — that the Mohegans and the Pequots aren't acting like tribal governments in this enterprise, they're operating like competitors. And because of their status ... they don't need the protection that other tribes do," Rand said in an interview this week. "The counterargument, of course, is that tribal sovereignty doesn't depend on whether the tribe needs the federal government's help. Tribal sovereignty is just a fact."

Black's Sept. 15 letter also does not mention the procedural difference between the tribes as a factor in deciding to return the applications without acting on them.

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EPA emails show industry worries slowed new science policy [Back](#)

By Annie Snider | 04/19/2018 05:01 PM EDT

EPA's rollout of a controversial new transparency policy that would severely restrict the scientific research the agency can rely on when drafting new regulations has been slowed down by political officials' fears that it could have major unintended consequences for chemical makers, according to newly released EPA documents.

The issue of scientific transparency has been high on the agenda of House Science Chairman [Lamar Smith](#) (R-Texas), who has found strong support from EPA Administrator Scott Pruitt — much to the consternation of public health advocates and green groups, who view the effort as backdoor attack on the agency's ability to enact environmental regulations.

Since Pruitt announced plans for the new policy last month, researchers and public health proponents have raised alarms that it could restrict the agency's ability to consider a broad swath of data about the effects of pollution on human health. But documents released under the Freedom of Information Act show that top EPA

officials are more worried the new restrictions would prevent the agency from considering industry studies that frequently support their efforts to justify less stringent regulations.

Emails between EPA officials obtained by the Union of Concerned Scientists show that Nancy Beck, the top political official in the agency's chemicals office who came to the agency after serving as a key expert for the chemical industry's lead lobbying group, voiced major concerns after she received a draft of the not-yet-released policy on Jan. 31.

The new scientific transparency directive is expected to require that the raw data for all studies EPA relies on be publicly available, and that the studies be peer-reviewed. But Beck said these requirements would exclude a great deal of industry data about pesticides and toxic chemicals that her office considers when determining whether a substance is safe or must be restricted.

It costs companies "millions of dollars to do these studies," Beck wrote in an email to Richard Yamada, the political official in EPA's office of research and development who is spearheading work on the new scientific policy and is also a former staffer for the House Science Committee chairman.

"These data will be extremely valuable, extremely high quality, and NOT published," Beck wrote. "The directive needs to be revised."

Moreover, much of this data, Beck noted, is considered proprietary by companies. It is dubbed confidential business information, and even though EPA can consider it as part of its regulatory review, the data cannot legally be made public.

Yamada replied to thank Beck for the heads up. "Yes, thanks this is helpful - didn't know about the intricacies of CBI," he wrote. "We will need to thread this one real tight!"

The term "confidential business information" primarily applies to industry information. That data is separate from the personal medical information that public health researchers worry could block consideration of their work.

Yogin Kothari, a lobbyist for the Union of Concerned Scientists, said the emails show the Trump administration's EPA has been "trying to stack the deck in favor of the industries they're supposed to be regulating."

"They want to potentially create exemptions for industry, but if you look at this entire set of documents ... you will see that there's not a single consideration for the impacts on public health data, on long-term health studies, on studies that EPA does after public health disasters like the BP oil spill," he said.

EPA spokeswoman Liz Bowman emphasized the policy is not yet finalized.

"These discussions are part of the deliberative process; the policy is still being developed. It's important to understand; however, that any standards for protecting [confidential business information] would be the same for all stakeholders," she said in a statement.

The emails indicate Pruitt wanted the new science policy rolled out at the end of February, and teased his plans in an interview with conservative outlet The Daily Caller in mid-March. But the agency has yet to finalize the policy.

The transparency directive has its origins in legislation introduced by Smith during the Obama administration, that had the backing of a number of industry groups, including the American Chemistry Council. The House

Science Committee chairman frequently charged that the Obama EPA used "secret science" to justify "costly new regulations."

Although versions of the measure were approved by the House multiple times, the Senate never took it up. CBO estimated that one version of Smith's legislation would cost EPA \$250 million a year, at least in the initial years, and a leaked staff response to questions from the budget office said a later version would be even more costly, would endanger confidential medical and business information, and "would prevent EPA from using the best available science."

But Smith found an ally in Pruitt. The emails indicate that Smith met with Pruitt in early January and show that Pruitt's staff quickly began working on a directive to "internally implement" the legislation.

Industry's backing for the new scientific approach began to waiver under the Trump administration, though. When a top American Chemistry Council scientist testified before Smith's committee in February 2017, she emphasized the need to protect industry information if the transparency initiative moved forward.

"One of the things that we do need to take into consideration as making that data publicly available is that there are adequate protections for confidential business information to ensure that we keep innovation and competitiveness available for the marketplace," Kimberly White told the committee.

Industry has historically claimed that a wide range of information about chemicals, ranging from the processes by which they are produced, to the locations of manufacturing plants, to their very identities, must be kept confidential in order to keep competitors from learning trade secrets. Environmental and public health advocates argue that industry claims this exemption in many cases where it's not necessary and that it often keeps important health and safety information from public view.

The issue was a key point of debate when Congress considered a major overhaul of the nation's primary chemical safety law passed 2016 and has reemerged as Pruitt's EPA sets about implementing the law.

Asked for comment on EPA's new effort to implement the scientific transparency approach internally, American Chemistry Council spokesman Scott Openshaw said the group looks forward to reviewing the directive once it's finalized.

"It is critical that any final directive properly protect confidential business information and competitive intelligence," he said in a statement.

The internal emails show that EPA political staff were particularly attuned to this concern. In a Feb. 23 email to colleagues, Beck forwarded language from a 2005 White House document that laid out narrow exemptions from its requirement that all "important scientific information" disseminated by the federal government go through peer review.

"[Y]ou may need to tweak but hopefully there is something helpful here that can be borrowed/adopted," she wrote.

Richard Denison, lead senior scientist for the Environmental Defense Fund, said that EPA's access to industry data is indeed important to its ability to review the safety of new chemicals and pesticides, but said the internal EPA communications show that Pruitt's EPA wants to "have their cake and eat it too" with the new directive.

"They're trying to force peer review studies done by academic scientists to disclose every last detail, while at the same time allowing industry studies to be kept private or aspects of those to still be kept private," he said.

He pointed out that the concerns Beck raised about the burden the new policy would place on industry are the very same ones that the CBO report said the policy would place on EPA.

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Energy industry puzzles over new White House adviser [Back](#)

By Ben Lefebvre and Eric Wolff | 04/19/2018 07:14 PM EDT

The appointment of a 28-year-old former congressional staffer as the top White House energy aide left many industry lobbyists scratching their heads — and nervous that the new hire may have trouble filling the shoes of the more experienced adviser he's replacing.

The relatively unknown [Francis Brooke](#) will step into the role as replacement for Mike Catanzaro, who will exit the White House next week. Catanzaro and NSC energy adviser George David Banks, another energy adviser who departed earlier this year, have been the top two energy experts in the White House, and they'll take with them decades of experience.

Brooke spent the last year in Vice President Mike Pence's office serving in a junior role to Catanzaro and Banks. But energy lobbyists worry his elevation will leave them without steady hands in the White House just as the administration confronts big decisions on the coal industry, an intra-party biofuels fight and thorny energy trade issues. Putting a relative rookie into the role also shows that the administration may not devote as much attention to energy issues in the run-up to the 2018 elections, sources said.

"It shows you this administration doesn't care about these issues," said one lobbyist who works extensively with the administration on energy policy, but who requested anonymity to discuss people he expects to work with. "I expect agencies are now going to have to play a bigger role. There's not going to be a lot of policy issues that will be determined over the next eight months or so."

Brooke joins the White House with far less energy-sector experience than Banks and Catanzaro, who came to their jobs with long histories in industry and government. He started his career as an intern for Mick Mulvaney in October 2012 when the White House budget director was a South Carolina congressman. After that, he had stints as a staff assistant for Rep. [Andy Barr](#) (R-Ky.) and legislative aide for Senate Majority Leader [Mitch McConnell](#) (R-Ky.). Pence's office tapped him to be associate director of policy in February 2017.

His family was involved in international politics in the previous decade. His father, [Francis Brooke Sr.](#), helped foster the relationship between officials in the George W. Bush administration and Ahmed Chalabi, the controversial Iraqi exile who helped convince the U.S. to invade his country.

Pence's office confirmed Brooke's biographical information but did not offer further details about his time working with the vice president.

McConnell's office did not respond to questions about Brooke. A spokeswoman for Barr said Brooke had been "one of the Congressman's most trusted legislative assistants and handled a wide variety of issues including energy, environment, and health care."

Previous to that, Brooke's biggest notice came from pitching 97 innings in the 2012 season with Northwestern University, making 13 starts and ending with a 2.51 earned run average. He would later serve as a coach to the Republicans' congressional baseball team, and he was on the Arlington, Va., practice field when a gunman shot Rep. Steve Scalise of Louisiana.

Lobbyists say they worry that with the departures of Catanzaro and Banks, Brooke will not be able to help the White House navigate complex energy issues with technical details that can be headache-inducing.

"There is angst downtown that without Mike there, no one knows who is going to make the trains run on time," said Andeavor's Stephen Brown said before Brooke was officially named to the position. "Mike was always the adult in the room on energy issues with substantive knowledge, not just a political perspective."

Brooke, along with Wells Griffith, an Energy Department official on a three-month loan to the White House, will have almost no time to get acclimated to their jobs. The Department of Energy is grappling with whether to try to use emergency authority to keep economically distressed coal-fired power plants running. And the two new staffers may need to help Trump navigate the dispute between refiners seeking changes to the Renewable Fuel Standard and corn farmers who are counting on the president to live up to his promise to protect ethanol.

They will also have to cope with White House officials on trade issues, such as the steel tariffs that oil and gas companies have complained could hamper the construction of new pipelines.

But some current and former administration officials say they have confidence Brooke is up to the job. They say he worked closely with Banks and Catanzaro on all their key issues, including traveling with Banks to the U.N. climate conference at Bonn, Germany, as a key adviser.

"He knows all the players, he's been in all the meetings," said one administration source. "He has the right temperament, the right judgment. People get into these jobs and they use them for vanity tours. Brooke doesn't do that. He's going to be great."

Banks, who left the White House in February, agreed.

"I think that he's ready for the role," said Banks, former adviser to Trump on the NSC. "Francis has been deeply engaged in all of the major energy environment [initiatives]. Some people wouldn't have the experience he's had in working these issues for over a year in the White House. He's incredibly bright, disciplined person."

Critics of the administration's energy policy rollbacks hoped Brooke's lack of experience would depoliticize some of the big decisions before the administration.

"Of course it's weird that there's no senior person covering energy issues," said John Morton, former senior director for energy and climate change on the NSC during the Obama administration. "Though with this administration, it's often a blessing in disguise when a policy area gets neglected by Trump appointees, as it allows more talented career staff to manage affairs."

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Bishop: Drilling moratorium holding up energy bill vote in House [Back](#)

By Anthony Adragna | 04/19/2018 05:32 PM EDT

House Natural Resources Chairman [Rob Bishop](#) says a wide-ranging GOP energy bill is "being held up" until the Pentagon weighs in on how offshore drilling near Florida could affect national security.

The Trump administration earlier this year proposed allowing drilling in the Eastern Gulf of Mexico after an existing moratorium expires in 2022. Although Interior Secretary Ryan Zinke [quickly backed away](#) from the idea, the resulting firestorm led two Florida Republicans to pursue [a permanent moratorium](#), which they said has the backing of Speaker [Paul Ryan](#).

A pending energy bill, [H.R. 4239 \(115\)](#), is one potential vehicle to extend the moratorium. But Bishop, a strong supporter of the oil industry, did not include any limits on offshore drilling when the bill passed out of his committee last year.

The Utah Republican told POLITICO this week he is waiting for the Defense Department report on how expanded drilling near Florida would affect "mission compatibility." A committee spokeswoman said the report's findings would influence "how to move forward on a potential agreement regarding the future of the Eastern Gulf once the moratorium expires in 2022."

Oil and gas leasing within 125 miles off the Florida coastline and areas of the Gulf of Mexico is currently off limits until 2022.

Bishop said in the interview Wednesday that the absence of House Majority Whip [Steve Scalise](#) (R-La.), lead sponsor of the legislation, for surgery is an additional factor in getting the bill floor time.

WHAT'S NEXT: When the measure will get floor consideration remains unclear.

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Report: EPA spent \$45,000 on Australia trip Pruitt canceled [Back](#)

By Emily Holden | 04/19/2018 05:34 PM EDT

Five EPA employees spent \$45,000 traveling to Australia last year to prepare for a trip by EPA Administrator Scott Pruitt that was ultimately canceled, Reuters [reported](#) today.

The two advance team aides and three security agents spent about \$9,000 each on business-class tickets to fly to Australia in August, an expense that is permitted under government rules on flights lasting 14 hours or more. The two EPA staffers were advance director Millan Hupp, the Oklahoma aide who followed Pruitt to Washington and has drawn scrutiny for receiving a large raise, and Kevin Chmielewski, the former deputy chief of staff for operations who was dismissed and is now acting as a whistleblower to lawmakers about Pruitt's spending habits.

Agency officials did not dispute the figures. EPA spokesman Jahan Wilcox said Pruitt did not go to Australia because of Hurricane Harvey. Pruitt traveled from his home in Tulsa, Okla. to Corpus Christi, Texas, to assess relief efforts on Aug. 30, according to his schedule and flight records.

Pruitt spent at least \$105,000 on first class flights and at least \$3 million on a round-the-clock [security detail](#). Records show about one-quarter of the \$120,000 costs for a trip to Italy in June for a G-7 environment meeting was to cover Pruitt's security. EPA's inspector general and various other government officials are investigating Pruitt's travel and spending.

Flight vouchers EPA has shared with lawmakers show Pruitt originally intended to travel to Sydney and Melbourne from Aug. 31 through Sept. 8 to "discuss best practices regarding the environmental operations" within the country.

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EPA tells Barrasso all Pruitt's emails searched for FOIA [Back](#)

By Alex Guillén | 04/19/2018 05:24 PM EDT

EPA today told Senate Environment and Public Works Chairman [John Barrasso](#) (R-Wyo.) that all four of Administrator Scott Pruitt's emails were searched whenever there was a Freedom of Information Act records request, but that a "full review" is being conducted just to make sure.

"As long as EPA Administrators have had secondary email accounts, EPA staff have routinely searched requested accounts in response to FOIA and Congressional inquiries. That practice has not changed under Administrator Pruitt's leadership," Steve Fine, EPA's deputy chief information officer, wrote in a [letter](#) released today by Barrasso.

Fine added: "However, in response to your concern, my office is conducting a full review of the searches conducted regarding FOIA requests seeking Administrator Pruitt's records. If additional documents exist, we will contact the relevant requesters, and we will update you once our review is complete."

"I look forward to receiving the findings of the agency's full review that's being conducted in response to my letter," Barrasso said in a statement.

WHAT'S NEXT: Fine did not say how long EPA's review of FOIA request fulfillment will take.

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Democrats meddle in West Virginia's GOP Senate primary [Back](#)

By Alex Isenstadt | 04/19/2018 04:23 PM EDT

National Democrats launched a campaign Thursday to intervene in the upcoming West Virginia Senate GOP primary — an effort that could be designed to help recently imprisoned coal baron Don Blankenship win the Republican nomination.

Duty and Country, a Washington-based Super PAC, began airing TV and web ads savaging the two mainstream Republican candidates, Rep. Evan Jenkins and state Attorney General Patrick Morrisey, who are competing in the May 8 primary. Left off the group's target list, however, was Blankenship, who spent one year in prison following the 2010 explosion at his Upper Big Branch Mine that killed 29 workers.

In propping up Blankenship, the Democratic Party is wading into an intensifying GOP civil war. Republicans are growing increasingly worried about Blankenship, who has been gaining traction in the primary. GOP officials in Washington are concerned that if Blankenship wins the nomination, he'll ruin the party's prospects of defeating Democratic Sen. Joe Manchin in November.

Last week, national Republicans launched a super PAC named Mountain Families PAC aimed at stopping Blankenship. The organization, which is staffed by consultants who've previously worked for a political group aligned with Senate Majority Leader Mitch McConnell, has begun airing TV commercials accusing Blankenship of contaminating drinking water by pumping toxic slurry while setting up a separate piping system to his mansion.

The Democratic group is spending over \$380,000 to air the commercials. One of the [TV spots](#) says that as the former head of West Virginia State Medical Association, Jenkins pushed doctors to use an insurance company that overcharged, allowing his organization to profit. Another [ad](#) describes Morrisey as a carpetbagger, calling him a "millionaire New Yorker and former lobbyist who came down here and ran for office with no idea of the real challenges West Virginians face."

The Democratic group has also begun sending out mailers describing Jenkins as "part of the swamp, part of the problem."

A Duty and Country spokesman, Mike Plante, said the group had no plans to go after Blankenship and was instead focused on his two rivals.

"We made the strategic decision based on data that shows that either Patrick Morrisey or Evan Jenkins is more likely to be the nominee, so that's where we're focusing our attention," he said.

Duty and Country appears to have close ties to the national Democratic Party. In its federal filings, it lists the same downtown Washington address as other major party groups, including Senate Majority PAC, the main Democratic super PAC devoted to electing Senate Democrats.

In another twist, West Virginia attorney Booth Goodwin, who served as U.S. attorney in the case against Blankenship, is listed as the group's treasurer.

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GOP maneuver could roll back decades of regulation [Back](#)

By Zachary Warmbrodt | 04/17/2018 10:16 AM EDT

Republicans are preparing to open a new front in their push to roll back regulations across the government, using a maneuver that could enable them to strike down decisions by federal agencies that reach back decades.

As soon as Tuesday, GOP senators, backed by President Donald Trump, will use the Congressional Review Act to topple safeguards issued by the CFPB in 2013 that were intended to discourage discrimination in auto lending.

While Republicans in the Trump era have already taken advantage of the 1996 law to remove more than a dozen recently issued rules, this would be the first time that Congress will have used it to kill a regulatory policy that is several years old.

Now, actions going back to President Bill Clinton's administration could be in play under the procedure GOP lawmakers are undertaking, forcing numerous agencies to reconsider how they roll out new regulations.

"It's a hugely important precedent," Sen. Pat Toomey (R-Pa.), the architect of the effort, said in an interview. "It's potentially a big, big opening."

While conservatives are applauding the effort as a way to rein in rogue bureaucrats and boost the economy, consumer advocates are warning that the consequences could be dire.

"This takes an already incredibly dangerous law and cranks it up to 11," said James Goodwin, senior policy analyst at the Center for Progressive Reform.

Republicans are leveraging two key provisions of the Congressional Review Act.

They're again taking advantage of fast-track authority that allows a simple majority of the Senate to pass a resolution rolling back a rule if the vote occurs within a window that's open for no more than a few months. The provision enables senators to avoid a filibuster.

But the more novel use lies in the law's requirement that federal agencies submit rules to Congress for their potential disapproval. Republicans have landed on a way to target a wide array of decisions — including regulatory guidance — that haven't typically been implemented as formal rules under the Administrative Procedure Act.

"You have this unimaginably large universe of stuff that is now eligible for repeal under the CRA," Goodwin said, citing a hypothetical Occupational Safety and Health Administration workplace safety poster as a potential example. "Agencies don't submit all this stuff because it would be an administrative nightmare."

In the case of the auto-lending policy, the CFPB released it as a guidance document rather than a formal rule governed by the notice-and-comment requirements of the APA. As such, it wasn't technically submitted to lawmakers for the purposes of the Congressional Review Act. That means the clock for congressional review never started.

That changed last year. For advocates of deregulation, the stars had aligned thanks to the ascendance of a Republican president eager to roll back rules and the Republicans retaining control of Congress.

Toomey, the former president of the conservative Club for Growth, went on the hunt for ways the GOP could take advantage of its congressional majority to eliminate federal rules.

He found a way to wield the power that the Congressional Review Act gives a majority of the Senate to sidestep obstruction via filibuster when it comes to years-old regulatory actions.

To do so, he asked the Government Accountability Office to determine whether the CFPB auto-lending guidance qualified as a rule for the purposes of the Congressional Review Act. In December, GAO told him that

it did in fact satisfy the legal definition of a rule, starting the clock for Republicans to undo it without having to seek any help from Democrats.

"When regulators regulate by guidance rather than through the process they're supposed to use, which is the Administrative Procedure Act and do a proper rulemaking, they shouldn't be able to get away with that," Toomey said. "If we can get a determination that the guidance rises to the significance of being a rule, then from that moment the clock starts on the CRA opportunity."

Amit Narang, regulatory policy advocate at Public Citizen, said it "is really going to open up a Pandora's box." Public Citizen and 60 other advocacy groups covering the gamut of finance, the environment, labor and gay rights are calling on Congress to oppose the CFPB rollback, saying it would set a dangerous precedent.

They warned it would put at risk not only protections for workers, consumers, minorities and the environment, but also regulatory certainty for businesses.

"Expanding the power of the CRA to overturn guidance from decades ago will threaten protections hardworking families rely on, making it harder for middle class Americans to get ahead and responsible businesses to follow the law," Sen. Sherrod Brown (D-Ohio) said.

Critics have also questioned the need to undo the CFPB auto-lending guidance because the bureau is now led by a Trump appointee, acting Director Mick Mulvaney, who could eliminate it himself. Mulvaney told lawmakers last week he was reviewing the policy. The National Automobile Dealers Association and the American Financial Services Association are supporting the rollback of the anti-discrimination measure, arguing that the way the CFPB crafted the guidance was flawed.

The Senate opened debate on the bill Tuesday following a 50-47 procedural vote. Sen. Joe Manchin (D-W.Va.) was the only Democrat to support moving forward with the legislation.

Other lawmakers have begun to test the waters. In November, GAO in a response to a request from Sen. Lisa Murkowski (R-Alaska) confirmed that a 2016 plan from the Bureau of Land Management was a rule for the purposes of review under the CRA. A spokeswoman for Murkowski did not respond to a request for comment.

Paul Larkin, a senior legal research fellow at the Heritage Foundation, has been advocating for Congress to take advantage of this deregulatory pathway in the Congressional Review Act, saying it could force agencies to comply with formal rulemaking requirements and help the economy by cutting red tape.

"This would indicate that Congress believes it can reach back beyond what the conventional wisdom was," he said.

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Somewhat



Neutral



Not really



Not at all

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Message

From: Bennett, Tate [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1FA92542F7CA4D01973B18B2F11B9141-BENNETT, EL]
Sent: 4/3/2018 9:52:34 PM
To: Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]
Subject: Fwd: Pruitt defense scheduled to go up in TheHill.com

Begin forwarded message:

From: Richard Manning <rmanning@getliberty.org>
Date: April 3, 2018 at 5:50:50 PM EDT
To: "bennett.tate@epa.gov" <bennett.tate@epa.gov>
Subject: Pruitt defense scheduled to go up in TheHill.com

From: Kelsey Rupp <krupp@thehill.com>
Sent: Tuesday, April 3, 2018 5:48 PM
To: Richard Manning <rmanning@getliberty.org>
Subject: Re: Contributor - PRUITT DEFENSE

Your column is scheduled for 6:30pm ET. Thank you again! thehill.com/opinion/energy-environment/381508-epa-chief-scott-pruitt-gets-results-thats-why-hes-a-target-of-the

Please promote on social and we'll send this to our social team as well.

On Tue, Apr 3, 2018 at 5:37 PM, Richard Manning <rmanning@getliberty.org> wrote:

Thank you.

From: Kelsey Rupp <krupp@thehill.com>
Sent: Tuesday, April 3, 2018 5:32 PM

To: Richard Manning <rmanning@getliberty.org>
Subject: Re: Contributor - PRUITT DEFENSE

Here's my edited version. Will have a link and time for you soon.

President Donald Trump is standing by his embattled Environmental Protection Agency (EPA) Administrator Scott Pruitt, according to reports. Let's be clear, that is good thing for both Trump and the country. Pruitt is one of the shining stars of the Trump administration, and no one who supports the president's "Make America Great Again" agenda should want him replaced.

Current complaints about Pruitt's living arrangements in Washington, D.C., are mostly politically motivated. As the designated agency ethics official for the EPA explained:

"Entering into the lease was consistent with federal ethics regulations regarding gifts, and use of the property in accordance with the lease agreement did not constitute a gift as defined in those regulations."

Yet some hope that by attacking Pruitt on fake ethics charges, the media-created scandal will cause the Trump White House to either foolishly force Pruitt out or cause him to throw up his hands in disgust and resign.

This would be a disaster for President Trump and all of us who care about his success.

EPA Administrator Pruitt has been instrumental in taking on the difficult task of rolling back Obama era regulations and in his first year has already completed 22 deregulatory actions, saving more than a billion dollars in regulatory costs.

Something as benign as Pruitt's recently announced effort to make certain that the methodology of the science the EPA uses to make regulatory determinations is transparent and the results are repeatable, has come under fire from former Obama-era EPA administrators Gina McCarthy and Janet McCabe called it, "his latest effort to cripple the agency."

It would seem that making sure the science behind major economy-shattering regulations is actually accurate and that the data is available for public scrutiny should be standard. Yet, incredibly, Pruitt is having to fight for the sake of establishing sound science that meets the basic criteria of the scientific method in order to restore valid underpinnings for environmental regulations.

Pruitt is even having to re-evaluate the Obama administration's controversial and arbitrary fuel efficiency standard that set a car and light truck fleet average of 50 miles per gallon by 2025, regardless of whether it was technologically possible to achieve it. Effectively, this policy would force auto makers to sell expensive-to-produce electric vehicles to consumers at a loss in order to be able to sell customers the trucks and other gasoline-consuming vehicles that they want at significantly increased prices.

The changes announced by the EPA have left open what the fuel efficiency standards will be, and likely will end the state of California's waiver to federal law allowing the rogue state to compel stricter standards under the Clean Air Act.

President Trump can expect to hear an uproar from states like California and New York over Pruitt's smart decision on Corporate Average Fuel Economy (CAFE) standards, but when Administrator Pruitt prevails on this issue, it will help the president achieve his goal of putting the American auto industry back on top. Pruitt is doing the hard work to achieve the Trump agenda and taking the political and personal attacks that are part of battling the environmental industry driving American manufacturing to the breaking point.

We are talking about more than angry letter writing. In fact, Pruitt and his family have been subjected to a significant stream of personal threats from radical environmentalists. The threats have become so severe that the EPA inspector general, who is tasked with the physical safety of the administrator, now provides 24/7 protection for him and his family.

Incredibly, Pruitt gets zero credit from the left for increasing Superfund clean-up efforts designed to restore polluted sites to usability. He gets zero credit for enforcement actions that resulted in the second highest level of civil and administrative fine collections in the past decade, falling short of only FY 2016 which included a massive BP settlement. He gets zero credit because these critics are less concerned with cleaning up legitimate messes, than strangling the American manufacturing sector today and into the future.

President Donald Trump can and should be proud of his administrator's efforts at the EPA. Scott Pruitt is moving the Trump agenda forward and ensuring that the environment remains protected while our economic engines roar back to life.

Scott Pruitt is excelling at his job, and that is why he is the target of those who want to see the Trump administration fail. The president needs to recognize this and stand by his chief general in the war against the regulatory stranglehold that was left by Obama. To be persuaded to make a personnel change at the EPA would be a disastrous mistake for his policy agenda. Most importantly, it would be a bad, bad decision for America's future.

Rick Manning is president of Americans for Limited Government

On Tue, Apr 3, 2018 at 4:54 PM, Richard Manning <rmanning@getliberty.org> wrote:

Fantastic. Thank you.

Rick

From: Kelsey Rupp <krupp@thehill.com>
Sent: Tuesday, April 3, 2018 4:54 PM
To: Richard Manning <rmanning@getliberty.org>
Subject: Re: Contributor - PRUITT DEFENSE

Actually I can publish this afternoon

On Tue, Apr 3, 2018 at 4:33 PM, Richard Manning <rmanning@getliberty.org> wrote:

Scott Pruitt's EPA leadership should make Trump proud

By Rick Manning

President Donald Trump has come under fire for supposed turmoil in his administration, yet those who are trying to create this negative narrative are among those attempting to undermine Scott Pruitt, and his continuance as EPA Administrator.

Let's be clear. Scott Pruitt is one of the shining stars of the Trump Administration, and no one who backed the President's "Make America Great Again" agenda and his presidential run could possibly want him replaced.

The fact is that complaints against Pruitt are largely politically motivated. In one case, the left tried to make a big deal out of his living arrangements in D.C., even though the designated agency ethics official for the EPA wrote, "Entering into the lease was consistent with federal ethics regulations regarding gifts, and use of the property in accordance with the lease agreement did not constitute a gift as defined in those regulations."

Yet some hope that by attacking Pruitt on fake ethics charges, the created media scandal will cause the Trump White House to either foolishly force Pruitt out or cause him to throw up his hands in disgust and resign.

This would be a disaster for President Trump and all of us who care about his success.

EPA Administrator Pruitt has been instrumental in taking on the difficult task of rolling back Obama era regulations and in his first year has already completed 22 deregulatory

actions<[https://www.epa.gov/sites/production/files/2018-](https://www.epa.gov/sites/production/files/2018-03/documents/year_in_review_3.5.18.pdf)

[03/documents/year_in_review_3.5.18.pdf](https://www.epa.gov/sites/production/files/2018-03/documents/year_in_review_3.5.18.pdf)>, saving more than a billion dollars in regulatory costs.

Something as innocent as Pruitt's recently announced

effort<.././AppData/Local/Microsoft/Windows/INetCache/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/QY7RQOYQ/Daily%20Caller%20interview> to make certain that the methodology of the science the EPA uses to make regulatory determinations is transparent and the results are repeatable, have come under fire from Obama's EPA head Gina

McCarthy<<http://thehill.com/policy/energy-environment/380451-former-epa-heads-dont-be-fooled-by-secret-science-argument>> who called it, "his latest effort to cripple the agency."

It would seem that making certain that underlying science behind major economy shattering regulations is actually accurate should be a bare minimum standard. Yet, incredibly, Pruitt is having to fight those with a radical agenda in favor of re-establishing sound science that meets the basic criteria of the scientific method in order to restore valid underpinnings for environmental regulations.

Pruitt is even having to re-evaluate the Obama Administration's controversial and arbitrary fuel efficiency standard<<http://www.autonews.com/article/20180402/OEM11/180409926/trump-epa-cafe-standards>> that set a car and light truck fleet average of 50 miles per gallon by 2025 regardless of whether it was technologically possible to achieve it. The Obama sub-rosa goal was to force auto makers to sell expensive to produce electric vehicles to consumers at a significant loss in order to be able to sell customers trucks and other gasoline consuming vehicles that they want at significantly increased prices.

The changes announced by the EPA have left open what the fuel efficiency standards will be, and likely will end the state of California's waiver to federal law allowing the rogue formerly golden state to compel stricter standards under the Clean Air Act.

President Trump can expect to hear an uproar from California and New York over Pruitt's smart decision on Corporate Average Fuel Economy (CAFE) standards, but when Administrator Pruitt prevails on this issue, it will help the President achieve his goal of making the American auto industry great again. Just another example of Pruitt doing the hard work to achieve the Trump agenda and taking the political and personal attacks that are part of battling the environmental industrial complex which has driven American manufacturing to the breaking point.

And the environmental warriors who Pruitt has offended are not simply letter writers. Instead, Pruitt and his family have been subjected to a significant stream of personal threats from radical environmentalists. The threats have become so severe that the EPA Inspector General who is tasked with the physical safety of the Administrator has begun to provide 24/7

protection<<https://www.politico.com/story/2018/02/15/scott-pruitt-first-class-travel-epa-351669>> for him and his family. That's right, even Scott Pruitt's family has been threatened by the environmental mob. Yet, he continues fighting to end the massive overreach by the former administration.

Incredibly, Pruitt gets zero credit from the left for increasing Superfund clean-up efforts<<https://www.epa.gov/newsreleases/epa-announces-2017-annual-environmental-enforcement-results>> designed to restore polluted sites to usability. He gets zero credit for enforcement actions that resulted in the second highest level of civil and administrative fine collections in the past decade<<https://www.epa.gov/newsreleases/epa-announces-2017-annual-environmental-enforcement-results>>, falling short of only FY 2016 which included a massive BP settlement. He gets zero credit because these so-called environmentalists are less concerned with cleaning up legitimate messes, than strangling the American manufacturing sector today and into the future.

President Donald Trump can and should be proud of his Administrator's efforts at the EPA. Scott Pruitt is moving the Trump agenda forward and ensuring that the environment remains protected while our economic engines roar back to life.

Scott Pruitt is excelling at his job, and that is why he has come under withering attack from those who want to see President Trump fail. The President needs to recognize this and stand by his chief general in the war against the regulatory stranglehold that was left by Obama, including ending the war on coal, and not be tricked into making a change due to the fake news tactics that his critics so often use against him. That would be a disastrous mistake that would make #NeverTrumpers laugh out loud while dismaying the President's friends. Most importantly, it would be a bad, bad decision for America's future.

The author is President of Americans for Limited Government

From: Richard Manning

Sent: Tuesday, April 3, 2018 4:23 PM

To: Kelsey Rupp (krupp@thehill.com) <krupp@thehill.com>

Subject: Contributor - PRUITT DEFENSE

Kelsey: Scott Pruitt is under intense attack and this piece defending him is hot and would need to run tomorrow. I am having my senior editor give it a final review, and I will have it to you within fifteen minutes if you want it.

Thank you,

Rick

[alg-logo-clear-graphic]<<https://getliberty.org/>>Richard Manning

President

Americans for Limited Government

(703) 383-0880 (Office)

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Message

From: ECOS [ecos=ecos.org@mail214.atl171.mcdlv.net]
on behalf of ECOS [ecos@ecos.org]
Sent: 4/27/2018 8:21:21 PM
To: Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]
Subject: Pruitt Testifies on Hill and Proposes Science Rule, States Make Strides, & More

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ECOSWIRE

Friday, April 27, 2018

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Pruitt Testifies at Two Closely Watched Hearings on Capitol Hill

U.S. EPA Administrator Scott Pruitt testified yesterday at two hearings in the House of Representatives to respond to questions surrounding agency funding and policy as well as personal ethics. Appearing before the Appropriations Interior, Environment, & Related Agencies Subcommittee and the Energy & Commerce Environment Subcommittee on the agency's FY19 budget, Pruitt defended himself against criticism regarding certain management and spending practices. He also touched on policy issues including the new proposed rule to strengthen science used in regulations (see related story) and the suite of [FY18 Brownfields Grants](#) announced this week.

In addition, Pruitt addressed actions on the horizon, noting that EPA soon will announce a Waters of the U.S. replacement rule and proposed revisions to EPA's light-duty vehicle greenhouse gas standards. In response to a lawmaker's question about coal combustion residuals, Pruitt noted that few states have filed state coal ash implementation plans pursuant to the new federal policy but that the program is still nascent and EPA is working

with several states to assist in their development of permit program applications.

Pruitt's written testimony included a listing of his top priorities: enhancing drinking water and wastewater infrastructure; accelerating the remediation and revitalization of the most contaminated land; improving air quality through reductions in the number of areas not in attainment with the National Ambient Air Quality Standards; and meeting all the statutory deadlines outlined in the amended Toxic Substances Control Act. In addition, the testimony notes support for flexibility for states to address priorities and for cooperative federalism activities through the multipurpose grants program.

The testimony also includes an EPA proposal to increase compliance assistance through new voluntary oil and chemical facility compliance assistance fees allowing EPA to conduct walkthroughs and provide recommendations to facilities. It further notes that while EPA's budget request does not include plans to close Regional offices, the agency will continue "to prioritize efforts that save taxpayer dollars through space consolidation...." [McAleer/Graves/Parisien]

Pruitt Signs Proposed Rule to Eliminate 'Secret Science'

U.S. EPA Administrator Scott Pruitt signed Tuesday a proposed rule to eliminate "secret science" used in regulations issued by the agency. According to EPA, the rule seeks to ensure that all regulatory science underlying EPA actions is fully transparent, publicly available, and sufficient for independent validation. EPA says the rule aligns with the scientific community's push for increased data sharing and reproducible research.

The proposed rule has drawn mixed reviews, with opponents arguing that it skirts statutory mandates to use the best available science and address confidential trade secrets. Some express concern as to whether the policy will prevent use of studies that rely on confidential business information (CBI) or limit EPA's access to health studies, which are subject to patient confidentiality requirements. While the rule does not specifically address these points, it states that the agency believes "that concerns about access to confidential

or private information can, in many cases, be addressed through the application of solutions commonly in use across some parts of the [f]ederal government.”

EPA soon will accept public comment on a number of the proposed rule’s provisions, including authorities to address implementation issues (including CBI) and what criteria the agency should use to justify any exceptions. [Longworth]

U.S. EPA Announces First WIFIA Loan to King County, Washington

Last week, U.S. EPA issued its first loan under the Water Infrastructure Finance and Innovation Act (WIFIA) to King County, Washington.

The loan will help finance the Georgetown Wet Weather Treatment Station, which will collect and treat up to 70 million gallons of wastewater and stormwater per day. During heavy rains the combined sewer pipes spill into the Duwamish River, which drains into Puget Sound. The estimated project cost is \$275 million, and the WIFIA loan will finance nearly half of it.

For more information about the WIFIA program and the Georgetown Wet Weather Treatment Station, click [here](#). [Piper]

State News You Can Use

[Groundbreaking Ceremony Marks Progress under North Carolina](#)

State Water Plan

Pennsylvania, Federal Agencies Settle with Natural Gas
Company over Air Violations

Texas Hosts Hurricane Prep Workshop

Iowa Introduces Streamlined Public Notice of Air Quality Permits

Need-to-Know News in Air & Environmental Justice

U.S. EPA Announces Funding to Reduce Emissions from Diesel Engines Nationwide

Area of Focus: Air

On April 24, U.S. EPA announced the availability of grant funding to modernize the nation's diesel fleet by retrofitting or replacing vehicles with cleaner, more efficient diesel engines.

EPA anticipates awarding approximately \$40 million in Diesel Emission Reduction Program (DERA) grant funding to eligible applicants, subject to the availability of funds.

EPA anticipates awarding between 20 and 80 assistance agreements to projects that significantly reduce diesel emissions and exposure, especially from fleets operating at goods movements facilities in areas designated as having poor air quality. Priority for funding will be given to projects that engage and benefit local communities and applicants that demonstrate their ability to promote and continue efforts to reduce emissions after the project has ended.

Project proposals are due **June 5**. [Poole]

U.S. EPA Environmental Justice FY2017 Progress Report Notes ECOS Publication

Area of Focus: Environmental Justice

On April 19, U.S. EPA issued its Environmental Justice FY2017 Progress Report. Marking the 25th anniversary of the establishment of the Office of Environmental Justice, the FY2017 report highlights EPA's ongoing environmental justice work focused on demonstrating tangible results in minority, low-income, tribal and indigenous communities.

The report focuses on the themes of delivering environmental results; cooperative federalism; rule of law and fair process; and building community capacity and engagement.

Notably, the report cites the ECOS Green Report on State Approaches to Community Engagement and Equity Considerations in Permitting as an example of cooperative federalism and best practices regarding community involvement and equity in state permitting programs. [Poole]

U.S. EPA Launches Mobile App for EJSCREEN

Area of Focus: Environmental Justice

On April 24, U.S. EPA launched its mobile version of EJSCREEN, the agency's nationally

acclaimed environmental justice screening and mapping tool. This new version makes accessing EJSCREEN easier for those working on the ground in communities.

The mobile version offers most of the same key functions and features as the full online version, but does so in a more compact and accessible layout. Some of the features included are the ability to select locations; access reports; and map environmental, demographic and EJ indicators. [Poole]

Career Opportunities

Massachusetts DEP Seeks Deputy Director, Municipal Services

The Massachusetts Department of Environmental Protection's Bureau of Water Resources seeks applicants for the position of Deputy Director, Municipal Services. The position entails the identification of priority areas for investment of Clean Water and Drinking Water State Revolving Fund financing.

For more information, see [here](#). [Parisien]

Upcoming Events

ECOS Calls

ERIS on Research Needs

In an effort to prioritize states' research needs, ECOS and affiliate Environmental Research Institute of the States is conducting media-specific calls to gather information to inform future planning and contribute to the development of the U.S. EPA Office of Research and Development (ORD) Strategic Research Action Plan.

The water and air-focused calls were held this week. The remaining two calls are scheduled as follows:

- **Waste - April 30: 2-3 p.m. Eastern**
<http://epawebconferencing.acms.com/ecoswastecommittee/>
- **Cross-Media - May 3: 3-4 p.m. Eastern**
<http://epawebconferencing.acms.com/ecoscrossmediacall/>

The call-in number for both calls is (866) 299-3188, with access code (202) 564-6669.

ECOS members and state staff are invited to participate in the calls, and are asked to be prepared to answer the following questions: Are states' priorities the same or different from those identified in the [2016 ERIS survey of state research needs](#)? What emerging issues/challenges should ORD consider in its next Action Plan?

As the calls are held, PowerPoint presentations will be posted on ECOS' website [here](#). States are encouraged to provide comments after the calls to further inform strategic research planning. Please send comments to [Sarah Grace Longworth](#) of ECOS by May 11. [Longworth]

ERIS on State Science Contacts

ERIS will host its bimonthly State Science Contacts call on **May 4 at 11 a.m. Eastern**. The purpose of these calls is to share relevant information on science and research, receive input from states on state science needs, and provide state perspective on various

research activities.

An agenda for the call will be sent next week. If you are interested in participating, email [Sarah Grace Longworth](#) of ECOS. [Longworth]

Webinars

U.S. EPA on Emerging Sensor Technologies Report

U.S. EPA's Air and Energy National Research Program will host two webinar sessions to update stakeholders on its Emerging Sensor Technologies 2014-2018 Progress Report. The identical sessions will be held on **April 30 at 8:30-11:30 a.m. Eastern and 1:30-4:30 p.m. Eastern**, and will summarize general findings across a broad base of the agency's air sensor research activities over the past several years.

The first two hours of each session will feature presentations by EPA Sensor Performance Evaluation and Application Research team members on topics such as sensor evaluations, data analytics, ammonia detection, citizen science, and detection of select emission sources. The final portion of each session will be a question and answer period.

To register, see [here](#). [Longworth]

U.S. EPA on Lead Exposure Modeling and Research

U.S. EPA will host its monthly Tools and Resources webinar on **April 30 at 3-4 p.m. Eastern** to discuss multimedia modeling of lead exposure in children and water lead monitoring research to inform public health decisions. Specifically, EPA's Office of Research and Development (ORD) will highlight its innovative exposure-dose [modeling approach](#) to better understand the relationship between drinking water lead concentrations and children's blood lead levels considering exposures from water, soil, dust, food, and air. ORD will then discuss the future data needs to apply the approach at state and local

levels, and will report on water lead monitoring research relevant to state priorities.

To register, see [here](#). [Longworth]

ITRC on Bioavailability of Contaminants in Soil

The Interstate Technology & Regulatory Council (ITRC) will hold an online training course on Bioavailability of Contaminants in Soil: Considerations for Human Health Risk Assessment on **May 3 at 1-3:15 p.m. Eastern**.

The basis for this training course is the ITRC guidance: [Bioavailability of Contaminants in Soil: Considerations for Human Health Risk Assessment \(BCS-1\)](#). This guidance describes the general concepts of the bioavailability of contaminants in soil, reviews the state of the science, and discusses how to incorporate bioavailability into the human health risk assessment process. Training course participants will learn to apply the decision-making process to determine when a site-specific bioavailability assessment may be appropriate; consider factors that affect arsenic, lead, and PAH bioavailability; select appropriate methods to evaluate soil bioavailability; and use tools to develop site-specific soil bioavailability estimates and incorporate them into human health risk assessment

Learn more and register [here](#). [Bodi]

E-Enterprise Facility Integration Project Team on Opportunities for Involvement

The E-Enterprise Facility Integration Team Co-Chairs will host a webinar on **May 8 at 1-2:30 p.m. Eastern** to report on the team's Phase II accomplishments and plans for Phase III, which is about to begin. Co-Chairs Ron Evans and Susan Joan Smiley (U.S. EPA), Joshua Kalfas (Oklahoma), and Ben Way (Wyoming DEQ) will lead webinar presentations and answer any questions related to the Facility work.

The Facility Integration Team is currently seeking states, tribes and local governments to

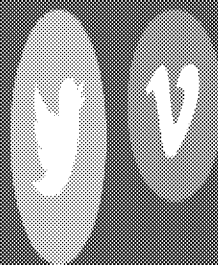
partner in Phase III. Partnership opportunities will be discussed on the webinar.

Register [here](#) and learn more [here](#). [McAleer]

U.S. EPA on Business Innovations in Reducing Food Waste

U.S. EPA will host a webinar on **May 17 at 10-11:30 a.m. Eastern** to highlight business innovations to reduce food loss and waste. Presenters include three [Food Loss and Waste 2030 Champions](#) who are leading the way in helping the country reach its 50 percent food loss and waste reduction goal. Speakers from each company will share best practices, tools, and resources to prevent food from going to waste. They will address how shifts in company culture have changed operations as well as the critical role of food waste measurement in achieving their goals.

Register [here](#). [Longworth]



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Subject: POLITICO's Morning Energy: What's happening with WOTUS — Keystone fight far from over — Wheeler to Michigan

By Kelsey Tamborrino | 08/17/2018 10:00 AM EDT

With help from Annie Snider, Ben Lefebvre and Alex Guillén

A COUNTRY DIVIDED: Which streams and wetlands are protected under the Clean Water Act? As of Thursday, the answer depends on where you're standing. After a South Carolina District Court [ruling](#) overturning the Trump administration's attempted delay of the Obama administration's Waters of the U.S. rule for failing to offer the public a proper opportunity to comment, the 2015 rule is now officially on the books in 26 states — but not in the other 24 states where other district court injunctions are in place.

"**The agencies refused to engage** in a substantive reevaluation of the definition of the 'waters of the United States' even though the legal effect of the Suspension Rule is that the definition of 'waters of the United States' ceases to be the definition under the WOTUS rule and reverts to the definition under the 1980s regulation," Judge David Norton wrote in Thursday's ruling. "An illusory opportunity to comment is no opportunity at all."

Environmental groups hailed the decision, with Jon Devine of the Natural Resources Defense Council calling it a "sharp rebuke to the Trump administration." Meanwhile, Zippy Duvall, president of the American Farm Bureau Federation, one of the fiercest critics of the Obama-era rule, called on the Trump administration to "to take immediate steps to limit the impact of this dangerous court decision."

But will it hold? The Justice Department is reviewing the decision, a spokesman said, and players on both sides broadly expect an appeal. Separately, EPA said in a statement it and the Army Corps of Engineers "will review the order as the agencies work to determine next steps." But the fate of the delay rule could ultimately become moot if the federal district judge in Texas grants a nationwide injunction request.

And don't forget, this is just the warm-up fight. The battle royale will be over the Trump administration's rule to repeal the 2015 rule, which the agency has not finalized. Geoff Gisler, the Southern Environmental Law Center attorney who brought yesterday's case on behalf of local environmental groups, argued that Thursday's South Carolina court decision has implications for that fight and "should give the agencies pause" as they move forward. "The agencies just aren't telling the public what they're doing," he argued. "What this decision said was you can't just have a comment period, it has to be a meaningful comment period."

WE MADE IT TO FRIDAY! I'm your host, Kelsey Tamborrino. Simon and Company's Jen Covino named the eight senators who formerly served as mayors: [Dianne Feinstein](#), [Cory Booker](#), [Jim Inhofe](#), [Bob Corker](#), [Bernie Sanders](#), [Tim Kaine](#), [Mike Enzi](#) and [Bob Menendez](#). For today: Who are the three current House lawmakers who previously served as ambassadors? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseyam](#), [@Morning_Energy](#) and [@POLITICOPro](#).

FAR FROM OVER: A federal judge's order directing the State Department to conduct a supplemental environmental review for the Keystone XL pipeline's updated path through Nebraska is another setback in nearly a decade full of them for TransCanada. The order is sure to stall construction of the pipeline for months, Pro's Ben Lefebvre [reports](#). Plaintiffs in the case said the review would involve public hearings in Nebraska and consultations with Native American tribes whose land the pipeline would traverse.

Pipeline opponents are hoping to use the new review to push for a broader study of the project, Ben reports. Doug Hayes, a lawyer for the Sierra Club and one of the plaintiffs in the case, said the judge's ruling that the "entire pipeline remains interrelated and requires one [environmental review] to understand the functioning of the entire unit" could open the door for them to seek a new review for the pipeline's entire route. "If they are going back to do a supplemental environmental impact statement, our position is they would need to evaluate all the new impacts of the pipeline," Hayes said. "That would take definitely months."

WHERE'S WHEELER? Acting EPA Administrator Andrew Wheeler travels to Michigan today to discuss issues plaguing the Great Lakes and meet with GOP Rep. Tim Walberg, a member of the Energy and Commerce Committee, and officials from the Michigan Department of Natural Resources and Department of Environmental Quality.

WHEELER DELIVERS MESSAGE ON HARASSMENT: Wheeler reaffirmed EPA's policy against harassment in a memorandum sent to staff Thursday. Wheeler wrote that he expects "all individuals working at the EPA — employees, supervisors and non-employees — will not engage in or be subjected to unlawful and prohibited harassment."

MURKOWSKI: FERC NOMINEE SHOULD GO LITMUS TEST-FREE: Senate Energy Chairman Lisa Murkowski wouldn't comment on POLITICO's report that DOE's Bernard McNamee will be nominated to FERC. But the Alaska Republican said she believes that the next nominee shouldn't face a litmus test over their view of the Trump administration's efforts to prop up coal and nuclear power plants, Pro's Darius Dixon reports. "I worry that this is going to be viewed as, 'If you don't commit to voting against or voting for, then you're not going to have my support,'" Murkowski said. "That's not the way that we should be selecting commissioners for the FERC."

GET YOUR COMMENTS IN: American Petroleum Institute's Frank Macchiarola reiterated the need for Renewable Fuel Standard reform on a call with reporters Thursday outlining the group's comments for EPA's proposed biofuel blending requirements for the coming year under the RFS. "Very simply what we want is an end to this program by 2022," he said. Macchiarola said API is "willing to compromise" on certain policies like a waiver for summertime sales of E15, but only if the program will sunset by 2022. "The problem again is that the ethanol industry has been dug in to not doing anything," Macchiarola said. He added legislation is being drafted to reform the program in both chambers, but noted challenges and lengthy debate are likely ahead. Comments are due today on EPA's proposed volumes, with the final rule due to be released by Nov. 30.

— **API is also looking at the proposed plan** by EPA and the Department of Transportation to freeze fuel efficiency standards for cars and trucks. "It is a very complex proposal to a very complex program," Macchiarola said. "We will say that we appreciate the administration's relooking at CAFE in the light of changing energy market realities."

SECRET'S OUT: Thursday was the last day for comments on EPA's proposed "secret science" rule, which would ban the use of studies that don't publicly disclose all their data. Getting their thoughts in under the wire, Sens. Sheldon Whitehouse, Brian Schatz, Maggie Hassan, Jeff Merkley, Ed Markey, Tammy Duckworth, Kirsten Gillibrand, Tom Carper and Kamala Harris banded together to make their opposition known. "The proposed rule is illegal because it is arbitrary and capricious," they write, adding that "the proposed rule is illegal because it is the result of an effective delegation of rulemaking authority to private interests."

The American Chemistry Council, meanwhile, applauded the proposal in its comment Thursday. "EPA's proposal codifies an important good governance principle — that government agencies should be as transparent as possible, within the bounds of the law, about scientific information relied upon and the justifications for the significant regulatory decisions they make." Still, the trade association also highlighted that implementation of the plan would benefit from better historical context and applicability, and that greater clarity is required on key definitions and regulatory text, among other recommendations.

FIGHTING FIRE WITH A FEDERAL PLAN: The Agriculture Department released a new, aggressive approach to fighting wildfires Thursday, with proactive steps. During a bipartisan press conference, Secretary Sonny Perdue unveiled a plan that emphasizes increased collaboration with states, implementation of mapping and remote sensing tools, and management practices such as prescribed burns and timber sales, Pro's Liz Crampton reports. Though Perdue brushed aside specific questions on climate change's role, he said Interior Secretary Ryan Zinke is on board with the plan and noted further details and costs will be forthcoming from the U.S. Forest Service. "Really a lot of people ... when you talk about climate change, they want to talk about what the causes are," Perdue said. "[What] we're trying to talk about is the impact."

FERC RESTARTS PART OF PIPELINE: FERC modified a stop work order for the Mountain Valley Pipeline this week, allowing construction to restart for around 77 miles of the pipeline's West Virginia route with the exception of a 7-mile area surrounding the Weston and Gauley Bridge Turnpike Bridge Trail, MVP said Thursday. However, the company said about half of its construction workforce has been released due to continued delays. MVP said that it "remains committed to the earliest possible in-service date," though it noted that is now expected to arrive during the fourth quarter of 2019.

GREENS CALL FOR FERC REVIEW: The Southern Environmental Law Center and Appalachian Mountain Advocates petitioned the 4th U.S. Circuit Court of Appeals on Thursday to review FERC's approval of the Atlantic Coast Pipeline. The suit was filed on behalf of 13 other conservation groups. "FERC ordered the ACP construction stopped because the 4th Circuit determined that permits were issued without proper scrutiny," SELC attorney Greg Buppert said in a statement. "On the very same day, FERC rejected a rehearing request in which the conservation groups asserted that it also rushed through its decision to permit a pipeline that we don't need." The 4th Circuit last week vacated two permits issued for the project by the U.S. Fish and Wildlife Service and the National Park Service.

GREENS FILE FOIA SUIT: Environmental group Friends of the Earth filed a lawsuit Thursday against the Interior Department for lack of response to a Freedom of Information Act request. The lawsuit seeks to compel DOI to produce documents related to senior members of the department and the industries they regulate. The suit points to David Bernhardt's work as a lawyer and lobbyist for oil and gas companies and Vincent DeVito's time working as an energy industry representative. Friends of the Earth is being represented by the law firm Meyer Glitzenstein & Eubanks LLP.

AD-ING IT UP: Ahead of Wyoming's gubernatorial primaries Tuesday, a partnership between the Wyoming Wildlife Federation and Rocky Mountain Farmers Union, dubbed the Wyoming Conservation Legacy, will launch a five-figure ad campaign asking candidates to support conservation. The campaign will begin on Saturday and run through Aug. 21 with full-page print ads in the Casper Star Tribune and the Wyoming Tribune Eagle, separate radio buys on Wyoming Public Media programs, and digital ads across the state. See the ads here.

MAIL CALL! ON THE FARM: The National Biodiesel Board sent a letter to farm bill conference committee lawmakers reiterating its support for the inclusion of biodiesel programs in the five-year bill.

STAR-STUDDER SUMMIT: Attendees of the Global Climate Action Summit in San Francisco in September will hear from former White House officials, including former Vice President Al Gore and Secretary of State John Kerry. The summit announced Thursday night that new delegates will join the event, including Executive Secretary of the United Nations Framework Convention on Climate Change Patricia Espinosa and U.N. Special Envoy for Climate Action Michael Bloomberg. Actor Alec Baldwin and chimpanzee expert Jane Goodall will also attend.

GO NUCLEAR: The American Nuclear Society this week launched a nuclear science educational program for middle schoolers that covers topics like fission and fusion, and detecting radiation. The "Navigating Nuclear:"

Energizing Our World" program is aligned with the Next Generation Science Standards framework, which provides an evidence-based foundation for scientific research.

MOVER, SHAKERS: Jack Cramton, policy adviser for Sen. Bill Cassidy (R-La.), will start Monday as a legislative affairs adviser at the Department of Energy's Congressional and Intergovernmental Affairs Office.

QUICK HITS

- "U.S. energy chief applauds Mexico's plan to end fuel imports," Reuters.
- "Trump's CO2 rule is coming, and industries wonder who's next," E&E News.
- "California fire risk won't abate until November, U.S. warns," Bloomberg.
- "Zinke said he would never sell public land. But Interior is considering it," The Washington Post.
- "Elon Musk confronts a fateful tweet and an 'excruciating' year," The New York Times.

THAT'S ALL FOR ME!

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Extended, & More News

ECOSWIRE | Vol. 20 No. 21

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ECOSWIRE

Friday, May 25, 2018

Vol. 20 No. 21

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U.S. EPA Holds National Leadership Summit on PFAS

U.S. EPA convened its Per- and Poly-fluoroalkyl Substances (PFAS) [National Leadership Summit](#) this week in Washington, DC. The Summit brought together over 200 representatives from 40 states, tribes, and territories, 20 federal agencies, Congressional offices, state associations, industry groups, and non-governmental organizations to share information about efforts to identify and characterize PFAS, brainstorm near-term actions to mitigate its challenges, and discuss risk communication strategies to address public concerns of contamination.

The first day of the Summit, open to all participants, specifically brought to light the importance of finding near-term solutions in the absence of a federally-enforceable standard for PFAS analytes such as PFOA and PFOS. Highlights included presentations

from ECOS members Craig Butler (OH) and Heidi Grether (MI), as well as an address from EPA Administrator Scott Pruitt, who outlined the agency's four-step action plan. The plan is:

- To evaluate the need for a maximum contaminant level for PFOA and PFOS by working through regulatory determinations of the Safe Drinking Water Act;
- To explore the designation of PFOA and PFOS as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA);
- To develop groundwater and contaminated site cleanup goals for PFOA and PFOS; and
- To generate toxicity values for GenX and PFBS.

The second day of the Summit was open only to state and federal participants. In small group dialogue, state and federal partners discussed how they can collaborate to address some identified including standards, methodologies, and risk communication.

This summer, EPA will travel to states and tribal lands with communities impacted by PFAS to hear directly from the public on how the agency can help states and local officials address this issue. EPA plans to use information from the Summit, community engagements, and [public comment](#) to develop a PFAS Management Plan that will be released later this year.

ECOS will distribute to states detailed notes of the Summit, and will keep states informed of its efforts to address concerns of PFAS. [Longworth]

Comment Period for Science Transparency Rule Extended

Public Hearing Scheduled

Thursday, U.S. EPA announced the extension to **August 17, 2018** of the comment period for the proposed rule, "[Strengthening Transparency in Regulatory Science](#)". When the

proposed rule was initially announced, comments were due by May 30, 2018. Comments should be submitted to www.regulations.gov under [Docket ID No. EPA-HQ-OA-2018-0259](#).

EPA will hold a public hearing on the proposed rule on **July 17, 2018** in Washington, DC. The hearing will allow interested parties to present data, views, and arguments regarding the proposal. To provide oral testimony at the hearing, register by **July 15** [here](#). [Hanson]

Register Now for ECOS Silver Anniversary Fall Meeting in Vermont

Registration is open for the August 27-30 Silver Anniversary Fall Meeting in Stowe, Vermont. With a theme of *25 Years of Progress*, the meeting will be keynoted by ECOS Founding Executive Director Robbie Roberts and current Executive Director Sam Sankar, Vermont Governor Phil Scott, and Green Mountain Power President & CEO Mary Powell.

The gathering will showcase an array of environmental successes and lessons learned over the past quarter century. Planned roundtables are: *Earth, Sea, and Sky – Taking Stock of 25 Years of Progress*; *Greening Our States to Bring in the Green – Environmental Improvement as a Driver of Economic Development*; and *Applying Past Lessons to PFAS and Other Emerging Challenges*. Also planned are a point-counterpoint on acceptable science, a mini session on social media, and a group problem-solving session. And sure to be a highlight are video presentations by ECOS members along with live voting for the 2018 State Program Innovation Awards (see next story).

ECOS members will hold closed sessions with U.S. EPA leadership to discuss Cooperative Federalism 2.0 progress and PFAS. In addition, the Cooperative Federalism Oversight Workgroups, Shale Gas Caucus, Federal Facilities Forum, Data Management Workgroup, Environmental Research Institute of the States, and Executive Committee will meet. Networking opportunities include an ice cream icebreaker, an ECOS anniversary trivia contest, a Taste of Vermont reception, and a 25th Anniversary Gala & Awards Ceremony.

Register by **July 12** to receive the early bird registration rate, and reserve a hotel room without delay at Stowe Mountain Lodge!

See the draft agenda, registration, and hotel details [here](#). For agenda and sponsorship questions, contact [Lia Parisien](#) or [MC Murphy](#). For registration questions, contact [Sarah Grace Longworth](#) of ECOS. For hotel questions, contact [Megan Swanson](#) of ECOS. [Parisien]

Reminder: ECOS Asks States to Submit an Innovation Videos by July 12

In honor of the 25th anniversary of ECOS, the association is changing up the process for selecting recipients of its annual State Program Innovation Awards bestowed at the Fall Meeting. This year's nominations will be presented via member video and selected through a live vote by all attendees.

ECOS hopes to receive one nomination video from each state. Each submission should contain: the name of your program; an overview of your innovative program or approach; and results to date. Be as creative with the video as you'd like. You are welcome to report from the field, add video feed and music or sound effects, and involve your staff.

We only ask that the ECOS member appear at least briefly on camera to describe the innovation, limit the video to between 90 seconds and two minutes, and submit just one video on one innovation. To ensure a video quality, shoot in HD (720p minimum) with a horizontal frame; use a tripod for stability; ensure clear lighting and high-quality audio; and avoid reading from a paper with your head tilted downward.

Please send your submission to [Nia Duke](#) of ECOS by **July 12** and contact her with any questions. Thanks in advance for your participation! [Parisien]

ERIS, ORD Meet to Continue Cooperative Federalism Work

This week, ERIS Board members and ECOS Vice President Becky Keogh met with U.S. EPA Office of Research and Development (ORD) leadership and staff at EPA's lab in Gulf Breeze, Florida to discuss recent accomplishments and plan future work. ERIS and ORD have worked for several years to improve the two-way flow of information between states and EPA around science research. As identified in [*Cooperative Federalism 2.0*](#), EPA conducts important research that most states do not have the capacity to replicate or replace.

In response to ERIS requests on behalf of the states for a clearinghouse of ORD research products, ORD has redesigned their [*Science Inventory*](#). Based on a demonstration at this week's meeting, the ERIS Board is excited for states to use the new version of the Inventory.

Meeting attendees also discussed ongoing outreach by ORD to the states through efforts such as regional gatherings of states at ORD labs, monthly webinars, and including state scientists in ORD networking events. Gathering state research needs and getting them incorporated into EPA's research plans was another topic addressed. [Hanson]

Check Out Last Week's Most-Read *ECOSWIRE* Story

Last week, ECOS staff were treated to a musical performance by Mike Morris of the Wyoming Department of Environmental Quality's Air Quality Division. While the *Hamilton*-inspired rap on air regulation is not yet on YouTube, you can check out last week's [most-read article](#) to learn more. [Longworth]

State News You Can Use

[Alabama Prepares for Annual Groundwater Conference](#)

[Pennsylvania Accepting Applications for First 'Driving PA Forward' Grants](#)

[West Virginia Governor Signs Executive Order on Permit Review](#)

[Wyoming Opens Carbon Capture Integrated Test Center](#)

ITRC

[Interstate Technology and Regulatory Council](#)

ITRC Provides Trainings on Fractured Rock and Petroleum Vapor Intrusion

Last week, the Interstate Technology and Regulatory Council (ITRC) partnered with the Missouri Waste Control Coalition to hold a one-day seminar on Characterization and Remediation of Fractured Rock. Close to 115 participants attended the Kansas City, MO training, bringing together stakeholders from across the country!

ITRC is also hosting a 2-day classroom training on Petroleum Vapor Intrusion: Fundamentals of Screening, Investigation, and Management in Seattle, Washington on **October 10 - 11**. Learn more and register here. [Olonoff]

Career Opportunities

New Hampshire Department of Environmental Services

The New Hampshire Department of Environmental Services (DES) is hiring a Director for its Water Division. This individual is expected to lead the largest division of the DES by developing and advocating for public policy and regulatory objectives, providing oversight of planning and budgets, and representing DES at the state and federal levels. For a detailed description and information on how to apply, see here. [Longworth]

Upcoming Events

ECOS Calls

SMM Workgroup

The next ECOS Sustainable Materials Management Workgroup call will take place on **May 29 at 3-4 p.m. Eastern**. The call will cover different perspectives on the regulation and beneficial use of coal combustion residuals.

An agenda with dial-in information will be sent prior to the call. For more information about the call or to join the workgroup, email [Connor MacCartney](#) of ECOS.

Webinars

ECHO: How Do I Search For ... ??

States are invited to join U.S. EPA for its next Enforcement and Compliance History Online (ECHO) webinar on **June 12 at 1:30 - 2:30 p.m. Eastern**. This webinar will provide an overview of the data in ECHO and guide attendees through the site to answer environmental enforcement and compliance questions. The webinar will consist of short, step-by-step demonstrations geared toward both new and experienced users. [ECHO Facility Search](#) and other features will be demonstrated to answer questions such as:

- How do I search for a specific facility?
- How do I search for facilities in my community?
- How do I search for facilities releasing a pollutant?

Please [register](#) to attend the webinar. If you are unavailable at that time, it will be recorded and posted on the [ECHO Training page](#). For more information, contact [Rebecca Kane](#).
[Graves]

Save the Date: HABs and PFAS Risk Communication Webinars

ECOS and the Association of State and Territorial Health Officials (ASTHO) will host two webinars in June to highlight state-level risk communication of waterborne contaminants.

June 14 at 2 p.m. Eastern: Per- and Polyfluoroalkyl Substances (PFAS) ([Register here](#))

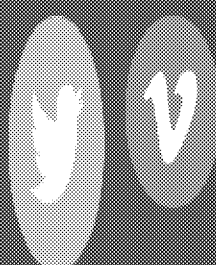
June 21 at 2 p.m. Eastern: Harmful Algal Blooms (HABs) ([Register here](#))

In early 2018, ECOS and ASTHO interviewed health and environmental agency staff from 13 states regarding their risk communication strategies and lessons learned for either PFAS contamination or HABs. Results were compiled into brief case studies that outline the states' overall efforts, risk communication efforts, relevant resources, key messages for the public, and challenges in the states' programs or communications. The webinars will provide key findings from the case studies and offer potential considerations to others seeking to implement or improve their risk communication practices. [Longworth]

U.S. EPA on Environmental Sampling and Analytical Methods

U.S. EPA will host its monthly Tools and Resources Webinar on **June 20 at 3 - 4 p.m.**

Eastern. The topic is [Environmental Sampling and Analytical Methods](#) (ESAM), a suite of online tools that support the environmental characterization process for chemical, radiochemical, biotoxin, and pathogen contamination incidents. This webinar will highlight the functionality of ESAM's tools and include case studies and real world examples, including the recent ricin incident response in Colorado. To register, go [here](#). [Longworth]



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Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 5/16/2018 12:25:09 PM
To: Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]; Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]
Subject: Fwd: Hearing help
Attachments: Transparency Side-by-Side & NAAQS Memo TPs 5-15-18.docx; ATT00001.htm

Deliberative Process / Ex. 5

Begin forwarded message:

From: "Woods, Clint" <woods.clint@epa.gov>
Date: May 15, 2018 at 11:49:17 AM EDT
To: "Greaves, Holly" <greaves.holly@epa.gov>
Cc: "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>, "Dominguez, Alexander" <dominguez.alexander@epa.gov>, "Hanson, Paige (Catherine)" <hanson.catherine@epa.gov>
Subject: RE: Hearing help

Holly,

Deliberative Process / Ex. 5

Clint Woods
Deputy Assistant Administrator
Office of Air and Radiation, U.S. EPA
202.564.6562

-----Original Message-----

From: Woods, Clint
Sent: Tuesday, May 15, 2018 10:14 AM
To: Greaves, Holly <greaves.holly@epa.gov>
Cc: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>; Hanson, Paige (Catherine) <hanson.catherine@epa.gov>
Subject: Re: Hearing help

Will do - Thanks!

On May 15, 2018, at 10:09 AM, Greaves, Holly <greaves.holly@epa.gov> wrote:

Clint,

Deliberative Process / Ex. 5

Sent from my iPhone

Message

From: Abboud, Michael [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B6F5AF791A1842F1ADCC088CBF9ED3CE-ABBOUD, MIC]
Sent: 8/16/2018 7:29:22 PM
To: Abboud, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6f5af791a1842f1adcc088cbf9ed3ce-Abboud, Mic]; adm15.arwheeler.email [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6f061a85b2e14828934c1a85cc4d5122-adm15.arwhe]; Beach, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6b124299bb6f46a39aa5d84519f25d5d-Beach, Chri]; Bennett, Tate [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1fa92542f7ca4d01973b18b2f11b9141-Bennett, El]; Block, Molly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=60d0c681a16441a0b4fa16aa2dd4b9c5-Block, Moll]; Bodine, Susan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8c2cc6086fcc44c3be6b5d32b262d983-Bodine, Sus]; Cory, Preston (Katherine) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bfd80b15f6d04a3ba11fc8ca3c85bc50-Cory, Kathe]; Falvo, Nicholas [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=424ac90ea7d8494a93209d14d37f2946-Falvo, Nich]; Frye, Tony (Robert) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=58c08abdfc1b4129a10456b78e6fc2e1-Frye, Rober]; Gordon, Stephen [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7c8fb4d82bff4eec98f5c5d00a47f554-Gordon, Ste]; Grantham, Nancy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=12a3c2ed7158417fb0bb1b1b72a8cfb0-Grantham, Nancy]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Hanson, Paige (Catherine) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=95adc1b2ac3b40ab9dc591801d594df8-Hanson, Cat]; Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]; Konkus, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=555471b2baa6419e8e141696f4577062-Konkus, Joh]; Kunding, Kelly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e3c9a5d16e2244079e222f342bf9992f-Kunding,]; Leopold, Matt (OGC) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4e5cdf09a3924dada6d322c6794cc4fa-Leopold, Ma]; Letendre, Daisy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b691cccca6264ae09df7054c7f1019cb-Letendre, D]; Lyons, Troy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=15e4881c95044ab49c6c35a0f5eef67e-Lyons, Troy]; Molina, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d19c1d68da1a4587866e1850f22a6ae5-Molina, Mic]; Morgan, Ashley [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4acef44653d440e3baab09958ffc24ea-Morgan, Ash]; Palich, Christian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=330ad62e158d43af93fcbbece930d21a-Palich, Chr]; Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]; Rodrick, Christian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6515dbe46dae466da53c8a3aa3be8cc2-Rodrick, Ch]; Ross, David P [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=119cd8b52dd14305a84863124ad6d8a6-Ross, David]; Shimmin, Kaitlyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=becb3f33f9a14acd8112d898cc7853c6-Shimmin, Ka]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group

(FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]

Subject: EPA News Highlights 8.16.18

Attachments: EPA News Highlights 8.16.18.docx

EPA News Highlights: 8.16.18

E&E News: Judge revives WOTUS in 26 states

A federal judge in South Carolina has issued a nationwide injunction on the Trump administration's delay of the Clean Water Rule. The decision in the U.S. District Court for the District of South Carolina means the Clean Water Rule is now the law of the land in 26 states where district court judges have not stayed the regulation.

CNN: 'What did we do?' Families anxious about chemicals found in tap water

It's been about three weeks since Tammy Cooper last drank water from her tap. That's when she saw a warning on Facebook for residents of her small Western Michigan town to stop drinking the water. In Michigan, water main breaks aren't unusual, although they're more common in winter. It didn't immediately strike Cooper as out of the ordinary to not be able to drink the water. But the Facebook message made no mention of the run-of-the-mill breaks or chloroform warnings; rather, the city's July 26 post said, "We have just been informed this afternoon by the [Michigan Department of Environmental Quality] that the PFAS level in a City well is 1400 ppt. The limit being 70 ppt."

Washington Examiner: With a quarter million comments in, EPA set to move on contentious 'secret science' rule

The Environmental Protection Agency is set to take a big step forward Thursday toward implementing a contentious "secret science" rule, a move that critics fear will undermine the scientific process in favor of cherry-picking research that supports specific outcomes. The "Strengthening Transparency in Regulatory Science" rulemaking, as it is formally titled, would require EPA's scientific studies to be independently verified through a peer-reviewed process outside the agency. It wouldn't address any one issue or regulation, but rather would undergird the science behind much of what the agency does.

E&E News: EPA wanted its logo removed from the controversial rollback

EPA is the harsh teacher, and the Transportation Department is the struggling student. That's the dynamic at play in regulatory comments submitted this week on the Trump administration's proposal to weaken Obama-era clean car rules. In dozens of instances throughout the document, EPA career staffers criticize DOT political appointees for making faulty assumptions in order to justify the rollback. Chief among their concerns is that freezing the car rules could mean more deaths from vehicle crashes — not fewer, as DOT claims.

Politico: The key to Trump's climate reversal? New math

The Trump administration's attempt to reverse Barack Obama's most sweeping climate regulation rests on a legally risky strategy — redoing the calculations of how much the rule would cost and who would benefit. The EPA's proposed replacement is expected to downplay the money that people and businesses would save from using less electricity, a key feature of the Obama-era greenhouse rule for power plants. People tracking the issue also expect that the agency will count only a fraction of the improvements in public health from reduced smog and soot pollution, and won't consider any benefits from slowing climate change outside the U.S.

E&E News: Lead concerns drive record demand for EPA loans

Demand for EPA's low-interest loans for water infrastructure improvements has hit a record high, the agency said. EPA received 61 letters of interest from municipalities requesting \$9.1 billion in loans from the Water Infrastructure Finance and Innovation Act program. The request is nearly double the agency's lending capacity for 2018, which Office of Water head David Ross said demonstrates "the critical need for investment in our nation's water infrastructure and strong support for EPA's Water Infrastructure Finance and Innovation Act program."

National News Highlights: 8.16.18

The New York Times: Special Report: Children Poisoned by Lead on U.S. Army Bases as Hazards Ignored

FORT BENNING, Georgia — Army Colonel J. Cale Brown put his life on the line in two tours of duty in Afghanistan, earning a pair of Bronze Stars for his service. In between those deployments, Brown received orders to report to Fort Benning, the sprawling Georgia base that proudly describes itself as the century-old home of the U.S. infantry. He was pleased. His wife, Darlena, was pregnant with their second child, and the Browns owned a home in the area. Their 10-month-old son, John Cale Jr, was a precocious baby, babbling a dozen words and exploring solid foods. Cale's duties as a battalion commander required him to live on base. So instead of moving into their own house, in 2011 the Browns rented a place inside Fort Benning. The 80-year-old white stucco home had hosted generations of officers.

The Washington Post: Numerous children have been poisoned by lead in homes approved by D.C. housing inspectors

She was giving Alonzo, then 3, a bath in a tub that her landlord had just painted to pass a housing inspection. She turned to find a washcloth, and when she swiveled back, she found the boy with bits of peeling paint in his mouth. She tried get it out, but it was too late. The lead tests came back positive: Alonzo had more than double what the government defines as "elevated," and he hasn't been the same since. Between March 2013 and March 2018, at least 41 families discovered that their homes, subsidized by a housing voucher and approved by city inspectors, contained lead contaminants, according to a tabulation requested by The Washington Post through the Freedom of Information Act.

E&E News

<https://www.eenews.net/greenwire/stories/1060094313>

Judge revives WOTUS in 26 states

Ariel Wittenberg, 8/16/18

A federal judge in South Carolina has issued a nationwide injunction on the Trump administration's delay of the Clean Water Rule.

The decision in the U.S. District Court for the District of South Carolina means the Clean Water Rule is now the law of the land in 26 states where district court judges have not stayed the regulation.

The Trump administration finalized its delay of the Clean Water Rule, also known as Waters of the U.S., or WOTUS, rule in February. The regulation redefined which wetlands and small waterways are covered by the Clean Water Act.

Green groups, including the Southern Environmental Law Center, and states immediately sued the administration, arguing it rushed through the rulemaking.

Ruling in the SELC's case, Judge David Norton found that the Trump administration violated the Administrative Procedure Act in proposing and finalizing the rule.

CNN

<https://www.cnn.com/2018/08/16/health/tap-water-crisis-toxic-michigan-pfoa-pfas/index.html>

'What did we do?' Families anxious about chemicals found in tap water

By Nadia Kounang, 8/16/18

It's been about three weeks since Tammy Cooper last drank water from her tap. That's when she saw a warning on Facebook for residents of her small Western Michigan town to stop drinking the water.

In Michigan, water main breaks aren't unusual, although they're more common in winter. It didn't immediately strike Cooper as out of the ordinary to not be able to drink the water.

But the Facebook message made no mention of the run-of-the-mill breaks or chloroform warnings; rather, the city's July 26 post said, "We have just been informed this afternoon by the [Michigan Department of Environmental Quality] that the PFAS level in a City well is 1400 ppt. The limit being 70 ppt."

It advised using bottled water for cooking, drinking and making baby formula.

"I immediately felt really sick," Cooper said.

PFAS, or per- and polyfluoroalkyl substances, are a family of more than 4,000 synthetic chemicals that degrade very slowly, if at all, in the environment. Some of the best-known chemicals are PFOS, PFOA and GenX.

It's not the first time Michigan has dealt with toxic tap water; the legacy of Flint is not far behind. But unlike in the Flint lead crisis, it's unknown how long the water in Parchment has been contaminated with PFAS.

Now, all Cooper could see were toxins all over her house, poisoning her nearly 3-year-old daughter, Jillian, who has lived in Parchment most of her life.

"You look around and you have sippy cups around," she said. Every cup of water -- in fact, anything using the water -- became suspect.

A persistent problem

The chemicals have been used for decades on military bases and in industrial areas in the manufacturing of thousands of consumer items including food packaging materials, water-resistant fabrics, nonstick cooking pans and firefighting foams.

"They're extremely strong, and they are extremely persistent, and that's what makes them so good for nonstick, waterproof and stain-repellant products," said Tom Bruton, a scientist with the Green Science Policy Institute in Berkeley, California.

The chemicals are no longer manufactured in the United States. In 2002, 3M, the primary US manufacturer of PFOS, voluntarily phased out production of the chemical. In 2006, eight major companies in the PFAS industry agreed to stop production of PFOA and PFOA-related chemicals by 2015.

But they can still be found all around us, including in the water.

"I think that people should be concerned about the amount of PFOA and PFOS that is in our environment," Susan M. Pinney, a professor in the Department of Environmental Health at the University of Cincinnati, wrote in an email.

"These are chemicals with long half-lives," meaning they can persist in the environment as well as the body.

According to the federal Agency for Toxic Substances and Disease Registry, they can stay in the body two to nine years. "Exposure in utero may have the greatest effect on developing children ... and effects may last into adulthood," Pinney said, adding that the research is early and so is not definitive.

According to the US Environmental Protection Agency, PFAS exposure has been linked to low birth weight, immunological disorders, cancer and thyroid hormone disruption.

And that is what exactly worries Cooper. She can't help but wonder whether the more than two years her family has lived in Parchment have been the root of their health issues.

"You just start thinking, 'well, we were sick a lot,' " she said.

Is it the water? Could it be breast milk?

Cooper and her husband David prioritize healthy living: They buy organic food; they wash their hands often; they diligently use laundry detergent "free and clear" of unnecessary chemicals; she breastfed her daughter for nearly 3 years. So could there be a connection to the water? After all, her thyroid hormone levels went down after her pregnancy. "It causes all these questions," she said.

Her biggest concern is Jillian. She was small, measuring in the 10th percentile for weight when they moved to Parchment when she was 6 months old. A year later, she had dropped below the 1st percentile in weight. After Cooper focused on feeding her a higher-fat and -protein diet, Jillian's weight is now in the 4th percentile.

"Is it the water?" Cooper wonders. Could it have been her breast milk? "She's nursed the entire duration that we've lived here. Everything that I've read, if you're nursing a child, you're passing it on to them."

PFOS and PFOA are found in blood and at lower levels in breast milk and umbilical cord blood, according to the Centers for Disease Control and Prevention's National Center for Environmental Health.

Cooper reached out to Jillian's pediatrician immediately after she read the Facebook announcement. Her doctor is concerned there could be a connection between the water and Jillian's growth, but there is little to nothing they can do about it now.

Since the city's announcement, Cooper decided to wean her daughter off breastfeeding. "I didn't want it to end this way. The last thing I want to remember is this special thing to be terminated because of this thing in the water," she said.

"Maybe I don't have any health issues from the water, but there's a major cost to your mental health, because you're in charge of this little person, and you feel like you're failing."

It's an anxiety that has occupied many other parents in the area, like Sara Dean.

Dean and her husband settled in Parchment three years ago after searching for a place to raise their children. They worried that their hometown of Chicago was too busy and potentially too violent of a place to raise a family. Parchment was beautiful. Neighbors spoke to one another. It seemed like a great place to start a family.

"We moved to a state associated with healthy living, pure water -- all the things with the Pure Michigan campaign -- and now we're like, what did we do? Would we have been better off starting a family in Chicago? At least the water is safe. There is a lot of questioning if we made the right decision three years ago."

A national problem

What's happening in Parchment isn't unique. The state of Michigan has confirmed at least 34 sites that have been contaminated with the chemicals. The state has been testing potential sites across Michigan since 2017.

On July 29, Michigan declared a state of emergency over Parchment's water. Although a specific source of the PFAS contamination has not been identified, the state Department of Environmental Quality has tested an area where PFAS might have been used. The state is also testing private residential tests to understand how far the contamination has spread.

The Environmental Working Group and Northwestern University have mapped 94 sites across the country affected by PFAS. The US Department of Defense has listed 36 contaminated military installations.

The EPA has called PFAS a national priority.

The contaminant became a political lightning rod this year when internal White House emails revealed that the Trump administration tried to withhold a US Department of Health and Human Services report on the chemicals' health risks because it could be a "potential public relations nightmare." The report, which was eventually released in June, found that the current EPA-recommended level was seven to 10 times higher than it should be.

In May, the agency held a national leadership summit on PFAS but blocked several media outlets, including CNN, from attending.

This summer, the EPA hosted "community engagement" events in Exeter, New Hampshire; Horsham, Pennsylvania; Colorado Springs, Colorado; and Fayetteville, North Carolina -- all communities affected by contaminated water.

At the event this week in Fayetteville, the agency addressed residents who have found elevated levels of the chemical GenX, a second-generation PFAS, in private drinking water wells.

John Pate, a resident of the area, told CNN affiliate WRAL that it's not just the immediate impact he's concerned about. "We could be still looking at, 20 years down the road, people coming up with things. We don't know," Pate said.

Bruton, of the Green Science Policy Institute, expects the number of affected communities to continue to grow. "The more we monitor water supplies, the more widespread we find these chemicals to be," he said.

Dean can't help but wonder what the impact of Parchment's water has been on her 2-year-old boy and the child with which she is 30 weeks pregnant. Like Jillian, Dean's son, Patrick, is on the smaller side, and her baby is measuring smaller in the womb.

"Do I make small babies," Dean questions, "or do I make small babies because I drink poisoned water?"

Within hours of hearing the news of the elevated levels, the city of Parchment quickly set up a bottled water distribution system. City officials are currently working to connect residents to the nearby Kalamazoo water system.

According to the CDC's National Center for Environmental Health, the major pathway for PFAS exposure is ingestion. Aside from contaminated drinking water, PFAS can be found around the house, Bruton said. It's in the dust from stain-treated carpets and upholstery, in some packaged foods and in foods cooked in nonstick pans.

Parchment's water advisory says it's safe to use the water for cleaning and washing purposes. Bathing is also fine because absorption of PFAS through the skin is slow and insignificant.

But when Dean takes a dish out of the dishwasher, she will run bottled water over it "for peace of mind." Dean and her husband have also installed a reverse-osmosis water filter in their home. Reverse osmosis filters certified by NSF International can reduce PFAS levels to below levels set by the EPA.

It's something Don Rome is also considering. It's well worth the cost to protect his wife, their 13-year-old daughter and 17-year-old son, and their pets, he said.

"I'm not sure I'll be going back to drinking directly from the tap without filters. So there is some uncertainty there. It's all a new frontier," Rome said.

And when Rome swims in their pool or takes a shower, there's always some thought about it in the back of his mind. "You don't intend to drink the water, but it gets in your mouth. ... Things happen."

Rome has a lot of confidence in the city. He feels that officials have done a good job of communicating actions taken to keep residents safe, including the efforts to connect to the Kalamazoo system.

But there is no question in Rome's mind that the water has impacted all parts of the city.

Rome tracks real estate in Parchment in his job. He noticed the pace of home sales has slowed since the PFAS announcement.

"There has been a slowdown in interest and foot traffic," he said.

For Cooper, the impact of the PFAS contamination has been significant. Her house is being used as one of the city's testing sites. It has created a sense of distrust that wasn't there before.

"You backtrack on everything that you ever believed in, everything about your safety," she said.

"If you can't trust the government about water, what can you trust them about?"

Washington Examiner

<https://www.washingtonexaminer.com/policy/energy/with-a-quarter-million-comments-in-epa-set-to-move-on-contentious-secret-science-rule>

With a quarter million comments in, EPA set to move on contentious 'secret science' rule

By John Siciliano, 8/16/18

The Environmental Protection Agency is set to take a big step forward Thursday toward implementing a contentious "secret science" rule, a move that critics fear will undermine the scientific process in favor of cherry-picking research that supports specific outcomes.

The "Strengthening Transparency in Regulatory Science" rulemaking, as it is formally titled, would require EPA's scientific studies to be independently verified through a peer-reviewed process outside the agency. It wouldn't address any one issue or regulation, but rather would undergird the science behind much of what the agency does.

The rule would help the industry contain the cost of new regulation by giving them the ability to question the basis of new pollution standards, especially if the "public is likely to bear the cost of compliance" with those regulations, according to the EPA.

The deadline to receive input from the public on the rule closes at midnight, and already it has garnered nearly a quarter of a million comments.

The comment deadline was extended from May 30 to Aug. 16 due to increased interest in the rulemaking and the potential significant harm that critics say it will pose to the scientific integrity of the EPA.

The Natural Resources Defense Council, in its formal request to extend the comment period, said environmental groups' meetings to discuss the rule at the White House were canceled, while industry groups were given unabated access in the rule's early development stages.

"The exclusion of environmental groups from these preliminary discussions is cause for significant concern," wrote John Walke, the environmental group's clean air director. "In light of this imbalance, EPA should extend the comment deadline to ensure that the public is fairly represented in the rulemaking process."

However, tens of thousands of the comments arriving in the EPA's inbox are from private citizens, not major trade associations or environmental groups, arguing both for and against the regulation.

Most of the comments are not substantive and read more like tweets than formal comments on policy. "[C]ut the crap epa – showyourwork — no secrets!" reads one comment from a private citizen.

Climate change skeptics say the rule is critical to reining in the agency under the administration's broader deregulation agenda.

"Given the Environmental Protection Agency's constrained mission, flawed paradigm, political pressures to chase the impossible goal of zero risk, and evidence of actual corruption, we can have no confidence in any science it produces in justification of its regulations," the Heartland Institute said in its comments. The group argued that new guardrails for

EPA science are necessary because of the agency's lack of transparency and integrity and its "culture of disrespect for the scientific method and independent peer review."

Other comments raised more practical, economic concerns for increasing scientific oversight at the agency. The Sacramento-based construction company Delta submitted comments that detailed how the company was forced to close because of the EPA's use of a scientific study to form the basis of pollution rules.

"Facing bankruptcy of my 73 year family business due to the imposition that I must replace all of my previously owned and once legal diesel 'assets' with new, I closed my doors in June 2017," wrote Norman R. "Skip" Brown, owner of both Delta Construction Company, Inc. and Asphalt Consulting Services, LLC.

"My equipment was sold at auction and employees ranging to 40 years with me lost their jobs," Brown said. He sees merit in the science rule by giving industry a voice when a single study can mean life or death for a business. In his case, it was a 1995 study on the harmful effects of soot from diesel engines.

Larger industry trade associations like the American Petroleum Institute, the largest oil and natural gas industry association, see similar reasons for supporting the science rule, but appears to be walking a careful line on how far it thinks EPA should go in implementing the regulations.

In a preview of the group's opinion, Ted Steichen, API senior policy adviser, told the EPA at a public hearing last month that "[s]cience used when developing policy and regulations impacts all aspects of API member business," but that they are simultaneously "dedicated to continuous efforts to improve the compatibility of their operations with the environment."

The API supports the use of sound and transparent science in public policy making, said Steichen, outlining ways the EPA can ensure the science it uses is able to be reproduced by outside parties. His remarks were submitted to the EPA comment docket, but other more substantive comments are expected to also be submitted on Thursday. Meanwhile, environmental groups are pressuring the agency to withdraw the proposed regulations as an affront to science.

The Clean Air Task Force said it is "concerned about EPA's current attitude towards science," senior scientist David McCabe said at a public hearing. He said the Trump administration's recent approach to environmental rulemakings "show the Agency's disregard for objective information and the scientific process, and its move to rely on analysis that supports particular outcomes."

McCabe said this should be of "great concern for all Americans, whose health and welfare depend upon effective environmental regulation," according to the remarks submitted to EPA.

E&E News

<https://www.eenews.net/climatewire/2018/08/16/stories/1060094235>

EPA wanted its logo removed from the controversial rollback

By Maxine Joselow, 8/16/18

EPA is the harsh teacher, and the Transportation Department is the struggling student.

That's the dynamic at play in regulatory comments submitted this week on the Trump administration's proposal to weaken Obama-era clean car rules.

In dozens of instances throughout the document, EPA career staffers criticize DOT political appointees for making faulty assumptions in order to justify the rollback.

Chief among their concerns is that freezing the car rules could mean more deaths from vehicle crashes — not fewer, as DOT claims.

In another section, EPA chastises DOT for making an inaccurate comparison regarding the standards' effect on vehicle prices, saying, "These sentences are comparing apples to oranges."

EPA staffers also accuse DOT of misrepresenting the findings of researchers Mark Jacobsen and Arthur van Benthem, saying, "The comment about Jacobsen & Van Benthem's finding is the opposite of what they find."

EPA submitted the regulatory comments to the White House Office of Management and Budget in June. They were uploaded on Tuesday to the rulemaking's docket on regulations.gov.

The revelations came two weeks after the Trump administration signaled that it plans to freeze fuel economy standards at 2020 levels, meaning that new car models would travel on average about 30 mpg of gas rather than 36 mpg.

In the regulatory comments released this week, the phrase "EPA does not agree" appears 19 times.

For example, next to a DOT paragraph about how the rollback could encourage more sales of new vehicles, EPA career staff wrote: "EPA does not agree with this conclusion. It's also inconsistent with the argument, above, that consumers consider the lifetime of fuel economy in their purchase decisions."

Jeff Alson, a former staffer in EPA's Office of Transportation and Air Quality, said he heard from former colleagues that DOT political appointees manipulated the findings in their rush to finalize the proposal.

"These political folks had all the answers they wanted. They cooked the books," said Alson, who served as a senior engineer and policy adviser in the transportation office for 40 years before retiring three months ago.

EPA career staffers were shut out of the process by DOT political appointees, who refused to invite them to meetings for months, Alson said. EPA career staffers tried to signal to OMB that their concerns about DOT's technical analysis didn't make it into the final proposal, he said.

Indeed, EPA stated in separate regulatory comments, "This Preliminary [Regulatory Impact Analysis] is a work product of DOT and NHTSA, and was not authored by EPA. ... EPA's name and logo should be removed." The agency was referring to the National Highway Traffic Safety Administration.

EPA spokesman John Konkus pushed back on the notion that there was infighting between the agencies as they sought to craft the proposal.

"These emails are but a fraction of the robust dialogue that occurred during interagency deliberations for the proposed rule," Konkus said in an email to E&E News. "EPA is currently soliciting comments on eight different alternative standards and we look forward to reviewing any new data and information."

Alson said EPA's top political brass would have trouble defending the administration's car proposal if it's challenged in court.

"Right now there's this EPA leadership that chose to rubber-stamp the NHTSA analysis justifying weakening the greenhouse gas emission standards," he said. "And then there's EPA career staff who are the world's experts on greenhouse gas emission standards who were shut out. I assume any reasonable judge would say, 'Wow, EPA political leadership is proposing to weaken the standards, and they didn't even ask the career staff.'"

DOT and EPA have joint jurisdiction over the clean car rules. EPA is responsible for promulgating tailpipe greenhouse gas emissions standards with attention to public health and climate change. DOT is responsible for promulgating corporate average fuel economy standards, with a focus on driver safety.

Tension is bound to arise when two agencies are jointly responsible for one rulemaking, said Bill Reilly, who served as EPA administrator under President George H.W. Bush.

Reilly recalled working with the Coast Guard — then a division of DOT — in the aftermath of the 1989 Exxon Valdez oil spill.

After a tanker spilled 10.8 million gallons of oil into Alaska's Prince William Sound, Bush tasked Reilly and then-Transportation Secretary Sam Skinner with producing a report on the spill and future protection of the nation's harbors.

"I remember talking to Transportation Secretary Sam Skinner, and he later thanked me for my objections," Reilly said. "I didn't go public with my criticism of his report, but we certainly had it. That sort of negotiation is not uncommon, I suspect, when two agencies have jurisdiction."

Politico

<https://subscriber.politicopro.com/energy/article/2018/08/the-key-to-trumps-climate-reversal-new-math-740455>

The key to Trump's climate reversal? New math

By Alex Guillen and Emily Holden, 8/15/18

The Trump administration's attempt to reverse Barack Obama's most sweeping climate regulation rests on a legally risky strategy — redoing the calculations of how much the rule would cost and who would benefit.

The EPA's proposed replacement is expected to downplay the money that people and businesses would save from using less electricity, a key feature of the Obama-era greenhouse rule for power plants. People tracking the issue also expect that the agency will count only a fraction of the improvements in public health from reduced smog and soot pollution, and won't consider any benefits from slowing climate change outside the U.S.

The upshot: President Donald Trump's EPA will argue that the Obama administration's rule had more costs and fewer benefits than previously stated, a change to help improve the comparison when it unveils its own, much less ambitious power plant proposal as soon as next week.

The Obama administration had estimated that the benefits from its 2015 rule would outstrip the costs by \$26 billion to \$45 billion by 2030.

Supporters of the Obama version say those net benefits could be even higher now, because states are on track to meet the climate goals and the costs of clean energy have continued to plummet. And they warn that repealing the regulation could keep older, more expensive coal-fired power plants in operation, adding to consumers' costs.

The math could be crucial to the success or failure of a number of Trump rules. That could make the rollbacks legally vulnerable when environmental advocates and states sue to overturn Trump's action, critics of the new proposals say.

"They are cooking the books on technical analysis to try to justify preconceived conclusions that these regulations are bad," said David Doniger, the senior strategic director of the Natural Resources Defense Council's climate program who was influential in the Obama EPA's crafting of the original rule.

EPA did not respond to a request for comment on Wednesday.

Trump administration lawyers reviewing the replacement are already struggling with how to defend a rule that could cost electricity users money but would not do much to address climate change or air pollution, according to a person aware of conversations between the White House and the Justice Department. DOJ would be charged with defending the rule in court.

POLITICO has examined a portion of the agency's unpublished draft of the new rule, which would allow states to write their own modest regulations for coal plants or even let plant operators seek to opt out entirely, according to a source with knowledge of the broader proposal.

The proposed rewrite of the power plant rule is part of a pattern: Critics say similarly fuzzy math underlies other Trump administration proposals to reverse or stymie action on climate change, such as a recent plan by EPA and the Department of Transportation to halt a planned tightening of fuel efficiency standards for cars and trucks.

Sean Donahue, an environmental lawyer who has represented groups like the Environmental Defense Fund, said he would expect a court to be "very skeptical" of any effort that looks as though EPA is trying to evade its obligation to regulate greenhouse gases. But he conceded that will depend on the details of EPA's power plant proposal.

"If it were one or two technical judgments where there's a difference between this administration and the last one, or this administration and prior consistent practice, that would be one thing," Donahue said. "But it's many, many things all pointing the same way, all pointing toward rolling back greenhouse gas mitigation efforts."

Trump has repeatedly expressed doubts about man-made climate change, and much of his Cabinet shares a similar view. In contrast, the federal government's own scientific assessment finds that human-caused climate change will not only raise temperatures but also make extreme weather more dangerous and lift sea levels by one to four feet by the end of the century.

Kate Larsen, director of the economic research firm Rhodium Group, said the Trump administration's justifications for unraveling climate change policies are symptomatic of its broader governing principles.

"A decision we make today is narrowly focused on the impacts to myself and my immediate neighbor in the next week, but you're not taking into account impacts next year and the following year to yourself, your neighbor, the entire community," she said.

Environmental experts are also scrutinizing the auto rule proposal, released earlier this month, which would freeze the Obama administration's aggressive fuel economy standards after 2020 and dial back EPA greenhouse gas rules to match.

EPA and DOT's National Highway Traffic Safety Administration argued that the freeze would save billions of dollars in costs. Critics say the administration overestimated compliance costs of the Obama-era auto targets by as much as fourfold, which could significantly tip the cost-benefit analysis in their favor. Another claim that the Trump rollback would save more than 1,000 lives per year — yielding benefits of \$77 billion — has also drawn skepticism. On Tuesday, EPA released a June memo that showed agency staff criticizing a number of "unrealistic" aspects of NHTSA's modeling. They disagreed with the proposals fatality figures, with EPA staff estimating deaths would increase slightly under the freeze. And they thought the rule overestimated compliance costs and the time needed to recoup those costs in fuel savings, all factors that boosted benefits and lowered costs for the proposed freeze. Both EPA and NHTSA dismissed the memo as only one part of a complex review process.

The administration and industry groups have blasted the Obama administration's use of "co-benefits" — the benefits in improved health or reduced pollution that arise even when they're not the primary aim of a regulation. (One example: Cutting coal plants' carbon dioxide pollution under the power plant regulation wouldn't do much directly to improve people's health, but it would also reduce smog.) But Donahue argued that Trump's regulators sometimes lean on co-benefits to help build the case for their rollbacks.

For example, NHTSA's modeling credits changes in consumer behavior as the overwhelming factor behind all the lives that the Trump administration contends its auto rollback would save. The agencies argue that under the previous Obama rule, drivers would be more likely to remain in older, more dangerous cars than purchase more expensive, safer ones.

That "would seem to be a co-benefits argument, since the EPA doesn't have, and NHTSA doesn't have, the authority to regulate used cars," said Donahue, who called the paradox "sort of entertaining."

Counting co-benefits is a long-standing practice for federal regulators, but energy industry groups and Republican state officials grew incensed by the Obama administration's use of it to justify major regulations.

"The co-benefits thing has ballooned into the biggest scandal in environmental regulation," said the conservative Competitive Enterprise Institute's Myron Ebell, who led Trump's post-election transition team at EPA. "You get very small direct benefits, but you make up, essentially, a lot of co-benefits."

Still, he contended that EPA's withdrawal of Obama's power plant rule would eliminate a huge amount of costs in the coming years, saying Obama's regulation represented "just the first emissions cuts."

"There were going to be more beyond that if the Obama administration had been succeeded by the Clinton administration," Ebell said. He added: "By cutting it off in the way that they're doing, we're avoiding immense future costs."

E&E News

<https://www.eenews.net/greenwire/2018/08/16/stories/1060094303>

Lead concerns drive record demand for EPA loans

Ariel Wittenberg, 8/16/18

Demand for EPA's low-interest loans for water infrastructure improvements has hit a record high, the agency said.

EPA received 61 letters of interest from municipalities requesting \$9.1 billion in loans from the Water Infrastructure Finance and Innovation Act program.

The request is nearly double the agency's lending capacity for 2018, which Office of Water head David Ross said demonstrates "the critical need for investment in our nation's water infrastructure and strong support for EPA's Water Infrastructure Finance and Innovation Act program."

"EPA looks forward to reviewing the letters of interest we received as we advance the President's infrastructure agenda and help communities better protect public health and water quality," he said.

Established by Congress in 2014, WIFIA has been extremely popular among municipalities and lawmakers alike. This year, EPA received letters of interest from 24 states, the District of Columbia and Guam.

More than half of the proposed projects would either reduce exposure to lead in drinking water or update aging infrastructure, or both.

The New York Times

<https://www.nytimes.com/reuters/2018/08/16/us/16reuters-usa-military-housing-specialreport.html?ref=collection%2Fsectioncollection%2Freuters-news>

Special Report: Children Poisoned by Lead on U.S. Army Bases as Hazards Ignored

By Reuters, 8/16/18

FORT BENNING, Georgia — Army Colonel J. Cale Brown put his life on the line in two tours of duty in Afghanistan, earning a pair of Bronze Stars for his service. In between those deployments, Brown received orders to report to Fort Benning, the sprawling Georgia base that proudly describes itself as the century-old home of the U.S. infantry.

He was pleased. His wife, Darlena, was pregnant with their second child, and the Browns owned a home in the area. Their 10-month-old son, John Cale Jr, was a precocious baby, babbling a dozen words and exploring solid foods.

Cale's duties as a battalion commander required him to live on base. So instead of moving into their own house, in 2011 the Browns rented a place inside Fort Benning. The 80-year-old white stucco home had hosted generations of officers.

Like most family housing on U.S. bases today, the home wasn't owned and operated by the military. It was managed by Villages of Benning, a partnership between two private companies and the U.S. Army, whose website beckons families to "enjoy the luxuries of on-post living."

The symptoms began suddenly. At 18 months, JC would awake screaming. He began refusing food, stopped responding to his name and lost most of his words.

"He was disappearing into an isolated brain," Darlena recalls.

For nearly a year, doctors probed: Was it colic? Autism? Ear infections? Then, in late 2012, came a call from JC's pediatrician: He had high levels of lead in his blood. When Darlena told Villages of Benning of his poisoning, contractors ordered home testing.

The results: At least 113 spots in the home had lead paint, including several peeling or crumbling patches, requiring \$26,150 in lead abatement. Villages of Benning moved the Browns into another old house next door.

The heavy metal had stunted JC's brain, medical records reviewed by Reuters show. At age two, he was diagnosed with a developmental disorder caused by lead. Now eight, JC has undergone years of costly therapy. He excels at reading and swimming, but still struggles with speech, hyperactivity and social interactions.

When a reporter met JC last year, the boy looked away and repeated a phrase from a children's TV show: "Max, what did you do? Max, what did you do?" Later, JC sat outside and watched sunlight gliding through his fingers, seemingly lost in reverie.

"I'm sad that my son lost his future," Darlena said. "It was because of where we were that this happened."

This wasn't supposed to happen to families like the Browns, who move often between posts for the U.S. armed forces, trusting base landlords and military brass to provide safe shelter for children and spouses.

Cale Brown, a 46-year-old active-duty colonel, now works on detail to the White House on the National Security Council, helping to protect the country from complex threats like North Korea's nuclear program.

For years, he has told the Army of failures to defend children on U.S. bases from lead poisoning, a preventable household health hazard. Ingesting the heavy metal can severely affect mental and physical development, especially in children, causing brain damage and other potentially lifelong health impacts. But poisoning is avoidable if old homes containing lead paint are properly monitored and maintained.

"There is no acceptable number of children that the Army can allow to be so egregiously hurt," Cale wrote in a letter to the Army Office of the Inspector General last year, describing the poisoning of JC and hundreds of other military kids he was aware of. He hasn't received a response to the letter's concerns.

The Browns' story and others, told publicly for the first time here, reveal a toxic scourge inside homes on military bases. Previously undisclosed military and state health records, and testing by Reuters for lead in soldiers' homes, show problems at some of America's largest military installations.

Federal law defines lead-based paint as containing 0.5 percent or more lead by weight. Sales have been banned since 1978. But many older homes still contain lead paint, which is particularly dangerous when it peels, chips or turns to dust – easy for kids to swallow or breathe in.

Reuters tested five homes at Benning, using a methodology designed with a Columbia University geochemist. All five contained hazardous levels of deteriorating lead paint within reach of children, in one case exceeding the federal threshold by a factor of 58.

Testing turned up problems elsewhere as well. At West Point, New York, home of the United States Military Academy, paint chips falling from a family's front door contained lead at 19 times the federal threshold.

At Kentucky's Fort Knox, whose vaults hold much of America's gold reserves, Reuters found paint peeling from a covered porch where small kids play. It contained 50 percent lead by weight, or 100 times the threshold.

The Army requires

http://www.campbell.army.mil/Installation/Environmental_Handbook/Documents/LBPMManagementPlan_DEC2014.pdf abatement when certified testing identifies deteriorating lead paint in base homes. Yet it also "discourages" this type of lead-paint inspection, in part because lead abatement can be costly.

These homes put military kids at risk. Reuters obtained medical data from the Army showing that at least 31 small children tested high for lead at a Fort Benning hospital over a recent six-year period. All tested above the U.S. Centers for Disease Control and Prevention's threshold for elevated lead levels – 5 micrograms per deciliter of blood. Any child who tests high warrants a public health response, the CDC says.

Army data from other clinics showed at least 77 more high blood-lead tests for children at Fort Polk in Louisiana, Fort Riley in Kansas, and Fort Hood and Fort Bliss in Texas.

From 2011 to 2016, Brooke Army Medical Center in Texas – which processes blood tests from many bases nationwide – registered more than 1,050 small children who tested above the CDC's elevated threshold, the center's records show.

The thousand-plus blood results, obtained from Army bases through Freedom of Information Act requests, provide only a glimpse of the problem. A \$10 finger-prick test can spot a child exposed to lead, yet millions of U.S. children are never screened. Just how many are tested across all military bases isn't clear. But for those who are, the results often go unreported to state public health agencies that attend to poisoned kids.

Reuters found that Fort Benning in Georgia was not reporting lead results for small children tested at the base's hospital. Nor was Brooke Army Medical Center in Texas. Georgia and Texas, like most states, require the reporting of all these lead testing results to state health authorities.

The Army declined to comment on the lead hazards Reuters detected at base homes. Asked about the broader findings of this article, a spokeswoman said the Army conducts yearly visits to ensure housing is safe and follows the recommendations of the CDC and the American Academy of Pediatrics when responding to children with high lead tests. Housing managers classify resident complaints about lead paint as "urgent" and seek to respond within hours, she said.

"We are committed to providing a safe and secure environment on all of our installations," Army spokeswoman Colonel Kathleen Turner said in a written statement, "and to providing the highest quality of care to our service members, their families, and all those entrusted to our care."

The two contractors that operate Villages of Benning – Clark Realty Capital and Michaels Management Services – didn't respond to requests for comment.

The military's lapses in lead safeguards leave legions of kids at risk. Private contractors house some 700,000 Americans at more than 100 military installations nationwide, including an estimated 100,000 children ages 0 through 5.

Benning alone is home to some 2,000 small children. Of its 4,001 family homes, 2,274 "have lead-based paint present in them," according to a Villages of Benning memo from November 2017. The mere presence of lead paint doesn't make a home dangerous, but when the paint deteriorates, it is a "hazard and needs immediate attention," the U.S. Environmental Protection Agency says.

"These are families making sacrifices by serving," said Dr. Bruce Lanphear, a toxicity researcher at Simon Fraser University in British Columbia who reviewed Reuters' findings. "It appears that lead poisoning is sometimes the cost of their loyalty to the military."

Reuters began examining lead poisoning at U.S. bases last year, and in April began seeking interviews with Army officials. The Army declined to talk at the time.

After Reuters informed the Army and families that reporters had found hazards on bases, Fort Benning's garrison commander, Colonel Clinton W. Cox, wrote to residents that "unknown persons" were seeking to test homes for lead and advised them not to cooperate. In a June 30 "Resident Safety Alert," Cox told families to call 911 or base security to report such "suspicious behavior."

Cox said he was unaware of who had done lead testing in base homes when he sent the letter. "What we're most concerned about is our residents' security," he said in a brief phone interview.

But behind the scenes, the Army also began quietly addressing some of the problems.

After reporters asked why it often wasn't informing state health departments about poisoned children, the Army overhauled its practices to comply with state laws. When Reuters found unsafe conditions at Fort Knox, contractors announced a neighborhood-wide lead abatement program. After reporters found the neurotoxin in a child's bedroom at Benning, base command approved the family's move to another home.

A HISTORY OF NEGLECT

For most military families, living on base is an option, not a requirement, though it can be enticing. The gated enclaves are considered safe havens that build esprit de corps. They offer support for spouses of deployed troops, access to military schools, lodging for low-income families. About 30 percent of service families live on bases.

By the 1990s, the U.S. stock of military family housing – nearly 300,000 homes in all service branches – was decaying and starved of funding. "Continuing to neglect these issues runs the risk of collapsing the force," the Department of Defense warned in a 1996 briefing document presented to a congressional sub-committee.

The same year, the military began privatizing its homes. The initiative was the largest-ever corporate takeover of federal housing. It was meant to rid bases of substandard accommodations and save taxpayers billions by having contractors foot the rebuilding bill. In return, contractors would enjoy a steady flow of rental income over 50-year leases.

The military knew hazards lurked in its housing. In 2005, the Army released an environmental study that said 75 percent of its 90,000 homes nationwide didn't meet its own standards of quality or safety. Of Benning, it said: "As homes deteriorate, the risk of children's being exposed to hazardous materials ... would increase."

Twenty years after privatization began, in 2016, a DOD Inspector General report found that poor maintenance and oversight left service families vulnerable to "pervasive" health and safety hazards.

An increase in Pentagon housing funds – \$133 million – was earmarked this fiscal year, largely for overseas bases, where the military still owns its housing. Meanwhile, in recent years the Defense Department has reduced the housing subsidies that fund upkeep of privatized homes on U.S. bases, leading to fewer maintenance staff, the Army has noted.

The age and condition of base homes vary, and lead hazards are hardly exclusive to military housing. A two-year Reuters investigation <https://www.reuters.com/investigates/special-report/usa-lead-newyork> identified more than 3,800 neighborhoods nationwide – mostly in civilian settings – with alarming levels of poisoning.

Military families can face special difficulties if they complain about hazards in their homes, however. They are taking on landlords who are in business with their employer. Among the 60 interviewed for this story, more than half expressed fear that being identified could hurt a military member's career.

But in private, some trade stories about unsafe homes. Darlena Brown helped create a private Facebook group with nearly 700 members. Many have shared photos of peeling paint, mold or other toxins at home and tales of unresponsive base landlords.

Reuters devised a plan to test for hazards in the homes and yards of some of these concerned families. Working with Columbia University scientists, reporters provided home lead testing to 11 families on seven bases. Eight homes had blatant hazards in children's play areas – visibly peeling patches of lead-based paint.

Deteriorating paint from these houses – in Georgia, Texas, New York and Kentucky – had "very high" or "extremely high" lead content that puts children at immediate risk, said Alexander van Geen, a research professor of geochemistry who oversaw the lab analysis at Columbia's Lamont Earth Observatory.

The true number of children exposed on bases is hidden by factors including the military's spotty blood-testing and lapses in reporting to civilian authorities.

To prevent further exposure, most state health departments track lead-poisoned children and mandate inspections in their homes.

Yet when Georgia health officials repeatedly sought test results from Benning, the base refused to share them, alluding to exemptions for federal facilities, state email records show. No such exemptions exist.

"They do not report to us," the head of Georgia's lead-poisoning prevention program, Christy Kuriatnyk, vented about Fort Benning in an internal email to colleagues last year. "I've tried to get them to voluntarily report but that went nowhere."

In April, Reuters presented the Army with evidence of its reporting lapses. In late July, the Army said it had "instituted new procedures to ensure that all reporting requirements are properly observed" nationwide.

'NOTHING TO WORRY ABOUT'

At Benning, private contractors took over the base's family housing in 2006. They pledged to demolish thousands of dilapidated homes and build almost 3,200 new ones within 10 years. Estimated cost: \$602 million. At the time, 99 percent of Benning homes predated the 1978 U.S. ban on lead paint.

The contractors were also required to maintain nearly 500 historic Benning homes, and agreed to control lead, asbestos, mold, basement flooding and other risks.

In 2011, a Villages of Benning agent took the Browns on a home walk-through before they moved in. Darlena expressed concern about lead paint.

"You have nothing to worry about, Mrs. Brown," she recalled being told. "We've never had any problem with lead."

The same year, Benning Martin Army Community Hospital recorded seven high lead results for small children, hospital records show. The hospital says it doesn't know whether children tested there lived on or off base.

After moving in, Darlena asked maintenance to fix paint chipping around windows, but was told by a supervisor that the crew couldn't work on historic windows, she said.

In 2012, JC and as many as five other children had high lead tests at Benning's hospital.

After JC was poisoned, Cale Brown pleaded with base leaders to enforce regular home inspections, test more kids and scrutinize contractors. "A few small changes could mean the difference between a child having life-altering developmental problems or being completely healthy," he wrote Benning's garrison command in December 2012.

"Bottom line, we will do everything necessary to make sure this is addressed thoroughly and quickly," Colonel Jeffrey Fletcher, the garrison commander at the time, responded in an email. Fletcher declined to comment.

The next year, 2013, Benning's hospital recorded seven more high lead-test results for children. One child had lead levels more than double JC's, hospital records show.

Villages of Benning began replacing some old leaded windows and garage doors around the base that year, but left others in place, state and Army records show.

STALKED BY LEAD, GOING TO COURT

Even after the Browns moved to another Benning home, JC wasn't safe.

In 2013, he began special education preschool classes at Benning's Dexter Elementary School. Months later, Darlena received a frightening note on Defense Department letterhead: Drinking water taps in JC's classroom had tested high for lead.

One had 2,200 parts per billion lead – 147 times an EPA safety threshold and higher than all but a few of the worst taps found during the recent water crisis in Flint, Michigan. It isn't clear how many students may have been exposed. Benning didn't require or recommend they get screened.

The Army said the contamination was limited to individual taps around the base and didn't affect the underlying water system. The tainted taps were shut, and parents who wanted testing for their children were given the option, the Army said.

In 2014, the Browns filed suit in Georgia federal court against Benning's housing contractors, alleging their negligence caused JC's poisoning and seeking compensation for his disability. The contractors denied any wrongdoing and contested the suit.

Cale deployed to Afghanistan the same year. There, he pushed for housing repairs at U.S. bases in a meeting that November with Katherine Hammack, the Army's top official in charge of military installations.

She seemed to favor bold action, Cale said: preventing small children from living in older base homes altogether. Cale said his follow-ups went unanswered.

Hammack, who left the Army last year, told Reuters she explored such a plan, but Army lawyers said it could be discriminatory against families with children. "It is up to the soldier to make a choice," she said.

Families who rent pre-1978 housing on bases are given lead disclosure forms before signing a lease, as required of all U.S. landlords by federal law, and can opt to live elsewhere, the Army said.

Two days before Christmas 2014, Darlena learned that JC's lead levels, which had declined over time, were rising again. Her younger son's levels were up, too, though below the CDC's elevated threshold. The agency says there is no safe level of lead in children's blood.

She removed the boys from their second Benning home that night. Nine time zones away, Cale boarded a chopper out of Forward Operating Base Gamberi in eastern Afghanistan. He was granted emergency home leave to help his family resettle.

The next year, in 2015, the Defense Department's Inspector General found that a Clark and Michaels partnership had failed to correct lead paint hazards in homes at Fort Belvoir in Virginia. The Army pledged to address the issue with contractors, IG records show.

At Benning, meanwhile, children had 14 more high lead tests.

DANGER ON RAINBOW AVENUE

Fort Benning's Rainbow Avenue seems a perfect spot for families, the yards of its 1920s homes filled with toys, American flags fluttering from front porches.

Behind this idyll, children face poisoning risks.

Since 2015, state lead inspectors have visited at least three of the 33 houses on the street in response to calls from worried residents, state environmental records show. "The homes all have high levels of lead," inspectors wrote in an internal memo last year.

In one Rainbow home, they found leaded dust at 93 times the EPA's hazard level.

In another, inspector William Spain of the state Environmental Protection Department visited a mother of three in 2016. He found paint chips throughout the home and later emailed colleagues: "Her youngest will be 5 in July and did not appear normal."

The mother had grown concerned after the mysterious deaths of family pets. But she hesitated when the state offered additional help, pleading with Spain not to conduct lead testing in the home or to speak with neighbors.

Spain, who has since retired, said in an interview that Benning families expressed concern that notifying outsiders might anger commanders and harm careers.

"Something became obvious to me as I worked there," he said. "You and your family cannot make trouble for base command."

State environmental records show that Jana Martin, another mother on the block, had a four-year-old son who suffered for months from severe vomiting and belly pain – common symptoms of lead exposure. She and the doctors were mystified. "I couldn't even get a job because my kid was so sick," Martin said. She had put in two maintenance requests to fix chipping paint, but Villages of Benning didn't respond for months, Martin said.

When Martin's husband met Cale Brown, the colonel urged the family to act. The Martins bought testing swabs online. They lit up bright red, indicating exposed lead paint.

Finally, in October 2016, housing managers moved the Martins out temporarily and replaced their windows. State inspectors only learned about the case when Martin called seeking assistance.

By the time Rainbow resident Dana Sackett left a voicemail on a state lead hotline last year, inspectors knew the street well.

"Another Rainbow row site at Ft. Benning," one wrote.

Sackett, a mother of two, is a PhD toxicologist. Her husband is a lawyer with the Army Rangers. After moving to the street, she spotted paint hazards and complained.

Villages of Benning initially declined to fix them, state files say. Then mold spread in an upstairs closet, and repairs for that problem went ahead while Sackett and her girls temporarily relocated. She demanded the workers address paint hazards, too.

The landlords hired workers to scrape lead paint off the home. They lacked the required safety certifications and protective gear to conduct lead abatement, Army records show.

The Army says it has since taken steps to ensure all Benning workers dealing with lead paint are properly certified.

Last fall, Villages of Benning told Sackett the work was done and her family could move back. She found paint scrapings and dust, the records show, and refused to return unless housing managers could show the home wouldn't poison her girls.

Days later, Villages of Benning declared the property a "contamination area" and had Sackett sign papers promising not to enter. "It was one of the most stressful things I've been through," she said.

Six months later, 103 Rainbow Avenue stood vacant. At another Rainbow Avenue home, paint was peeling from doors and a window by a child's bed. A bathroom faucet leaked brown goop. A pizza-sized black mold bloom covered a ceiling. Outside, old paint crumbled from window frames, steps and a garage.

Lab testing at Columbia showed four of six paint samples from the home exceeded lead safety standards, including one from beside the child's bed. The family reported the findings to Benning officials and is now moving.

'SILENCED VERSION'

About a mile from Rainbow Avenue lies Perkins Village, a cluster of drab mid-century homes that isn't supposed to exist.

Benning's development plans called for all 180 Perkins houses to be razed years ago and replaced with 228 new Mission-style homes. Just a handful of the old homes were torn down, and none of the new ones have been built. Reuters tested two homes in Perkins Village. Both had visibly deteriorating paint with lead above federal safety standards.

The Benning contractors wound up building just over half of the 3,185 new homes that were promised back when the housing was privatized. As a result, records show, nearly three out of five Benning homes still contain lead.

The Army said it's satisfied with the results of the building project. It said it doesn't know whether any children living in Benning's older homes have tested high for lead in recent years. The base's data system can't track where children with elevated lead levels were living when they were tested.

Darlana Brown said Villages of Benning wasn't aware of JC's poisoning, either, until she spoke up.

Court records show the Browns' lawsuit was settled earlier this year. As a precondition of settlement talks, the Benning contractors demanded the Browns stop communicating with Reuters and stop mentioning the dispute publicly.

This January, on the private Facebook page where military families share their worries, Darlena Brown revised an earlier post. It still recounts her son's poisoning but omits any mention of the landlords.

She changed the title, too. It's now called "Darlana's Story (The silenced version)."

The Washington Post

https://www.washingtonpost.com/local/social-issues/many-children-have-been-poisoned-by-lead-in-homes-approved-by-dc-housing-inspectors/2018/08/14/5633a144-9b24-11e8-8d5e-c6c594024954_story.html?utm_term=.6cef09d92218

Numerous children have been poisoned by lead in homes approved by D.C. housing inspectors

By Terrence McCoy, 8/15/18

She was giving Alonzo, then 3, a bath in a tub that her landlord had just painted to pass a housing inspection. She turned to find a washcloth, and when she swiveled back, she found the boy with bits of peeling paint in his mouth. She tried get it out, but it was too late.

The lead tests came back positive: Alonzo had more than double what the government defines as “elevated,” and he hasn’t been the same since.

Between March 2013 and March 2018, at least 41 families discovered that their homes, subsidized by a housing voucher and approved by city inspectors, contained lead contaminants, according to a tabulation requested by The Washington Post through the Freedom of Information Act.

The District Department of Energy and Environment, which performed the count and the testing, said it inspected about half of the homes because a child living at the property, or visiting it often, had tested positive for elevated levels of lead; the other homes were investigated following a tip about possible lead hazards. The agency said that the list wasn’t exhaustive and that there may be more.

The findings again highlight key weaknesses in federal guidelines established by the U.S. Department of Housing and Urban Development, which the District and other cities follow. Many rental properties supported by housing vouchers in the city receive inspections under these standards. But they require only visual inspections for peeling paint and don’t mandate lead testing, unlike states such as Maryland and Rhode Island.

“You cannot detect with any certainty that a house does not contain toxic lead dust without doing a dust test, period,” said Ruth Ann Norton, president of Baltimore’s Green & Healthy Homes Initiative and one of the nation’s foremost experts on lead-poisoning prevention.

Since 2013, the District has subsidized and inspected more than 18,900 properties, all while it tries to meet a crisis in homelessness and affordable housing. In the first seven months of 2018, the D.C. Department of Human Services placed 367 homeless families — nearly three times as many as it did in 2013, according to city statistics.

Rick White, a spokesman for the District Housing Authority, which performs many of the inspections for subsidized properties, said that most of the voucher properties in the tabulation were overseen by the agency. After hazardous lead was found in the homes, some families moved out when their landlords did not abate the contamination. Other landlords cleared the properties of lead hazards and provided documentation to city authorities, and the families stayed. It is the landlords’ responsibility, he said, to ensure that the homes are free of hazardous lead.

“I do not want you, or your newspaper, mistakenly believing or inaccurately reporting that DCHA is not fully meeting its legal obligations,” he said, adding that the city is also reviewing how cities that have made strides in lead remediation, such as Baltimore, conduct their lead inspections. “Rest assured that if federal laws or regulations are amended, then we will adjust our operating practices accordingly. . . . In all cases, DCHA immediately takes appropriate actions against any private property owner where a DCHA inspector identifies peeling paint.”

The fix for peeling paint, however, often includes another coat of paint. But superficial and cosmetic fixes, according to housing advocates, lawyers and tenants, do little to address more significant and underlying issues, such as plumbing problems or leaking roofs, that can cause paint to crack and peel again. And that’s when lead paint, effectively banned in 1978, becomes dangerous.

“Sometimes families chose housing that may not be great because they feel like they don’t have any other options,” said Kathy Zeisel of the Children’s Law Center. “They may believe the coat of paint has resolved the issue, but by the end of the month, the paint is peeling all over again, and the water is coming through the walls.”

It was a problem for Donna Black. She moved into a house on Rittenhouse Street in Northwest Washington with her housing voucher in 2013, while she was pregnant. When she first saw the home, she didn’t feel good about it but didn’t want to seem “choosy.” Plus, the inspectors had said it was okay, so she assumed it was safe.

“That was very false,” she said.

The roof started leaking. The paint started peeling. She gave birth. She named the baby Damion.

A year later, his blood carried twice the amount of lead the government calls elevated, although most advocates and scientists say any trace of lead in a child’s system can lead to diminished cognitive function.

Four years after that, Black is homeless, living in a Holiday Inn Express with Damion, whose needs her life revolves around. “My son is not a normal 3-year-old,” she said.

A lot of days, she’s filled with anger.

“We’re very upset with the city,” she said. “The city is the number one reason why this has happened to my son. . . . They let our family move in there, and it was fixed up to the point where it could look like it was okay, but it really wasn’t.”

Mattocks, too, has trouble understanding how to raise a child who is different from her seven other children. Alonzo, now 7, is always behind in his schooling, and she worries about what sort of life he will have. “I’m worried that, as an African American male, they’re already having so many issues with police brutality and being discriminated against that I’m fearful . . . that this will be another barrier that he’ll have to try to get through.”

Mattocks and Black filed lawsuits against the housing authority and their landlords in District Superior Court in 2016, but the housing authority was dismissed from the cases after arguing that it wasn’t liable, although that decision is being appealed. “There really should be stricter standards to protect the children,” said Alan Mensh, the attorney representing the two.

Scott Muchow, the landlord for Mattocks’s property, declined to address specific questions about Alonzo’s lead poisoning. “In late 2016, I received notice of a lawsuit for lead paint related issues at the property from Ms. Mattocks, but during discovery, Ms. Mattocks chose to voluntarily dismiss the case,” Muchow said in a statement.

The lawsuit against Black’s landlord, Jerome Lindsey, who could not be reached to comment, is pending.

Mattocks and Black said they were less interested in money than a sense of justice. They moved into homes that were supposed to be safe but turned out to be anything but, and now they’re raising children whose needs exceed their means. And no one, they say, wants to take responsibility.

“So who do we hold responsible?” Mattocks said. “We have to hold the city accountable, and the landlords accountable, we have to hold all of these people accountable . . . so that the children we call our future, we take care of these children. . . . But how do we do that if we don’t hold them accountable?”

EPA News Highlights: 8.16.18

E&E News: Judge revives WOTUS in 26 states

A federal judge in South Carolina has issued a nationwide injunction on the Trump administration's delay of the Clean Water Rule. The decision in the U.S. District Court for the District of South Carolina means the Clean Water Rule is now the law of the land in 26 states where district court judges have not stayed the regulation.

CNN: 'What did we do?' Families anxious about chemicals found in tap water

It's been about three weeks since Tammy Cooper last drank water from her tap. That's when she saw a warning on Facebook for residents of her small Western Michigan town to stop drinking the water. In Michigan, water main breaks aren't unusual, although they're more common in winter. It didn't immediately strike Cooper as out of the ordinary to not be able to drink the water. But the Facebook message made no mention of the run-of-the-mill breaks or chloroform warnings; rather, the city's July 26 post said, "We have just been informed this afternoon by the [Michigan Department of Environmental Quality] that the PFAS level in a City well is 1400 ppt. The limit being 70 ppt."

Washington Examiner: With a quarter million comments in, EPA set to move on contentious 'secret science' rule

The Environmental Protection Agency is set to take a big step forward Thursday toward implementing a contentious "secret science" rule, a move that critics fear will undermine the scientific process in favor of cherry-picking research that supports specific outcomes. The "Strengthening Transparency in Regulatory Science" rulemaking, as it is formally titled, would require EPA's scientific studies to be independently verified through a peer-reviewed process outside the agency. It wouldn't address any one issue or regulation, but rather would undergird the science behind much of what the agency does.

E&E News: EPA wanted its logo removed from the controversial rollback

EPA is the harsh teacher, and the Transportation Department is the struggling student. That's the dynamic at play in regulatory comments submitted this week on the Trump administration's proposal to weaken Obama-era clean car rules. In dozens of instances throughout the document, EPA career staffers criticize DOT political appointees for making faulty assumptions in order to justify the rollback. Chief among their concerns is that freezing the car rules could mean more deaths from vehicle crashes — not fewer, as DOT claims.

Politico: The key to Trump's climate reversal? New math

The Trump administration's attempt to reverse Barack Obama's most sweeping climate regulation rests on a legally risky strategy — redoing the calculations of how much the rule would cost and who would benefit. The EPA's proposed replacement is expected to downplay the money that people and businesses would save from using less electricity, a key feature of the Obama-era greenhouse rule for power plants. People tracking the issue also expect that the agency will count only a fraction of the improvements in public health from reduced smog and soot pollution, and won't consider any benefits from slowing climate change outside the U.S.

E&E News: Lead concerns drive record demand for EPA loans

Demand for EPA's low-interest loans for water infrastructure improvements has hit a record high, the agency said. EPA received 61 letters of interest from municipalities requesting \$9.1 billion in loans from the Water Infrastructure Finance and Innovation Act program. The request is nearly double the agency's lending capacity for 2018, which Office of Water head David Ross said demonstrates "the critical need for investment in our nation's water infrastructure and strong support for EPA's Water Infrastructure Finance and Innovation Act program."

National News Highlights: 8.16.18

The New York Times: Special Report: Children Poisoned by Lead on U.S. Army Bases as Hazards Ignored

FORT BENNING, Georgia — Army Colonel J. Cale Brown put his life on the line in two tours of duty in Afghanistan, earning a pair of Bronze Stars for his service. In between those deployments, Brown received orders to report to Fort Benning, the sprawling Georgia base that proudly describes itself as the century-old home of the U.S. infantry. He was pleased. His wife, Darlena, was pregnant with their second child, and the Browns owned a home in the area. Their 10-

month-old son, John Cale Jr, was a precocious baby, babbling a dozen words and exploring solid foods. Cale's duties as a battalion commander required him to live on base. So instead of moving into their own house, in 2011 the Browns rented a place inside Fort Benning. The 80-year-old white stucco home had hosted generations of officers.

The Washington Post: Numerous children have been poisoned by lead in homes approved by D.C. housing inspectors
She was giving Alonzo, then 3, a bath in a tub that her landlord had just painted to pass a housing inspection. She turned to find a washcloth, and when she swiveled back, she found the boy with bits of peeling paint in his mouth. She tried get it out, but it was too late. The lead tests came back positive: Alonzo had more than double what the government defines as "elevated," and he hasn't been the same since. Between March 2013 and March 2018, at least 41 families discovered that their homes, subsidized by a housing voucher and approved by city inspectors, contained lead contaminants, according to a tabulation requested by The Washington Post through the Freedom of Information Act.

E&E News

<https://www.eenews.net/greenwire/stories/1060094313>

Judge revives WOTUS in 26 states

Ariel Wittenberg, 8/16/18

A federal judge in South Carolina has issued a nationwide injunction on the Trump administration's delay of the Clean Water Rule.

The decision in the U.S. District Court for the District of South Carolina means the Clean Water Rule is now the law of the land in 26 states where district court judges have not stayed the regulation.

The Trump administration finalized its delay of the Clean Water Rule, also known as Waters of the U.S., or WOTUS, rule in February. The regulation redefined which wetlands and small waterways are covered by the Clean Water Act.

Green groups, including the Southern Environmental Law Center, and states immediately sued the administration, arguing it rushed through the rulemaking.

Ruling in the SELC's case, Judge David Norton found that the Trump administration violated the Administrative Procedure Act in proposing and finalizing the rule.

CNN

<https://www.cnn.com/2018/08/16/health/tap-water-crisis-toxic-michigan-pfoa-pfas/index.html>

'What did we do?' Families anxious about chemicals found in tap water

By Nadia Kounang, 8/16/18

It's been about three weeks since Tammy Cooper last drank water from her tap. That's when she saw a warning on Facebook for residents of her small Western Michigan town to stop drinking the water.

In Michigan, water main breaks aren't unusual, although they're more common in winter. It didn't immediately strike Cooper as out of the ordinary to not be able to drink the water.

But the Facebook message made no mention of the run-of-the-mill breaks or chloroform warnings; rather, the city's July 26 post said, "We have just been informed this afternoon by the [Michigan Department of Environmental Quality] that the PFAS level in a City well is 1400 ppt. The limit being 70 ppt."

It advised using bottled water for cooking, drinking and making baby formula.

"I immediately felt really sick," Cooper said.

PFAS, or per- and polyfluoroalkyl substances, are a family of more than 4,000 synthetic chemicals that degrade very slowly, if at all, in the environment. Some of the best-known chemicals are PFOS, PFOA and GenX.

It's not the first time Michigan has dealt with toxic tap water; the legacy of Flint is not far behind. But unlike in the Flint lead crisis, it's unknown how long the water in Parchment has been contaminated with PFAS.

Now, all Cooper could see were toxins all over her house, poisoning her nearly 3-year-old daughter, Jillian, who has lived in Parchment most of her life.

"You look around and you have sippy cups around," she said. Every cup of water -- in fact, anything using the water -- became suspect.

A persistent problem

The chemicals have been used for decades on military bases and in industrial areas in the manufacturing of thousands of consumer items including food packaging materials, water-resistant fabrics, nonstick cooking pans and firefighting foams.

"They're extremely strong, and they are extremely persistent, and that's what makes them so good for nonstick, waterproof and stain-repellant products," said Tom Bruton, a scientist with the Green Science Policy Institute in Berkeley, California.

The chemicals are no longer manufactured in the United States. In 2002, 3M, the primary US manufacturer of PFOS, voluntarily phased out production of the chemical. In 2006, eight major companies in the PFAS industry agreed to stop production of PFOA and PFOA-related chemicals by 2015.

But they can still be found all around us, including in the water.

"I think that people should be concerned about the amount of PFOA and PFOS that is in our environment," Susan M. Pinney, a professor in the Department of Environmental Health at the University of Cincinnati, wrote in an email.

"These are chemicals with long half-lives," meaning they can persist in the environment as well as the body.

According to the federal Agency for Toxic Substances and Disease Registry, they can stay in the body two to nine years. "Exposure in utero may have the greatest effect on developing children ... and effects may last into adulthood," Pinney said, adding that the research is early and so is not definitive.

According to the US Environmental Protection Agency, PFAS exposure has been linked to low birth weight, immunological disorders, cancer and thyroid hormone disruption.

And that is what exactly worries Cooper. She can't help but wonder whether the more than two years her family has lived in Parchment have been the root of their health issues.

"You just start thinking, 'well, we were sick a lot,' " she said.

Is it the water? Could it be breast milk?

Cooper and her husband David prioritize healthy living: They buy organic food; they wash their hands often; they diligently use laundry detergent "free and clear" of unnecessary chemicals; she breastfed her daughter for nearly 3 years. So could there be a connection to the water? After all, her thyroid hormone levels went down after her pregnancy. "It causes all these questions," she said.

Her biggest concern is Jillian. She was small, measuring in the 10th percentile for weight when they moved to Parchment when she was 6 months old. A year later, she had dropped below the 1st percentile in weight. After Cooper focused on feeding her a higher-fat and -protein diet, Jillian's weight is now in the 4th percentile.

"Is it the water?" Cooper wonders. Could it have been her breast milk? "She's nursed the entire duration that we've lived here. Everything that I've read, if you're nursing a child, you're passing it on to them."

PFOS and PFOA are found in blood and at lower levels in breast milk and umbilical cord blood, according to the Centers for Disease Control and Prevention's National Center for Environmental Health.

Cooper reached out to Jillian's pediatrician immediately after she read the Facebook announcement. Her doctor is concerned there could be a connection between the water and Jillian's growth, but there is little to nothing they can do about it now.

Since the city's announcement, Cooper decided to wean her daughter off breastfeeding. "I didn't want it to end this way. The last thing I want to remember is this special thing to be terminated because of this thing in the water," she said.

"Maybe I don't have any health issues from the water, but there's a major cost to your mental health, because you're in charge of this little person, and you feel like you're failing."

It's an anxiety that has occupied many other parents in the area, like Sara Dean.

Dean and her husband settled in Parchment three years ago after searching for a place to raise their children. They worried that their hometown of Chicago was too busy and potentially too violent of a place to raise a family. Parchment was beautiful. Neighbors spoke to one another. It seemed like a great place to start a family.

"We moved to a state associated with healthy living, pure water -- all the things with the Pure Michigan campaign -- and now we're like, what did we do? Would we have been better off starting a family in Chicago? At least the water is safe. There is a lot of questioning if we made the right decision three years ago."

A national problem

What's happening in Parchment isn't unique. The state of Michigan has confirmed at least 34 sites that have been contaminated with the chemicals. The state has been testing potential sites across Michigan since 2017.

On July 29, Michigan declared a state of emergency over Parchment's water. Although a specific source of the PFAS contamination has not been identified, the state Department of Environmental Quality has tested an area where PFAS might have been used. The state is also testing private residential tests to understand how far the contamination has spread.

The Environmental Working Group and Northwestern University have mapped 94 sites across the country affected by PFAS. The US Department of Defense has listed 36 contaminated military installations.

The EPA has called PFAS a national priority.

The contaminant became a political lightning rod this year when internal White House emails revealed that the Trump administration tried to withhold a US Department of Health and Human Services report on the chemicals' health risks because it could be a "potential public relations nightmare." The report, which was eventually released in June, found that the current EPA-recommended level was seven to 10 times higher than it should be.

In May, the agency held a national leadership summit on PFAS but blocked several media outlets, including CNN, from attending.

This summer, the EPA hosted "community engagement" events in Exeter, New Hampshire; Horsham, Pennsylvania; Colorado Springs, Colorado; and Fayetteville, North Carolina -- all communities affected by contaminated water.

At the event this week in Fayetteville, the agency addressed residents who have found elevated levels of the chemical GenX, a second-generation PFAS, in private drinking water wells.

John Pate, a resident of the area, told CNN affiliate WRAL that it's not just the immediate impact he's concerned about. "We could be still looking at, 20 years down the road, people coming up with things. We don't know," Pate said.

Bruton, of the Green Science Policy Institute, expects the number of affected communities to continue to grow. "The more we monitor water supplies, the more widespread we find these chemicals to be," he said.

Dean can't help but wonder what the impact of Parchment's water has been on her 2-year-old boy and the child with which she is 30 weeks pregnant. Like Jillian, Dean's son, Patrick, is on the smaller side, and her baby is measuring smaller in the womb.

"Do I make small babies," Dean questions, "or do I make small babies because I drink poisoned water?"

Within hours of hearing the news of the elevated levels, the city of Parchment quickly set up a bottled water distribution system. City officials are currently working to connect residents to the nearby Kalamazoo water system.

According to the CDC's National Center for Environmental Health, the major pathway for PFAS exposure is ingestion. Aside from contaminated drinking water, PFAS can be found around the house, Bruton said. It's in the dust from stain-treated carpets and upholstery, in some packaged foods and in foods cooked in nonstick pans.

Parchment's water advisory says it's safe to use the water for cleaning and washing purposes. Bathing is also fine because absorption of PFAS through the skin is slow and insignificant.

But when Dean takes a dish out of the dishwasher, she will run bottled water over it "for peace of mind." Dean and her husband have also installed a reverse-osmosis water filter in their home. Reverse osmosis filters certified by NSF International can reduce PFAS levels to below levels set by the EPA.

It's something Don Rome is also considering. It's well worth the cost to protect his wife, their 13-year-old daughter and 17-year-old son, and their pets, he said.

"I'm not sure I'll be going back to drinking directly from the tap without filters. So there is some uncertainty there. It's all a new frontier," Rome said.

And when Rome swims in their pool or takes a shower, there's always some thought about it in the back of his mind. "You don't intend to drink the water, but it gets in your mouth. ... Things happen."

Rome has a lot of confidence in the city. He feels that officials have done a good job of communicating actions taken to keep residents safe, including the efforts to connect to the Kalamazoo system.

But there is no question in Rome's mind that the water has impacted all parts of the city.

Rome tracks real estate in Parchment in his job. He noticed the pace of home sales has slowed since the PFAS announcement.

"There has been a slowdown in interest and foot traffic," he said.

For Cooper, the impact of the PFAS contamination has been significant. Her house is being used as one of the city's testing sites. It has created a sense of distrust that wasn't there before.

"You backtrack on everything that you ever believed in, everything about your safety," she said.
"If you can't trust the government about water, what can you trust them about?"

Washington Examiner

<https://www.washingtonexaminer.com/policy/energy/with-a-quarter-million-comments-in-epa-set-to-move-on-contentious-secret-science-rule>

With a quarter million comments in, EPA set to move on contentious 'secret science' rule

By John Siciliano, 8/16/18

The Environmental Protection Agency is set to take a big step forward Thursday toward implementing a contentious "secret science" rule, a move that critics fear will undermine the scientific process in favor of cherry-picking research that supports specific outcomes.

The "Strengthening Transparency in Regulatory Science" rulemaking, as it is formally titled, would require EPA's scientific studies to be independently verified through a peer-reviewed process outside the agency. It wouldn't address any one issue or regulation, but rather would undergird the science behind much of what the agency does.

The rule would help the industry contain the cost of new regulation by giving them the ability to question the basis of new pollution standards, especially if the "public is likely to bear the cost of compliance" with those regulations, according to the EPA.

The deadline to receive input from the public on the rule closes at midnight, and already it has garnered nearly a quarter of a million comments.

The comment deadline was extended from May 30 to Aug. 16 due to increased interest in the rulemaking and the potential significant harm that critics say it will pose to the scientific integrity of the EPA.

The Natural Resources Defense Council, in its formal request to extend the comment period, said environmental groups' meetings to discuss the rule at the White House were canceled, while industry groups were given unabated access in the rule's early development stages.

"The exclusion of environmental groups from these preliminary discussions is cause for significant concern," wrote John Walke, the environmental group's clean air director. "In light of this imbalance, EPA should extend the comment deadline to ensure that the public is fairly represented in the rulemaking process."

However, tens of thousands of the comments arriving in the EPA's inbox are from private citizens, not major trade associations or environmental groups, arguing both for and against the regulation.

Most of the comments are not substantive and read more like tweets than formal comments on policy. "[C]ut the crap epa – showyourwork — no secrets!" reads one comment from a private citizen.

Climate change skeptics say the rule is critical to reining in the agency under the administration's broader deregulation agenda.

"Given the Environmental Protection Agency's constrained mission, flawed paradigm, political pressures to chase the impossible goal of zero risk, and evidence of actual corruption, we can have no confidence in any science it produces in justification of its regulations," the Heartland Institute said in its comments. The group argued that new guardrails for EPA science are necessary because of the agency's lack of transparency and integrity and its "culture of disrespect for the scientific method and independent peer review."

Other comments raised more practical, economic concerns for increasing scientific oversight at the agency.

The Sacramento-based construction company Delta submitted comments that detailed how the company was forced to close because of the EPA's use of a scientific study to form the basis of pollution rules.

"Facing bankruptcy of my 73 year family business due to the imposition that I must replace all of my previously owned and once legal diesel 'assets' with new, I closed my doors in June 2017," wrote Norman R. "Skip" Brown, owner of both Delta Construction Company, Inc. and Asphalt Consulting Services, LLC.

"My equipment was sold at auction and employees ranging to 40 years with me lost their jobs," Brown said. He sees merit in the science rule by giving industry a voice when a single study can mean life or death for a business. In his case, it was a 1995 study on the harmful effects of soot from diesel engines.

Larger industry trade associations like the American Petroleum Institute, the largest oil and natural gas industry association, see similar reasons for supporting the science rule, but appears to be walking a careful line on how far it thinks EPA should go in implementing the regulations.

In a preview of the group's opinion, Ted Steichen, API senior policy adviser, told the EPA at a public hearing last month that "[s]cience used when developing policy and regulations impacts all aspects of API member business," but that they are simultaneously "dedicated to continuous efforts to improve the compatibility of their operations with the environment."

The API supports the use of sound and transparent science in public policy making, said Steichen, outlining ways the EPA can ensure the science it uses is able to be reproduced by outside parties. His remarks were submitted to the EPA comment docket, but other more substantive comments are expected to also be submitted on Thursday. Meanwhile, environmental groups are pressuring the agency to withdraw the proposed regulations as an affront to science.

The Clean Air Task Force said it is "concerned about EPA's current attitude towards science," senior scientist David McCabe said at a public hearing. He said the Trump administration's recent approach to environmental rulemakings "show the Agency's disregard for objective information and the scientific process, and its move to rely on analysis that supports particular outcomes."

McCabe said this should be of "great concern for all Americans, whose health and welfare depend upon effective environmental regulation," according to the remarks submitted to EPA.

E&E News

<https://www.eenews.net/climatewire/2018/08/16/stories/1060094235>

EPA wanted its logo removed from the controversial rollback

By Maxine Joselow, 8/16/18

EPA is the harsh teacher, and the Transportation Department is the struggling student.

That's the dynamic at play in regulatory comments submitted this week on the Trump administration's proposal to weaken Obama-era clean car rules.

In dozens of instances throughout the document, EPA career staffers criticize DOT political appointees for making faulty assumptions in order to justify the rollback.

Chief among their concerns is that freezing the car rules could mean more deaths from vehicle crashes — not fewer, as DOT claims.

In another section, EPA chastises DOT for making an inaccurate comparison regarding the standards' effect on vehicle prices, saying, "These sentences are comparing apples to oranges."

EPA staffers also accuse DOT of misrepresenting the findings of researchers Mark Jacobsen and Arthur van Benthem, saying, "The comment about Jacobsen & Van Benthem's finding is the opposite of what they find."

EPA submitted the regulatory comments to the White House Office of Management and Budget in June. They were uploaded on Tuesday to the rulemaking's docket on regulations.gov.

The revelations came two weeks after the Trump administration signaled that it plans to freeze fuel economy standards at 2020 levels, meaning that new car models would travel on average about 30 mpg of gas rather than 36 mpg.

In the regulatory comments released this week, the phrase "EPA does not agree" appears 19 times.

For example, next to a DOT paragraph about how the rollback could encourage more sales of new vehicles, EPA career staff wrote: "EPA does not agree with this conclusion. It's also inconsistent with the argument, above, that consumers consider the lifetime of fuel economy in their purchase decisions."

Jeff Alson, a former staffer in EPA's Office of Transportation and Air Quality, said he heard from former colleagues that DOT political appointees manipulated the findings in their rush to finalize the proposal.

"These political folks had all the answers they wanted. They cooked the books," said Alson, who served as a senior engineer and policy adviser in the transportation office for 40 years before retiring three months ago.

EPA career staffers were shut out of the process by DOT political appointees, who refused to invite them to meetings for months, Alson said. EPA career staffers tried to signal to OMB that their concerns about DOT's technical analysis didn't make it into the final proposal, he said.

Indeed, EPA stated in separate regulatory comments, "This Preliminary [Regulatory Impact Analysis] is a work product of DOT and NHTSA, and was not authored by EPA. ... EPA's name and logo should be removed." The agency was referring to the National Highway Traffic Safety Administration.

EPA spokesman John Konkus pushed back on the notion that there was infighting between the agencies as they sought to craft the proposal.

"These emails are but a fraction of the robust dialogue that occurred during interagency deliberations for the proposed rule," Konkus said in an email to E&E News. "EPA is currently soliciting comments on eight different alternative standards and we look forward to reviewing any new data and information."

Alson said EPA's top political brass would have trouble defending the administration's car proposal if it's challenged in court.

"Right now there's this EPA leadership that chose to rubber-stamp the NHTSA analysis justifying weakening the greenhouse gas emission standards," he said. "And then there's EPA career staff who are the world's experts on greenhouse gas emission standards who were shut out. I assume any reasonable judge would say, 'Wow, EPA political leadership is proposing to weaken the standards, and they didn't even ask the career staff.'"

DOT and EPA have joint jurisdiction over the clean car rules. EPA is responsible for promulgating tailpipe greenhouse gas emissions standards with attention to public health and climate change. DOT is responsible for promulgating corporate average fuel economy standards, with a focus on driver safety.

Tension is bound to arise when two agencies are jointly responsible for one rulemaking, said Bill Reilly, who served as EPA administrator under President George H.W. Bush.

Reilly recalled working with the Coast Guard — then a division of DOT — in the aftermath of the 1989 Exxon Valdez oil spill.

After a tanker spilled 10.8 million gallons of oil into Alaska's Prince William Sound, Bush tasked Reilly and then-Transportation Secretary Sam Skinner with producing a report on the spill and future protection of the nation's harbors.

"I remember talking to Transportation Secretary Sam Skinner, and he later thanked me for my objections," Reilly said. "I didn't go public with my criticism of his report, but we certainly had it. That sort of negotiation is not uncommon, I suspect, when two agencies have jurisdiction."

Politico

<https://subscriber.politicopro.com/energy/article/2018/08/the-key-to-trumps-climate-reversal-new-math-740455>

The key to Trump's climate reversal? New math

By Alex Guillen and Emily Holden, 8/15/18

The Trump administration's attempt to reverse Barack Obama's most sweeping climate regulation rests on a legally risky strategy — redoing the calculations of how much the rule would cost and who would benefit.

The EPA's proposed replacement is expected to downplay the money that people and businesses would save from using less electricity, a key feature of the Obama-era greenhouse rule for power plants. People tracking the issue also expect that the agency will count only a fraction of the improvements in public health from reduced smog and soot pollution, and won't consider any benefits from slowing climate change outside the U.S.

The upshot: President Donald Trump's EPA will argue that the Obama administration's rule had more costs and fewer benefits than previously stated, a change to help improve the comparison when it unveils its own, much less ambitious power plant proposal as soon as next week.

The Obama administration had estimated that the benefits from its 2015 rule would outstrip the costs by \$26 billion to \$45 billion by 2030.

Supporters of the Obama version say those net benefits could be even higher now, because states are on track to meet the climate goals and the costs of clean energy have continued to plummet. And they warn that repealing the regulation could keep older, more expensive coal-fired power plants in operation, adding to consumers' costs.

The math could be crucial to the success or failure of a number of Trump rules. That could make the rollbacks legally vulnerable when environmental advocates and states sue to overturn Trump's action, critics of the new proposals say.

"They are cooking the books on technical analysis to try to justify preconceived conclusions that these regulations are bad," said David Doniger, the senior strategic director of the Natural Resources Defense Council's climate program who was influential in the Obama EPA's crafting of the original rule.

EPA did not respond to a request for comment on Wednesday.

Trump administration lawyers reviewing the replacement are already struggling with how to defend a rule that could cost electricity users money but would not do much to address climate change or air pollution, according to a person aware of conversations between the White House and the Justice Department. DOJ would be charged with defending the rule in court.

POLITICO has examined a portion of the agency's unpublished draft of the new rule, which would allow states to write their own modest regulations for coal plants or even let plant operators seek to opt out entirely, according to a source with knowledge of the broader proposal.

The proposed rewrite of the power plant rule is part of a pattern: Critics say similarly fuzzy math underlies other Trump administration proposals to reverse or stymie action on climate change, such as a recent plan by EPA and the Department of Transportation to halt a planned tightening of fuel efficiency standards for cars and trucks.

Sean Donahue, an environmental lawyer who has represented groups like the Environmental Defense Fund, said he would expect a court to be "very skeptical" of any effort that looks as though EPA is trying to evade its obligation to regulate greenhouse gases. But he conceded that will depend on the details of EPA's power plant proposal.

"If it were one or two technical judgments where there's a difference between this administration and the last one, or this administration and prior consistent practice, that would be one thing," Donahue said. "But it's many, many things all pointing the same way, all pointing toward rolling back greenhouse gas mitigation efforts."

Trump has repeatedly expressed doubts about man-made climate change, and much of his Cabinet shares a similar view. In contrast, the federal government's own scientific assessment finds that human-caused climate change will not only raise temperatures but also make extreme weather more dangerous and lift sea levels by one to four feet by the end of the century.

Kate Larsen, director of the economic research firm Rhodium Group, said the Trump administration's justifications for unraveling climate change policies are symptomatic of its broader governing principles.

"A decision we make today is narrowly focused on the impacts to myself and my immediate neighbor in the next week, but you're not taking into account impacts next year and the following year to yourself, your neighbor, the entire community," she said.

Environmental experts are also scrutinizing the auto rule proposal, released earlier this month, which would freeze the Obama administration's aggressive fuel economy standards after 2020 and dial back EPA greenhouse gas rules to match.

EPA and DOT's National Highway Traffic Safety Administration argued that the freeze would save billions of dollars in costs. Critics say the administration overestimated compliance costs of the Obama-era auto targets by as much as fourfold, which could significantly tip the cost-benefit analysis in their favor. Another claim that the Trump rollback would save more than 1,000 lives per year — yielding benefits of \$77 billion — has also drawn skepticism.

On Tuesday, EPA released a June memo that showed agency staff criticizing a number of "unrealistic" aspects of NHTSA's modeling. They disagreed with the proposals fatality figures, with EPA staff estimating deaths would increase slightly under the freeze. And they thought the rule overestimated compliance costs and the time needed to recoup those costs in fuel savings, all factors that boosted benefits and lowered costs for the proposed freeze. Both EPA and NHTSA dismissed the memo as only one part of a complex review process.

The administration and industry groups have blasted the Obama administration's use of "co-benefits" — the benefits in improved health or reduced pollution that arise even when they're not the primary aim of a regulation. (One example: Cutting coal plants' carbon dioxide pollution under the power plant regulation wouldn't do much directly to improve people's health, but it would also reduce smog.) But Donahue argued that Trump's regulators sometimes lean on co-benefits to help build the case for their rollbacks.

For example, NHTSA's modeling credits changes in consumer behavior as the overwhelming factor behind all the lives that the Trump administration contends its auto rollback would save. The agencies argue that under the previous Obama rule, drivers would be more likely to remain in older, more dangerous cars than purchase more expensive, safer ones.

That "would seem to be a co-benefits argument, since the EPA doesn't have, and NHTSA doesn't have, the authority to regulate used cars," said Donahue, who called the paradox "sort of entertaining."

Counting co-benefits is a long-standing practice for federal regulators, but energy industry groups and Republican state officials grew incensed by the Obama administration's use of it to justify major regulations.

"The co-benefits thing has ballooned into the biggest scandal in environmental regulation," said the conservative Competitive Enterprise Institute's Myron Ebell, who led Trump's post-election transition team at EPA. "You get very small direct benefits, but you make up, essentially, a lot of co-benefits."

Still, he contended that EPA's withdrawal of Obama's power plant rule would eliminate a huge amount of costs in the coming years, saying Obama's regulation represented "just the first emissions cuts."

"There were going to be more beyond that if the Obama administration had been succeeded by the Clinton administration," Ebell said. He added: "By cutting it off in the way that they're doing, we're avoiding immense future costs."

E&E News

<https://www.eenews.net/greenwire/2018/08/16/stories/1060094303>

Lead concerns drive record demand for EPA loans

Ariel Wittenberg, 8/16/18

Demand for EPA's low-interest loans for water infrastructure improvements has hit a record high, the agency said.

EPA received 61 letters of interest from municipalities requesting \$9.1 billion in loans from the Water Infrastructure Finance and Innovation Act program.

The request is nearly double the agency's lending capacity for 2018, which Office of Water head David Ross said demonstrates "the critical need for investment in our nation's water infrastructure and strong support for EPA's Water Infrastructure Finance and Innovation Act program."

"EPA looks forward to reviewing the letters of interest we received as we advance the President's infrastructure agenda and help communities better protect public health and water quality," he said.

Established by Congress in 2014, WIFIA has been extremely popular among municipalities and lawmakers alike. This year, EPA received letters of interest from 24 states, the District of Columbia and Guam.

More than half of the proposed projects would either reduce exposure to lead in drinking water or update aging infrastructure, or both.

The New York Times

<https://www.nytimes.com/reuters/2018/08/16/us/16reuters-usa-military-housing-specialreport.html?rref=collection%2Fsectioncollection%2Freuters-news>

Special Report: Children Poisoned by Lead on U.S. Army Bases as Hazards Ignored

By Reuters, 8/16/18

FORT BENNING, Georgia — Army Colonel J. Cale Brown put his life on the line in two tours of duty in Afghanistan, earning a pair of Bronze Stars for his service. In between those deployments, Brown received orders to report to Fort Benning, the sprawling Georgia base that proudly describes itself as the century-old home of the U.S. infantry.

He was pleased. His wife, Darlena, was pregnant with their second child, and the Browns owned a home in the area. Their 10-month-old son, John Cale Jr, was a precocious baby, babbling a dozen words and exploring solid foods.

Cale's duties as a battalion commander required him to live on base. So instead of moving into their own house, in 2011 the Browns rented a place inside Fort Benning. The 80-year-old white stucco home had hosted generations of officers.

Like most family housing on U.S. bases today, the home wasn't owned and operated by the military. It was managed by Villages of Benning, a partnership between two private companies and the U.S. Army, whose website beckons families to "enjoy the luxuries of on-post living."

The symptoms began suddenly. At 18 months, JC would awake screaming. He began refusing food, stopped responding to his name and lost most of his words.

"He was disappearing into an isolated brain," Darlena recalls.

For nearly a year, doctors probed: Was it colic? Autism? Ear infections? Then, in late 2012, came a call from JC's pediatrician: He had high levels of lead in his blood. When Darlena told Villages of Benning of his poisoning, contractors ordered home testing.

The results: At least 113 spots in the home had lead paint, including several peeling or crumbling patches, requiring \$26,150 in lead abatement. Villages of Benning moved the Browns into another old house next door.

The heavy metal had stunted JC's brain, medical records reviewed by Reuters show. At age two, he was diagnosed with a developmental disorder caused by lead. Now eight, JC has undergone years of costly therapy. He excels at reading and swimming, but still struggles with speech, hyperactivity and social interactions.

When a reporter met JC last year, the boy looked away and repeated a phrase from a children's TV show: "Max, what did you do? Max, what did you do?" Later, JC sat outside and watched sunlight gliding through his fingers, seemingly lost in reverie.

"I'm sad that my son lost his future," Darlena said. "It was because of where we were that this happened."

This wasn't supposed to happen to families like the Browns, who move often between posts for the U.S. armed forces, trusting base landlords and military brass to provide safe shelter for children and spouses.

Cale Brown, a 46-year-old active-duty colonel, now works on detail to the White House on the National Security Council, helping to protect the country from complex threats like North Korea's nuclear program.

For years, he has told the Army of failures to defend children on U.S. bases from lead poisoning, a preventable household health hazard. Ingesting the heavy metal can severely affect mental and physical development, especially in children, causing brain damage and other potentially lifelong health impacts. But poisoning is avoidable if old homes containing lead paint are properly monitored and maintained.

"There is no acceptable number of children that the Army can allow to be so egregiously hurt," Cale wrote in a letter to the Army Office of the Inspector General last year, describing the poisoning of JC and hundreds of other military kids he was aware of. He hasn't received a response to the letter's concerns.

The Browns' story and others, told publicly for the first time here, reveal a toxic scourge inside homes on military bases. Previously undisclosed military and state health records, and testing by Reuters for lead in soldiers' homes, show problems at some of America's largest military installations.

Federal law defines lead-based paint as containing 0.5 percent or more lead by weight. Sales have been banned since 1978. But many older homes still contain lead paint, which is particularly dangerous when it peels, chips or turns to dust – easy for kids to swallow or breathe in.

Reuters tested five homes at Benning, using a methodology designed with a Columbia University geochemist. All five contained hazardous levels of deteriorating lead paint within reach of children, in one case exceeding the federal threshold by a factor of 58.

Testing turned up problems elsewhere as well. At West Point, New York, home of the United States Military Academy, paint chips falling from a family's front door contained lead at 19 times the federal threshold.

At Kentucky's Fort Knox, whose vaults hold much of America's gold reserves, Reuters found paint peeling from a covered porch where small kids play. It contained 50 percent lead by weight, or 100 times the threshold.

The Army requires

http://www.campbell.army.mil/Installation/Environmental_Handbook/Documents/LBPManagementPlan_DEC2014.pdf
abatement when certified testing identifies deteriorating lead paint in base homes. Yet it also "discourages" this type of lead-paint inspection, in part because lead abatement can be costly.

These homes put military kids at risk. Reuters obtained medical data from the Army showing that at least 31 small children tested high for lead at a Fort Benning hospital over a recent six-year period. All tested above the U.S. Centers for Disease Control and Prevention's threshold for elevated lead levels – 5 micrograms per deciliter of blood. Any child who tests high warrants a public health response, the CDC says.

Army data from other clinics showed at least 77 more high blood-lead tests for children at Fort Polk in Louisiana, Fort Riley in Kansas, and Fort Hood and Fort Bliss in Texas.

From 2011 to 2016, Brooke Army Medical Center in Texas – which processes blood tests from many bases nationwide – registered more than 1,050 small children who tested above the CDC's elevated threshold, the center's records show.

The thousand-plus blood results, obtained from Army bases through Freedom of Information Act requests, provide only a glimpse of the problem. A \$10 finger-prick test can spot a child exposed to lead, yet millions of U.S. children are never screened. Just how many are tested across all military bases isn't clear. But for those who are, the results often go unreported to state public health agencies that attend to poisoned kids.

Reuters found that Fort Benning in Georgia was not reporting lead results for small children tested at the base's hospital. Nor was Brooke Army Medical Center in Texas. Georgia and Texas, like most states, require the reporting of all these lead testing results to state health authorities.

The Army declined to comment on the lead hazards Reuters detected at base homes. Asked about the broader findings of this article, a spokeswoman said the Army conducts yearly visits to ensure housing is safe and follows the recommendations of the CDC and the American Academy of Pediatrics when responding to children with high lead tests. Housing managers classify resident complaints about lead paint as "urgent" and seek to respond within hours, she said.

"We are committed to providing a safe and secure environment on all of our installations," Army spokeswoman Colonel Kathleen Turner said in a written statement, "and to providing the highest quality of care to our service members, their families, and all those entrusted to our care."

The two contractors that operate Villages of Benning – Clark Realty Capital and Michaels Management Services – didn't respond to requests for comment.

The military's lapses in lead safeguards leave legions of kids at risk. Private contractors house some 700,000 Americans at more than 100 military installations nationwide, including an estimated 100,000 children ages 0 through 5.

Benning alone is home to some 2,000 small children. Of its 4,001 family homes, 2,274 "have lead-based paint present in them," according to a Villages of Benning memo from November 2017. The mere presence of lead paint doesn't make a home dangerous, but when the paint deteriorates, it is a "hazard and needs immediate attention," the U.S. Environmental Protection Agency says.

"These are families making sacrifices by serving," said Dr. Bruce Lanphear, a toxicity researcher at Simon Fraser University in British Columbia who reviewed Reuters' findings. "It appears that lead poisoning is sometimes the cost of their loyalty to the military."

Reuters began examining lead poisoning at U.S. bases last year, and in April began seeking interviews with Army officials. The Army declined to talk at the time.

After Reuters informed the Army and families that reporters had found hazards on bases, Fort Benning's garrison commander, Colonel Clinton W. Cox, wrote to residents that "unknown persons" were seeking to test homes for lead and advised them not to cooperate. In a June 30 "Resident Safety Alert," Cox told families to call 911 or base security to report such "suspicious behavior."

Cox said he was unaware of who had done lead testing in base homes when he sent the letter. "What we're most concerned about is our residents' security," he said in a brief phone interview.

But behind the scenes, the Army also began quietly addressing some of the problems.

After reporters asked why it often wasn't informing state health departments about poisoned children, the Army overhauled its practices to comply with state laws. When Reuters found unsafe conditions at Fort Knox, contractors announced a neighborhood-wide lead abatement program. After reporters found the neurotoxin in a child's bedroom at Benning, base command approved the family's move to another home.

A HISTORY OF NEGLECT

For most military families, living on base is an option, not a requirement, though it can be enticing. The gated enclaves are considered safe havens that build esprit de corps. They offer support for spouses of deployed troops, access to military schools, lodging for low-income families. About 30 percent of service families live on bases.

By the 1990s, the U.S. stock of military family housing – nearly 300,000 homes in all service branches – was decaying and starved of funding. "Continuing to neglect these issues runs the risk of collapsing the force," the Department of Defense warned in a 1996 briefing document presented to a congressional sub-committee.

The same year, the military began privatizing its homes. The initiative was the largest-ever corporate takeover of federal housing. It was meant to rid bases of substandard accommodations and save taxpayers billions by having contractors foot the rebuilding bill. In return, contractors would enjoy a steady flow of rental income over 50-year leases.

The military knew hazards lurked in its housing. In 2005, the Army released an environmental study that said 75 percent of its 90,000 homes nationwide didn't meet its own standards of quality or safety. Of Benning, it said: "As homes deteriorate, the risk of children's being exposed to hazardous materials ... would increase."

Twenty years after privatization began, in 2016, a DOD Inspector General report found that poor maintenance and oversight left service families vulnerable to "pervasive" health and safety hazards.

An increase in Pentagon housing funds – \$133 million – was earmarked this fiscal year, largely for overseas bases, where the military still owns its housing. Meanwhile, in recent years the Defense Department has reduced the housing subsidies that fund upkeep of privatized homes on U.S. bases, leading to fewer maintenance staff, the Army has noted.

The age and condition of base homes vary, and lead hazards are hardly exclusive to military housing. A two-year Reuters investigation <https://www.reuters.com/investigates/special-report/usa-lead-newyork> identified more than 3,800 neighborhoods nationwide – mostly in civilian settings – with alarming levels of poisoning.

Military families can face special difficulties if they complain about hazards in their homes, however. They are taking on landlords who are in business with their employer. Among the 60 interviewed for this story, more than half expressed fear that being identified could hurt a military member's career.

But in private, some trade stories about unsafe homes. Darlena Brown helped create a private Facebook group with nearly 700 members. Many have shared photos of peeling paint, mold or other toxins at home and tales of unresponsive base landlords.

Reuters devised a plan to test for hazards in the homes and yards of some of these concerned families. Working with Columbia University scientists, reporters provided home lead testing to 11 families on seven bases. Eight homes had blatant hazards in children's play areas – visibly peeling patches of lead-based paint.

Deteriorating paint from these houses – in Georgia, Texas, New York and Kentucky – had "very high" or "extremely high" lead content that puts children at immediate risk, said Alexander van Geen, a research professor of geochemistry who oversaw the lab analysis at Columbia's Lamont Earth Observatory.

The true number of children exposed on bases is hidden by factors including the military's spotty blood-testing and lapses in reporting to civilian authorities.

To prevent further exposure, most state health departments track lead-poisoned children and mandate inspections in their homes.

Yet when Georgia health officials repeatedly sought test results from Benning, the base refused to share them, alluding to exemptions for federal facilities, state email records show. No such exemptions exist.

"They do not report to us," the head of Georgia's lead-poisoning prevention program, Christy Kuriatnyk, vented about Fort Benning in an internal email to colleagues last year. "I've tried to get them to voluntarily report but that went nowhere."

In April, Reuters presented the Army with evidence of its reporting lapses. In late July, the Army said it had "instituted new procedures to ensure that all reporting requirements are properly observed" nationwide.

'NOTHING TO WORRY ABOUT'

At Benning, private contractors took over the base's family housing in 2006. They pledged to demolish thousands of dilapidated homes and build almost 3,200 new ones within 10 years. Estimated cost: \$602 million. At the time, 99 percent of Benning homes predated the 1978 U.S. ban on lead paint.

The contractors were also required to maintain nearly 500 historic Benning homes, and agreed to control lead, asbestos, mold, basement flooding and other risks.

In 2011, a Villages of Benning agent took the Browns on a home walk-through before they moved in. Darlena expressed concern about lead paint.

"You have nothing to worry about, Mrs. Brown," she recalled being told. "We've never had any problem with lead."

The same year, Benning Martin Army Community Hospital recorded seven high lead results for small children, hospital records show. The hospital says it doesn't know whether children tested there lived on or off base.

After moving in, Darlena asked maintenance to fix paint chipping around windows, but was told by a supervisor that the crew couldn't work on historic windows, she said.

In 2012, JC and as many as five other children had high lead tests at Benning's hospital.

After JC was poisoned, Cale Brown pleaded with base leaders to enforce regular home inspections, test more kids and scrutinize contractors. "A few small changes could mean the difference between a child having life-altering developmental problems or being completely healthy," he wrote Benning's garrison command in December 2012.

"Bottom line, we will do everything necessary to make sure this is addressed thoroughly and quickly," Colonel Jeffrey Fletcher, the garrison commander at the time, responded in an email. Fletcher declined to comment.

The next year, 2013, Benning's hospital recorded seven more high lead-test results for children. One child had lead levels more than double JC's, hospital records show.

Villages of Benning began replacing some old leaded windows and garage doors around the base that year, but left others in place, state and Army records show.

STALKED BY LEAD, GOING TO COURT

Even after the Browns moved to another Benning home, JC wasn't safe.

In 2013, he began special education preschool classes at Benning's Dexter Elementary School. Months later, Darlena received a frightening note on Defense Department letterhead: Drinking water taps in JC's classroom had tested high for lead.

One had 2,200 parts per billion lead – 147 times an EPA safety threshold and higher than all but a few of the worst taps found during the recent water crisis in Flint, Michigan. It isn't clear how many students may have been exposed. Benning didn't require or recommend they get screened.

The Army said the contamination was limited to individual taps around the base and didn't affect the underlying water system. The tainted taps were shut, and parents who wanted testing for their children were given the option, the Army said.

In 2014, the Browns filed suit in Georgia federal court against Benning's housing contractors, alleging their negligence caused JC's poisoning and seeking compensation for his disability. The contractors denied any wrongdoing and contested the suit.

Cale deployed to Afghanistan the same year. There, he pushed for housing repairs at U.S. bases in a meeting that November with Katherine Hammack, the Army's top official in charge of military installations.

She seemed to favor bold action, Cale said: preventing small children from living in older base homes altogether. Cale said his follow-ups went unanswered.

Hammack, who left the Army last year, told Reuters she explored such a plan, but Army lawyers said it could be discriminatory against families with children. "It is up to the soldier to make a choice," she said.

Families who rent pre-1978 housing on bases are given lead disclosure forms before signing a lease, as required of all U.S. landlords by federal law, and can opt to live elsewhere, the Army said.

Two days before Christmas 2014, Darlena learned that JC's lead levels, which had declined over time, were rising again. Her younger son's levels were up, too, though below the CDC's elevated threshold. The agency says there is no safe level of lead in children's blood.

She removed the boys from their second Benning home that night. Nine time zones away, Cale boarded a chopper out of Forward Operating Base Gamberi in eastern Afghanistan. He was granted emergency home leave to help his family resettle.

The next year, in 2015, the Defense Department's Inspector General found that a Clark and Michaels partnership had failed to correct lead paint hazards in homes at Fort Belvoir in Virginia. The Army pledged to address the issue with contractors, IG records show.

At Benning, meanwhile, children had 14 more high lead tests.

DANGER ON RAINBOW AVENUE

Fort Benning's Rainbow Avenue seems a perfect spot for families, the yards of its 1920s homes filled with toys, American flags fluttering from front porches.

Behind this idyll, children face poisoning risks.

Since 2015, state lead inspectors have visited at least three of the 33 houses on the street in response to calls from worried residents, state environmental records show. "The homes all have high levels of lead," inspectors wrote in an internal memo last year.

In one Rainbow home, they found leaded dust at 93 times the EPA's hazard level.

In another, inspector William Spain of the state Environmental Protection Department visited a mother of three in 2016. He found paint chips throughout the home and later emailed colleagues: "Her youngest will be 5 in July and did not appear normal."

The mother had grown concerned after the mysterious deaths of family pets. But she hesitated when the state offered additional help, pleading with Spain not to conduct lead testing in the home or to speak with neighbors.

Spain, who has since retired, said in an interview that Benning families expressed concern that notifying outsiders might anger commanders and harm careers.

"Something became obvious to me as I worked there," he said. "You and your family cannot make trouble for base command."

State environmental records show that Jana Martin, another mother on the block, had a four-year-old son who suffered for months from severe vomiting and belly pain – common symptoms of lead exposure. She and the doctors were mystified. "I couldn't even get a job because my kid was so sick," Martin said. She had put in two maintenance requests to fix chipping paint, but Villages of Benning didn't respond for months, Martin said.

When Martin's husband met Cale Brown, the colonel urged the family to act. The Martins bought testing swabs online. They lit up bright red, indicating exposed lead paint.

Finally, in October 2016, housing managers moved the Martins out temporarily and replaced their windows. State inspectors only learned about the case when Martin called seeking assistance.

By the time Rainbow resident Dana Sackett left a voicemail on a state lead hotline last year, inspectors knew the street well.

"Another Rainbow row site at Ft. Benning," one wrote.

Sackett, a mother of two, is a PhD toxicologist. Her husband is a lawyer with the Army Rangers. After moving to the street, she spotted paint hazards and complained.

Villages of Benning initially declined to fix them, state files say. Then mold spread in an upstairs closet, and repairs for that problem went ahead while Sackett and her girls temporarily relocated. She demanded the workers address paint hazards, too.

The landlords hired workers to scrape lead paint off the home. They lacked the required safety certifications and protective gear to conduct lead abatement, Army records show.

The Army says it has since taken steps to ensure all Benning workers dealing with lead paint are properly certified.

Last fall, Villages of Benning told Sackett the work was done and her family could move back. She found paint scrapings and dust, the records show, and refused to return unless housing managers could show the home wouldn't poison her girls.

Days later, Villages of Benning declared the property a "contamination area" and had Sackett sign papers promising not to enter. "It was one of the most stressful things I've been through," she said.

Six months later, 103 Rainbow Avenue stood vacant. At another Rainbow Avenue home, paint was peeling from doors and a window by a child's bed. A bathroom faucet leaked brown goop. A pizza-sized black mold bloom covered a ceiling. Outside, old paint crumbled from window frames, steps and a garage.

Lab testing at Columbia showed four of six paint samples from the home exceeded lead safety standards, including one from beside the child's bed. The family reported the findings to Benning officials and is now moving.

'SILENCED VERSION'

About a mile from Rainbow Avenue lies Perkins Village, a cluster of drab mid-century homes that isn't supposed to exist.

Benning's development plans called for all 180 Perkins houses to be razed years ago and replaced with 228 new Mission-style homes. Just a handful of the old homes were torn down, and none of the new ones have been built. Reuters tested two homes in Perkins Village. Both had visibly deteriorating paint with lead above federal safety standards.

The Benning contractors wound up building just over half of the 3,185 new homes that were promised back when the housing was privatized. As a result, records show, nearly three out of five Benning homes still contain lead.

The Army said it's satisfied with the results of the building project. It said it doesn't know whether any children living in Benning's older homes have tested high for lead in recent years. The base's data system can't track where children with elevated lead levels were living when they were tested.

Darlana Brown said Villages of Benning wasn't aware of JC's poisoning, either, until she spoke up.

Court records show the Browns' lawsuit was settled earlier this year. As a precondition of settlement talks, the Benning contractors demanded the Browns stop communicating with Reuters and stop mentioning the dispute publicly.

This January, on the private Facebook page where military families share their worries, Darlena Brown revised an earlier post. It still recounts her son's poisoning but omits any mention of the landlords.

She changed the title, too. It's now called "Darlana's Story (The silenced version)."

The Washington Post

https://www.washingtonpost.com/local/social-issues/many-children-have-been-poisoned-by-lead-in-homes-approved-by-dc-housing-inspectors/2018/08/14/5633a144-9b24-11e8-8d5e-c6c594024954_story.html?utm_term=.6cef09d92218

Numerous children have been poisoned by lead in homes approved by D.C. housing inspectors

By Terrence McCoy, 8/15/18

She was giving Alonzo, then 3, a bath in a tub that her landlord had just painted to pass a housing inspection. She turned to find a washcloth, and when she swiveled back, she found the boy with bits of peeling paint in his mouth. She tried get it out, but it was too late.

The lead tests came back positive: Alonzo had more than double what the government defines as “elevated,” and he hasn’t been the same since.

Between March 2013 and March 2018, at least 41 families discovered that their homes, subsidized by a housing voucher and approved by city inspectors, contained lead contaminants, according to a tabulation requested by The Washington Post through the Freedom of Information Act.

The District Department of Energy and Environment, which performed the count and the testing, said it inspected about half of the homes because a child living at the property, or visiting it often, had tested positive for elevated levels of lead; the other homes were investigated following a tip about possible lead hazards. The agency said that the list wasn’t exhaustive and that there may be more.

The findings again highlight key weaknesses in federal guidelines established by the U.S. Department of Housing and Urban Development, which the District and other cities follow. Many rental properties supported by housing vouchers in the city receive inspections under these standards. But they require only visual inspections for peeling paint and don’t mandate lead testing, unlike states such as Maryland and Rhode Island.

“You cannot detect with any certainty that a house does not contain toxic lead dust without doing a dust test, period,” said Ruth Ann Norton, president of Baltimore’s Green & Healthy Homes Initiative and one of the nation’s foremost experts on lead-poisoning prevention.

Since 2013, the District has subsidized and inspected more than 18,900 properties, all while it tries to meet a crisis in homelessness and affordable housing. In the first seven months of 2018, the D.C. Department of Human Services placed 367 homeless families — nearly three times as many as it did in 2013, according to city statistics.

Rick White, a spokesman for the District Housing Authority, which performs many of the inspections for subsidized properties, said that most of the voucher properties in the tabulation were overseen by the agency. After hazardous lead was found in the homes, some families moved out when their landlords did not abate the contamination. Other landlords cleared the properties of lead hazards and provided documentation to city authorities, and the families stayed. It is the landlords’ responsibility, he said, to ensure that the homes are free of hazardous lead.

“I do not want you, or your newspaper, mistakenly believing or inaccurately reporting that DCHA is not fully meeting its legal obligations,” he said, adding that the city is also reviewing how cities that have made strides in lead remediation, such as Baltimore, conduct their lead inspections. “Rest assured that if federal laws or regulations are amended, then we will adjust our operating practices accordingly. . . . In all cases, DCHA immediately takes appropriate actions against any private property owner where a DCHA inspector identifies peeling paint.”

The fix for peeling paint, however, often includes another coat of paint. But superficial and cosmetic fixes, according to housing advocates, lawyers and tenants, do little to address more significant and underlying issues, such as plumbing problems or leaking roofs, that can cause paint to crack and peel again. And that’s when lead paint, effectively banned in 1978, becomes dangerous.

“Sometimes families chose housing that may not be great because they feel like they don’t have any other options,” said Kathy Zeisel of the Children’s Law Center. “They may believe the coat of paint has resolved the issue, but by the end of the month, the paint is peeling all over again, and the water is coming through the walls.”

It was a problem for Donna Black. She moved into a house on Rittenhouse Street in Northwest Washington with her housing voucher in 2013, while she was pregnant. When she first saw the home, she didn't feel good about it but didn't want to seem "choosy." Plus, the inspectors had said it was okay, so she assumed it was safe.

"That was very false," she said.

The roof started leaking. The paint started peeling. She gave birth. She named the baby Damion.

A year later, his blood carried twice the amount of lead the government calls elevated, although most advocates and scientists say any trace of lead in a child's system can lead to diminished cognitive function.

Four years after that, Black is homeless, living in a Holiday Inn Express with Damion, whose needs her life revolves around. "My son is not a normal 3-year-old," she said.

A lot of days, she's filled with anger.

"We're very upset with the city," she said. "The city is the number one reason why this has happened to my son. . . . They let our family move in there, and it was fixed up to the point where it could look like it was okay, but it really wasn't."

Mattocks, too, has trouble understanding how to raise a child who is different from her seven other children. Alonzo, now 7, is always behind in his schooling, and she worries about what sort of life he will have. "I'm worried that, as an African American male, they're already having so many issues with police brutality and being discriminated against that I'm fearful . . . that this will be another barrier that he'll have to try to get through."

Mattocks and Black filed lawsuits against the housing authority and their landlords in District Superior Court in 2016, but the housing authority was dismissed from the cases after arguing that it wasn't liable, although that decision is being appealed. "There really should be stricter standards to protect the children," said Alan Mensh, the attorney representing the two.

Scott Muchow, the landlord for Mattocks's property, declined to address specific questions about Alonzo's lead poisoning. "In late 2016, I received notice of a lawsuit for lead paint related issues at the property from Ms. Mattocks, but during discovery, Ms. Mattocks chose to voluntarily dismiss the case," Muchow said in a statement.

The lawsuit against Black's landlord, Jerome Lindsey, who could not be reached to comment, is pending.

Mattocks and Black said they were less interested in money than a sense of justice. They moved into homes that were supposed to be safe but turned out to be anything but, and now they're raising children whose needs exceed their means. And no one, they say, wants to take responsibility.

"So who do we hold responsible?" Mattocks said. "We have to hold the city accountable, and the landlords accountable, we have to hold all of these people accountable . . . so that the children we call our future, we take care of these children. . . . But how do we do that if we don't hold them accountable?"

From: POLITICO Pro Energy [politicoemail@politicopro.com]
Sent: 8/16/2018 9:44:18 AM
To: Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]
Subject: Morning Energy: Trump's not-so simple math — Judge orders update of Keystone XL study — States' rights get tricky over water

By Kelsey Tamborrino | 08/16/2018 05:43 AM EDT

With help from Ben Lefebvre and Annie Snider

A NUMBERS GAME: The White House's plan to rewrite the Obama administration's cornerstone climate rule for power plants may be based on some fuzzy math, setting up a potentially brutal court battle for the Justice Department. The legally risky strategy, POLITICO's Alex Guillén and Emily Holden report, calls for redoing the calculations of how much the rule would cost and who would benefit.

EPA's proposed replacement plan is expected to be unveiled any day now and will likely downplay a key feature of the Obama-era greenhouse rule: the money saved by using less electricity. Some expect EPA will also count only a fraction of the improvements in public health from reduced smog and soot pollution, Alex and Emily report, and it won't consider any benefits from slowing climate change outside the U.S.

In doing so, President Donald Trump's EPA will argue that the Obama-era rule had higher costs and fewer benefits than previously stated, a change to help improve the comparison when it unveils its own proposal. The Obama administration had estimated that the benefits from its rule would outstrip the costs by \$26 billion to \$45 billion by 2030, though supporters of that version say those net benefits could be even higher now.

In fact, math could become vital to the success or failure of several of Trump's rules. Critics say similarly fuzzy math underlies other Trump administration proposals to reverse or stymie action on climate change, such as a recent plan by EPA and the Department of Transportation to halt a planned tightening of fuel efficiency standards for cars and trucks. "They are cooking the books on technical analysis to try to justify preconceived conclusions that these regulations are bad," said David Doniger, senior strategic director of the Natural Resources Defense Council's climate program who was influential in the Obama EPA's crafting of the original rule. Read [more](#).

GOOD THURSDAY MORNING! I'm your host, Kelsey Tamborrino. Many of you knew, but ClearView Energy Partners' Mitch Huber was the first to correctly answer that it's Loretta and Linda Sanchez who were the first and only sisters to serve simultaneously in Congress. For today: How many current senators are also former mayors? Bonus points if you can name them. Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](#), [@Morning_Energy](#) and [@POLITICOPro](#).

DO THAT AGAIN: The Trump administration was ordered Wednesday to update an environmental study of the Keystone XL pipeline despite its contention the alternative route picked last year by Nebraska regulators didn't require an updated environmental impact statement. Instead, Judge Brian Morris of the U.S. District Court for Montana ordered the State Department to go back to its 2014 EIS to take into account the new route, Alex reports for Pros. Morris said the State Department still has a "meaningful opportunity to evaluate" the alternative route that was picked in Nebraska. However, he declined environmentalists' request that Trump's permit be vacated.

STATES' RIGHTS GET TRICKY OVER WATER: The roiling debate over states' right to halt development projects over their water quality effects heads to the Senate Environment and Public Works Committee today. The panel will hold a legislative hearing on a bill from Chairman John Barrasso, S. 3303 (115), the Water Quality Certification Improvement Act of 2018. The measure would limit states' authority under Section 401 of the Clean Water Act, which requires states to certify that projects won't harm their water quality standards before the federal government issues a permit. In recent years a handful of Democratic-led states have used that authority to block natural gas pipelines. Republican Maryland Gov. Larry Hogan is also using the authority to try to force Exelon Corp. to clean up nutrient pollution flowing through one of its dams that harms the Chesapeake Bay.

GOP lawmakers have backed earlier efforts to limit or remove the authority, including in this year's House Appropriations bill, House and Senate energy legislation and standalone bills. But the Western Governors Association, which represents a number of Republican governors, has come out in opposition to reining in states' authority, and the Environmental Council of the States warned Wednesday that such moves could have unintended consequences. **If you go:** The hearing begins at 10 a.m. in 406 Dirksen.

NOMINATIONS ON TAP: Two nominees to the Energy Department will testify before the Senate Energy and Natural Resources Committee this morning: Bill Cooper to be general counsel and Lane Genatowski for director of the Advanced Research Projects Agency-Energy, which the Trump administration has sought to eliminate.

Who are they? Cooper serves as senior counsel and director of the McConnell Valdés law firm. Prior to that he was a subcommittee staff director for House Natural Resources, with a particular policy focus on the National Environmental Policy Act that the White House has sought to change up. Cooper also previously was president of the Center for Liquefied Natural Gas and counsel to the House Energy and Commerce Committee. His credentials have earned him the backing of industry groups, including the Air-Conditioning, Heating, and Refrigeration Institute, the Interstate Natural Gas Association of America, and the Electric Reliability Coordinating Council.

— **Genatowski hails from** a banking background. He's managing partner in investments at Dividend Advisors, a firm he founded in 2012. Genatowski before that was an energy investment banker at JPMorgan Chase and other Wall Street giants. His résumé lines up with others in Rick Perry's Energy Department, which has focused more on businessmen with energy-sector experience. **If you go:** The hearing kicks off at 10 a.m. in 366 Dirksen.

RESCISSIONS — TAKE TWO: The Trump administration is once again weighing a so-called rescissions package to force Congress to roll back federal spending, with just weeks to go until the next budget deadline, Pro's Sarah Ferris and John Bresnahan report. Senate Appropriations Chairman Richard Shelby said Wednesday he was told about the idea: "I heard they were thinking about one, but I haven't seen it." But a Senate leadership source said OMB chief Mick Mulvaney has already begun moving ahead on the effort.

FLORIDA DRILLING BITS: To drill or not to drill off the Florida coast is a question once again heating up the state's election campaigns. Gwen Graham, the current front-runner in the Democratic gubernatorial primary field, sent out a message titled "Drilling 75 Miles off Florida's Beaches is Insane" after a POLITICO report highlighted the idea as one that oil industry lobbyists are pushing to have included in the Interior Department's upcoming offshore drilling plan. Sunshine State Democratic Sen. Bill Nelson took the story to the Senate floor to try to whack current Gov. Rick Scott, who is running to replace him and earlier this year got help from Trump on the drilling issue.

REMEMBRANCE OF TARBALLS PAST: Former Florida Lt. Gov. Jeff Kottkamp is catching heat for his statement at a pro-drilling rally in Tallahassee that oil from the Deepwater Horizon spill "didn't even reach the shores of Florida." The remark, as first reported in the Florida Phoenix, may have surprised those who

remember former Gov. Charlie Crist squatting over oil-stained beaches in Pensacola. Kottkamp, who was speaking as co-chair of Explore Offshore Florida, went on to say "tarballs are naturally occurring." Earthjustice staff attorney Bradley Marshall called it "absurd to claim the Deepwater Horizon spill did not reach Florida" given the damage the state experienced. "That's why so many of Florida's leaders, regardless of what political party they belong to, have been so protective of our coasts all these years," he said in a statement.

WHAT'S THE RISK? EPA acting Administrator Andrew Wheeler delivered a video address at the National Environmental Justice Advisory Council's public meeting in Boston on Wednesday where he acknowledged the need for improvement in risk communication and noted the agency owes it to the American public to improve. "How well or how poorly we communicate risk disproportionately impacts those on the lower end of the socioeconomic ladder," he said. "We have fallen short in the past from our response to the Gold King Mine in Colorado, to the Kanawha River in West Virginia, to Flint, Mich." Watch it here.

CASE CLOSED: Interior's Office of Inspector General has closed its investigation into an allegation made against National Park Service officials. The claim centered around references to human-caused climate change in a report on sea-level rise and storm surge projections that officials allegedly sought to remove. The watchdog office said Wednesday that shortly after it opened the investigation, the NPS "published the report with all original references to human-caused climate change," thus prompting it to close its probe.

'SECRET' AGENTS: Comments are due today on EPA's proposed "scientific transparency" rule, which would ban the use of studies that don't publicly disclose all their data. Experts have said that plan could prohibit the use of vital studies on how pollutants affect human health because researchers typically promise to keep subjects' health information confidential. But conservatives have long accused the agency of relying on "secret science," prompting former Administrator Scott Pruitt to unveil the proposal in the name of transparency.

Under the wire: With the comment deadline approaching, nearly 80 groups, including the Union of Concerned Scientists, Sierra Club and Moms Clean Air Force, signed onto a letter Wednesday calling on Wheeler to withdraw the so-called secret science proposal. Separately, 66 health and medical organizations sent comments to Wheeler in opposition to the proposed rule. That's not to say there isn't support for the proposal; several comments posted Wednesday echoed the refrain that scientists should be required to "show your work."

AFTER THE STORM: The nonprofit Environmental Integrity Project released a new report today leading up to the one-year anniversary of Hurricane Harvey's widespread destruction in Texas. Using records from the Texas Commission on Environmental Quality, the report looks at air pollution during and after the storm as well as the government's and industries' response, and makes recommendations for the future. The "Preparing for the Next Storm" report found that all five of the largest industrial air pollution releases during Harvey were in the Houston area — with the Magellan Galena Park Terminal the biggest polluter, releasing 2,472,402 pounds of air pollution.

Harvey also triggered the release of at least 8.3 million pounds of unpermitted air pollution from petrochemical plants, according to the EIP report. And in the nine months after Harvey, "18 companies revised their air pollution reports to the state to erase 1.7 million pounds of unpermitted emissions during Hurricane Harvey," the report found.

LET'S MAKE A DEAL: Trump might soon strike a deal with Mexico on NAFTA, even as a trade war plays out with the rest of the world, POLITICO's Megan Cassella reports. The apparent turnaround after months of stalemate arrives as Mexican Secretary of Economy Ildefonso Guajardo visited Washington on Wednesday to hammer out some of the most contentious issues on NAFTA. "Both U.S. and Mexican officials now say they could be on the verge of announcing a preliminary agreement on everything from complicated automotive rules to environmental regulations by the end of August," Megan reports.

CATCHING FIRE: Agriculture Secretary Sonny Perdue will join Senate Energy ranking member [Maria Cantwell](#) and Sens. [Steve Daines](#) and [Ron Wyden](#) to unveil a new federal plan for addressing wildfires. Earlier this year, Perdue and Cantwell [worked together](#) on a commitment to use unmanned aircraft technology this fire season, and the Washington Democrat will likely highlight similar tools and technology today. Watch the [livestream here](#).

POLL: CLIMATE A FACTOR FOR MOST: Slightly more than half (53 percent) of U.S. voters believe climate change is a factor in making the ongoing California wildfires more extreme, while 39 percent say it's not, according to a new poll from Quinnipiac University [released](#) Wednesday. Sixty-four percent of voters said they think the country is not doing enough to address climate change, the national poll found. Eighteen percent of voters say the U.S. is doing enough to address the issue, while 10 percent say the U.S. is doing too much.

— **On a related note**, the Natural Resources Defense Council launched [a tracker](#) this week to see where every state's lawmakers stand on offshore drilling.

QUICK HITS

— "A coal company and Interior teamed up to save a power plant," [E&E News](#).

— "FirstEnergy Solutions takes next step toward closure of nuclear power plants," [Akron Business Journal](#).

— "A rising concern? After straws, balloons get more scrutiny," [The Associated Press](#).

— "Will Washington State Voters Make History on Climate Change?" [The Atlantic](#).

HAPPENING TODAY

10 a.m. — Senate Environment and Public Works Committee [hearing](#) on clean water, 406 Dirksen.

10 a.m. — Senate Energy and Natural Resources Committee [hearing](#) to consider DOE nominees, 366 Dirksen.

10 a.m. — American Petroleum Institute conference call briefing on efforts "to reform the broken Renewable Fuel Standard that threatens to reverse America's energy progress."

12:45 p.m. — Senate Energy and Natural Resources ranking member [Maria Cantwell](#) and Agriculture Secretary Sonny Perdue [unveil](#) a federal plan for addressing wildfire, Senate Room S-115.

THAT'S ALL FOR ME!

To view online:

<https://subscriber.politicopro.com/newsletters/morning-energy/2018/08/trumps-not-so-simple-math-319039>

Stories from POLITICO Pro

Exclusive: Draft details Trump's plan for reversing Obama climate rule [Back](#)

By Emily Holden | 08/14/2018 07:46 PM EDT

The Trump administration is preparing to unveil its plan for undoing Barack Obama's most ambitious climate regulation — offering a replacement that would do far less to reduce the greenhouse gas emissions that are warming the planet, according to POLITICO's review of a portion of the unpublished draft.

The new climate proposal for coal-burning power plants, expected to be released in the coming days, would give states wide latitude to write their own modest regulations for coal plants or even seek permission to opt out, according to the document and a source who has read other sections of the draft.

That's a sharp contrast from the aims of Obama's Clean Power Plan, a 2015 regulation that would have sped a shift away from coal use and toward less-polluting sources such as natural gas, wind and solar. That plan was the centerpiece of Obama's pledge for the U.S. to cut carbon dioxide emissions as part of the Paris climate agreement, which President Donald Trump has said he plans to exit.

The Environmental Protection Agency acknowledges that both carbon emissions and pollutants such as soot and smog would be higher under its new proposal than under the Clean Power Plan. And Trump's critics call it a recipe for abandoning the effort to take on one of the world's most urgent problems.

The proposal would be "another, more official, sign that the government of the United States is not committed to climate policy," said Janet McCabe, EPA's air chief under Obama.

McCabe said based on a description of the proposal, it would offer "a significant amount of discretion to states to decide that nothing at all needs to be done."

Many red states and several companies sued over the Clean Power Plan, and a federal appeals court was nearing a decision when Trump's EPA asked for time to rewrite the rule. McCabe said the proposal could be meant to eat up time and stall a future president from quickly regulating greenhouse gases.

EPA was widely expected to write a far less stringent replacement rule. Trump promised to nix the Clean Power Plan and exit the Paris deal during his campaign. But the draft offers the first look at the specifics since the agency released a broader notice that it would reconsider the rule in April.

The White House Office of Management and Budget has finished reviewing the draft and sent it back to EPA this week.

The rule would allow states to write rules to make coal plants more efficient, enabling them to burn less coal to produce the same amount of electricity. But that could be bad for the planet, people familiar with state air programs say, by making it cost-effective for power companies to run those plants more often.

EPA looked at the outcomes of various scenarios that could be possible from state-proposed plans in 2025, 2030 and 2035, implying that the plans could be in place before 2025.

Obama's plan was meant to see greenhouse gas emissions from the U.S. power sector fall to 32 percent below 2005 levels by 2030. The nation has already achieved much of that reduction because of trends such as the closures of dozens of older coal plants.

EPA intends to argue that the Obama administration rule illegally sought to regulate the broader power sector, beyond coal plants, and that the compliance costs would have been big and the climate benefits negligible, according to the draft POLITICO reviewed.

Environmental advocates and blue states plan to wage war on the proposal once it is final. But while the legal fights play out, the regulation will be a placeholder that could stall a future president from regulating power plants.

States will be able to present reasons for why they don't want to regulate coal plants, including considering how many more years they have left before they would probably shut down, according to a source who reviewed a different section of the document.

In another contentious portion of the proposal, EPA is looking at letting states decide whether they want to adopt changes to pollution reviews that kick in when a plant makes upgrades. Existing rules are meant to keep plants from making changes that cause more pollution.

Conservatives and industry groups have long argued that the review process, called New Source Review, makes it too expensive for operators to make improvements to plants.

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The key to Trump's climate reversal? New math [Back](#)

By Alex Guillén and Emily Holden | 08/16/2018 05:06 AM EDT

The Trump administration's attempt to reverse Barack Obama's most sweeping climate regulation rests on a legally risky strategy — redoing the calculations of how much the rule would cost and who would benefit.

The EPA's proposed replacement is expected to downplay the money that people and businesses would save from using less electricity, a key feature of the Obama-era greenhouse rule for power plants. People tracking the issue also expect that the agency will count only a fraction of the improvements in public health from reduced smog and soot pollution, and won't consider any benefits from slowing climate change outside the U.S.

The upshot: President Donald Trump's Environmental Protection Agency will argue that the Obama administration's rule had more costs and fewer benefits than previously stated, a change to help improve the comparison when it unveils its own, much less ambitious power plant proposal as soon as next week.

The Obama administration had estimated that the benefits from its 2015 rule would outstrip the costs by \$26 billion to \$45 billion by 2030.

Supporters of the Obama version say those net benefits could be even higher now, because states are on track to meet the climate goals and the costs of clean energy have continued to plummet. And they warn that repealing the regulation could keep older, more expensive coal-fired power plants in operation, adding to consumers' costs.

The math could be crucial to the success or failure of a number of Trump rules. That could make the rollbacks legally vulnerable when environmental advocates and states sue to overturn Trump's action, critics of the new proposals say.

"They are cooking the books on technical analysis to try to justify preconceived conclusions that these regulations are bad," said David Doniger, the senior strategic director of the Natural Resources Defense Council's climate program who was influential in the Obama EPA's crafting of the original rule.

EPA did not respond to a request for comment on Wednesday.

Trump administration lawyers reviewing the replacement are already struggling with how to defend a rule that could cost electricity users money but would not do much to address climate change or air pollution, according to a person aware of conversations between the White House and the Justice Department. DOJ would be charged with defending the rule in court.

POLITICO has examined a portion of the agency's unpublished draft of the new rule, which would allow states to write their own modest regulations for coal plants or even let plant operators seek to opt out entirely, according to a source with knowledge of the broader proposal.

The proposed rewrite of the power plant rule is part of a pattern: Critics say similarly fuzzy math underlies other Trump administration proposals to reverse or stymie action on climate change, such as a recent plan by EPA and the Department of Transportation to halt a planned tightening of fuel efficiency standards for cars and trucks.

Sean Donahue, an environmental lawyer who has represented groups like the Environmental Defense Fund, said he would expect a court to be "very skeptical" of any effort that looks as though EPA is trying to evade its obligation to regulate greenhouse gases. But he conceded that will depend on the details of EPA's power plant proposal.

"If it were one or two technical judgments where there's a difference between this administration and the last one, or this administration and prior consistent practice, that would be one thing," Donahue said. "But it's many, many things, all pointing the same way, all pointing toward rolling back greenhouse gas mitigation efforts."

Trump has repeatedly expressed doubts about man-made climate change, and much of his Cabinet shares a similar view. In contrast, the federal government's own scientific assessment finds that human-caused climate change will not only raise temperatures but also make extreme weather more dangerous and lift sea levels by 1 to 4 feet by the end of the century.

Kate Larsen, director of economic research firm Rhodium Group, said the Trump administration's justifications for unraveling climate change policies are symptomatic of its broader governing principles.

"A decision we make today is narrowly focused on the impacts to myself and my immediate neighbor in the next week, but you're not taking into account impacts next year and the following year to yourself, your neighbor, the entire community," she said.

Environmental experts are also scrutinizing the auto rule proposal, released earlier this month, which would freeze the Obama administration's aggressive fuel economy standards after 2020 and dial back EPA greenhouse gas rules to match.

EPA and DOT's National Highway Traffic Safety Administration argued that the freeze would save billions of dollars in costs. Critics say the administration overestimated compliance costs of the Obama-era auto targets by as much as fourfold, which could significantly tip the cost-benefit analysis in their favor. Another claim that the Trump rollback would save more than 1,000 lives per year — yielding benefits of \$77 billion — has also drawn skepticism.

On Tuesday, EPA released a June memo that showed agency staff criticizing a number of "unrealistic" aspects of NHTSA's modeling. They disagreed with the proposal's fatality figures, with EPA staff estimating deaths would increase slightly under the freeze. And they thought the rule overestimated compliance costs and the time needed to recoup those costs in fuel savings, all factors that boosted benefits and lowered costs for the proposed freeze. Both EPA and NHTSA dismissed the memo as only one part of a complex review process.

The administration and industry groups have blasted the Obama administration's use of "co-benefits" — the benefits in improved health or reduced pollution that arise even when they're not the primary aim of a regulation. (One example: Cutting coal plants' carbon dioxide pollution under the power plant regulation would't do much directly to improve people's health, but it would reduce smog.) But Donahue argued that Trump's regulators sometimes lean on co-benefits to help build the case for their rollbacks.

For example, NHTSA's modeling credits changes in consumer behavior as the overwhelming factor behind all the lives that the Trump administration contends its auto rollback would save. The agencies argue that under the previous Obama rule, drivers would be more likely to remain in older, more dangerous cars than purchase more expensive, safer ones.

That "would seem to be a co-benefits argument, since the EPA doesn't have, and NHTSA doesn't have, the authority to regulate used cars," said Donahue, who called the paradox "sort of entertaining."

Counting co-benefits is a long-standing practice for federal regulators, but energy industry groups and Republican state officials grew incensed by the Obama administration's use of it to justify major regulations.

"The co-benefits thing has ballooned into the biggest scandal in environmental regulation," said the conservative Competitive Enterprise Institute's Myron Ebell, who led Trump's post-election transition team at EPA. "You get very small direct benefits, but you make up, essentially, a lot of co-benefits."

Still, he contended that EPA's withdrawal of Obama's power plant rule would eliminate a huge amount of costs in the coming years, saying Obama's regulation represented "just the first emissions cuts."

"There were going to be more beyond that if the Obama administration had been succeeded by the Clinton administration," Ebell said. He added: "By cutting it off in the way that they're doing, we're avoiding immense future costs."

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Keystone XL pipeline wins green light in Nebraska — but may face new hurdles [Back](#)

By Ben Lefebvre | 11/20/2017 11:25 AM EDT

Nebraska regulators approved the Keystone XL pipeline Monday, but only if it is built along a new path that may force the project developer to jump through a new set of regulatory hoops.

The 3-2 vote by the Nebraska Public Service Commission gave the green light to a different route than the one preferred by Keystone developer TransCanada, moving it east to run partially alongside the original Keystone pipeline and through a portion of the state's ecologically sensitive Sandhills area as well across the Ogallala Aquifer.

The Trump administration is evaluating whether it would have to re-approve the controversial pipeline to account for the new route. But activists who have spent the better part of a decade fighting to block Keystone said the decision throws the whole project into jeopardy, while TransCanada, the company seeking to build the project, said only that it is evaluating its next steps.

"This decision today throws the entire project into a huge legal question mark," said Jane Kleeb, the activist who led the opposition to the pipeline and who is now Nebraska Democratic Party chair. "TransCanada will have to go back to the State Department because that route has never been reviewed by the feds."

The State Department said it is reviewing the PSC decision for just such a possibility.

"We won't know about any impacts until we learn precisely the extent of any changes, something we are currently engaged in," State Department spokesman Vincent Campos said.

TransCanada President and CEO Russ Girling said the company "will conduct a careful review of the Public Service Commission's ruling while assessing how the decision would impact the cost and schedule of the project."

Former President Barack Obama had blocked the permits for the pipeline in 2015, citing the oil sands' impact on climate change, but President Donald Trump quickly reversed that decision after taking office. Keystone XL is designed to transport up to 830,000 barrels per day of crude from Canada's oil sands and North Dakota's shale fields to oil refineries on the Gulf Coast.

The Nebraska PSC vote comes as TransCanada adds new crews to its cleanup operations in South Dakota, where the original Keystone Pipeline ruptured last week and released 210,000 gallons of oil. But Nebraska law bars the regulators from considering spills or pipeline safety in its decision-making process.

Environmentalists and landowners who opposed Keystone XL's construction have promised to try to overturn the commission's decision.

"We will appeal," Kleeb said. "We will challenge a foreign corporation being given eminent domain in the county courts, with every intent to bring it to the Supreme Court if needed."

Even with the approval, the project, whose costs to build the nearly 1,200 mile artery have ballooned to \$8 billion, is still not ready to be built since TransCanada is gauging the economics of the huge investment. Though prices for oil have rebounded moderately in recent months, and while TransCanada has said demand for space on the pipeline is strong, it's not yet clear that enough companies will commit to the 20-year contracts required to reserve space on it.

The opposition to Keystone XL had been a rallying cry for green activists who have long said mining Canada's oil sands would be a disaster for global climate change, releasing vast amounts of carbon dioxide into the atmosphere.

But supporters have said tapping the oil fields in Alberta is no worse than the oil production in Venezuela, where much of the heavy sour crude that is shipped to U.S. refineries comes from now.

Many in the oil industry, however, no longer see the Keystone XL pipeline as crucial to the U.S. refineries as they once did, especially since the railroad sector stepped in to offer a more flexible — though more expensive — way to ship the oil.

"There's not going to be a parade thrown, although everyone in the industry is going to be grateful," said Tyler Nelson, an energy lobbyist for Cornerstone Government Affairs. "It should have been done years ago. But now a lot of people want it to be over with and done and move on."

The pipeline may struggle to succeed in the oil business. Energy markets have made the Alberta oil sands less attractive, with ExxonMobil, ConocoPhillips and others pulling out of the region to concentrate on U.S. oil

shale development in Texas. Meanwhile, rival pipeline company Enbridge has expanded its pipeline system delivering Canadian crude to the U.S.

Critics have pointed to the recent shale oil boom as a reason that supply from the Canadian and North Dakota fields is in less demand, and they argue that much of the oil from Keystone XL could end up on tankers bound for export. U.S. oil production is on target to average more than 9 million barrels a day this year, nearly double what it was when TransCanada first proposed the massive pipeline.

If TransCanada gives its final approval to go ahead, construction would not start until 2019 at the earliest, Paul Miller, TransCanada's president of liquids pipelines, said during a conference call earlier this month.

The pipeline already is the focus of a court challenge stemming from Trump's State Department approving the project. A coalition of groups is arguing the State Department did not do due diligence before approving the cross-border pipeline in March. The case is still in the beginning stages, with a decision pending from the U.S. District Court of Montana on a Trump administration motion to dismiss.

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Judge orders Trump administration to update Keystone XL environmental study [Back](#)

By Alex Guillén | 08/15/2018 08:17 PM EDT

A federal judge today ordered the Trump administration to update its environmental study of the Keystone XL pipeline.

Nebraska regulators last year picked an alternative route through the state after the pipeline was approved by President Donald Trump. Now the State Department must update its previous 2014 environmental impact statement to take that route into account, ruled Judge Brian Morris of the U.S. District Court for Montana.

The Trump administration argued that it did not need to update the EIS, despite Nebraska regulators' decision to pick the alternate route.

But Morris concluded that the State Department still has a "meaningful opportunity to evaluate" the alternative route that was picked in Nebraska. "Federal Defendants cannot escape their responsibility under NEPA to evaluate the Mainline Alternative route," he ruled.

The approved route differs from the one studied in the 2014 EIS by crossing different counties and bodies of water and requiring an extra pump station and electric infrastructure, Morris noted.

However, Morris declined environmentalists' request that Trump's permit be vacated, at least for now.

TransCanada does not plan to start construction before the second quarter of 2019, he said, giving the Trump administration sufficient time "to supplement the EIS in a manner that allows appropriate review before TransCanada's planned construction activities." Morris said he would revisit the issue if "circumstances change" and he is unable to review the new supplemental EIS before TransCanada begins construction.

WHAT'S NEXT: Morris ordered the State Department to propose a schedule to supplement the EIS.

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Trump administration to make a second try on spending cutbacks [Back](#)

By Sarah Ferris and John Bresnahan | 08/15/2018 07:15 PM EDT

The Trump administration is eyeing a second attempt to force Congress to roll back federal spending, after its last attempt collapsed in the GOP-led Senate, according to the chairman of the Senate Appropriations Committee as well as a Senate leadership source.

The Office of Management and Budget is said to be considering a second package of so-called rescissions, with just weeks to go until Congress' next budget deadline.

OMB officials did not return a request for comment and it's not known yet what spending the White House might try to cut or eliminate this time around.

Senate Appropriations Chairman Richard Shelby said today he was told about the idea. "I heard they were thinking about one, but I haven't seen it," Shelby (R-Ala.) told POLITICO.

OMB chief Mick Mulvaney has already begun moving ahead, according to the Senate leadership source.

Budget hawks, led by Mulvaney, fought hard for the last package, H.R. 3 (115), which would have pulled back \$15 billion in already-approved federal dollars. That bill ultimately tanked in the Senate, coming up just one vote shy on a procedural vote.

If the White House moves quickly, its next rescissions package could arrive in the middle of a separate major funding fight on Capitol Hill. Lawmakers have until Sept. 30 to send roughly \$1.4 trillion in fiscal 2019 funding to President Donald Trump's desk or risk a funding lapse.

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Oil companies ask Florida lawmakers to unlock offshore drilling [Back](#)

By Ben Lefebvre | 08/15/2018 05:01 AM EDT

Oil and gas companies are aggressively lobbying Florida lawmakers to agree to allow offshore drilling in the eastern Gulf of Mexico — seeking to break decades of bipartisan opposition in a state that has long viewed oil spills as an existential threat to its tourist economy.

The effort, which would potentially bring oil rigs as close as 75 miles to Florida beaches, comes just seven months after Interior Secretary Ryan Zinke promised that the state was "off the table" for offshore drilling. And it could complicate Republican Gov. Rick Scott's campaign to unseat Democratic Sen. Bill Nelson, whose opposition to drilling off the coast has been a main theme of his decades in Congress.

But the expansion would aid President Donald Trump's effort to increase U.S. oil and gas production, in what he calls a bid for American "energy dominance."

Gaining access to the millions of barrels of oil and natural gas off Florida's west coast is a top priority for Exxon Mobil, Chevron, Shell and other companies.

Energy lobbyists and trade associations believe Zinke left some wiggle room in his comments, and they are trying to persuade Florida lawmakers to sign on to possible compromises, including allowing drill rigs to operate up to 75 miles off the state's Gulf coast, lawmakers and industry sources said. That would be down from more than 200 miles under an existing drilling moratorium.

Zinke's tweet exempting Florida — which critics charge was simply a political gift for Scott's Senate campaign — and his subsequent statement that he was "removing Florida from consideration for any new oil and gas platforms" shouldn't be read as official Interior policy, said Randall Luthi, president of the trade group National Offshore Industry Association, which is pressing for access to the waters.

"Secretarial tweets and statements to Congress are outside the administrative process, but certainly are indicators of where the Secretary and evidently the White House might end up," Luthi said in a statement to POLITICO. "The Eastern Gulf of Mexico is ripe for some kind of a reasonable compromise."

The Gulf of Mexico Energy Security Act of 2006 put a moratorium on oil and gas exploration in the eastern Gulf until June 2022. Department of Defense offshore training zones put another large part of those waters out of contention for drilling.

Interior's first draft plan included opening up every acre of federal water to oil and gas companies, however. Zinke has implied in later conversations with coastal state governors, senators and trade associations that the final plan wouldn't necessarily include drilling off the coasts of New Jersey, Delaware, Maine, but his plan to announce a final decision this fall could delay unpopular decisions — including possibly opening up the waters off southern California and the Mid-Atlantic region — until after the midterm elections, sources said.

The most aggressive plan industry lobbyists have brought to lawmakers calls for allowing drilling platforms within 75 miles of Florida's Gulf coast, an idea that Interior itself floated in its draft plan. Buffer zones going out as far as 125 miles have also been discussed, sources said. Either could technically adhere to Zinke's promise not to open Florida's waters, since the state's jurisdiction only extends nine nautical miles from the shoreline. Interior proposed the use of so-called exclusion zones for the eastern Gulf of Mexico and the Atlantic coast in its draft plan.

One lobbyist working the issue told POLITICO that Zinke and Scott were careful to "not say the entire Eastern Gulf," was off the table during their press conference at the Tallahassee airport in January.

"There are some Republicans who are prepared to make a deal. Seventy-five miles is the expected buffer, but folks might be willing to throw it a little further," said the lobbyist, speaking anonymously to frankly discuss ongoing negotiations.

That reduced buffer zone would please the oil industry because most of the oil and gas reserves in the eastern Gulf are believed to be in the waters south of Alabama and the Florida Panhandle, said a person at one oil and gas company who was not authorized to discuss the draft plan.

"I think we could live with 75 miles," the person said. "I think that wouldn't hurt anyone."

The idea so far has failed to gain much traction with at least two Florida Republicans who said they have been inundated with industry requests to open the area to drilling.

Florida Republican Rep. Matt Gaetz said he opposes the idea on national security grounds, given that the Defense Department uses a large part of the eastern Gulf for training exercises.

"It seems every week the oil and gas industry is working to obtain permission to crack the Destin Dome," Gaetz said in an interview with POLITICO, referring to one offshore site believed to hold large amounts of natural gas. "That would be devastating to our national security. I don't have a nuanced view on this. I am opposed."

Gaetz said he has raised his concerns on several occasions with Zinke, who he said has not pushed for a specific policy but has espoused an expansion of oil and gas drilling in general.

"I've had meetings with the secretary on this," Gaetz said. "I've had spirited conversations with him. I would not say he was wedded to any particular plan. He was trying to advance the cause of energy exploration."

An Interior spokeswoman did not answer questions about Zinke's meetings with Florida lawmakers or the possibility of establishing a 75-mile buffer zone.

"Secretary Zinke regularly meets with and communicates with many members on both sides of the aisle, coastal and non-coastal," the spokeswoman said in a written statement. "Members often discuss relevant issues pertaining to their districts and states as appropriate."

Republican Rep. Francis Rooney, who opposed drilling off the Florida coast during his 2016 campaign, said the industry has also been reaching out to him. Industry representatives have suggested several compromises, including a 100-mile buffer zone, he said, though he has rejected that plan, saying currents could carry any spilled oil from that part of the Gulf onto state beaches.

Instead, Rooney, who had served on the board of the oil and gas company Laredo Petroleum, offered to allow drilling 200 miles off the coast, west of the area where the military conducts training.

"The oil people have brought up several different things and I have been pretty much recalcitrant in negotiating with them," Rooney told POLITICO. "I think we need a clear delineation of where they will drill and not drill, and we don't need them drilling east of that military mission line."

Environmentalists also oppose any drilling, saying a buffer zone wouldn't protect Florida's beaches and tourism economy.

"The Deepwater Horizon disaster that spoiled Florida's coastline was 200 miles from its shore," said Diane Hoskins, director of environmental group Oceana, referring to the 2010 deepwater gusher that took months to plug. "A 75-mile buffer would be a cold comfort for Floridians."

Alexandra Glorioso contributed to this report.

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Trump delivers a Senate race sweetener to Scott [Back](#)

By Marc Caputo, Ben Lefebvre, Matt Dixon and Bruce Ritchie | 01/09/2018 11:24 PM EDT

Donald Trump delivered a big political contribution to Rick Scott on Tuesday as the Florida governor contemplates a bid for U.S. Senate: a pledge to spare Florida from administration plans to expand offshore oil drilling nationwide.

The surprise announcement from Secretary of Interior Ryan Zinke — who went to the trouble of flying to Tallahassee to stand beside Scott — outraged environmentalists and Democrats who insist the decision was a political ploy that unlawfully gave preferential treatment to Florida, a swing state that voted for Trump and that's home to his so-called "Winter White House" escape at Mar-a-Lago in Palm Beach.

Zinke made sure that the term-limited governor got all the credit. In response to a question about what was the final determining factor in his decision, Zinke said: "The governor."

"You have a tremendous governor that is straightforward, easy to work for, says exactly what he means. And I can tell you Florida is well-served," Zinke said.

Zinke's glowing endorsement of Scott has become de facto policy for Trump, who has tried for more than a year to woo Scott publicly and privately to run for U.S. Senate against Democratic incumbent Bill Nelson. The veteran senator is one of the most vocal opponents of offshore oil-drilling in Florida, an issue that typically enjoys broad bipartisan support in a state whose economy depends heavily on tourism and development along 1,300 miles of coastline.

Scott used to be an exception to the blanket opposition to offshore oil drilling. In 2010, the then-political newcomer voiced more support for oil exploration, but the position became a political liability in the state after the Deepwater Horizon oil spill coated some Florida beaches with tar balls and damaged tourism in parts of the Gulf.

A 2016 University of South Florida-Nelson poll found that 47 percent of state residents see offshore drilling as a move in the "wrong direction," a distinction that makes it one of the most unpopular policy proposals in the state.

So when Zinke announced last Thursday that the administration wanted to open vast new stretches of federal waters to oil and gas drilling, opposition was united in Florida — from liberal environmentalists to conservative lawmakers and even Scott, who issued a rare public denunciation of the policy.

At the time, Democrats and Nelson supporters highlighted the unpopular policy announcement by a president who's flagging in the polls. Nelson's campaign began fundraising off of the initial announcement to expand oil exploration.

One Republican insider, however, told POLITICO shortly after the initial announcement that the administration would scale the plan back somewhat to give Scott a political boost that would "be a big win, and it won't be Bill Nelson bringing it home."

As late as Tuesday, Nelson was still fundraising off the drilling announcement. "President Trump is about to hand a huge victory to the oil industry and put Florida's entire economy at risk," Nelson's campaign wrote. "He just announced plans to rollback offshore drilling regulations that were put in place after the 2010 Deepwater Horizon disaster, and open up nearly all federal waters to offshore oil drilling — including the eastern Gulf of Mexico."

But just before that email solicitation was sent out, Zinke was unexpectedly standing in Tallahassee's regional airport with Scott announcing the reversal to the Florida capital press corps.

Nelson said he was incredulous.

"I have spent my entire life fighting to keep oil rigs away from our coasts. But now, suddenly, Secretary Zinke announces plans to drill off Florida's coast and four days later agrees to 'take Florida off the table'? I don't believe it," Nelson said in a written statement. "This is a political stunt orchestrated by the Trump administration to help Rick Scott, who has wanted to drill off Florida's coast his entire career. We shouldn't be playing politics with the future of Florida."

Similarly, the Sierra Club of Florida said the decision was "a purely political move to aid the ambitions of Rick Scott." And the League of Conservation Voters called it a "publicity stunt."

Scott's spokesman, Jonathan Tupps, said oil-drilling opponents should not be upset.

"Senator Nelson and anyone else who opposes oil drilling off of Florida's coast should be happy that the governor was able to secure this commitment," he said. "This isn't about politics. This is good policy for Florida."

Tupps said that, contrary to claims by Scott's opponents, the governor and staff have frequently discussed Florida's opposition to more offshore oil drilling with the Interior Department. Scott personally raised the issue with Zinke in an October meeting in Washington, Tupps said.

Why Zinke suddenly reversed months of planning four days after announcing the new oil and gas exploration policy are unclear. Zinke also made his announcement via Twitter after a brief question-and-answer session with reporters in Tallahassee.

In reversing the policy for Florida, however, Zinke may have run afoul of the Administrative Procedure Act, critics said. That could give ammunition to California and Atlantic Coast states wanting to get on the same no-drill list -- the opposite of what President Donald Trump intended when he directed Zinke to expand oil companies' access to federal waters to boost U.S. energy production.

The American Petroleum Institute President Jack Gerard earlier in the day had applauded the Trump administration's plan to make all available federal waters available for drilling, saying "It represents a bold acknowledgement of the industry's advancements in technology to safely access U.S. energy resources."

Almost immediately after Zinke's announcement, lawmakers from other states took to Twitter to raise the specter of lawsuits, which could lead to courtroom entanglements for Interior's offshore drilling plan. The proposal was supposed to go into effect in 2019 and offer acres off the coast of Florida in late 2022 when a drilling moratorium officially ends.

"Under the Administrative Procedure Act, an agency can't act in an arbitrary and capricious manner. In this case, exempting Florida but not California (which has an even larger coastal economy) is arbitrary and capricious," Rep. Ted Lieu, a California Democrat and attorney, told POLITICO.

"So the agency would either have to not exempt Florida, or in the alternative, exempt Florida, California and any other state that can show the coasts are important to the state's tourism and economy."

California Attorney General Xavier Becerra also hammered that point on Twitter, echoing Scott's argument against drilling off the Florida coast to say "California is also 'unique' & our 'coasts are heavily reliant on tourism as an economic driver.' Our 'local and state voice' is firmly opposed to any and all offshore drilling. If that's your standard, we, too, should be removed from your list. Immediately."

In Virginia, U.S. Sen. Tim Kaine took a more low key approach. "Virginia's governor (and governor-elect) have made this same request [as Florida], but we have not received the same commitment. Wonder why..." he tweeted.

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Pruitt touts science policy as transparency as Democrats slam him for secrecy [Back](#)

By Emily Holden and Annie Snider | 04/26/2018 03:17 PM EDT

Embattled EPA Administrator Scott Pruitt sought to fend off criticisms he had clouded his activities within the agency in secrecy, pointing during Thursday's congressional hearing to the new science policy rolled out this week that he said is boosting transparency around new rules.

But that new policy, long a conservative priority, had Democrats howling that Pruitt had effectively given himself carte blanche to conceal studies that would not support his rollback of Obama EPA rules.

"The type of studies you want to exclude are the same kind of scientific studies that were used to prove that lead in pipes and paints harm children and that secondhand smoke is a dangerous carcinogen," said Rep. [Raul Ruiz](#) (D-Calif.). "You have demonstrated a disregard of true science [and] the scientific process," he said.

The discussion was one of the most substantive policy issues at [the hearing](#) of the Energy and Commerce subcommittee that focused largely on the scandals that have erupted around Pruitt in recent weeks.

The draft rule, which was announced at a closed event at agency headquarters on Tuesday, could have far-reaching effects that limit EPA's ability to rely on studies that don't have publicly available raw data when making decisions about air and water regulations. Scientists and public health advocates have argued the change could keep the agency from updating health protections based on new science since those studies typically redact subjects' personal information.

Pruitt's GOP supporters on the panel praised the move as a way to ensure that scientific data used to support new regulations was available for everyone to review.

"I've had a lot of constituents over the years who've been very concerned about decisions ... that get made by administrators or the bureaucracy and in some cases they can't get access to the underlying data that underpins the decisions," said Rep. [Greg Walden](#) (R-Ore.), chairman of the Energy and Commerce Committee.

Rep. [Paul Tonko](#) (D-N.Y.) called Pruitt "hypocritical" because the proposed rule gives broad authority Pruitt to grant exemptions from the new requirements, which he said Pruitt could use "without any transparency or accountability" for his decisions.

Tonko pointed to internal emails between top EPA officials initially released under the Freedom of Information Act that show the agency's top chemicals official, a former leading chemicals industry expert, expressing concerns about the impact the policy could have on companies' confidential business information.

"If EPA was assessing the safety of a chemical, you alone would have the power to selectively block public health studies that do not support your political priorities and allow ones that favor your friends in industry. Not only does this open the door to special treatment for industry over the public health, but you could also pick winners and losers among the industry types," Tonko said.

Pruitt argued the restrictions will apply equally to "all third party studies." He said both business and personal health information could be redacted, which experts have argued would be time-consuming and expensive.

Yogin Kothari, a Washington representative for the Union of Concerned Scientists, which has opposed the change, said Democrats were right to highlight the hypocrisy of the policy that he said was really about restricting science.

"What it highlights is a lack of transparency at the agency because he hasn't really talked about this or explained this or explained his thinking about this," Kothari said.

Frank Maisano, a spokesman for the lobbying firm Bracewell who attended the hearing, said Republicans on the committee appeared to be interested in hearing more about the policy.

"It's a topic that is different from what Democrats are talking about, it's a topic that's substantive," Maisano said. "It's a topic that many in the business community and many in the conservative community have been focused on for years."

EPA's proposal, based on long-sought legislation from House Science Chairman Lamar Smith (R-Texas), also drew support from Rep. Kevin Cramer (R-N.D.) who said it undercut Democrats who attacked Pruitt for secrecy while defending the agency previous use of "secret science."

"You've also been accused of hypocrisy, a lack of transparency, by people who are in the same breath defending secret science as a means of carrying out their political philosophy ... the irony is rich beyond rich with me," he said.

Quint Forgey contributed to this report.

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Mexico, U.S. may be heading toward NAFTA deal amid Trump's global trade war [Back](#)

By Megan Cassella | 08/15/2018 05:32 PM EDT

President Donald Trump could be poised to make a deal with Mexico on NAFTA even as he engages in a trade war with the rest of the world.

Mexican Economy Secretary Ildefonso Guajardo arrived in Washington on Wednesday — as he has every week for the past month — to hammer out some of the most contentious issues on NAFTA. U.S. and Mexican officials now say they could be on the verge of announcing a preliminary agreement on everything from complicated automotive rules to environmental regulations by the end of August.

The apparent turnaround after months of stalemate is a surprise outcome of discussions reaching their year anniversary on Thursday. And while the two sides have yet to bring Canada, the third partner in NAFTA, into the latest round, the negotiators' optimistic tone could signal that Trump may be ready to extinguish at least one trade conflagration before the midterms. That would placate Republicans who have been calling for a return to stability as the U.S. and China have been slapping tariffs on each other's exports, roiling international markets and burdening American farmers.

"We're settling in for the long haul with China, so we really need to release the pressure in our backyard," said Dan Ujcz, an international trade lawyer who specializes in Canada-U.S. matters. "I think that's a driving force for the U.S.' desire to get a deal right now."

To be sure, some major controversial issues remain unresolved, including the U.S. proposal to automatically terminate the pact after five years unless all three countries agree to renew it — an idea that Canada and Mexico have both rejected outright. And for the time being, at least, Canada still remains on the outside of the current talks.

But reaching even a bare-bones agreement on NAFTA before November's elections would hand a concrete victory to Trump, who would likely point to the revamped pact as a symbol that his strong-arm tactics have worked, industry sources and experts closely following the talks say. It would also allow U.S. trade officials to clear a major task off their agenda and dedicate more time to areas where U.S. Trade Representative Robert Lighthizer in particular has wanted to focus, primarily trade issues with China.

At the same time, Mexican negotiators are also under renewed pressure to get a deal after the country elected a new leader who takes office in December and who badly wants NAFTA to be signed and off his plate before then. Mexico has pointed to Aug. 25 as the date by which it must wrap up at least a preliminary agreement for outgoing President Enrique Peña Nieto to be able to sign the deal before he leaves office.

Those domestic politics have put Guajardo in a tough position, as he tries to appease the incoming Mexican administration and quickly wrap up a deal while still standing up firmly against some U.S. proposals that Mexico has repeatedly derided as unworkable.

"They're under a lot of pressure to just come up with anything, whatever it is," one source close to the talks said, requesting anonymity to speak freely about internal deliberations. "What I've been hearing from other Mexican parties is that Ildefonso was sort of distraught and frazzled by the fact that he's being asked to wrap it up, and that of course means making concessions that he wasn't ready to make. It lowers his negotiating potential."

Against that backdrop, sources close to the talks say Mexico appears to be poised to accept large swaths of a U.S. proposal involving the rules that govern North American-produced automobiles and dictate what percentage of each car must be sourced from within a NAFTA country to qualify for reduced duties under the agreement.

At the U.S.' urging, Mexico looks likely to agree to an increase in the overall amount of North American-sourced content that must be included in each automobile, and will accept a requirement that a certain percentage of each car must be produced by workers earning at least \$16 an hour, sources say. Mexico is also poised to accept mandates that a certain percentage of the steel, aluminum and plastic included in each vehicle is also sourced from a NAFTA country.

In exchange, the United States would be prepared to give up a controversial proposal that would have made it easier for American fruit and vegetable growers to make the case that Mexico is selling produce at unfairly low prices when crops are in season in a particular region, two sources with knowledge of the trade-off told POLITICO. The U.S. would also submit to Mexico's demand to leave a chapter largely untouched that contains rules on disputes between governments, one of the sources said.

"Essentially, there is a deal," one of the sources said.

At the same time, however, other major aspects of the renegotiation remain unfinished. Chief among them is the so-called sunset clause that the U.S. wants, which would end the pact after five years unless the parties opt to continue it. Several sources close to the talks say the sunset clause has hardly been discussed during the latest set of meetings between the U.S. and Mexico, and the two countries still remain on opposite sides.

And Canada will need to come to the table for a deal to be finalized. Officials from all three countries have sought to emphasize that the U.S.-Mexico engagement is not a sign of ill will toward Canada but is instead an attempt to work out bilateral issues before bringing Ottawa back into the fold.

But negotiators had expected that Washington and Mexico City would have made enough progress by now for Canadian Foreign Minister Chrystia Freeland to have joined the meetings in Washington. The more time that passes, the more likely it is that the strategy to put off a trilateral meeting could backfire, a source close to the talks said.

"Yes, there's U.S.-Mexico momentum — that's a positive message and great from Mexico's point of view," the source said. "But the longer it takes to bring in Canada, the less likely this is going to get done in the short term."

Still, any incremental progress, or even the fact that the U.S. and Mexico are continuing to engage in good-faith negotiations and regular meetings, has offered a signal of some hope to U.S. farmers, consumers and industry groups who have been worn out by months of uncertainty and pummeled by retaliatory tariffs imposed over the past few months.

Retailers and business groups are reluctant to throw their support at this point behind a deal that is still unfinished, particularly when a number of proposals that some have termed poison pills remain on the table.

But at the same time, "I think what all of our members want, what the business industry at large wants, is certainty," said Vanessa Sciarra, a former U.S. trade negotiator who now works as a vice president at the National Foreign Trade Council. "Anything that provides for greater clarity on trade relationships, particularly with Mexico and Canada ... would be helpful."

Adam Behsudi contributed to this report.

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Attachments: EPA Top Achievements May-June_pocket card.docx

Ryan, I took what the program offices sent me for top accomplishments over the past month and put them into pocket card format. Is this what you're looking for?

Best,
Chris

EPA's Recent Achievements

Asbestos:

- On June 1, EPA released a significant new use rule (SNUR) proposal enabling the Agency to prevent new uses of asbestos – the first such action on asbestos ever proposed.

Science Transparency

- The era of “secret science” is over.
- EPA will only rely on outside science that is publicly available. This allows for third-parties to test, authenticate, and reproduce scientific findings.

Office of Continuous Improvement

- Prior to this administration, EPA was not systematically tracking vital processes like: the **amount of time to issue permits and legal deadlines imposed on EPA**
- This new office will coordinate agency-wide implementation of the new EPA Lean Management System.
- Permitting Reform Goal: All decisions, up or down, in **six months**.

PFAS

- EPA hosted the first ever National Leadership Summit on PFAS.
- EPA will use the information discussed at the summit, along with upcoming visits to communities, to develop a National PFAS Management Plan.

Infrastructure

- In April, EPA issued its first-ever WIFIA loan to King County, Washington.
- In 2017, EPA programs helped fund more than \$10 billion in projects that will fix local infrastructure problems, create jobs, and provide clean and safe water to communities large and small.

Added Sites to the National Priorities List

- In May, EPA announced its commitment to clean up **six new sites** by adding them to the Superfund Program's National Priorities List (NPL) and proposed to add another three hazardous waste sites to the NPL.
- In the first year of Adm. Pruitt's tenure, seven contaminated sites were deleted, substantially or entirely, from the National Priorities List (NPL); only two sites were removed the previous year.

Brownfields:

- In late April, EPA selected **144 communities** for brownfields environmental Assessment, Revolving Loan Fund, and Cleanup grants. The 221 grants totaling **\$54.3 million** will provide communities with funding to assess, clean up and redevelop underutilized properties while protecting public health and the environment.

Message

From: Daniell, Kelsi [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CD867173479344B3BDA202B3004FF830-DANIELL, KE]
Sent: 5/15/2018 2:53:28 PM
To: Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]
Subject: RE:
Attachments: Science Transparency memo.docx; Office of Continuous Improvement Coverage.docx

Please see attached. Let me know if you need anything else or prefer a different format.

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From: Jackson, Ryan
Sent: Tuesday, May 15, 2018 10:44 AM
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Subject:

Can you email it to me when you have it?

Ryan Jackson
Chief of Staff
U.S. EPA

Personal Matters / Ex. 6

Science Transparency Coverage

The Daily Caller: Scott Pruitt Will End EPA's Use of 'Secret Science' to Justify Regulations. Environmental Protection Agency (EPA) Administrator Scott Pruitt will soon end his agency's use of "secret science" to craft regulations. "We need to make sure their data and methodology are published as part of the record," Pruitt said in an exclusive interview with The Daily Caller News Foundation. "Otherwise, it's not transparent. It's not objectively measured, and that's important." Pruitt will reverse long-standing EPA policy allowing regulators to rely on non-public scientific data in crafting rules. Such studies have been used to justify tens of billions of dollars' worth of regulations. ([Daily Caller](#), 03/19/18)

Wall Street Journal: EPA Wants New Rules to Rely Solely on Public Data. The Environmental Protection Agency plans to restrict research used in developing regulations, the agency said Tuesday, a change that could affect rules governing everything from household products to power-plant emissions. The proposal follows years of complaints by conservatives that regulations such as emissions restrictions under the Obama administration sometimes went beyond what science could prove. The new proposal would exclude the many research studies that don't make their raw data public and limit the use of findings that can't be reproduced by others. The EPA said this would boost transparency. ([WSJ](#), 04/24/18)

The Washington Post: Pruitt Unveils Controversial 'Transparency' Rule Tuesday Limiting What Research EPA Can Use. Environmental Protection Agency Administrator Scott Pruitt proposed a rule Tuesday that would establish new standards for what science could be used in writing agency regulations, according to individuals briefed on the plan. The sweeping change, long sought by conservatives, could have significant implications for decisions on everything from the toxicity of household products to the level of soot that power plants can emit. The rule would only allow EPA to consider studies for which the underlying data are made available publicly. ([WaPo](#), 04/24/18)

Washington Examiner: Scott Pruitt Announces New EPA Rule to Combat 'Secret Science.' Environmental Protection Agency Administrator Scott Pruitt announced a proposed rule Tuesday that would block the agency from using scientific studies that do not make public the raw data used in the research. Pruitt argues the proposed rule, subject to a 30-day comment period, would improve transparency and ensure science used in policymaking can be independently verified. It fits with a policy he implemented last year to boot scientists from key advisory boards to the EPA. ([Washington Examiner](#), 04/24/18)

E&E News: Pruitt to Unveil 'Secret Science' Effort Today. Scott Pruitt is expected today to unveil his plans to restrict science used by EPA, multiple sources told E&E News. The EPA administrator is slated to release an order requiring that all underlying data used in scientific studies affecting regulations be made public. The move fulfills a long-standing wish of some conservatives who argue that EPA has been relying on "secret science" when crafting rules. ([E&E](#), 04/24/18)

ABC News: Pruitt Wants EPA to Stop Basing Rules on What He Calls 'Secret Science.' Environmental Protection Agency Administrator Scott Pruitt announced a new rule Tuesday that would limit what kind of science the EPA can consider in writing new environmental rules. Pruitt said the rule would ban the EPA from relying on what he called "secret science," research that didn't make the raw data behind it available to the general public, saying the new proposal makes the process more transparent. ([ABC News](#), 04/24/18)

Reuters: U.S. Environment Agency Proposes Limits to Science Used in Rulemaking. Under the new proposals, the EPA will no longer be able to rely on scientific research that is underpinned by confidential medical and industry data. The measure was billed by EPA Administrator Scott Pruitt as a way to boost transparency for the

benefit of the industries his agency regulates. But scientists and former EPA officials worry it will hamstring the agency's ability to protect public health by putting key data off limits. ([Reuters](#), 04/24/18)

The Hill: Pruitt Signs Proposed Rule to Erase 'Secret Science.' Speaking in front of a number of well-known climate change skeptics including the Competitive Enterprise Institute's Myron Ebell, Pruitt announced that the new rule would require science to "be transparent, reproducible and able to be analyzed by those in the marketplace." He also dubbed the current process which had, until now, allowed science to be peer reviewed rather than open to public scrutiny, "simply wrong headed." ([The Hill](#), 04/24/18)

Bloomberg: Pruitt Proposes Limits to Scientific Research Used by EPA Staff. The U.S. Environmental Protection Agency broke with four decades of practice Tuesday and proposed limits on the science used to develop policies protecting public health and the environment. The measure, backed by conservatives and some advisers to President Donald Trump who have warned of "junk science," would prevent the EPA from considering scientific research unless all methodological, technical and other information is publicly available. But critics fear the move would exclude such research as public-health studies containing anonymized patient data. ([Bloomberg](#), 04/24/18)

Daily Caller: Scott Pruitt's Transparency Rule Will Shed Light on A Key Aspect of EPA Regulations. Environmental Protection Agency Administrator Scott Pruitt's proposed rule requiring data transparency, if finalized, would be a major reform of the agency's scientific and regulatory process. Not only will Pruitt's proposal against "secret science" require data transparency, the rule will also require EPA officials to take a hard look at the scientific basis for models used in regulations to calculate the effects of changes in air pollutants. ([Daily Caller](#), 04/25/18)

The Hill: EPA Opts for Accountability and Transparency in Environmental Science (op-ed). Environmental Protection Agency Administrator Scott Pruitt signed a proposed rule to prevent the agency from relying on scientific studies that don't publish their underlying data. "The era of secret science at EPA is coming to an end," Pruitt said. "The ability to test, authenticate, and reproduce scientific findings is vital for the integrity of the rulemaking process. Americans deserve to assess the legitimacy of the science underpinning EPA decisions that may impact their lives." ([The Hill](#), 04/25/18)

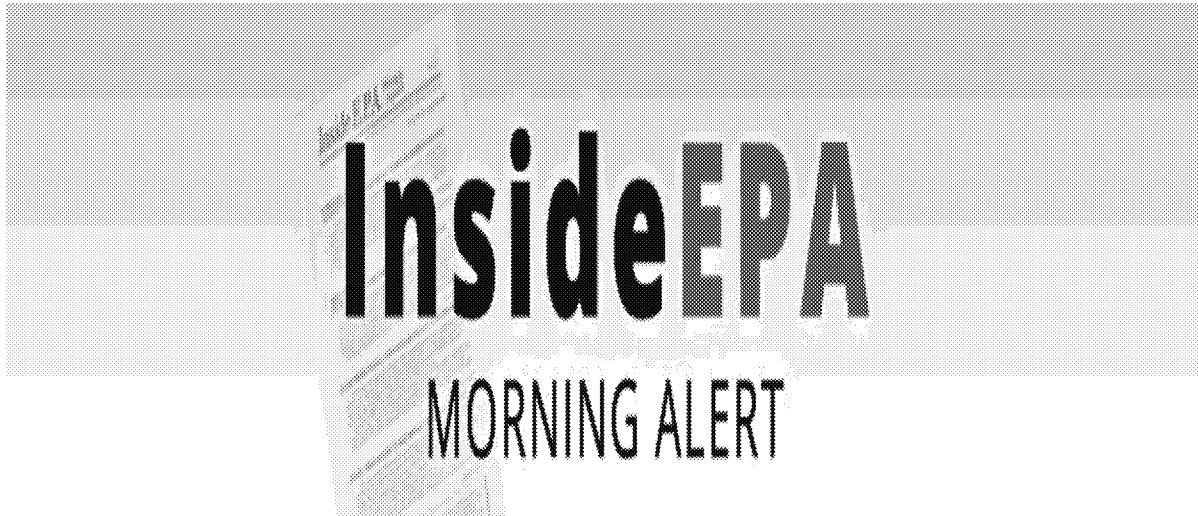
The Daily Signal: Scott Pruitt's Effort to Expose 'Secret Science' Has Environmentalists Scared Stiff. A proposed rule announced Tuesday by Scott Pruitt, administrator of the Environmental Protection Agency (EPA), is intended to bring much-needed transparency to agency rulemaking. The environmental lobby is positively apoplectic about the proposal (naturally), even though it aligns perfectly with their long-held commitment to the public's "right to know" principle. The proposed regulation would require EPA to ensure that the scientific data and research models "pivotal" to significant regulation are "publicly available in a manner sufficient for validation and analysis." ([Daily Signal](#), 04/26/18)

The Washington Times: Reforming the Environmental Protection Agency (op-ed). EPA Administrator Scott Pruitt is getting a lot of push-back for his efforts to reform the Environmental Protection Agency and its rule-making process. His goal of making regulations work better for economic as well as environmental purposes is apparently a new way of doing business at the agency. A policy change recently announced by the administrator requires that all the data and methodology the EPA uses in the rule-making process from now on will become part of the public record and open to scrutiny. This policy shift is particularly important because it upsets the status quo of an agency that went off the rails years ago. ([Wash Times](#), 05/01/18)

The Washington Post: Many Mocked This Scott Pruitt Proposal. They Should Have Read It First (op-ed). When Environmental Protection Agency Administrator Scott Pruitt proposed a rule last month to improve

transparency in science used to make policy decisions, he was roundly criticized by interest groups and academics. Several researchers asserted that the policy would be used to undermine a litany of existing environmental protections. Former Obama administration EPA officials co-wrote a New York Times op-ed in which they said the proposal “would undermine the nation’s scientific credibility.” The Economist derided the policy as “swamp science.” But there is a lot to cheer about in the rule that opponents have missed. A careful reading suggests it could promote precisely the kind of evidence-based policy most scientists and the public should support. ([WaPo](#), 05/10/18)

From: InsideEPA.com [insideepa-alerts@iwpnews.com]
Sent: 6/20/2018 10:53:23 AM
To: Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]
Subject: The Morning Headlines from InsideEPA.com -- June 20, 2018



REDEFINING EPA: Overhauling an agency and its mission -- Complete coverage

June 20, 2018

Latest News

EPA Raises Early Defenses Against Likely Suit Over Ash Program Approval

EPA is raising early legal defenses against environmentalists' promised legal challenge to the agency's approval of Oklahoma's first-of-its-kind coal ash disposal permit program, with EPA downplaying as irrelevant environmentalists' claims that the Sooner State lacks the resources to adequately implement its new permitting regime.

Observers Brace For Trump Reorganization Plan With EPA Impact Unclear

The Trump administration is expected to release as soon as June 21 a broad plan for reorganizing the federal government, though some observers doubt the plan will spur broad proposed changes at EPA, such as closing of regional offices, despite calls from some to do so.

CEQ Issues Advance Notice For Sweeping Update Of NEPA Regulations

The White House Council on Environmental Quality (CEQ) is publishing an advance notice of proposed rulemaking (ANPR) on a long-anticipated and potentially sweeping update of its National Environmental Policy Act (NEPA) implementing rules, opening the door to just the second amendment to the rules in 40 years.

Court Rejects Coal Lease NEPA Review Suit But Outlines Paths Forward

A federal appeals court panel is rejecting a long-running lawsuit seeking to force the Bureau of Land Management (BLM) to conduct a broad National Environmental Policy Act (NEPA) review to consider the climate impacts of its coal leasing program, but two of the three judges are outlining other options environmentalists can use to force such analysis.

'Secret Science' Policy's Impact On Pending NAAQS Review May Be Muted

EPA Administrator Scott Pruitt's proposed rule barring the agency from using confidential data in rulemakings might not have as dramatic an impact on pending national ambient air quality standards (NAAQS) as many fear because some of the most influential air pollution studies relevant to those reviews rely on publicly available data, sources say.

Inspector General Details Broad Review Of EPA Programs In Annual Plan

EPA's Office of Inspector General (OIG) is laying out a broad agenda for the remainder of fiscal year 2018 that ranges from reviews of the agency's regulatory oversight on key media and research programs to internal staffing and management as well as previously announced inquiries into Administrator Scott Pruitt's controversial security, spending and hiring.

Daily Feed

Top EPA union official announces retirement

John O'Grady is a long-time union representative of EPA employees who has been a public spokesman for many career staff concerned about the Trump administration.

Colorado to join backers of California vehicle GHG rules

Colorado will join a dozen states that have embraced California's vehicle GHG limits, just as the Trump administration is readying a plan roll back current standards and target states' ability to enforce their own rules.

Environmentalists detail issues in Superfund financial rule suit

Environmental groups suing over EPA's decision to drop a planned Superfund rule are questioning whether the agency's action is contrary to the administrative record and the law.

Ewire: EPA shifts grant reviews from public affairs office

In today's Ewire: As of last month, EPA requires regional administrators or assistant administrators of program offices to sign off on grants, replacing its old policy of reviews by a political aide in the public affairs office.

Auto industry-focused publication calls for Pruitt to resign

A "serious industry deserves a serious regulator, a public servant of proven integrity who lives by at least a baseline standard of propriety. Scott Pruitt is none of those things," *Automotive News* says in an editorial.

D.C. Circuit schedules argument in SO2 NAAQS designations suit

The U.S. Court of Appeals for the District of Columbia Circuit will hear oral argument Sept. 11 in consolidated litigation over EPA's 2010 sulfur dioxide air standard attainment designations.

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Message

From: Bennett, Tate [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1FA92542F7CA4D01973B18B2F11B9141-BENNETT, EL]
Sent: 3/26/2018 3:51:31 PM
To: Ford, Hayley [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4748a9029cf74453a20ee8ac9527830c-Ford, Hayle]; Ferguson, Lincoln [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=08cd7f82606244de96b61b96681c46de-Ferguson, L]; Bowman, Liz [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c3d4d94d3e4b4b1f80904056703ebc80-Bowman, Eli]; Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]
Subject: Oklahoman Opinion Piece

Good stuff!

<http://newsok.com/article/5588210/ban-on-secret-science-in-epa-regulation-makes-sense>

Elizabeth Tate Bennett
Associate Administrator for Public Engagement & Environmental Education
Office of the Administrator
U.S. Environmental Protection Agency

Personal Matters / Ex. 6

Bennett.Tate@epa.gov

Message

From: Bolen, Brittany [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31E872A691114372B5A6A88482A66E48-BOLEN, BRIT]
Sent: 2/13/2018 2:12:30 PM
To: Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]
Subject: Fwd: latest version
Attachments: data_access_memo V3.docx; ATT00001.htm

Sent from my iPhone

Begin forwarded message:

From: "Yamada, Richard (Yujiro)" <yamada.richard@epa.gov>
Date: January 29, 2018 at 5:58:04 PM EST
To: "Feeley, Drew (Robert)" <Feeley.Drew@epa.gov>, "Bolen, Brittany" <bolen.brittany@epa.gov>, "Woods, Clint" <woods.clint@epa.gov>
Cc: "Schwab, Justin" <Schwab.Justin@epa.gov>, "Baptist, Erik" <Baptist.Erik@epa.gov>, "Beck, Nancy" <Beck.Nancy@epa.gov>
Subject: latest version

(This email contains deliberative and pre-decisional information)

Deliberative Process / Ex. 5

Richard Yamada
Deputy Assistant Administrator
Office of Research and Development
U.S. Environmental Protection Agency

Phone: Personal Matters / Ex. 6
yamada.richard@epa.gov

Message

From: Schwab, Justin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EED0F609C0944CC2BBDB05DF3A10AADB-SCHWAB, JUS]
Sent: 3/20/2018 4:58:35 PM
To: Bowman, Liz [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c3d4d94d3e4b4b1f80904056703ebc80-Bowman, Eli]
CC: Baptist, Erik [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=10fc1b085ee14c6cb61db378356a1eb9-Baptist, Er]; Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]; Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]; Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]
Subject: Re: For Approval: 'Secret Science' Statement

Attorney Work Product / Ex. 5

Sent from my iPhone

On Mar 20, 2018, at 12:44 PM, Bowman, Liz <Bowman.Liz@epa.gov> wrote:

Deliberative Process / Ex. 5

Liz Bowman
U.S. Environmental Protection Agency (EPA)
Office: 202-564-3293

Message

From: InsideEPA/climate [insideepa-alerts@iwpnews.com]
Sent: 4/3/2018 11:44:44 AM
To: Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]
Subject: The Morning Headlines from InsideEPA/climate -- April 3, 2018



April 3, 2018

Latest News

EPA Embraces Automaker Claims In Bid To Weaken Vehicle GHG Standards

EPA's determination that its vehicle greenhouse gas standards are too stringent and needs to be eased broadly embraces a suite of auto industry arguments on cost, consumer tastes and technology challenges, setting the stage for a formal process to fill in the details of proposed changes to model year 2022-2025 limits that promises to be highly contentious.

Pruitt's Bid To End 'Secret Science' Faces Legal, Implementation Hurdles

EPA Administrator Scott Pruitt's pending plan to apply a sweeping new data transparency requirement at EPA is expected to face legal and implementation controversies likely as soon as it is released, agency watchers say, including potential violations of medical privacy protections, trade secret information and other data that form the basis for air quality standards, pesticide and chemical approvals and climate rules.

California Officials Reject Calls To Tighten 2035 Transportation GHG Targets

The California Air Resources Board (CARB) has adopted controversial 2035 transportation-related greenhouse gas targets for major metropolitan areas in the state, rejecting calls by environmentalists and civil rights groups to make the goals more stringent.

Climate Beat

Regulation: EPA announces plan to ease vehicle GHG standards

But California's waiver -- which allows the state to retain its standards -- is still being "reexamined," EPA says.

Biofuels: Group blames EPA waivers for falling ethanol demand

A new biofuels industry analysis of the effects of EPA's RFS waivers suggests the agency might not have to take short-term measures to curb compliance costs.

Loose Change: On condo scandal, Christie not sure if Pruitt can 'survive'

In today's news roundup: Former New Jersey Gov. Chris Christie (R) says he is not sure how Scott Pruitt can "survive" as EPA chief after he secured a \$50-per-night lease on a Capitol Hill condo connected to an energy lobbyist.

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From: Bowman, Liz [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C3D4D94D3E4B4B1F80904056703EBC80-BOWMAN, ELI]
Sent: 3/20/2018 4:54:46 PM
To: Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]
CC: Baptist, Erik [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=10fc1b085ee14c6cb61db378356a1eb9-Baptist, Er]; Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]; Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]; Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]
Subject: RE: For Approval: 'Secret Science' Statement

Thank you; any additional edits? Sending shortly.

From: Yamada, Richard (Yujiro)
Sent: Tuesday, March 20, 2018 12:50 PM
To: Bowman, Liz <Bowman.Liz@epa.gov>
Cc: Baptist, Erik <Baptist.Erik@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Woods, Clint <woods.clint@epa.gov>
Subject: Re: For Approval: 'Secret Science' Statement

Deliberative Process / Ex. 5

Sent from my iPhone

On Mar 20, 2018, at 11:44 AM, Bowman, Liz <Bowman.Liz@epa.gov> wrote:

Deliberative Process / Ex. 5

Liz Bowman
U.S. Environmental Protection Agency (EPA)
Office: 202-564-3293

From: Morning Energy [morningenergy@politico.com]
Sent: 7/17/2018 2:04:00 PM
To: Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]
Subject: POLITICO's Morning Energy: Spotlight on FERC at Pro summit — Hitching a ride on the 'minibus' — 'Secret science' out in the open

By Kelsey Tamborrino | 07/17/2018 10:00 AM EDT

With help from Emily Holden, Anthony Adragna, Colin Wilhelm and Darius Dixon

SEE YOU THERE: Today's the day — POLITICO Pro is hosting its second annual Pro summit, featuring one-on-one conversations with newsmakers across the policy landscape, including two sessions on energy.

FERC Commissioner Cheryl LaFleur will sit down this afternoon with our own Darius Dixon, before the regulatory body is deadlocked next month following the exit of GOP Commissioner Rob Powelson. LaFleur, a Democrat, has served under presidents from both parties and experienced the agency in almost every configuration — whether it has all five commissioners in place, or just one. There's no shortage of topics to chew over: the potential impact of an Energy Department coal and nuclear rescue plan, the heated rhetoric against states that stand in the way of pipelines, and whether FERC is "on the wrong side of history" when it comes to climate change. Darius' interview with LaFleur starts around 2 p.m.

Also on tap: California Air Resources Board Chairwoman Mary Nichols, Murray Energy CEO Bob Murray and the Council on Foreign Relations' Amy Myers Jaffe will participate in a panel this morning on America's "energy future." Nichols, for one, has been heavily involved in discussions with the Trump administration over car rules that the White House is considering rolling back. Expect questions related to the administration's efforts to pare back regulations and increase oil, gas and coal production — and an in-depth conversation on what that means for free market forces and renewables.

See the full agenda [here](#) and watch the livestream [here](#).

WELCOME TO TUESDAY! I'm your host, Kelsey Tamborrino. Citizens' Climate Lobby's Brett Cease was first to correctly identify the two presidents who threw out the first pitch at an All-Star game in D.C.: Franklin D. Roosevelt in 1937 and John F. Kennedy in 1962. For today: Which state or states have just one consonant in its spelling? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseyam](#), [@Morning_Energy](#) and [@POLITICOPro](#).

JUST RELEASED: [View the latest POLITICO/AARP poll](#) to better understand Arizona voters over 50, a voting bloc poised to shape the midterm election outcome. Get up to speed on priority issues for Hispanic voters age 50+, who will help determine whether Arizona turns blue or stays red.

HITCHING A RIDE ON THE 'MINIBUS': The House Rules Committee late Monday made 70 amendments to the EPA and Interior title of the spending minibuss, [H.R. 6147 \(115\)](#). The amendments focus on blocking a host of Obama-era environmental regulations even as the Trump administration is in the process of rolling back many of those. Some of the amendments that caught ME's eye:

— **Diesel emissions grants:** Rep. [Gary Palmer's amendment](#) would eliminate the popular bipartisan Diesel Emissions Reduction Grant program used to retrofit diesel engines like those in school buses,

— **WOTUS:** Rep. Don Beyer's amendment would remove language blocking the Obama administration's Waters of the U.S. regulation,

— **Obama-era methane rule:** Rep. Markwayne Mullin's amendment would block enforcement of the Obama-era regulation aimed at curbing methane emissions from new oil and gas sources, which the Trump administration is already reconsidering,

— **Social cost of carbon:** Another amendment from conservatives would bar the use of the social cost of carbon in rulemakings,

— **Trailer efficiency:** Reps. Barry Loudermilk and Morgan Griffith's amendment would bar EPA from applying stricter fuel efficiency and greenhouse gas emissions standards to certain truck trailers,

— **Chesapeake Bay:** Rep. Bob Goodlatte's effort would limit EPA's ability to go after states that miss Chesapeake Bay cleanup milestones,

— **Ozone:** Rep. Glenn Grothman's amendment would block implementation of EPA's 2015 tightened ozone standard,

— **Coal ash:** A Democratic amendment would block the Trump EPA from revisiting an Obama-era coal ash regulation,

— **Endangered Species Act riders:** Several measures would bar the administration from issuing or enforcing Endangered Species Act rules relating to species like the lesser prairie chicken and Preble's meadow jumping mouse,

— **Attorney fees:** An amendment from Reps. Jason Smith and Greg Gianforte would block attorney fees from being awarded in any Clean Air Act, Clean Water Act or Endangered Species Act settlement, and,

— **Inspectors general:** Nothing related to former Administrator Scott Pruitt was made in order, but the House will consider an amendment from Rep. Raúl Grijalva that would increase the budget of the Interior Department's inspector general by \$2.5 million.

Read the full list of amendments made in order to the measure here.

'SECRET SCIENCE' OUT IN THE OPEN: EPA's controversial proposal to consider only research with publicly available data gets a public hearing at agency headquarters today starting at 8 a.m. Nearly 70 health, medical, academic and science groups — including the American Lung Association, American Heart Association, American Medical Association and American Academy of Pediatrics — oppose the plan, which they say could hamstring public health and environment protections.

EPA's Science Advisory Board voted unanimously to review the proposal, which Pruitt said was meant to bolster transparency. Paul Billings, national senior vice president of advocacy at the American Lung Association, called the rule a "coordinated effort to ignore the science that is inconvenient to the EPA's agenda," and compared it to lobbying efforts by the tobacco industry in the 1990s to exclude studies that showed secondhand smoke could kill.

What's at stake? The proposal could move forward quickly enough to allow EPA to roll back certain air quality standards currently under review. According to the Natural Resources Defense Council, the plan could undercut computer models meant to test chemicals under the new Toxic Substances Control Act and could toss

out landmark studies that relied on personal health records following extraordinary events, including when Hiroshima and Nagasaki victims were tested over time to find out the effects of radiation on humans.

The meeting will run until 8 p.m. or an hour after the last of more than 100 registered speakers has commented. Speakers, aside from many environment and public health groups, include the American Petroleum Institute, the U.S. Chamber of Commerce, the American Chemistry Council, FreedomWorks Foundation and climate science critic Steve Milloy. Dan Byers of the Chamber of Commerce's Global Energy Institute is expected to applaud the agency's efforts and commend EPA for going through the formal public comment and rulemaking process. "It is one thing to be cavalier about transparency principles when their application has little or no import to public policy, but federal rules that impact millions of people and billions of dollars should be held to a higher standard," he is expected to say. Also registered are Reps. Paul Tonko, Suzanne Bonamici and Dan Lipinski. Comments can be submitted until Aug. 16.

Related reading: Competitive Enterprise Institute senior fellow Angela Logomasini looks at the science transparency rule in analysis published today. "The rule is actually far more modest and flexible than depicted by its critics, and its goals are in fact achievable," Logomasini writes. Read it here.

FOR THE RECORD: The House Rules Committee meets at 3 p.m. this afternoon to formulate a rule on an anti-carbon tax resolution, H. Con. Res. 119 (115), that calls a tax on carbon released from fossil fuels "detrimental to the United States economy." The Rules panel will tee up a vote later this week on the resolution, which is led by Majority Whip Steve Scalise and would put a range of lawmakers — most notably the Climate Solutions Caucus — on the record on the issue.

WHERE'S ZINKE? Interior Secretary Ryan Zinke will deliver remarks this morning at the first meeting of the "Made in America" Outdoor Recreation Advisory Committee. The committee is tasked with advising the secretary on "public-private partnerships across all public lands, with the goal of expanding access to and improving infrastructure on public lands and waterways." See the meeting agenda.

AMERICA'S PLEDGE STILL WORKING ON PLEDGES: Michael Bloomberg and California Gov. Jerry Brown, the co-chairs of climate organization "America's Pledge," have unveiled a preview of the report they will release at the Global Climate Action Summit in San Francisco in September, detailing "bottom-up" opportunities for climate action sans federal leadership. The list is familiar: boosting renewables, accelerating coal retirements, retrofitting buildings for energy efficiency, electrifying building energy use, accelerating electric vehicle adoption, phasing out HFCs, preventing methane leaks at the wellhead, reducing methane leaks in cities, reducing emissions from land and starting carbon markets.

Vice Chairman Carl Pope said the group still plans to debut a quantitative analysis outlining what state and local governments are already doing, what they have committed to and what they are keying up. "We have every reason to believe the rest of the world is watching this very closely," Pope said, noting that the U.N.'s top climate official, Patricia Espinosa, mentioned the group and summit by name at the Vatican earlier this month. Read it here.

ESA GETS ITS DAY: Proposed tweaks to the Endangered Species Act will be front and center at a Senate Environment and Public Works hearing this morning. The hearing will feature testimony from Wyoming Gov. Matt Mead, Colorado Parks and Wildlife's Bob Broscheid and Virginia's Secretary of Natural Resources Matthew J. Strickler, and will focus on a discussion draft released by Chairman John Barrasso earlier this month aimed at changing the statute. **If you go:** The hearing kicks off at 9:45 a.m. in 406 Dirksen. Livestream here.

TAKEN BY STORMWATER: The House on Monday passed by voice vote H.R. 3906 (115), the Innovative Stormwater Infrastructure Act of 2017, which would "establish centers of excellence" for stormwater control infrastructure. The legislation, introduced last year by Democratic Rep. Denny Heck, directs EPA to create a

stormwater infrastructure funding task force to make recommendations on the availability of public and private funding for stormwater infrastructure.

DOE ISSUES FIRST TRIBAL LOAN GUARANTEE: The Energy Department will issue its first solicitation for the Tribal Energy Loan Guarantee Program today. The program provides up to \$2 billion in partial loan guarantees to support energy development in Native American and Alaska Native communities. According to DOE, today's solicitation marks more than \$40 billion in energy infrastructure loans and loan guarantees from DOE's Loan Programs Office in five areas.

HOUSE PANEL TO HOLD GRID HEARING: House Natural Resources will hold a hearing on July 25 on Puerto Rico's electric grid recovery and possible improvements to make it more efficient and resilient to future hurricanes. On top of the devastation caused by Hurricane Maria last year, Puerto Rico's electric utility owes bondholders \$9 billion, and most of its leadership departed last week after clashes with Gov. Ricardo Rosselló over executive compensation and political control of the utility, which is quasi-governmental.

MAKING THE GRADE: The Environment America Research & Policy Center is out today with its state-by-state report card, "Renewables on the Rise," which details increases in solar, wind, energy efficiency, electric vehicles and battery storage. The report says the U.S. now produces almost six times as much renewable electricity from wind and solar than it did in 2008. It also found that in March of last year, wind and solar produced 10 percent of the United States' electricity — marking a first. On the state level, the report said California, Arizona, North Carolina, Nevada and Texas saw the greatest total increases from 2008 until 2017 in solar energy generation. See the report [here](#) and a state-by-state interactive map [here](#).

YOU DOWN WITH TIP? A bipartisan group of four senators wrote to Energy Secretary Rick Perry on Monday in support of the Western Area Power Administration's Transmission Infrastructure Program, which was axed under the Trump administration's fiscal 2019 budget proposal. "TIP is one of the few federal programs that directly supports new and upgraded electric transmission," according to the letter, signed by Sens. Catherine Cortez Masto, Martin Heinrich, Dean Heller and Cory Gardner.

HOUSE PLANS FLOOD INSURANCE VOTE: The House is planning to vote next week to extend the National Flood Insurance Program, ahead of its July 31 expiration, sources familiar with the matter tell Pro Financial Services' Zachary Warmbrodt. There are already a few options on the table for the program: one from Financial Services Chairman Jeb Hensarling, who has been trying to put together an extension bill that includes reforms, and a new bill introduced by Scalise and Rep. Tom MacArthur that would reauthorize the program through Nov. 30. Read [more](#).

FOR YOUR RADAR: Republican Sen. Chuck Grassley introduced bipartisan legislation on Monday targeting price fixing by OPEC. The bill would amend the Sherman Act to make oil-producing and exporting cartels illegal, and was co-sponsored by Sens. Amy Klobuchar, Mike Lee and Patrick Leahy. "It's long past time to put an end to illegal price fixing by OPEC," Grassley said in a statement. Read the legislation [here](#).

MAIL CALL! National Rural Electric Cooperative Association CEO Jim Matheson sent a letter to the leadership of the Energy and Commerce Environment Subcommittee on Monday in support of legislation to reform the New Source Review permitting program.

— **More than 100 Democrats** signed onto a letter to members of both House and Senate Armed Services committees today to urge them to oppose any provisions to the National Defense Authorization Act that would "have widespread, negative consequences for the conservation of our imperiled wildlife and public lands." Read the letter [here](#).

— **Iowa's congressional delegation** invited acting EPA Administrator Andrew Wheeler to their state to discuss the Renewable Fuel Standard. Read it [here](#).

What role will Hispanic voters over 50 play in Arizona this Fall? Read POLITICO Magazine's new series "The Deciders" which focuses on this powerful voting bloc that could be the determining factor in turning Arizona blue.

QUICK HITS

- "Puerto Ricans return to power grid, but fear for long term," The Associated Press.
- "Oil boom in Southern New Mexico ignites groundwater feud with Texas," Water Deeply.
- "In N.Y., farmers think about what might have been," E&E News.
- "Same agenda, different style, acting EPA head pledges," Bloomberg Environment.

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Subject: Pruitt plans to change EPA policy on scientific studies

By Alex Guillén

03/20/2018 10:38 AM EDT

EPA Administrator Scott Pruitt plans to change how the agency considers scientific information when writing regulations in a way that likely will exclude certain studies, he told the [Daily Caller](#).

Pruitt told the news site he will reverse longtime agency policy to require that any studies used to support regulations make their raw data available for review and replication by independent scientists.

"We need to make sure their data and methodology are published as part of the record," Pruitt said. "Otherwise, it's not transparent. It's not objectively measured, and that's important."

The changes are in line with legislation that House Science Chairman [Lamar Smith](#) (R-Texas) has pushed for years, but which was never been passed by the Senate. Democrats, environmentalists and scientific groups have long criticized that legislation as an attempt to cherry-pick data friendly to industry from the voluminous body of epidemiological science. And EPA already releases significant amounts of this data, they said.

CBO [said last year](#) the changes "would significantly reduce the number of studies that the agency relies on." And although EPA said it could make the changes at little to no cost, CBO estimated it would spend \$5 million from 2018 through 2022. EPA [previously told CBO](#) it would have to spend \$250 million a year scrubbing information from thousands of studies "to ensure the transparency of information and data supporting some covered actions."

WHAT'S NEXT: Pruitt did not say when he will issue a formal directive changing EPA's science policy.

To view online:

<https://www.politicopro.com/energy/whiteboard/2018/03/pruitt-plans-to-change-epa-policy-on-scientific-studies-843621>

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Somewhat



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on behalf of EPA Press Office [press@epa.gov]
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Subject: Ban On "Secret Science" In EPA Regulation Makes Sense

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THE OKLAHOMAN

Ban On "Secret Science" In EPA Regulation Makes Sense

Editorial

March 26, 2018

<http://newsok.com/article/5588210/ban-on-secret-science-in-epa-regulation-makes-sense>

The Environmental Protection Agency has announced it will now base new regulations only on the findings of scientific studies whose data and methodology are made public so they can be subjected to independent review. That's a sound move in line with basic scientific transparency and professionalism.

Yet it's being treated as a sign of impending apocalypse by some on the left, which says much about the questionable validity of that group's policy prescriptions.

In an interview with The Daily Caller News Foundation, Administrator Scott Pruitt said the EPA will end its use of studies that do not publish underlying data, only conclusions. "Otherwise, it's not transparent. It's not objectively measured, and that's important," Pruitt said.

In the past, the EPA has advanced air-quality regulations that imposed massive costs based primarily on the findings of two studies done in the 1990s that linked fine particulate pollution to premature death. Neither study made associated data public.

U.S. Rep. Lamar Smith, R-Texas and chairman of the House Committee on Science,

Space and Technology, has long criticized the use of “secret science” and authored legislation to curtail its use by regulators. Last year, Smith said the EPA had “routinely relied on questionable science based on nonpublic information that could not be reproduced, a basic requirement of the scientific method.”

“Americans deserve to see the science for themselves,” Smith said. “If the EPA has nothing to hide, why not make the scientific data it uses for its regulations publicly available? What was the EPA hiding?”

That will strike most people as a fair question. But to some activists, the idea that science should involve review and scrutiny is apparently anathema. In response to a prior effort to ban “secret science” at the EPA, Andrew Rosenberg, director of the Union of Concerned Scientists’ Center for Science and Democracy, said transparency would “gut the EPA at the expense of public health and safety.”

That same group has claimed release of data would require publicizing the confidential patient data of individuals. But Steve Milloy, publisher of JunkScience.com and a senior fellow at the Energy and Environmental Legal Institute, notes that California already makes similar data available in its “Public Use Death Files,” and that has been accomplished without violating patient privacy.

Other critics object that there are costs involved in scrubbing data sets so patient privacy is protected. Perhaps, but that doesn’t mean the public should be kept in the dark about the data and methods used to justify literally billions in new regulatory burden.

Scientific studies are as susceptible to human error and even outright fraud as any other endeavor — particularly when such studies are used in the political realm. Facilitating transparency and independent review will reduce the chances of bad science harming Americans with half-baked regulations, and should enhance the case for regulations when the underlying science has withstood independent scrutiny.

Given the stakes for public health and the national economy, Americans must be assured government regulations are based on sound science, not someone’s “trust me” assurances.

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Sent: 8/24/2018 5:36:19 PM
To: Grantham, Nancy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=12a3c2ed7158417fb0bb1b1b72a8cfb0-Grantham, Nancy]; Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]; Konkus, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=555471b2baa6419e8e141696f4577062-Konkus, Joh]
Subject: RE: Pesticide Studies Won E.P.A.'s Trust, Until Trump's Team Scorned 'Secret Science' - The New York Times

Ryan –

Nancy, Erik, Charlotte and the pesticides team talked to Eric on the phone for about 30 minutes on June 18. It's the same day you and Nancy talked to Lipton for another 30 mins on all the TSCA anniversary milestones. I have recordings from each interview.

Molly

From: Grantham, Nancy
Sent: Friday, August 24, 2018 1:33 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>; Konkus, John <konkus.john@epa.gov>
Cc: Block, Molly <block.molly@epa.gov>
Subject: RE: Pesticide Studies Won E.P.A.'s Trust, Until Trump's Team Scorned 'Secret Science' - The New York Times

Looping molly who has the info on this – we did put folks on the phone with eric lipton

Nancy Grantham
Office of Public Affairs
US Environmental Protection Agency
202-564-6879 (desk)
202-253-7056 (mobile)

From: Jackson, Ryan
Sent: Friday, August 24, 2018 12:53 PM
To: Konkus, John <konkus.john@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>
Subject: Pesticide Studies Won E.P.A.'s Trust, Until Trump's Team Scorned 'Secret Science' - The New York Times

Did we even get asked to comment on this?

<https://www.nytimes.com/2018/08/24/business/epa-pesticides-studies-epidemiology.html?action=click&module=Top%20Stories&pgtype=Homepage>

Pesticide Studies Won E.P.A.'s Trust, Until Trump's Team Scorned 'Secret Science'

Backed by agrochemical companies, the current administration and Congress are moving to curb the role of human health studies in regulation.

Aug. 24, 2018



A strawberry field in California's Salinas Valley, where a yearslong study, funded in part by the Environmental Protection Agency, has linked pesticides to ailments in children of farm workers. Carlos Chavarría for The New York Times

SALINAS, Calif. — José Camacho once worked the fields here in the Salinas Valley, known as “the Salad Bowl of the World” for its abundance of lettuce and vegetables. His wife still does.

But back in 2000, Mr. Camacho, who is 63, got an unusual phone call. He was asked if he wanted to work for a new project studying the effects of pesticides on the children of farm workers.

“This seemed really crazy,” he recalled saying at the time, since he barely spoke English. “A research study?”

The project, run by scientists from the University of California, Berkeley, and funded in part by the Environmental Protection Agency, is still going all these years later. Known as Chamacos, Spanish for “children,” it has linked pesticides sprayed on fruit and vegetable crops with respiratory complications, developmental disorders and lower I.Q.s among children of farm workers. State and federal regulators

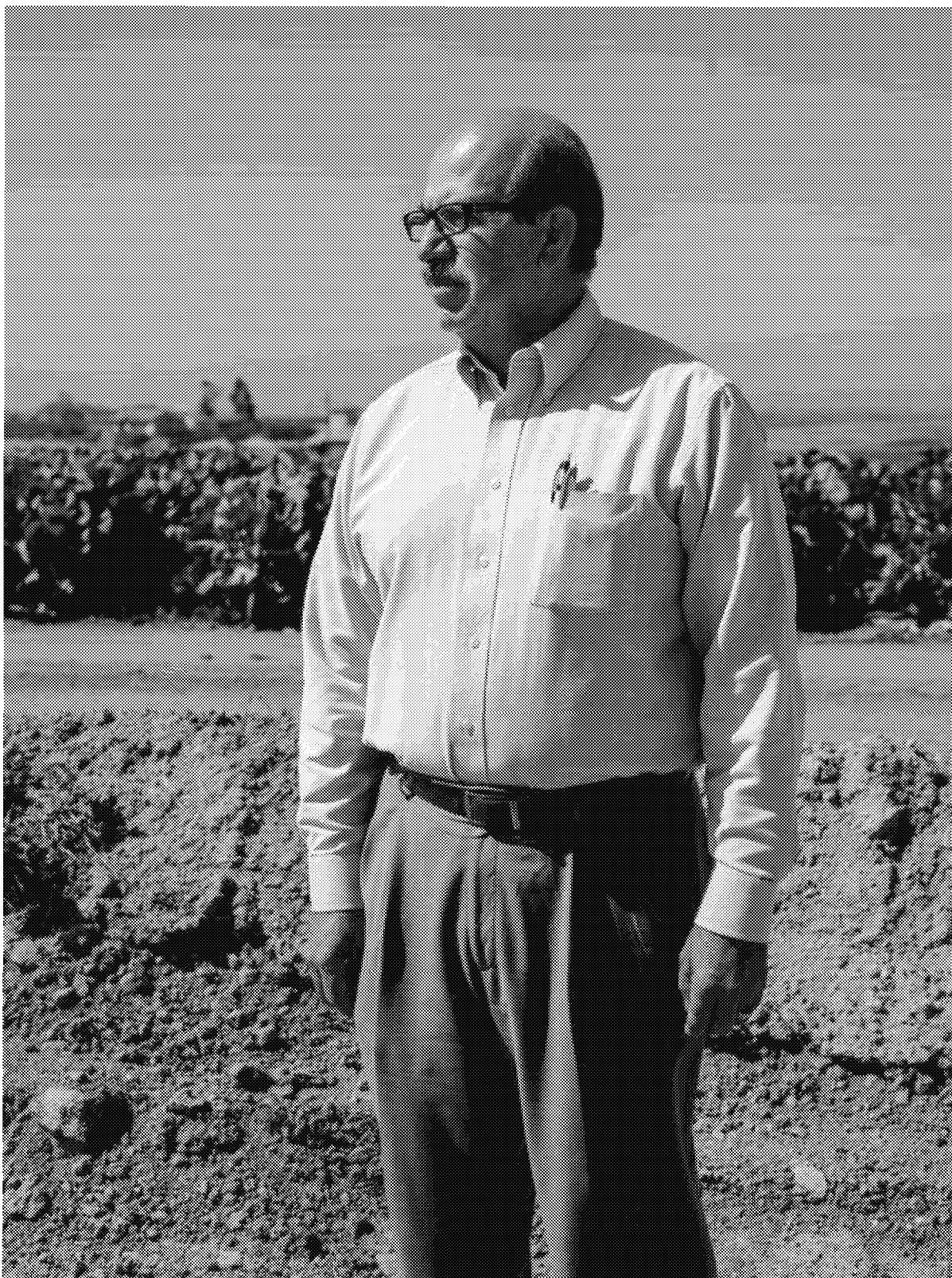
have cited its findings to help justify proposed restrictions on everything from insecticides to flame-retardant chemicals.

But the Trump administration wants to restrict how human studies like Chamacos are used in rule-making. A government proposal this year, called Strengthening Transparency in Regulatory Science, could stop them from being used to justify regulating pesticides, lead and pollutants like soot, and undermine foundational research behind national air-quality rules. The E.P.A., which has funded these kinds of studies, is now labeling many of them “secret science.”

Studying disease trends in specific groups of people — a branch of medicine known as epidemiology — started to gain currency at the E.P.A. in recent years. These studies can be difficult because they require adjusting for all the various substances people are exposed to beyond pesticides. But researchers had amassed years of data from a wave of compelling chemical studies begun in the 1990s, giving regulators a new body of research to incorporate into their decision-making.

Under the Obama administration, the E.P.A., which had long favored tests on rats and other laboratory animals in its pesticide regulation, began considering epidemiological studies more seriously. The agency leaned on this type of research in proposing to ban an insecticide called chlorpyrifos in late 2016, and has been repeatedly prodded to take action on the chemical by federal courts.

But weeks after Donald J. Trump was elected president, CropLife America, the main agrochemical trade group, petitioned the E.P.A. to “halt regulatory decisions that are highly influenced and/or determined by the results of epidemiological studies” unless universities were forced to share more of their data.



José Camacho was asked in 2000 to participate in the study, which tracks families as they go about their normal lives. Such research was embraced by the E.P.A. during the Obama administration. Carlos Chavarría for The New York Times

Industry leaders aggressively challenged such studies in high-level meetings and emails with E.P.A. leaders, according to thousands of pages of documents obtained through Freedom of Information Act

requests. One trade group invited a top E.P.A. official to meet with its Washington lobbyist last year, complaining that “carefully controlled” animal studies were giving way to “conclusions reflected in epidemiological papers.”

Gary W. Van Sickle, executive director of the California Specialty Crops Council, wrote to the agency last September that “there have been serious flaws with E.P.A.’s conclusion to use these data.”

The council, representing growers of crops as diverse as carrots, garlic, pears and peppers, cited “inappropriate use of the epidemiology.”

The E.P.A., whose new leadership is seeded with industry veterans, has responded. In a mid-July assessment of atrazine, a widely used weed killer long banned in Europe, the agency reviewed and dismissed 12 recent epidemiological studies linking the herbicide to such ailments as childhood leukemia and Parkinson’s disease. It echoed the conclusions of research funded by Syngenta, atrazine’s manufacturer, finding the chemical unlikely to cause cancer.

Before scandals forced Scott Pruitt out last month as head of the E.P.A., he proposed the transparency regulation. It would ban many epidemiological studies, and other outside research, unless more data behind the studies was made public. In doing so, he revived a strategy advanced for years by congressional Republicans and corporate interests like tobacco companies.

“The era of secret science at E.P.A. is coming to an end,” Mr. Pruitt proclaimed at the time. The agency’s new acting administrator, Andrew R. Wheeler, says he’s moving forward with the proposal, as the agency re-evaluates a class of widely used insecticides, called organophosphates, that have been the subject of numerous epidemiological studies like Chamacos.

Nancy B. Beck, a chemical industry veteran who is the E.P.A.’s deputy assistant administrator, said there was no attempt to thwart epidemiology, adding that the agency was committed to “the best available science in the most transparent manner.”

But academics and state health officials say universities are being pressured to release data that would ultimately divulge the identities of study participants, a strategy once used by tobacco companies seeking to undermine research on the dangers of smoking. While participant data is shared with regulators in drug trials, academics fear that the E.P.A.’s proposal would additionally require divulging confidential personal information, potentially violating privacy regulations for federally funded research.



Ana Lilia Sanchez, a farm worker and the mother of a participant in the Salinas Valley study, said her family took precautions to avoid pesticide contamination. Carlos Chavarria for The New York Times

“It is a naked attempt to use a false claim that something nefarious is going on with these studies in an effort to allow industry to challenge conclusions that are not in their favor,” said James Kelly, a manager of environmental surveillance at the Minnesota Department of Health.

A Wave of Studies, an Uneasy Industry

An advertisement in a Nebraska student newspaper was looking for people who wanted to “earn extra money.” Thirty-six college student volunteers and others from the community who responded were paid \$460 to drink gelatin capsules filled with the pesticide chlorpyrifos, at up to 300 times levels the E.P.A. considered safe, without a full discussion of the risks.

Sponsored by Dow Chemical, this study, conducted in 1998, was one of the last of its kind. That year, the E.P.A. banned the use of studies exposing people to pesticides, and it continues to severely restrict them.

Epidemiology, which has been used to examine everything from the effects of climate change to childhood obesity, offered a way to continue studying disease trends, amid new legal requirements to examine how pesticides particularly affect infants and children. And it could do so by tracking people during their normal lives instead of treating them as if they were lab rats. Chamacos and other studies began almost immediately, although it took decades to collect sufficient data and study how participants changed over time.

One study by Columbia University researchers linked an insecticide to developmental delays in toddlers. Another, by scientists at the University of California, Los Angeles, connected pesticides to Parkinson's disease. Academics at the University of Rochester found that pesticides lower sperm counts in men, while researchers from the Harvard School of Public Health found lower fertility in women.

By 2015, there was a growing body of research, often funded in part by the E.P.A. The agency decided that year to consult epidemiology more seriously in its evaluation of glyphosate, the world's most popular weed killer and the active ingredient in Monsanto's Roundup.

"This is a watershed event in our Program, and one which I feel particularly proud to be a part (go epi!!)," Carol Christensen, then an E.P.A. epidemiologist, wrote in a 2015 email to a colleague — using "epi" as shorthand for epidemiology. "In the 35 year history of our program, this will be the FIRST time epi studies are actively considered in the decision making."

Yet even then, there was friction over what to make of studies aiming to determine whether glyphosate causes cancer.

One E.P.A. division, the Office of Research and Development, closely examined epidemiological research and came to believe either that glyphosate was likely to cause cancer or that there was at least some evidence suggesting a problem. But another division, the Office of Pesticide Programs, was dismissive of epidemiological studies and determined that glyphosate was not a carcinogen, a view that prevailed at the E.P.A., according to interviews, emails and an internal memo obtained by The New York Times. Those involved in the agency's debates on epidemiology spoke on the condition of anonymity because the discussions weren't public.

Monsanto said in a statement that "we cannot speak to the internal E.P.A. discussions" but emphasized the agency's ultimate finding that glyphosate was not likely to cause cancer.

The cancer question received renewed attention this month when a California jury awarded \$289 million to a groundskeeper who alleged that the chemical had sickened him. In his closing argument, the plaintiff's attorney, R. Brent Wisner, called epidemiology one of "the three pillars of cancer science" that the case relied on.

At the E.P.A., the debate swung in favor of epidemiology. While such studies are often complex and can be of varying quality, the agency was reluctant in the past to give them as much weight as lab experiments on animals. But by the Obama administration's final months, the agency moved for the first time to ban a pesticide largely because of epidemiological research.

The pesticide, chlorpyrifos, was the same one ingested years earlier by unwitting Nebraskans. It is applied to crops like apples, oranges and strawberries to combat insects like spider mites and sap-sucking bugs.

In California alone, chlorpyrifos was sprayed on 640,000 acres in 2016, according to state data. And research from Salinas, and the Chamacos study, became a central element in the E.P.A.'s recommendation.

“There is a breadth of information available on the potential adverse neurodevelopmental effects in infants and children as a result of prenatal exposure to chlorpyrifos,” the agency concluded in 2016, also citing epidemiological research from Columbia University and the Icahn School of Medicine at Mount Sinai.

The pesticide industry's reaction was loud and intense.

Monsanto, in emails with the E.P.A., was dismissive of critical epidemiological research related to Roundup, writing that “such studies are well known to be prone to a number of biases.”



A Trump administration proposal would prevent the E.P.A. from using many epidemiological studies, like the one in Salinas, unless more data behind them was made public. Carlos Chavarría for The New York Times

Dow Chemical said in reports submitted to the E.P.A. that “the evidence from these studies is insufficient” and called chlorpyrifos a “proven first-line of defense” against new pest outbreaks.

A month after taking over the E.P.A., Mr. Pruitt acted. He disregarded agency scientists and rejected the proposed chlorpyrifos ban, later calling for “a new day, a new future, for a common-sense approach to environmental protection.”

View From the Field

Ana Lilia Sanchez, 50, has worked in the fields in Salinas more than half her life, and one of her daughters has been a Chamacos study participant.

Ms. Sanchez has learned to watch for drifting droplets or the whir of a helicopter spraying overhead.

“Sometimes when we feel it, or we hear it, we start talking about it,” she said recently, sitting with her 5-month-old granddaughter at her home on a Salinas cul-de-sac. “Why wouldn’t they tell us, you know, to get out of here, to not come today?” she asked. “Women, they cover themselves, but men are working in short sleeves, so they are more exposed.”

Insecticides like chlorpyrifos are organophosphates, from the same chemical family as nerve agents like sarin and Novichok, the Russian-developed compound linked to recent attacks in Britain. While the safety of insecticides is extensively tested, long-term health impacts, or even how far pesticides drift, are the subject of continuing disagreement.

Ms. Sanchez showers after work, before touching her granddaughter.

“I also put my clothes aside,” she said. “We separate the clothes we use when we’re working, both my husband and I, and wash them separately so they’re not contaminated.”

While some human studies examine potential harm from pesticide residue found on fruits and vegetables, the Chamacos project is more personal, following hundreds of children in the heart of where American food is grown. California has the nation’s largest agricultural industry and uses more than 200 million pounds of pesticides annually.



Brenda Eskenazi, the director of the Salinas Valley project, said that “well-controlled epidemiologic studies” were essential for understanding “how things affect human health.” Carlos Chavarria for The New York Times

For locals, pesticides are part of life. “It’s a big difference from when I was working,” Mr. Camacho said, while standing in a strawberry field framed on three sides by distant hills. Men and women were bent over nearby, pulling weeds. “My supervisor would say: ‘That’s not dangerous. Just keep working.’ There was no information.”

Chamacos is built on an unsettling premise: What happens to children of pregnant mothers certain to have pesticides in their bloodstreams? The E.P.A. and other government agencies have spent millions of dollars funding Chamacos.

Half the Chamacos children have been tracked since before birth. Researchers have collected 350,000 samples of blood, urine, breast milk and even household dust and spent nearly two decades studying maturing children. They perform neurodevelopmental and physical assessments and study factors like diet and school performance. After nearly two decades, the study’s data appears in more than 160 academic papers.

During a visit to the Chamacos office in Salinas, Brenda Eskenazi, the director of the project and a professor of epidemiology at Berkeley, was testing out brain monitoring equipment, wearing what looked like a black swim cap strewn with knobs and wiring. She has long been fascinated with cognitive development, going back to when she saw a Woodstock reveler — one having a bad acid trip — dive into pavement.

“Why did he do that?” Ms. Eskenazi remembers wondering at the time. “What was he thinking? What’s going on in that brain?”

“Any science is imperfect,” she said, but stressed that “well-controlled epidemiologic studies” were essential for understanding “how things affect human health.” She added, “Otherwise you’re just making huge assumptions that a rodent is the same as a human.”

A Bitter Debate

The day after Mr. Pruitt made his March 2017 decision to reject a ban on chlorpyrifos, he hosted top executives from one of the nation’s largest farming and pesticide trade organizations for a closed-door conversation.

Near the top of the meeting agenda was “Epidemiology Study Policy” in the aftermath of the “chlorpyrifos matter,” according to internal records.



McKinnon Elementary School in Salinas. The pesticide industry contends that epidemiological studies are prone to biases and not as reliable as testing on lab animals. Carlos Chavarria for The New York Times

“There are no guideposts, if you will, for what is a legitimate, useful epidemiology study and what is not,” Jay Vroom, CropLife America’s president, said in an interview, explaining what he had told agency officials at this and other meetings.

In a subsequent letter to the E.P.A., a CropLife America lobbyist said the agency was relying on a “shortsighted approach,” and the group submitted formal proposals to curb the embrace of epidemiology the E.P.A. undertook under the Obama administration.

Mr. Pruitt responded with his proposal, made this past spring, to ban epidemiological and other studies that did not make study details public, including at least some information on study participants.

Academics have resisted previous requests to review their data, notably at Columbia University. In a 2016 letter to the agency, a university official wrote that it could not provide “extensive individual level data to E.P.A. in a way that ensures the confidentiality” of “our research subjects.”

David Michaels, an epidemiologist at George Washington University’s School of Public Health and head of the Occupational Safety and Health Administration during the Obama administration, said Mr. Pruitt’s plan was not about transparency but about discrediting studies that made pesticides look bad.

“The underlying justification for this ‘transparency’ proposal is a caricature of how science really works,” Mr. Michaels said at a recent hearing. “The cynical approach proposed by E.P.A. can be best described as ‘weaponized transparency.’”

It is no coincidence, he said, that the term “secret science” was also used in the 1970s when the tobacco industry was trying to forestall critical research about smoking.

Researchers have had wins. This month, a federal appeals court ordered the E.P.A. to ban chlorpyrifos, citing findings from human studies. The Trump administration is mulling whether to appeal.

But epidemiologists are unsettled. In mid-July, after nearly two decades of work on Chamacos, the E.P.A. emailed Ms. Eskenazi requesting “the original data” from her research, citing “uncertainty around neurodevelopmental effects associated” with pesticides she has studied. The agency made a similar request to Columbia.

Ms. Eskenazi, worried about her study participants’ privacy, alerted university lawyers. She is now concerned that the E.P.A. may try to undermine her study’s repeated findings that some pesticides may be harming children.

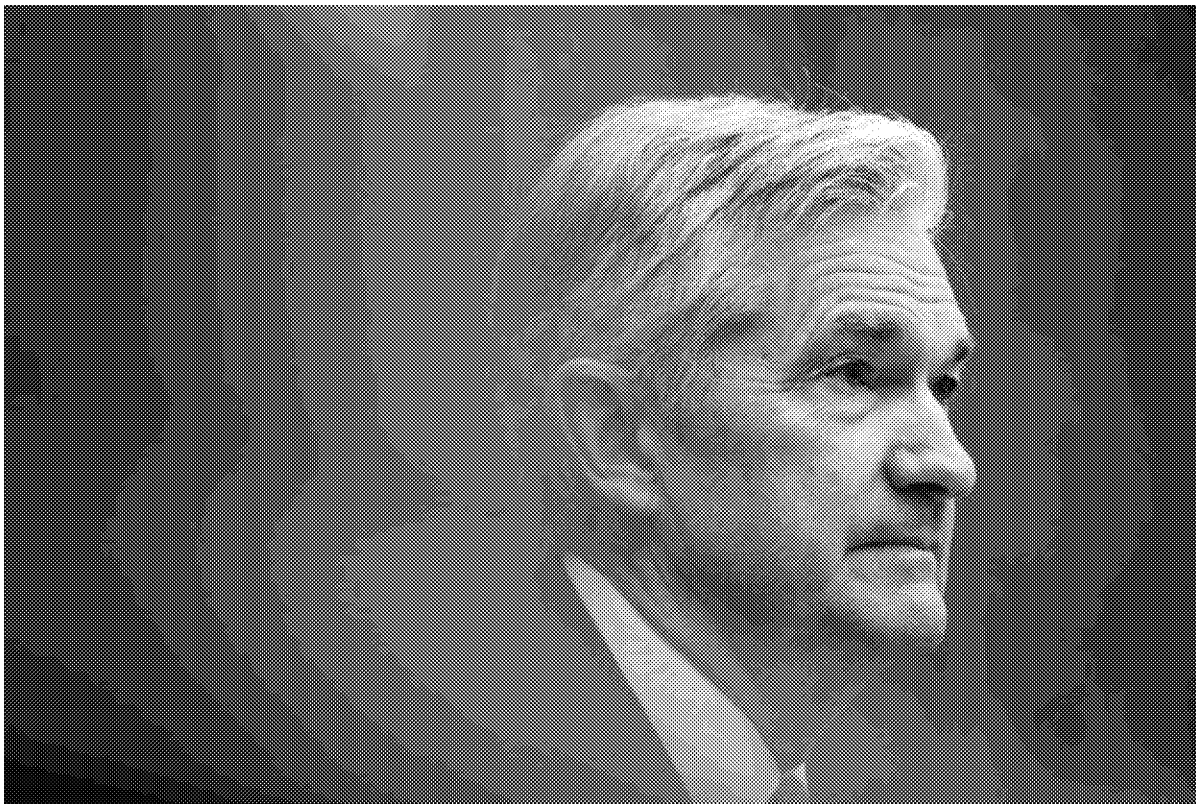
“I knew this was going to come sooner or later,” she said. “And here it is.”

Danny Hakim reported from Salinas, and Eric Lipton from Washington.

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TELE 02708P AND KIDDER COUNTY PRESS THE STORM LAKE TIMES THE TREDDEN NEW SHINE SENTINEL WHITE COUNTY MONIT

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Ryan Jackson
Chief of Staff
U.S. EPA

Personal Matters / Ex. 6

Message

From: David Wojick [davidwojick@insidepublicaccess.com]
Sent: 5/10/2018 6:40:21 PM
To: Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]
Subject: EPA's open secret science rule
Attachments: Inside Public Access May 10, 2018 EPAs open secret science rule.pdf

Here is a complimentary copy of the latest issue of *Inside Public Access*:

EPA's open secret science rule

By David Wojick, Ph.D.

Synopsis: EPA's proposed regulation more-or-less banning the Agency's use of so-called "secret science" has received a lot of attention. Most of this is negative and some of it is justified. What has largely been missed is the deep impact that this rule might have on the US Public Access Program and on open science generally.

Much work lies ahead. Happy to help EPA.

David

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May 10, 2018

EPA's open secret science rule

By David Wojick, Ph.D.
(davidwojick@insidepublicaccess.com)

Synopsis: EPA's proposed regulation more-or-less banning the Agency's use of so-called "secret science" has received a lot of attention. Most of this is negative and some of it is justified. What has largely been missed is the deep impact that this rule might have on the US Public Access Program and on open science generally.

The proposed regulation can be found [here](#), along with supporting documents and comments to date. Comments are presently due by May 30, 2018 but many people are requesting that the present 30 day comment period be extended to 90 days. This is fairly typical for major rules like this one.

Even on the negative side the criticism has been rather too narrow. People are focusing on things like privacy and other reasons to keep some data confidential. Everyone seems to be thinking about US research.

But the harsh reality is that science is a global exercise and a lot of researchers in other countries will have no interest in complying with EPA's burdensome requirements. The open science advocates like to ignore the fact that making one's research replicable is a difficult and costly task. That simple fact, the burden of making research replicable, could wind up causing most global research to be ruled out by the EPA rule.

Leaving this deep problem aside, consider the positive aspects, at least for those who advocate open science. The EPA rule is likely to finally establish specific standards for openness. Moreover, these standards will set a potential precedent for other Federal Agencies, possibly even other Governments, or even for journals. In other words this relatively small action by EPA is potentially a very big pilot project for the world.

This in turn raises another big problem. The present proposal is completely and hopelessly vague when it comes to saying what is actually required. It reads as though the concept of replicability were already well defined, which it most certainly is not.

This is a common problem with ground breaking new laws and regulations. They use language which is clear in its way but which has no operational definition. Working out what these new rules mean is then a complex and difficult matter, often involving protracted litigation. I have been studying this messy phenomenon for 50 years, beginning with the 1968 National Environmental Policy Act. NEPA required all Federal Agencies to do Environmental Impact Statements for all physical projects. But it did not say what these looked like or how to do them; it took years of confusion to work these questions out. So I developed a taxonomy of 126 different rulemaking confusions.

EPA's open science rule has the same broad impact and the same degree of vagueness as NEPA did. A great deal of work will have to be done before we know what these new rule actually require in practice. Some of this hard work can be done by EPA in formulating its final rules. But much of it is probably going to be done by expensive trial and error. At some point EPA is going to have to say, on a very specific case by case basis, which research can be considered and which cannot. This is when the rules get very specific.

Quite frankly I cannot imagine how the Agency is going to do this job, which is a measure of the magnitude of the challenge. First they have to figure out what using a given research result even means. For example, proposed major rules are accompanied by a voluminous Technical Support Document. It may cite hundreds, or even thousands, of research journal articles. Does each of these have to meet the availability and replicability standard? If so then I can imagine EPA dropping this citation practice.

But assuming that these deep problems finally get worked out, consider what it does. It basically extends the access and availability requirements of the Public Access Program from research that is federally funded to research that is federally used. (In fact EPA specifically cites their Public Access Plan as a supporting document for this new regulation.) It does this for data as well as articles. The researcher is basically required to provide access to everything technical that is involved in getting the research result.

In the environmental field a lot of research is done with federal policy in mind so this is potentially a very broad mandate. It in effect creates the new category of "EPA usable research." A lot of researchers, or their institutions, are likely to want their work to be EPA usable, even if EPA does not fund it.

So all things considered this regulation is a big extension of Public Access. It is also a big step forward for open science. But it will be a big job for EPA and the research community to work out.

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From: Morning Energy [morningenergy@politico.com]
Sent: 5/10/2018 2:12:38 PM
To: Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]
Subject: POLITICO's Morning Energy, presented by Anheuser-Busch: Zinke's turn on the Hill — EPA watchdog: Aides slow to turn over docs — House to take up Yucca bill today

By Kelsey Tamborrino | 05/10/2018 10:00 AM EDT

With help from Eric Wolff, Alex Guillén, Anthony Adragna and Jennifer Haberkorn

ZINKE HEADS TO THE HILL: Interior Secretary Ryan Zinke faces his Senate appropriators today to discuss his department's budget request for fiscal 2019. Expect Democrats to bring up familiar topics, such as his plans to reorganize the department and last year's decision to shrink national monuments in Utah. Subcommittee ranking member Tom Udall plans to tell Zinke that until courts weigh in on whether his move was legal, "I believe that moving forward with land management plans that will open these iconic areas to development is reckless."

Subcommittee Chair Lisa Murkowski may be interested in hearing more about Zinke's plans for oil and gas development in Alaska, after Interior kicked off its environmental review of potential drilling in part of the Arctic National Wildlife Refuge thanks to language she got included in last year's tax bill. And Sen. Lamar Alexander, another member of the subcommittee, can follow up on the maintenance backlog for the national parks, an issue the two discussed when Zinke visited Tennessee last week.

Ahead of the hearing, the Coalition to Protect America's National Parks is sending a letter to Zinke, with signatures from current and former employees of the National Park Service, calling on him to support permanent reauthorization of the Land and Water Conservation Fund, an issue with support in both parties.

If you go: The Senate Appropriations Interior-Environment Subcommittee hearing begins at 9:30 a.m. in 138 Dirksen.

- But first: Zinke will join Agriculture Secretary Sonny Perdue at USDA headquarters for an 8 a.m. briefing on the forecast for this year's wildfire season.

WATCHDOG: EPA AIDES SLOW TO SEND DOCS: EPA's internal watchdog complained last year that Administrator Scott Pruitt's aides were taking their sweet time handing over documents related to a probe into their boss' travels, new emails show. Although the standoff between the inspector general's office and Pruitt's staff was resolved a month later, the incident illustrates tensions between political appointees and career oversight officials that developed early on. The IG's office is in the process of conducting multiple reviews into Pruitt's actions.

The new emails, released under a FOIA request from California's Justice Department, show the IG's office was seeking information for its probe of Pruitt's frequent travel to Oklahoma on EPA business, Pro's Alex Guillén reports. That same probe was later expanded to include a wider swath of Pruitt's travel practices, including his first-class flights that cost more than \$100,000. (The investigation is slated to be completed this summer.)

At the time, the agency's assistant inspector general for audits, Kevin Christensen, wrote to a top career official in EPA's finance office to warn of a "potential situation" with the travel audit just two weeks after it began, the emails show. Christensen flagged messages showing Pruitt's chief of staff Ryan Jackson was

"screening" documents before releasing them to the Office of Inspector General. "This does not fit the definition of unfettered access or comply with the Administrator memo on access and providing information to the OIG," Christensen wrote to Jeanne Conklin, EPA's controller who oversees financial management and reporting. "When we are denied access to information until approved for release, it raises the question as to what is being withheld and approved for release."

The emails spotlight concerns about the lack of transparency atop the agency since Pruitt joined. And other emails released to California's Department of Justice also show career ethics officials warning Pruitt's aides about accepting industry awards and attending political events, further exemplifying internal tensions as Pruitt's external problems grow. Read more from Alex [here](#).

- Related reporting: Amid ongoing scrutiny, Pruitt met with industry representatives Wednesday, where a reporter asked if he still had the confidence of the White House. Pruitt said: "I think they've spoken very clearly," Bloomberg [reports](#).

WELCOME TO THURSDAY! I'm your host Kelsey Tamborrino. Bracewell's Frank Maisano was the first to correctly identify Detroit as home to the first paved roadway. Woodward Avenue carries the designation M-1 for its status as the first place to pour a 1-mile patch of concrete roadway. For today: Name the state first lady who simultaneously served as a member of the House. Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](#), [@Morning_Energy](#) and [@POLITICOPro](#).

TRUMP EXTENDS OLIVE BRANCH: President Donald Trump called coal baron Don Blankenship Wednesday to exchange pleasantries and offer up congratulations for waging his campaign, POLITICO's Alex Isenstadt reports. The conversation was described as straightforward, polite and cordial, and comes days after Trump tweeted that voters shouldn't vote for Blankenship in the West Virginia Republican primary. Blankenship also published an [open letter](#) to Trump on Wednesday that in part blamed the president for his loss. "Your interference in the West Virginia election displayed a lack of understanding of the likely outcome of the upcoming general election," Blankenship wrote. But he ended with a note of optimism: "I look forward to meeting with you in the near future." Alex reported the president had also reached out to Rep. [Evan Jenkins](#), who also lost in Tuesday's primary, but had yet to connect with the Republican party's winner, Patrick Morrisey, as of Wednesday evening. Read [more](#).

**** A message from Anheuser-Busch:** Anheuser-Busch announced that America's leading brewer has placed an order for up to 800 hydrogen-electric powered semi-trucks. The zero-emission trucks will be able to travel between 500 and 1,200 miles. Anheuser-Busch aims to convert its entire long-haul dedicated fleet to renewable powered trucks by 2025. [Learn more](#). **

HOUSE GOES NUCLEAR: The House will take up the long-awaited [H.R. 3053 \(115\)](#), the "Nuclear Waste Policy Amendments Act of 2018," for consideration today, with votes expected between 10:45 a.m. and 11:45 a.m. The bipartisan legislation would update how the U.S. handles nuclear waste and promote development of the Yucca Mountain repository in Nevada, among other provisions. The legislation is expected to pass, although it will face a much shakier Senate reception with Sen. [Dean Heller](#) facing a tough re-election race this year. Rep. [John Shimkus](#), who introduced the comprehensive nuclear waste package, previously said he hadn't had any recent talks with Senate counterparts about potentially moving the bill across the Capitol. Still, its appearance today is a victory for Shimkus: [Greg Walden](#) told reporters this week that Shimkus had sent handwritten letters to the homes of every member of leadership during recess encouraging the bill to come up, praising his tenacity.

COURT SAYS CRA IS A-OK: A federal judge in Alaska Wednesday [dismissed](#) an environmental group's lawsuit that called the Congressional Review Act unconstitutional. The Center for Biological Diversity specifically challenged the CRA [resolution](#) successfully passed by Congress last spring that nullified an Interior Department rule regarding hunting in Alaska wildlife refuges.

Judge Sharon Gleason of the U.S. District Court for Alaska, an Obama appointee, noted that both the CRA itself and this specific resolution were passed by both chambers and signed by the president, fulfilling the constitutional requirements for creating laws. Other parts of CBD's argument similarly failed to hold water. "The Court finds that even construing all the facts in favor of CBD, CBD's constitutional claims fail to adequately allege a plausible basis for relief," Gleason wrote.

SUNNY CALIFORNIA: The California Energy Commission voted unanimously Wednesday to require solar panels be installed for all newly built single-family homes and multifamily buildings less than three stories starting in 2020. A CEC study found that installing solar would increase home prices, but that would be more than offset by lower utility bills, according to the Los Angeles Times. The move has been anticipated for years and was supported by much of the home building industry. More from the LAT [here](#).

STEELWORKERS SAY YES TO RFS: The United Steelworkers are supporting Trump's recent decisions on the Renewable Fuel Standard, which include expanding sales of 15 percent ethanol fuels and having EPA and USDA workout some kind of program for biofuel credits on exported ethanol. "While it will continue to review the details, [USW] supports a deal brokered by the President that appears to address the long-running conflict between ethanol producers and oil refiners over federal biofuels mandates," the union said in a press release.

HOUSE GOP DROPS RESCISSIONS PACKAGE: House Majority Leader [Kevin McCarthy](#) unveiled the chamber's batch of [spending cuts](#) Wednesday. Similar to the White House's [request](#), the package makes cuts to Energy Department loan guarantee programs for clean energy and vehicle technologies. The bill is expected to [go directly to the House floor for a vote](#), Pro's Sarah Ferris [reports](#). Senate GOP leaders have said they will consider the bill if and when it passes the House.

MEANWHILE IN BONN: Things aren't going as planned for the second week of climate talks in Bonn, Germany, punting further discussions to another meeting in September. The U.N. Framework Convention on Climate Change [said](#) Wednesday that there would be an additional meeting from Sept. 3-8 in Bangkok amid a stalemate centered in part around clarity on climate finance between developed and developing countries. The new date underscores the pressure negotiators are under to advance talks enough for ministers to strike a deal later this year at the COP24 in Katowice, Poland. "We need to resolve differences on finance, accounting and transparency," Alden Meyer of the Union of Concerned Scientists [told POLITICO Europe's](#) Kalina Oroschakoff.

CALVERT: EPA-INTERIOR COMING SHORTLY: Rep. [Ken Calvert](#), who oversees EPA and Interior on the Appropriations Committee, told ME to expect their fiscal 2019 bill "pretty soon" as work's going well. "We're working on final details now," he said. As for the perennial question, yes, Calvert expects policy riders to be in play: "There's always riders," he quipped.

AUTOMAKERS WANT MORE FUEL EFFICIENCY: The Alliance of Automobile Manufacturers and the Global Automakers, trade associations which together represent most of the automakers who sell cars in the U.S., will tell Trump that they most definitely want increases in fuel efficiency standards, contra that zero increase preference of the Department of Transportation. They also want the federal government to work out a single national standard with California, rather than face either a bifurcated market or a long legal battle. "Automakers are deeply committed to increased fuel economy and safety measures that meet the needs of our customers, and we expect to share the importance of government policies that provide certainty to the auto sector, continue to reduce greenhouse gas emissions, reflect what consumers will buy and result in a national policy that includes California," the two groups said in a statement.

FOLLOW THE MONEY: The Environmental Integrity Project released a database Wednesday of political contributions from companies and conservative organizations that met with Pruitt between Feb. 21, 2017, and April 13 of this year. The database was compiled via EPA calendars, FEC reports and data from the Center for Responsive Politics. See it [here](#).

SAVE THE DATE: BLM scheduled meetings to discuss its plans for an environmental review of planned oil and gas leases in ANWR. Several will be held in Alaska, including one each in Fairbanks and Anchorage on May 29 and May 30, respectively. Another meeting is scheduled for Washington D.C. on June 15. For those who can't make the hearings, BLM plans to live stream the Fairbanks and Anchorage dates.

MAIL CALL! ISN'T IT IRONIC? Six Democratic senators wrote to Office of Information and Regulatory Affairs Administrator Neomi Rao on the office's review and evaluation process for EPA's proposed "secret science" proposal to ban the use of studies that don't publicly disclose all their data. "The review process and rollout of this rule appears to have been rushed and secretive - which is particularly ironic for a proposal that purportedly aims to improve agency transparency and decision-making processes," they write.

Separately, bipartisan Reps. Ryan Costello and Paul Tonko sent a letter to the National Academy of Sciences asking for its input on the proposed rule, which was discussed when Pruitt testified before the House E&C Committee. Read the letter here.

Of course, Pruitt seems pleased with the proposal: Bloomberg's Ari Natter snapped a photo of new signs at EPA that tout the agency's "Strengthening Transparency in Regulatory Science."

ROCK STARS: Access Fund and American Alpine Club are sponsoring their annual "Climb the Hill" event today with professional rock climbers and outdoor recreation advocacy groups, who will hit the Hill today to talk outdoor recreation and public lands. Sen. Maria Cantwell will attend a reception with the group at 3 p.m. in 385 Russell. High-profile members of the rock-climbing community and executives from REI, Patagonia and The North Face will attend.

QUICK HITS

- Pair of investor-pushed resolutions pass at Kinder Morgan, Axios.
- Saudis pledge to "mitigate" loss of Iranian oil exports from U.S. sanctions. But crude prices rise anyway, The Washington Post.
- Emails: Perdue's donors, agency coordinated on biomass, E&E News.
- Hugh Hewitt used his MSNBC gig to praise efforts to weaken a law that his firm's client is accused of violating, Media Matters.
- Emails show Heritage Foundation offered Pruitt flights, hotel, and talking points for its conference, ThinkProgress.

THAT'S ALL FOR ME!

**** A message from Anheuser-Busch:** Anheuser-Busch announced that America's leading brewer has placed an order for up to 800 hydrogen-electric powered semi-trucks from the pioneer in hydrogen-electric renewable technology, Nikola Motor Company. The zero-emission trucks - which will be able to travel between 500 and 1,200 miles and be refilled within 20 minutes, reducing idle time - are expected to be integrated into Anheuser-Busch's dedicated fleet beginning in 2020.

Through this agreement Anheuser-Busch aims to convert its entire long-haul dedicated fleet to renewable powered trucks by 2025.

"At Anheuser-Busch we're continuously searching for ways to improve sustainability across our entire value chain and drive our industry forward," said Michel Doukeris, CEO of Anheuser-Busch. "The transport industry

is one that is ripe for innovative solutions and Nikola is leading the way with hydrogen-electric, zero-emission capabilities. We are very excited by the possibilities our partnership with them can offer."

[Learn more.](#) **

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August 7, 2018

MEMORANDUM FOR THE WHITE HOUSE STAFF SECRETARY AND CABINET SECRETARY

FROM: Ryan Jackson, Chief of Staff, U.S. Environmental Protection Agency

SUBJECT: Environmental Protection Agency 90-Day Look Ahead for the Week of August 6, 2018

A. Events/Travel

- **July 16** – Travel to Western Pennsylvania (natural gas company, local chamber of commerce, Western Pennsylvania Conservancy, interview w/*Pittsburgh Post-Gazette*)
- **August 13** – Travel to Des Moines, IA
- **August 17** – Travel to Detroit, MI (Great Lakes and water infrastructure events, EPA Ann Arbor Office)
- **August 27** – Travel to Columbus and Zainesville, OH
- **September 7-8** – Travel to Butte, Montana (Superfund site, tribes)
- **September 10** – Travel to Denver (Superfund site, EPA Detroit Office)
- **September 14-16** – Camp David retreat
- **September 17-20** – G7 Environmental Ministers meeting
- **October 3-5** – Travel to West Coast (EPA San Francisco Office, EPA Seattle Office, Portland Harbor Superfund site, speaking engagement with American College of Environmental Lawyers)
- **October 15/16** – Speaking engagement with Louisiana Association of Business and Industry, RESTORE Counsel Meeting on the Gulf Coast)
- **October 19** – Event in Richmond, VA (mercury switch MOU)

B. Top News

- **Make Cars Great Again** (*Wall Street Journal*, 8/1/2018): “During a visit to Detroit last year, President Trump announced his administration would assess and correct the current vehicle fuel-economy standards, which impose significant costs on American consumers and eliminate jobs. The administration is continuing to deliver on that promise. On Thursday the Transportation Department and Environmental Protection Agency are announcing a joint proposal to update the national automobile fuel-economy and greenhouse-gas standards to give consumers greater access to safer, more affordable vehicles, while continuing to protect the environment.”
- **Trump Admin Encourages States To Take Over Water Permitting** (*Politico*, 8/7/18): “The Army Corps of Engineers and EPA are encouraging states to take over their controversial Clean Water Act permitting program and are boosting their process for allowing them to do so.”

C. Policy Updates

1. **GREENHOUSE GAS STANDARDS FOR LIGHT-DUTY VEHICLES:** In April 2018, Administrator Pruitt announced the start of a joint process with the National Highway Traffic Safety Administration (NHTSA) to develop a notice and comment rulemaking to set GHG emissions standards and Corporate Average Fuel Economy (CAFE) standards for light-duty vehicles model years 2021-2026. On August 1, the agencies issued a joint proposed seeking

public comment on a range of regulatory options, including a preferred alternative that locks in Model Year 2020 standards through 2026.

Timing: Comments will be due 60 days after the proposed rule is published in the Federal Register.

Contact: Bill Wehrum, Office of Air and Radiation, Wehrum.Bill@epa.gov

2. **SUPERFUND EMPHASIS LIST:** On December 8, 2017, EPA released an initial Superfund Emphasis List of Superfund sites in response to the Superfund Task Force Recommendations. On April 16, EPA released an updated Emphasis List. On August 3, EPA released the next revision of the list to remove eight sites: Centredale Manor Restoration Project, American Cyanamid Co., Ventron/Velsicol, Delaware Sand & Gravel Landfill, B.F. Goodrich, Mississippi Phosphates Corporation, Allied Paper, Inc./Portage Creek/Kalamazoo River, and Casmalia Resources.

Timing: EPA anticipates revising the list quarterly.

Contact: Nick Falvo, Falvo.Nick@epa.gov

3. **CLEAN POWER PLAN:** Consistent with Executive Order 13783, in March 2017, Administrator Pruitt announced EPA's review of the Clean Power Plan (CPP). In October, EPA issued a proposed rule to repeal the CPP. On December 18, EPA issued an Advanced Notice of Proposed Rulemaking (ANPRM) on a potential rule that would establish emission guidelines for states to establish performance standards for GHG emissions from existing Electric Generating Units (EGUs). On June 9, EPA sent a proposed rule revising the CPP to OMB. EPA is keeping its proposed CPP repeal open and will consider the public comments submitted on both proposals.

Timing: EPA plans to issue the June 9 proposed rule in August.

Contact: Mandy Gunasekara, Office of Air and Radiation, Gunasekara.Mandy@epa.gov

4. **OIL AND GAS NSPS:** Consistent with Executive Order 13783, in April 2017, Administrator Pruitt announced EPA's reconsideration of several aspects of the 2016 oil and gas New Source Performance Standards (NSPS). On March 1, 2018, EPA amended two provisions of the 2016 oil and gas NSPS to address immediate concerns with the fugitive emission requirements. On April 27, EPA sent a reconsideration proposed rule to OMB.

Timing: EPA plans to issue the proposed rule in August.

Contact: Mandy Gunasekara, Office of Air and Radiation, Gunasekara.Mandy@epa.gov

5. **TSCA FEES:** Under the amended TSCA, EPA is required to institute new fees on the chemical manufactures to fund the approval program for new chemicals. On February 8, 2018, EPA issued a proposed Fees Rule to provide funding for Lautenberg Act implementation, including risk evaluations and reviewing CBI.

Timing: EPA plans to send a final rule to OMB in late August before issuing the rule in September.

Contact: Nancy Beck, Office of Chemical Safety and Pollution Prevention, Beck.Nancy@epa.gov

6. **DEFINITION OF "WATERS OF THE UNITED STATES":** Consistent with Executive Order 13778, EPA and the U.S. Army Corps of Engineers are taking a multi-step approach to

reconsider the jurisdictional scope of the Clean Water Act. The agencies issued a proposed rule to withdraw the 2015 “Waters of the United States” (WOTUS) rule and re-codify the status quo in June 2017 and issued a supplemental notice seeking additional public comment in July 2018. In January 2018, the agencies issued a final rule to change the applicability date of the 2015 rule to February 2020. Lastly, the agencies are developing a revised definition of WOTUS, which was proposed in a rule sent to OMB for interagency review on June 15, 2018.

Timing: Comments on the supplemental notice are due August 13, 2018. EPA plans to issue the proposed rule revising the definition of WOTUS in September.

Contact: Dave Ross, Office of Water, Ross.DavidP@epa.gov

7. **LEAD AND COPPER RULE:** EPA is beginning the process of updating the Lead and Copper Rule (LCR) for drinking water to modernize and strengthen implementation of the rule. The LCR was first promulgated in 1991 and has not been substantially revised since that time. On January 8, 2018, EPA held its first federalism consultation meeting with stakeholders representing intergovernmental associations.

Timing: EPA plans to issue a proposed rule in September.

Contact: Dave Ross, Assistant Administrator, Office of Water, Ross.DavidP@epa.gov

8. **PSD/NSR PROJECT AGGREGATION:** Under the New Source Review (NSR) preconstruction permitting program, stationary sources undergoing modifications need to determine whether their physical or operational changes are a “major modification” based on the emissions increase that would result from the changes. The term “project aggregation” within the NSR program refers to the grouping of related physical and/or operational changes at a facility into a single project and combining the corresponding emission increases or decreases for purposes of determining NSR applicability. In January 2009, the EPA finalized an interpretation of existing NSR regulations that changes at a facility should be aggregated into a single project if they are “substantially related.” This 2009 action is currently under reconsideration.

Timing: EPA plans to issue a final reconsideration rule in September.

Contact: Bill Wehrum, Office of Air and Radiation, Wehrum.Bill@epa.gov

9. **COAL COMBUSTION RESIDUALS:** In response to petitions for rulemaking from the utility industry, EPA decided in September 2017 to reconsider provisions of the final 2015 rule regulating the disposal of coal combustion residuals (CCR) as nonhazardous waste in light of the issues raised in the petitions and the Water Infrastructure Improvements for the Nation Act (WIIN Act), which includes provisions authorizing state regulatory programs and providing EPA new oversight authority. EPA issued a proposed rule to modify several provisions of the 2015 CCR rule to respond to a June 2016 voluntary remand (“remand rule”). In addition to the specific issues subject to the remand, EPA has drafted additional proposed changes to the CCR rule as part of the remand rule to address many of the issues stakeholders raised in their petitions. On March 1, 2018, Administrator Pruitt proposed the first of two rules (Phases 1 and 2) that amend the 2015 CCR rule. On July 17, EPA issued the Phase 1 partial final rule.

Timing: EPA plans to send a Phase 2 proposed rule to OMB in September.

Contact: Byron Brown, Brown.Byron@epa.gov

10. **RFS VOLUME STANDARDS FOR 2019 AND BBD FOR 2020:** On June 26, EPA issued a proposed rule under the Renewable Fuel Standards (RFS) program that would set the minimum

amount of renewable fuels that must be supplied to the market in 2019, as well as the biomass-based diesel (BBD) volume standard for 2020.

Timing: Comments are due August 17, 2018. EPA plans to send a final rule to OMB in September before issuing the rule in October.

Contact: Mandy Gunasekara, Office of Air and Radiation, Gunasekara.Mandy@epa.gov

- 11. RISK MANAGEMENT PROGRAM:** The original Risk Management Program (RMP) rule was issued in 1996, and has been modified 5 times. The prior administration issued a rule to amend the RMP regulations that raised concerns related to national security, inconsistencies with the Process Safety Management (PSM) standards issued by OSHA, and unnecessary burdens on local communities. In March 2017, Administrator Pruitt granted reconsideration of the RMP rule in response to petitions from two industry groups and one from a group of states and issued a 90-day administrative stay of the rule. In June, EPA published a final rule to further delay the effective date of the rule until February 19, 2019. On May 17, EPA issued a reconsideration proposed rule. The proposed rule: (1) rescinds requirements for third-party audits, STAA, root cause analysis; (2) revises the requirements for local coordination and emergency exercises; (3) rescinds requirements for information availability while strengthening provisions that require a public meeting after an incident; and (4) extends compliance dates.

Timing: On July 24, EPA published a Federal Register notice of data availability (NODA) extending the comment period from July 30 to August 23. EPA plans to send a final rule to OMB in October.

Contact: Steven Cook, Office of Land and Emergency Management, Cook.Steven@epa.gov

- 12. COST-BENEFIT REFORM:** On April 10, 2018, Administrator Pruitt announced a forthcoming Advanced Notice of Proposed Rulemaking (ANPRM) to consider proposing regulations on cost-benefit reform. Under the Obama administration, EPA used questionable methods, like the social cost of greenhouse gases and relying on “co-benefits,” to inflate the purported benefits of its regulations and underestimate the true costs (as in the case of the Clean Power Plan). Additionally, several EPA statutes refer to the calculation of costs and benefits, but implementation has been inconsistent. This has led to EPA creating uncertainty for the regulated community. On June 7, EPA issued an ANPRM to solicit public input on whether and how to change the way it considers costs and benefits.

Timing: On July 3, EPA published a Federal Register notice extending the comment deadline for the proposed rule from July 13 to August 13.

Contact: Brittany Bolen, Office of Policy, Bolen.Brittany@epa.gov

- 13. SCIENCE TRANSPARENCY:** Consistent with Executive Orders 13777 and 13783, in April 2018, Administrator Pruitt signed a proposed rule to strengthen the science used in regulations issued by EPA. The rule would ensure that the regulatory science underlying agency actions is fully transparent, and will require that the underlying scientific information be publicly available, in a manner sufficient for independent validation. This action builds upon prior EPA actions in response to government-wide data access and sharing policies, as well as the experience of other federal agencies in this space.

Timing: On May 24, EPA published a Federal Register notice extending the comment deadline for the proposed rule from May 30 to August 16.

Contact: Richard Yamada, Office of Research and Development, Yamada.Richard@epa.gov

14. DUST-LEAD AND LEAD-BASED PAINT: In 2009, EPA was petitioned to lower dust-lead hazard standards and modify the definition of lead-based paint. On December 27, 2017, the Ninth Circuit granted a petition for writ of mandamus to compel EPA to issue a proposed rule by March 27, 2018. On March 26, EPA received a 90-day extension to issue a proposed rule by June 24. On June 22, EPA issued a proposed rule to change the dust-lead hazard standards from 40 µg/ft² and 250 µg/ft² to 10 µg/ft² and 100 µg/ft² on floors and window sills, respectively. In addition, EPA is proposing to make no change to the definition of lead-based paint because the Agency currently lacks sufficient information to support such a change.

Timing: Comments are due August 16, 2018.

Contact: Nancy Beck, Office of Chemical Safety and Pollution Prevention,
Beck.Nancy@epa.gov

15. PSD/NSR PROJECT EMISSIONS ACCOUNTING: Under the New Source Review (NSR) preconstruction permitting program, sources undergoing modifications need to determine whether their modification is considered a major modification and thus subject to NSR preconstruction permitting. A source owner determines if its source is undergoing a major modification under NSR using a two-step applicability test. The first step is to determine if there is a “significant emission increase” of a regulated NSR pollutant from the proposed modification (Step 1) and the second step is to determine if there is a “significant net emission increase” of that pollutant (Step 2). EPA plans to issue a rule that would consider emissions increases and decreases in Step 1.

Timing: EPA plans to send a proposed rule to OMB in October.

Contact: Bill Wehrum, Office of Air and Radiation, Wehrum.Bill@epa.gov

D. Grants

1. \$266,034 TO THE SACRAMENTO METROPOLITAN AIR QUALITY MANAGEMENT DISTRICT: This grant allows the State of Idaho to maintain an air quality program that meets the requirements of the federal Clean Air Act, to include plans and programs designed to achieve or maintain compliance with the National Ambient Air Quality Standards (NAAQS), conformity analysis, compliance with National Emission Standards for Hazardous Air Pollutants (NESHAPS) rules and regulations, stationary source compliance, emission inventory development, data collection, reporting and modeling.

Timing: EPA will issue a press release on August 8.

2. \$217,516 TO THE IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY: This grant allows the State of Idaho to maintain an air quality program that meets the requirements of the federal Clean Air Act, to include plans and programs designed to achieve or maintain compliance with the National Ambient Air Quality Standards (NAAQS), conformity analysis, compliance with National Emission Standards for Hazardous Air Pollutants (NESHAPS) rules and regulations, stationary source compliance, emission inventory development, data collection, reporting and modeling.

Timing: EPA will issue a press release on August 8.

3. **\$253,210 TO THE COOK COUNTY (ILLINOIS) DEPARTMENT OF ENVIRONMENTAL CONTROL:** The Cook County Department of Environmental Control (DEC) will continue monitoring activities to support the Illinois Environmental Protection Agency's Section 105 air pollution control program. Cook County DEC will maintain and operate a gaseous air monitoring network in Cook County, Illinois.
Timing: EPA will issue a press release on August 8.

E. Legal Actions

1. **STATE OF WEST VIRGINIA, ET AL. v. EPA, NO. 15-1363 (D.C. CIR.) – CLEAN POWER PLAN – CONTINUED ABEYANCE:** On April 28, 2016, the *en banc* court issued an order holding the litigation challenging the Clean Power Plan in abeyance and instructing the parties to file briefs on the question of whether the case should remain held in abeyance or whether the court should remand the rule to the Agency. On May 15, 2017, DOJ requested that the court hold the case in abeyance pending EPA's review of the rule. The rule's supporters have asked the court to remand the rule to EPA. On August 8, 2017, the D.C. Circuit ordered that the case remain in abeyance. The court directed EPA to continue to file status reports. The case remains in abeyance, and EPA continues to file status reports. EPA filed its most recent status report on July 26.
Timing: On June 26, 2018, the Court ordered that the case remain in abeyance for another 60 days, and that EPA file status reports every 30 days.
Contact: Matthew Leopold, General Counsel, Leopold.Matt@epa.gov
2. **OHIO VALLEY ENVIRONMENTAL COALITION v. PRUITT, NO. 17-1430 (4TH CIR.) – “CONSTRUCTIVE SUBMISSION” OF “NO TMDLS” BY WEST VIRGINIA – PETITION FOR REHEARING:** In February 2017, the District Court held that EPA must approve and/or disapprove West Virginia's "constructive submission" of no biological impairment/ionic toxicity Total Maximum Daily Loads (TMDLs) for 573 water bodies in the State. In June 2017, EPA and West Virginia negotiated a Memorandum of Agreement, which includes parameters under which the state will submit TMDLs for these water bodies. Relying on this agreement, EPA "conditionally approved" the submission of "no TMDLs," conditioned on the state meeting its obligations under the MOA, subject to the outcome of DOJ's appeal of the district court's determination in the Fourth Circuit. The case is now fully briefed. Various state-government and industry associations have filed *amicus* briefs in support of EPA's position. On appeal, EPA is arguing that (1) plaintiffs lacked standing to sue regarding all but 50 of the contested waters; (2) the district court misapplied the "constructive submission" doctrine to West Virginia, a state with a robust TMDL program that is working to complete the TMDLs at issue; and (3) the district court's decision was based on flawed factual assumptions about West Virginia's TMDL development efforts. Oral argument occurred on May 8, 2018 in Richmond, Virginia. The Court issued a decision on June 20, 2018.
Timing: On August 1, Plaintiffs-Appellees filed a petition for panel rehearing. On that same day, the Court stayed the mandate pending the petition for rehearing.
Contact: David Fotouhi, Deputy General Counsel, Fotouhi.David@epa.gov
3. **JULIANA v. UNITED STATES, NO. 15-01517 (D. OR.)/NO. 17-71692 (9TH CIR.). MANDAMUS PROCEEDINGS – CLIMATE-CHANGE LITIGATION WITH**

CONSTITUTIONAL CLAIMS – DISTRICT COURT PROCEEDING: This case is a broad-based challenge alleging that EPA and the US Government allowed excessive CO2 emissions from burning fossil fuel that have contributed to climate change. The district court denied the US motion to dismiss. On June 8, 2017, the district court denied our motion for interlocutory appeal and our request to stay the proceedings. On June 9, 2017, DOJ filed petition for mandamus with the Ninth Circuit seeking the same relief. On March 7, 2018, the Ninth Circuit denied the petition for a writ of mandamus. DOJ has filed motions for judgment on the pleadings and summary judgment for which oral argument was held on July 18, 2018. On July 5, DOJ filed a second petition for writ of mandamus and an emergency motion for a stay of discovery and trial with the Ninth Circuit. On July 17, the Ninth Circuit denied the request for a stay. On July 20, the Ninth Circuit denied the second petition for writ of mandamus. On July 17, DOJ filed an Application for Stay (or in the alternative a petition for mandamus or certiorari) with the Supreme Court, the plaintiffs filed their response on July 23. On July 30, the Supreme Court denied the requested stay.

Timing: District Court case is proceeding.

Contact: Justin Schwab, Deputy General Counsel, Schwab.Justin@epa.gov

4. **MASSACHUSETTS RIVERS ALLIANCE v. EPA, NO. 17-cv-11825 (D. MASS.)— APA 705 STAY OF MASS. MS4 PERMIT—CASE STAYED:** Massachusetts Rivers Alliance and nine other environmental groups filed a complaint against the EPA in U.S. District Court in Massachusetts with regards to EPA’s June 29, 2017 action under Section 705 of the Administrative Procedure Act (“APA”) to postpone the effective date of the Massachusetts small MS4 (municipal separate storm sewer system) general permit by one year, from July 1, 2017 to July 1, 2018. Multiple parties had already challenged the general permit in the First Circuit and the D.C. Circuit Court of Appeals; the cases have been transferred and consolidated in the D.C. Circuit, and we are now awaiting its decision on whether to hold those cases in abeyance indefinitely to allow for the parties to pursue court-sponsored alternative dispute resolution. Briefing concluded in January of 2018. A status conference occurred on July 30 after which time the court stayed the case until October. Petitioners have indicated that they intend to move for voluntary dismissal of the case at that time.

Timing: A status conference is set for October 22, 2018.

Contact: David Fotouhi, Deputy General Counsel, Fotouhi.David@epa.gov

5. **SAFER CHEMICALS HEALTHY FAMILIES v. EPA, No. 17-72260 (9TH Cir.) – CHALLENGE TO TSCA PRIORITIZATION RULE AND RISK EVALUATION RULE – RESPONSE BRIEF DUE:** On November 27, 2017, the Ninth Circuit denied EPA’s motion to transfer the petitions for review of the TSCA prioritization rule to the Fourth Circuit. The court consolidated the various challenges to the TSCA framework rules and then issued a briefing schedule. Petitioners filed their opening brief on April 16, 2018.

Timing: EPA’s response brief was filed on August 6.

Contact: David Fotouhi, Deputy General Counsel, Fotouhi.David@epa.gov

Message

From: Yamada, Richard (Yujiro) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4C34A1E0345E4D26B361B5031430639D-YAMADA, YUJ]
Sent: 2/5/2018 6:30:38 PM
To: Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]
Subject: draft
Attachments: data_access_memo V3.docx

(NOTE: this email contains pre-decisional and deliberative material)

Ryan

Deliberative Process / Ex. 5

Richard

Richard Yamada
Deputy Assistant Administrator
Office of Research and Development
U.S. Environmental Protection Agency

Phone: 202-564-1727
yamada.richard@epa.gov

Message

From: Yamada, Richard (Yujiro) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4C34A1E0345E4D26B361B5031430639D-YAMADA, YUJ]
Sent: 6/8/2018 3:50:00 PM
To: Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]
CC: Wilcox, Jahan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=88fd588e97d3405d869bcae98d391984-Wilcox, Jah]; Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]; Block, Molly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=60d0c681a16441a0b4fa16aa2dd4b9c5-Block, Moll]; Abboud, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6f5af791a1842f1adcc088cbf9ed3ce-Abboud, Mic]
Subject: Re: APPROVAL ...

Deliberative Process / Ex. 5

Sent from my iPhone

On Jun 8, 2018, at 11:42 AM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

Deliberative Process / Ex. 5

Ryan Jackson
Chief of Staff
U.S. EPA

Personal Matters / Ex. 6

On Jun 8, 2018, at 11:35 AM, Wilcox, Jahan <wilcox.jahan@epa.gov> wrote:

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Coral Davenport [<mailto:coral.davenport@nytimes.com>]
Sent: Friday, June 8, 2018 8:56 AM
To: Wilcox, Jahan <wilcox.jahan@epa.gov>
Subject: Re: moment to chat?

Hey, there - can you send? Tks!

Coral Davenport
Energy and Environment Correspondent
The New York Times
Washington Bureau
1627 I St. NW, Suite 700
Washington, DC 20006
coral.davenport@nytimes.com
O 202-862-0359
C 703-618-0645
Twitter @CoralMDavenport

On Jun 7, 2018, at 7:34 PM, Wilcox, Jahan <wilcox.jahan@epa.gov> wrote:

Just sent to our policy folks. Email again in the morning -
deadlines don't matter to me as I will try to get you something as
fast as I can (which hopefully will be before 10a).

On Jun 7, 2018, at 5:19 PM, Coral Davenport
<coral.davenport@nytimes.com> wrote:

Awesome, thank you. If someone cld get back to
me tonight or tomoro by like 10 am that would be
perfect. Story is currently slated to run over the
weekend.

Coral Davenport
Energy and Environment Correspondent
The New York Times
Washington Bureau
1627 I St. NW, Suite 700
Washington, DC 20006
coral.davenport@nytimes.com
O 202-862-0359
C 703-618-0645
Twitter @CoralMDavenport

On Jun 7, 2018, at 5:14 PM, Wilcox, Jahan
<wilcox.jahan@epa.gov> wrote:

What is your deadline? I am going to flag this for our policy shop and circle back.

From: Davenport, Coral
[mailto:coral.davenport@nytimes.com]
Sent: Thursday, June 7, 2018 3:53 PM
To: Wilcox, Jahan
<wilcox.jahan@epa.gov>
Subject: moment to chat?

Hi, Jahan,

I'm working on a story looking into concerns by the scientific community that the Trump administration is marginalizing and dismissing science. The story looks at examples from across the federal government, but many of them are at the E.P.A.

What are the administrator's responses to the following questions on this? Looking for fresh reax or would welcome your pointing me to specific remarks he's made on these. Overall, interested in his remarks on the allegation that he has reduced or ignored the role of science at the agency.

- Scientists are concerned that Mr. Pruitt has made multiple public statements on climate change that are at odds with decades of research on climate change, including research by the E.P.A.'s own scientists. Mr. Pruitt has said that carbon dioxide is not a primary contributor to global warming, and that scientists don't know how much humans contribute to global warming -- both statements that have been contested by the scientific community. What's his response?

- Critics say the proposed new "secret science" rule would ultimately have the impact of reducing the amount of scientific evidence that is used to formulate

regulations that affect human health.
Does this concern him?

- Can he speak to the criticism that in his efforts to change the Scientific Advisory Board, he has reduced the role of academic science and replaced it with industry-funded scientists? And that even with its new composition, the SAB has proposed re-examining the scientific basis for some of his proposed rule-makings?

- Critics say Pruitt's NAAQs memo to the CASAC, which would order the committee to take economic impacts of regulations into account, is both an effort to skirt provisions of the Clean Air Act which require the committee to focus on the public health impacts of regulations, and could lead to looser pollution rules that are not based in scientific evidence on the impact of certain pollutants on human health.

Can you send answers to these and give a call to chat about the story?
Best,
Coral

--

Coral Davenport
Energy and Environment
Correspondent
The New York Times
Washington Bureau
1627 I St. NW, Suite 700
Washington, DC 20006
coral.davenport@nytimes.com
O 202-862-0359
C 703-618-0645
Twitter @CoralMDavenport

Message

From: Hewitt, James [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=41B19DD598D340BB8032923D902D4BD1-HEWITT, JAM]
Sent: 5/7/2018 2:45:30 PM
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Subject: EPA News Highlights 5.7.18

Attachments: EPA News Highlights 5.7.18.docx

EPA News Highlights 5.7.18

E&E News: EPA's self-reporting plan could be rolled out by summer

An EPA plan that'll waive or reduce penalties for companies that self-report air emissions violations could be in place by June. A senior official in the agency's enforcement and compliance office discussed the program with state oil and gas regulators gathered here for a meeting of the Interstate Oil and Gas Compact Commission. EPA on Friday posted a description of the program it's developing. The program is designed to address the emissions from storage tanks used to hold oil, petroleum liquids and wastewater, said Patrick Traylor, EPA deputy assistant administrator for enforcement and compliance. It's one of the biggest sources of pollution from oil and gas operations.

The Palladium-Item: EPA money will help Richmond identify contaminated properties

Just how many properties around Richmond have some kind of environmental contamination issue? A federal grant will help city officials to better answer that question. The U.S. Environmental Protection Agency has awarded Richmond \$300,000 to assess various sites and update the city's brownfields inventory. Having an up-to-date listing of Richmond's troubled properties is necessary so officials can be ready to go with potential projects when the EPA makes future grants available. "We have an existing inventory that hadn't been updated in several years so to be ready for the rapid financing program that the EPA puts out, we need to have an updated inventory," City Controller Beth Fields said. "The overall vision was to identify all of the sites and then prioritize those sites for remediation."

The Washington Examiner: The EPA's new 'secret science' rule makes sense from a risk-assessment perspective

Environmental Protection Agency Administrator Scott Pruitt's recent announcement that EPA will not use "secret science" — that is science for which the underlying data is not available — is challenging. Whereas EPA is routinely in receipt of unpublished toxicity studies for chemicals designed for commerce, not all important scientific findings are publishable. Nor do scientific journals generally have sufficient space to include all data. Much has been made in recent weeks of this new EPA policy, including an op-ed opposing it by former EPA Administrator Gina McCarthy and former acting Assistant Administrator Janet McCabe. The media coverage has focused attention on how science is considered acceptable and useful in EPA's rulemaking.

Politico: EPA clamps down on document requests linked to Pruitt

Top aides to Scott Pruitt at the Environmental Protection Agency are screening public records requests related to the embattled administrator, slowing the flow of information released under the Freedom of Information Act — at times beyond what the law allows. Internal emails obtained by POLITICO show that Pruitt's political appointees reviewed documents collected for most or all FOIA requests regarding his activities, even as he's drawn scrutiny for his use of first-class flights and undisclosed dealings with lobbyists. While past administrations have given similar heads-ups to political aides for certain records requests, FOIA experts say this high-level vetting at EPA appears to have increased compared with the Obama era.

Michigan Live: Wolverine tannery back in EPA crosshairs 5 years later

Full federal scrutiny is finally coming to bear on the polluted Wolverine World Wide tannery in downtown Rockford, five years after the Environmental Protection Agency stepped away from its initial investigation and left the site under state control. The EPA says new contamination testing will begin mid-month at the former manufacturing grounds, where, from 1908 to 2009, Wolverine churned out treated leather that helped the footwear company grow into a global business with \$2.4 billion in revenue last year. The testing will be more thorough than Wolverine desired. The EPA wants Wolverine to conduct extensive soil and groundwater sampling across the entire 15-acre property, which has been open to the public as an informal community green space used sporadically for downtown events since the buildings were razed in 2010.

The Daily Caller: Scott Pruitt's Head Bodyguard Takes On The 'False Dirty Laundry' Being Spread About EPA

Many of the accusations against Environmental Protection Agency Administrator Scott Pruitt and his close aides were concocted by "disgruntled employees" looking to damage the agency, the former head of Pruitt's security detail said. "I believe at the end of the day, these are disgruntled employees — staffers — who, for whatever reason, decided to air dirty laundry — false dirty laundry to the press," Nino Perrotta told The Daily Caller News Foundation in an exclusive interview. Perrotta served as the special agent in charge of Pruitt's security detail for about a year, leading the administrator's protective detail as accusations of overspending and ethical violations. Congress and EPA's Office of Inspector General have multiple investigations into Pruitt's actions.

National News Highlights 5.7.18

The Wall Street Journal: Oil Prices Reach Highest Level Since 2014 Ahead of Iran Deadline

Oil prices rallied to a 3½ year high on Monday, with the U.S. benchmark breaking above \$70 a barrel, as investors braced for the country's expected exit from the Iran nuclear deal this week. Brent crude, the global oil benchmark, was up 1% to \$75.59 a barrel on London's ICE Futures exchange having hit \$75.89 earlier, their highest level since 2014. On the New York Mercantile Exchange, West Texas Intermediate futures were trading up 1% at \$70.42 a barrel. Oil prices have risen over 10% in the past month as U.S. President Donald Trump has indicated it is likely the country will withdraw from a 2015 international agreement with Iran which eased sanctions in return for curbs to its nuclear program. A decision is due by May. 12.

The New York Times: Giuliani Says Trump Would Not Have to Comply With Mueller Subpoena

Rudolph W. Giuliani, reeling after a chaotic first week as President Trump's lawyer, tried again on Sunday to straighten out his client's story. But Mr. Giuliani raised new questions about whether Mr. Trump had paid hush money to other women and suggested the president might invoke the Fifth Amendment to avoid testifying in the special counsel's Russia investigation. Mr. Giuliani, a former federal prosecutor and New York City mayor hired by Mr. Trump to smooth communication between the White House and the special counsel, Robert S. Mueller III, instead painted Mr. Mueller as an out-of-control prosecutor bent on trapping Mr. Trump into committing perjury. The president, he said, could defy a subpoena to testify.

Politico: Trump defends CIA pick Haspel: 'Democrats want out because she is too tough on terror'

President Donald Trump issued an online vote of confidence Monday for Gina Haspel, his pick to be the next director of the CIA, and chided Democrats who have been critical of her for her role in waterboarding terrorism suspects at a secret agency prison. "My highly respected nominee for CIA Director, Gina Haspel, has come under fire because she was too tough on Terrorists," the president wrote on Twitter. "Think of that, in these very dangerous times, we have the most qualified person, a woman, who Democrats want OUT because she is too tough on terror. Win Gina!" Haspel is expected to be on Capitol Hill on Monday, meeting with senators ahead of confirmation hearings later this week.

TRUMP TWEETS

E&E News

<https://www.eenews.net/energywire/2018/05/07/stories/1060080957>

EPA's self-reporting plan could be rolled out by summer

By Mike Lee, 5/7/18

An EPA plan that'll waive or reduce penalties for companies that self-report air emissions violations could be in place by June.

A senior official in the agency's enforcement and compliance office discussed the program with state oil and gas regulators gathered here for a meeting of the Interstate Oil and Gas Compact Commission. EPA on Friday posted a description of the program it's developing.

The program is designed to address the emissions from storage tanks used to hold oil, petroleum liquids and wastewater, said Patrick Traylor, EPA deputy assistant administrator for enforcement and compliance. It's one of the biggest sources of pollution from oil and gas operations.

The program is the latest move under the Trump administration and EPA Administrator Scott Pruitt to forge a collaborative relationship with the energy industry, although Traylor said EPA isn't completely abandoning tougher enforcement.

"We actually expect to have faster compliance through the use of this self-audit tool," he said. "This is one of our tools, not the only tool we'll be using in this sector."

Although it's not a formal rulemaking, EPA is taking comments on the proposal for 30 days, and it could go into effect soon after that, Traylor said.

If it's approved, the proposal would allow companies that acquire new oil and gas operations to self-audit their newly acquired properties and report any problems to EPA. The companies would then have a flexible timeline to fix the problems. In exchange, EPA would waive all or most of the civil and criminal penalties that would normally apply.

EPA has had a "new owner" program for traditional manufacturing plants since 2008. The agency has had difficulty applying it to the oil and gas industry because a typical oil field can include hundreds of tanks and other facilities.

Storage tanks are one of the major sources of pollution from the oil and gas industry. Volatile organic compounds such as benzene can leak from pressure-relief valves or from improperly secured hatches. In many cases, truck drivers open the tanks to the atmosphere when they measure the liquids that collect in tanks (Energywire, Aug. 22, 2017).

EPA plans to use a standard audit, based on a self-audit that the Texas-based gas producer Range Resources Corp. conducted in 2016 (E&E News PM, April 20).

It's similar to the approach that a half-dozen oil producing states have taken, sometimes through informal processes.

Texas and North Dakota have laws on the books that allow their state oil regulators to waive penalties for companies that report their own violations, state officials said during a roundtable discussion. Texas doesn't allow penalties to be waived, though, in cases that cause actual harm.

The Colorado Oil and Gas Conservation Commission adopted a similar policy in 2014, but it stipulates that the program doesn't apply to cases involving fraud, willful misconduct or gross negligence.

Environmentalists are likely to object to the program because it could encourage companies to flout the rules when they are developing new oil and gas fields, particularly if they plan to sell the field quickly.

That's unlikely to happen, Traylor said in an interview after his presentation.

"This shouldn't be interpreted as an incentive to not comply with the law," Traylor said.

Palladium-Item

<https://www.pal-item.com/story/news/local/2018/05/06/epa-money-help-richmond-identify-contaminated-properties/568006002/>

EPA money will help Richmond identify contaminated properties

By Jason Truitt, 5/6/18

Just how many properties around Richmond have some kind of environmental contamination issue? A federal grant will help city officials to better answer that question.

The U.S. Environmental Protection Agency has awarded Richmond \$300,000 to assess various sites and update the city's brownfields inventory.

Having an up-to-date listing of Richmond's troubled properties is necessary so officials can be ready to go with potential projects when the EPA makes future grants available.

"We have an existing inventory that hadn't been updated in several years so to be ready for the rapid financing program that the EPA puts out, we need to have an updated inventory," City Controller Beth Fields said.

"The overall vision was to identify all of the sites and then prioritize those sites for remediation."

Richmond was one of five Indiana cities and one multi-town group awarded funding recently by the EPA. The others were Clarksville, Indianapolis, Jeffersonville and Michigan City and a regional planning commission in southern Indiana that represents six towns.

The city's grant can only be used for "developing inventories of brownfields, prioritizing sites, conducting community involvement activities, conducting site assessments and developing cleanup plans and reuse plans related to brownfield sites," according to the grant application.

Jack Cruse, director of Richmond's Department of Infrastructure and Development, said the city made the former Mechanics Laundry building on North E Street next to the depot the focal point of its application, but officials intend to look at sites throughout the city.

"We've got properties in the city of Richmond that have not been assessed but we know that they exist," he said.

"A lot of these are old places that either had petroleum products or were laundry areas."

This isn't the first time that the former Mechanics Laundry building has come up in city conversations.

Back in 2004, Richmond Common Council passed a resolution allowing the city to pursue a purchase of the building by getting a pair of environmental studies done on the property. Officials believed the site might be contaminated with a chemical used in dry cleaning.

The plan was to tear down the building and use the space for parking in the Historic Depot District, but the city never did buy the property.

In 2014, Roger Richert, then-owner of the former Pennsylvania Railroad Depot next door, got permission to clean up the outside of the laundry and have a mural painted on it depicting a train that looks as if it's approaching the station.

The Washington Examiner

<https://www.washingtonexaminer.com/opinion/op-eds/the-epas-new-secret-science-rule-makes-sense-from-a-risk-assessment-perspective>

The EPA's new 'secret science' rule makes sense from a risk-assessment perspective

By Michael L. Dourson, 5/6/18

Environmental Protection Agency Administrator Scott Pruitt's recent announcement that EPA will not use "secret science" — that is science for which the underlying data is not available — is challenging. Whereas EPA is routinely in receipt of unpublished toxicity studies for chemicals designed for commerce, not all important scientific findings are publishable. Nor do scientific journals generally have sufficient space to include all data.

Much has been made in recent weeks of this new EPA policy, including an op-ed opposing it by former EPA Administrator Gina McCarthy and former acting Assistant Administrator Janet McCabe.

The media coverage has focused attention on how science is considered acceptable and useful in EPA's rulemaking. But missing from this is the perspective of risk scientists charged with protecting public health. In the case of EPA, it is often not enough for any one positive study to be published in a peer-reviewed journal. Such work often needs replication because a positive finding occurs, on average, in one out of every 20 studies due to chance.

If a study cannot be replicated, then it at least needs to make sense within the pattern of available data. For pesticides regulated by EPA, these data are often from hundreds of studies done according to federal guidelines.

Studies that are not replicated or that do not make sense in an overall pattern are still considered, however. Risk scientists will often contact the authors to obtain additional information in order to conduct their own analysis, a common practice within EPA.

When such data are forthcoming, without the need to break confidentiality or disclose confidential business information, independent analyses can be conducted and the public health is better served. But when such information is withheld by the authors, government risk scientists are often left with a dilemma.

For example, imagine that a series of studies come out on a single human group that is exposed to a commonly used insecticide, and they show an unexpected effect at extremely low exposures. This finding has not been replicated and clashes with multiple animal and human studies that point to danger only at much higher exposures.

In this case, EPA scientists would ask the authors for the underlying data to confirm this unexpected low-dose effect. But let's say they can't get it. EPA is then left with neither confirmatory studies, nor information that makes sense in light of other studies, nor the ability to conduct its own analysis. Understandably, Pruitt has chosen a policy of not using such studies.

There is one sense in which McCarthy and McCabe are spot on. The judgment over which epidemiology and/or toxicology data to use for risk or safety assessment purposes should be left to risk scientists. But from my perspective as a risk scientist, Pruitt's decision is still correct. The public's interest is best served when science is replicable and consistent with other information. When studies cannot be replicated or are inconsistent with other information, access to their underlying data is vital to independent analysis. When the underlying data are not provided to a risk scientist, it is difficult to use this study to make a credible risk judgment, much less national rulemaking.

There is one sense in which McCarthy and McCabe are spot on. The judgment over which epidemiology and/or toxicology data to use for risk or safety assessment purposes should be left to risk scientists. But from my perspective as a risk scientist, Pruitt's decision is still correct. The public's interest is best served when science is replicable and consistent with other information. When studies cannot be replicated or are inconsistent with other information, access to their underlying data is vital to independent analysis. When the underlying data are not provided to a risk scientist, it is difficult to use this study to make a credible risk judgment, much less national rulemaking.

In short, the public is often worried about chemical exposure, as they should be when such exposure exceeds a safety level. But the public's interest is best served by trusting in experts dedicated to public health protection, not by withholding scientific data from independent analysis.

Politico

<https://www.politico.com/story/2018/05/06/pruitt-epa-document-requests-570289>

EPA clamps down on document requests linked to Pruitt

By Alex Guillen, 5/6/18

Top aides to Scott Pruitt at the Environmental Protection Agency are screening public records requests related to the embattled administrator, slowing the flow of information released under the Freedom of Information Act — at times beyond what the law allows.

Internal emails obtained by POLITICO show that Pruitt's political appointees reviewed documents collected for most or all FOIA requests regarding his activities, even as he's drawn scrutiny for his use of first-class flights and undisclosed dealings with lobbyists.

While past administrations have given similar heads-ups to political aides for certain records requests, FOIA experts say this high-level vetting at EPA appears to have increased compared with the Obama era.

"This does look like the most burdensome review process that I've seen documented," said Nate Jones, director of the FOIA Project at The George Washington University's National Security Archive.

The emails also show Pruitt's aides chastising career employees who released documents about the administrator without letting them screen the records first. Meanwhile, several environmental groups say the agency has told them that political staffers' document reviews have delayed releases past legal deadlines.

The new processes described in the emails involve "awareness reviews" or "senior management reviews" conducted by top political staffers before the agency releases essentially any documents involving the administrator. The emails also show Pruitt's political appointees chastising career employees who released documents in accordance with FOIA without letting them screen the records first.

EPA sometimes conducted those types of reviews under the Obama administration when career staff thought documents would generate a lot of interest, agency officials from that era told POLITICO. But under Pruitt, the vetting by EPA chief of staff Ryan Jackson and other key appointees of any documents linked to the administrator appears to be on the rise, according to FOIA experts who reviewed the emails.

The increased scrutiny comes as the agency faces a wave of accusations of excessive secrecy. EPA has declined to provide information about Pruitt's public appearances in advance — a practice at odds with those of many other Cabinet members and the White House. And the agency releases his detailed calendars only when compelled by lawsuits.

That secrecy has prompted a boom in FOIA requests filed with the agency and lawsuits challenging its resistance to releasing information to the public. As POLITICO reported in February, production of documents under FOIA requests from Pruitt's office is drastically lower than the rest of EPA.

The newly released emails, which EPA gave to the Natural Resources Defense Council following legal action, show Jackson created a pilot program to "centralize" requests that go through the various suboffices that make up EPA's Office of the Administrator. The emails show that the political aides weren't just concerned about streamlining the FOIA process — they wanted to know about any requests anywhere at EPA that involved Pruitt.

In one exchange from last August, Jackson and Liz Bowman, the head of EPA's Office of Public Affairs, expressed concern about documents related to comments Pruitt made on CNBC disputing that carbon dioxide from human activities was

the primary cause of climate change. Those documents had been released to E&E News without first going through their review.

"Why did Kevin Bogardus from E&E all of a sudden get a response to a FOIA today, without any awareness from our FOIA office?" Bowman wrote Aug. 2. She later added that the response "wasn't due until 8/30."

Officials quickly determined that the request had been filled by a career employee before Bowman had a chance to flag it "for attention." Although the request involved Pruitt, the records sought by E&E were kept at EPA's Office of Research and Development, and the request was routed there before being released by a FOIA expert from that office.

Anything related to Pruitt "will draw inquiries from press," Jackson replied, and he requested that he and the public affairs office be notified ahead of any Pruitt-related release from any EPA office.

The message was received loud and clear by EPA's career staff.

"I have instructed my staff that no [Office of the Administrator] requests are to be issued without the opportunity for an awareness review by you, [the Office of Public Affairs] and the senior leadership of any other affected offices," Becky Dolph, the head of a special team of FOIA experts in EPA's Office of General Counsel, wrote to Jackson later that day.

Emails sent later that month showed Jackson pressing staff on why documents related to a coal plant water pollution rule were already available online just one day after an awareness review began.

The documents were "inadvertently" posted, replied Kevin Minoli, then EPA's acting general counsel, who added that the process would be changed so that "nothing is uploaded at all until we have the final set of documents and their production has been authorized."

None of the emails given to the NRDC reveal exactly what actions the political staffers conducting these reviews took.

NRDC attorney Aaron Colangelo said he asked EPA for details about the reviews after an EPA attorney told him that "awareness reviews" were delaying the release of documents in other FOIA requests filed by the environmental group. Those requests were related to Pruitt's participation in ongoing legal cases that he'd previously been involved in during his time as Oklahoma's attorney general.

Colangelo and other FOIA experts said federal agencies have discretion to set up their own internal FOIA processes, and the political reviews are not illegal — unless the reviews caused EPA to miss deadlines for producing documents set out in the Freedom of Information Act.

"There's nothing necessarily wrong with political folks getting a heads-up before potentially sensitive documents are released," Colangelo said in an interview. "But we do have a legitimate objection if that political review delays compliance with deadlines in the law."

And that has happened for at least two of the NRDC's Pruitt-related FOIA requests, he said.

Another request from a coalition of environmental groups for documents about Pruitt's delay of a rule limiting water pollution from coal plants was held up over a "senior management review."

A judge mediating the lawsuit over that delay, Valerie Caproni of the U.S. District Court for the Southern District of New York, said during November proceedings that while EPA "can do whatever internal policies in particular they want on FOIA," the agency cannot use political reviews to justify missing legal deadlines.

EPA still has to "comply with the law, and that means they have to produce documents in a timely way," she said. EPA eventually handed over the documents in that case.

It's not clear exactly how many FOIA requests have been delayed by political reviews, but experts say it is clearly having an impact.

Several Obama-era EPA political officials said they too occasionally received "heads-up" awareness reviews on high-profile requests, but not necessarily to the degree that Pruitt's aides are doing them.

"It doesn't seem abnormal to me that some political would get a chance to have review for awareness of productions that are going out that involve the administrator," said one former official. But the close attention from top-ranking officials like Jackson and former policy chief Samantha Dravis seemed "a little bit odd," the former official added.

Instead, awareness reviews generally went to the head of the agency program office in question and to congressional affairs staffers so they could coordinate with any requests from lawmakers, the former official said.

One Obama-era awareness review that was included in the new documents showed that a large batch of documents related to the Flint, Michigan, lead crisis was flagged to political officials in the Office of Water and the congressional affairs office, as well as the general counsel, the regional administrator and a public affairs official.

Bowman, the EPA spokeswoman, did not comment on questions from POLITICO about the political oversight of FOIA requests, but she noted that the Trump administration was not the first to use them.

"Each EPA program and Region does their own FOIAs, so an awareness review allows the press office, Congressional Affairs Office and senior officials to be informed of documents being released in response to FOIA requests, to facilitate inter-office coordination, and to prepare responses to inquiries," she said.

Thomas Cmar, an Earthjustice attorney involved in multiple FOIA lawsuits with EPA, said the emails raise as many questions as they answer.

"Political staff appear to be keeping a very close eye on what information is being requested and released to the public," he said. "It raises concerns and it raises questions that need to be answered about whether EPA is living up to its obligations to make basic information about its activities available to the public that it's supposed to be serving."

Michigan Live

http://www.mlive.com/news/grand-rapids/index.ssf/2018/05/wolverine_tannery_epa_rockford.html **Wolverine tannery back in EPA crosshairs 5 years later**

By Garrett Ellison, 5/6/18

Full federal scrutiny is finally coming to bear on the polluted Wolverine World Wide tannery in downtown Rockford, five years after the Environmental Protection Agency stepped away from its initial investigation and left the site under state control.

The EPA says new contamination testing will begin mid-month at the former manufacturing grounds, where, from 1908 to 2009, Wolverine churned out treated leather that helped the footwear company grow into a global business with \$2.4 billion in revenue last year.

The testing will be more thorough than Wolverine desired.

The EPA wants Wolverine to conduct extensive soil and groundwater sampling across the entire 15-acre property, which has been open to the public as an informal community green space used sporadically for downtown events since the buildings were razed in 2010.

Data shows the property is fouled by arsenic, chromium and lead in addition to the per- and polyfluoroalkyl substances, or PFAS chemicals, that have sparked new site scrutiny.

The now-empty land where Wolverine reneged on a promise to build a downtown Rockford shoe store is back in federal crosshairs after extremely high PFAS levels were found at the tannery, Wolverine's House Street sludge dump and other places where the company cached toxic waste around northern Kent County.

The tannery scored high enough to warrant inclusion on the federal Superfund list of toxic sites, but the EPA acquiesced in 2012 to substantial pushback from Wolverine and community leaders who lobbied hard to keep the century-old factory grounds under a state-led, voluntary environmental cleanup program.

Whether the site attains Superfund status is an open question.

Although PFAS helped bring the EPA back to Rockford, the federal government doesn't have enforceable cleanup standards for the contamination caused by Wolverine's use of 3M Scotchgard to waterproof shoe leather. But the state of Michigan does.

This has resulted in a delicate state and federal coupling.

The EPA is focusing its probe on other contaminants besides PFAS at the tannery and federal investigators are picking up where they left off, when a site assessment identified historic contamination in places like "the pit," a 50-foot former maintenance basement area where toxic waste pooled and sometimes overflowed.

The EPA issued Wolverine an investigative subpoena for records related to the tannery and the House Streep dump in Plainfield Township in early December, prior to a Jan. 10 order that formally increased the federal role in the Wolverine investigation.

Those records are now under EPA examination.

Jeffrey Kimble, an EPA Region 5 on-scene coordinator assigned to the investigation, asked Wolverine to expand testing.

"They did not meet what I wanted them to do, so (the sampling plan) has been given back to Wolverine's consultant with directions from me," Kimble said. "I want this to be a complete extent of contamination survey, so we've had them adjust their approach."

Kimble is scrutinizing the site for contamination that could pose an immediate health risk and wants "a good number and spacing of actual soil samples, sediment samples in Rum Creek and adjacent Rogue River, and few more groundwater samples."

"I'm looking at what people could actually touch if they dug in the dirt, if they had to do excavation or what may migrate off site," he said.

Through a spokesperson, Wolverine confirmed that it received Kimble's feedback and subsequently modified its testing plan.

Wolverine said it is "diligently" working with regulators and anticipates its consultant Rose & Westra GZA beginning field work this summer.

In June, the company will allow the Rockford Start of Summer Celebration to use the tannery lawn for ballgames and festival fireworks viewing, but EPA says it's requiring the company test the surface soils used for backfill and grading first.

Although the property is fenced along the west side, the public has easy access because the rest of the fence was removed at the city's request in 2015. The EPA couldn't provide a date when more fencing and warning signs would go up, although both are stipulated.

Thad Beard, Rockford city manager, thinks the topsoil cap placed after demolition is enough to keep people safe.

"If you were to go dig a 10-foot hole and start eating the dirt, that would be a cause for concern," Beard said.

"From what I understand, there's no contaminants exposed to the public unless you were to dig below grade."

That may depend on the location. According to EPA testing, contamination above acceptable human contact levels exists "at or near the surface" of the tannery footprint along the heavily-used White Pine Trail, where "elevated levels of organic and inorganic contaminants have been detected in surficial soils."

That contamination data was collected several years before 2017 testing confirmed total PFAS at 532,000 parts per trillion in the groundwater at the tannery.

In the river nearby, sediment testing found elevated levels of arsenic, total chromium, hexavalent chromium, copper, lead, mercury and zinc. Wolverine used chromium in bulk to convert raw hides into leather. The hexavalent variety is a known carcinogen.

In a January memo, Kimble characterized both the House Street and tannery sites as "imminent and substantial" threats to public health and the environment. The memo notes that children have been observed swimming in the river downtown where "sediment and water contamination has been documented."

The EPA evaluated the site six years ago at the request of the Concerned Citizens for Responsible Remediation (CCRR), a local group which petitioned for federal involvement in 2011 after independently documenting contamination at the property.

Lynn McIntosh, a Rockford activist instrumental in bringing Wolverine's pollution to light, said she's spent years warning people enjoying the river downtown to "make sure they wash their kids' hands or wipe their kayak" afterwards.

On multiple occasions, McIntosh said she's quietly approached parents with children playing at the trailside canoe launch near the southwest corner of the former tannery site to warn them about elevated levels of mercury in the nearby riverbed.

"I shouldn't have to do that," she said.

McIntosh is pleased the EPA is back on the ground in Rockford after watching former elected officials like late city manager Michael Young and ex-state Sen. Mark Jansen lobby keep the tannery under Michigan Department of Environmental Quality oversight.

Both men wrote similarly-worded letters to regulators warning of "significant negative effect" on tannery redevelopment and downtown Rockford if EPA involvement were to continue; both citing their understanding that "there are no conditions at the property that present a health threat to the public."

Wolverine "has advised me that the remaining environmental issues at the property will be properly addressed by Wolverine with the DEQ," Young wrote to the EPA on April 19, 2012.

Both Young and Jansen asked that EPA "terminate" their involvement and let DEQ manage the site under the state's Part 201 law.

Under the state voluntary cleanup program, the DEQ has essentially allowed Wolverine to mothball the site, McIntosh argued.

Although Wolverine has done sampling and soil boring, little excavation and no bioremediation, containment, groundwater control or treatment has occurred under the state's oversight.

Rockford put "money and image over addressing a real possible public health and safety issue, and worked with the company to accomplish that," McIntosh said.

The DEQ counters that retaining control over the site has sped, not slowed, tannery cleanup work because it takes several years for a site to become Superfund listed. The site was designated an "Other Cleanup Authority" under state lead in 2012.

Were it placed on the National Priorities List, "it would have taken several more years to accomplish remedial investigation and remedial actions," said DEQ spokesperson Scott Dean.

"Wolverine has better defined the extent of soil and groundwater contamination and located leather and hide scraps buried on the 100-year-old tannery site" following the 2012 agreement, Dean said.

The state's oversight "made it possible for Wolverine to quickly begin monitoring for PFAS" after it became a concern in 2016, he said.

The company began testing for PFAS in August 2017.

"Although we have been frustrated by the pace of work at the tannery site, our primary focus has been on protecting the public," Dean said.

"We remain committed to holding Wolverine accountable for the contamination on their site and seeing it returned to productive use."

The Daily Caller

<http://dailycaller.com/2018/05/07/exclusive-epa-scott-pruitt-body-guard-nino-perrotta-false-dirty-laundry/>

Scott Pruitt's Head Bodyguard Takes On The 'False Dirty Laundry' Being Spread About EPA

By Michael Bastasch, 5/7/18

Many of the accusations against Environmental Protection Agency Administrator Scott Pruitt and his close aides were concocted by "disgruntled employees" looking to damage the agency, the former head of Pruitt's security detail said.

"I believe at the end of the day, these are disgruntled employees — staffers — who, for whatever reason, decided to air dirty laundry — false dirty laundry to the press," Nino Perrotta told The Daily Caller News Foundation in an exclusive interview.

Perrotta served as the special agent in charge of Pruitt's security detail for about a year, leading the administrator's protective detail as accusations of overspending and ethical violations. Congress and EPA's Office of Inspector General have multiple investigations into Pruitt's actions.

Perrotta retired at the end of April, ending his 14-year career at EPA amid investigations into Pruitt's security arrangements — including his 24/7 detail, hiring of more agents, and flying first class when traveling.

Former EPA official Kevin Chmielewski detailed many accusations against Pruitt, Perrotta and other top aides to congressional Democrats. Many of the accusations were "intentionally used to mislead the American people," Perrotta told TheDCNF.

Chmielewski was one of several EPA staffers allegedly sidelined for challenging Pruitt on spending decisions. However, Perrotta believes Chmielewski decided to come out against Pruitt after a January 2018 phone call.

During that call, Chmielewski vented to Perrotta about issues he was having with his pay, the former EPA security head said. Perrotta said he tried to help Chmielewski with his pay issue, but the former EPA official “began to threaten the EPA, specifically the administrator and the chief of staff, that he was going to talk to the press and everyone he could about,” using colorful language, “how f-ed up the EPA was and how f-ed up the administrator was and how f-ed up the chief of staff was.”

“I found that to be very, very bizarre,” Perrotta said. “If you have differences, it should be aired through your chain of command.”

Chmielewski called the next day, but given his tone and threatening statements on their previous call, Perrotta said he’d have to report the former EPA official. Perrotta filed the report with the agency.

Pruitt’s been increasingly mired in negative news stories — many of them likely the result of Chmielewski talking to the press and Congress. News reports have already called into question the veracity of many of Chmielewski’s claim.

For example, “a \$30,000 contract with private Italian security personnel entered into by” Perrotta ahead of Pruitt’s attendance of a G7 summit in Italy, Chmielewski told Congress. Perrotta would never have the authority to unilaterally enter into such a contract, the former EPA security head said.

“That is a false accusation,” Perrotta told TheDCNF. “A person at my level and grade in the agency would have the authority to do so.”

Chmielewski also told Democratic lawmakers “at least one security-related contract was awarded to an individual who works at Mr. Perrotta’s private security firm, and he believes that other contracts may also have been awarded to friends or associates of Mr. Perrotta’s.”

It’s true EPA hired Edwin Steinmetz to conduct a security sweep of Pruitt’s office in 2017, costing the agency \$3,000. Steinmetz is listed on the management team of Perrotta’s security firm he operates on the side, Sequoia Security Group.

Perrotta said he explained to superiors that Steinmetz, a security consultant, subcontracted through his side company, which EPA gave him approval to operate in 2013. EPA officials asked Perrotta in 2017 if he could recommend a company to conduct a security sweep of Pruitt’s office.

“The only reason that the vendor was selected,” Perrotta said, “is because there were issues within the agency of identifying a new vendor, which to me was bizarre.”

“It was clear to me, now, that certain people compared notes, shared information, and created this false narrative. And I believe the American people are going to see this, eventually,” Perrotta said.

You can watch TheDCNF’s entire interview with Perrotta here. And stay tuned for more.

The Wall Street Journal

<https://www.wsj.com/articles/oil-prices-continue-to-rise-fueled-by-iran-concerns-1525673680>

Oil Prices Reach Highest Level Since 2014 Ahead of Iran Deadline

By Sarah McFarlane and Biman Mukherji, 5/7/18

Oil prices rallied to a 3½ year high on Monday, with the U.S. benchmark breaking above \$70 a barrel, as investors braced for the country’s expected exit from the Iran nuclear deal this week.

Brent crude, the global oil benchmark, was up 1% to \$75.59 a barrel on London's ICE Futures exchange having hit \$75.89 earlier, their highest level since 2014. On the New York Mercantile Exchange, West Texas Intermediate futures were trading up 1% at \$70.42 a barrel.

Oil prices have risen over 10% in the past month as U.S. President Donald Trump has indicated it is likely the country will withdraw from a 2015 international agreement with Iran which eased sanctions in return for curbs to its nuclear program. A decision is due by May. 12.

"There is some scope for profit-taking now that prices are at 42-month highs but that is been overshadowed by the potential re-imposition of sanctions on Iran," said Dubai-based Ehsan Khoman, head of research for the Middle East and North Africa region at MUFG bank.

Previously, international sanctions have cut Iranian exports by around 1 million barrels a day, but MUFG expects the U.S. will "go it alone" if they impose sanctions, meaning the impact will be a loss of 250,000-350,000 barrels a day.

"The EU may not deem it necessary to reinstate sanctions on shipping insurance which were paramount in restricting Iranian crude exports last time around," said Mr. Khoman.

The U.S. doesn't import any Iranian crude but certain allies including Japan and South Korea which do, may switch to other suppliers to comply with the changed stance of the U.S., analysts said.

There were also signs of discord among members of the Organization of the Petroleum Exporting Countries after Iran's deputy oil minister Amir Hossein Zamaminia said a "suitable price" for oil is \$60 to \$65 a barrel in an interview with Bloomberg on Sunday. Iran's position differs from OPEC's top producer Saudi Arabia, which is seeking to push oil to \$80 a barrel to fund economic reforms.

This creates uncertainty for the prospects of an extension to the group's deal to cut production, initially struck to target reducing a glut in global oil stocks, which had ballooned because of rising U.S. shale output. Saudi Arabia is expected to push for the cuts to continue beyond 2018 to keep oil prices closer to their target.

Oil production in the U.S. is expected to continue its march higher with the number of rigs drilling for oil rising by 9 last week to a three-year high of 834 rigs, according to oil-field services firm Baker Hughes (BHGE) data published on Friday.

Nymex reformulated gasoline blendstock—the benchmark gasoline contract—up 0.7% to \$2.13 a gallon. ICE gasoil changed hands at \$660.50 a metric ton, up \$11.50 from the previous settlement.

The New York Times

<https://www.nytimes.com/2018/05/06/us/politics/giuliani-says-trump-would-not-have-to-comply-with-mueller-subpoena.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=first-column-region®ion=top-news&WT.nav=top-news>

Giuliani Says Trump Would Not Have to Comply With Mueller Subpoena

By Mark Landler and Noah Weiland, 5/6/18

Rudolph W. Giuliani, reeling after a chaotic first week as President Trump's lawyer, tried again on Sunday to straighten out his client's story. But Mr. Giuliani raised new questions about whether Mr. Trump had paid hush money to other women and suggested the president might invoke the Fifth Amendment to avoid testifying in the special counsel's Russia investigation.

Mr. Giuliani, a former federal prosecutor and New York City mayor hired by Mr. Trump to smooth communication between the White House and the special counsel, Robert S. Mueller III, instead painted Mr. Mueller as an out-of-control prosecutor bent on trapping Mr. Trump into committing perjury. The president, he said, could defy a subpoena to testify.

"We don't have to," Mr. Giuliani said in a rambling, 22-minute interview on ABC's "This Week" program. "He's the president of the United States. We can assert the same privileges other presidents have."

Mr. Giuliani, who met with the special counsel's office shortly after joining the legal team last month, said he and another lawyer, Jay Sekulow, agreed that the president should not speak to Mr. Mueller. But he acknowledged that he had little, if any, control over the president, who said as recently as Friday that he still wanted to speak to the special counsel.

"How can I ever be confident of that?" Mr. Giuliani said, when asked whether Mr. Trump would not invoke his right to avoid self-incrimination. "I'm facing a situation with the president and all the other lawyers are, in which every lawyer in America thinks he would be a fool to testify, I've got a client who wants to testify."

It was one of several startling admissions by Mr. Giuliani, during his first extended television appearance since Mr. Trump criticized him last week as not having his "facts straight" about payments made to a pornographic film actress, Stephanie Clifford. Mr. Giuliani said it was possible that Mr. Trump's personal attorney, Michael D. Cohen, had made additional payments to other women on the president's behalf.

"I have no knowledge of that," Mr. Giuliani said when asked about other payments, "but I would think if it was necessary, yes."

If Mr. Trump were to invoke the Fifth Amendment, he would undercut his longstanding claim that he has nothing to hide about his campaign's ties to Russia. During the presidential campaign, he ridiculed his Democratic opponent, Hillary Clinton, when some of her aides invoked the Fifth Amendment during a congressional investigation of Mrs. Clinton's use of a private email server.

"The mob takes the Fifth," Mr. Trump said at a campaign rally in Iowa in September 2016. "If you're innocent, why are you taking the Fifth Amendment?"

After his interview, Mr. Giuliani met with Mr. Trump at his golf club in Northern Virginia.

Mr. Giuliani told the ABC anchor, George Stephanopoulos, that he was still getting up to speed on Mr. Trump's legal issues — a fact that became apparent as the interview went on. As was the case during his interviews last week, Mr. Giuliani seemed to speak largely off the cuff. He speculated freely and contradicted himself, sometimes from one statement to the next.

He said, for example, that Mr. Mueller would be to blame if Mr. Trump refused to testify because his office had leaked a list of questions that the special counsel would like to ask him. But then he admitted he did not know who leaked the questions, which were reported by The New York Times.

Mr. Giuliani referred repeatedly to a federal judge's criticism of the special counsel's fraud case against Paul Manafort, the former chairman of the Trump campaign. The judge, T.S. Ellis III, said on Friday that the case seemed motivated by a desire to get Mr. Manafort to potentially incriminate Mr. Trump.

"There's no question that the amount of government misconduct is accumulating," Mr. Giuliani said. "Very embarrassing to my former Justice Department."

Mr. Giuliani created a furor on Wednesday when he contradicted the president about the payment to Ms. Clifford. Speaking on Fox News, Mr. Giuliani said Mr. Trump reimbursed Mr. Cohen for a \$130,000 payment that Mr. Cohen has said he made to Ms. Clifford, to keep her from making public a story about an affair she claims she had with Mr. Trump — a claim that he denies. When asked in April by reporters traveling on Air Force One whether he knew about the payment, Mr. Trump said he did not.

On Sunday, Mr. Giuliani said he was still trying to establish when Mr. Trump learned that Mr. Cohen had paid Ms. Clifford, whose stage name is Stormy Daniels. But he added that as a legal matter, it did not matter since the payment did not violate federal campaign finance rules.

Asked about the discrepancies between his account and the president's statement, Mr. Giuliani said: "Those don't amount to anything — what is said to the press. That's political."

Mr. Giuliani did not shed much new light on the nature of the payments themselves. He said Mr. Cohen "made payments for the president, or he conducted business for president, which means he had legal fees, moneys laid out and expenditures." But he characterized the sum Ms. Clifford received as a "nuisance" payment.

"I never thought \$130,000 was a real payment," Mr. Giuliani said. "People don't go away for \$130,000."

Mr. Giuliani accused Ms. Clifford of trying to make as much money as possible from her notoriety, noting that she made a cameo appearance during the opening skit on "Saturday Night Live."

Mr. Giuliani's admission on Wednesday caught Mr. Trump's staff off guard and prompted Mr. Trump to try to clarify the nature of payments he made to Mr. Cohen. The morning after Mr. Giuliani's comments, Mr. Trump said on Twitter that Mr. Cohen "received a monthly retainer, not from the campaign and having nothing to do with the campaign, from which he entered into, through reimbursement, a private contract between two parties, known as a non-disclosure agreement, or NDA."

A day later, he told reporters gathered outside the White House that Mr. Giuliani did not know the particulars of the case, even after Mr. Giuliani told The Times on Wednesday night that he had spoken with the president before and after his interview on Fox News, and that Mr. Trump and other lawyers on the team were aware of what he would say.

"Virtually everything said has been said incorrectly, and it's been said wrong, or it's been covered wrong by the press," Mr. Trump said on Friday. "He'll get his facts straight."

Seeming to chastise Mr. Giuliani, Mr. Trump added: "You know what? Learn before you speak. It's a lot easier."

Some of Mr. Trump's legal and political advisers believe Mr. Giuliani's comments could put the president in legal jeopardy, since federal officials are required to report liabilities of more than \$10,000 during the preceding year. Mr. Trump's last disclosure, which he signed last June, does not mention any debt to Mr. Cohen.

On Sunday, Mr. Giuliani tried to clarify what Mr. Trump called a "retainer."

"The retainer agreement was to repay expenses, which turns out to have included this one," Mr. Giuliani said.

Appearing after Mr. Giuliani on the same program, Ms. Clifford's lawyer, Michael Avenatti, called Mr. Giuliani's interview an "absolute unmitigated disaster" and "one of the worst TV appearances by any attorney on behalf of a client in modern times."

"He now expects the American people to believe that he doesn't really know the facts," Mr. Avenatti added. "I think it is obvious to the American people that this is a cover-up, that they are making it up as they go along."

Politico

<https://www.politico.com/story/2018/05/07/trump-cia-gina-haspel-571566>

Trump defends CIA pick Haspel: 'Democrats want out because she is too tough on terror'

By Louis Nelson, 5/7/18

President Donald Trump issued an online vote of confidence Monday for Gina Haspel, his pick to be the next director of the CIA, and chided Democrats who have been critical of her for her role in waterboarding terrorism suspects at a secret agency prison.

“My highly respected nominee for CIA Director, Gina Haspel, has come under fire because she was too tough on Terrorists,” the president wrote on Twitter. “Think of that, in these very dangerous times, we have the most qualified person, a woman, who Democrats want OUT because she is too tough on terror. Win Gina!”

Haspel is expected to be on Capitol Hill on Monday, meeting with senators ahead of confirmation hearings later this week. Whether she will be confirmed to lead the CIA remains an open question amid concern about her role running a CIA “black site” prison in Thailand where terrorism suspects were subjected to so-called “enhanced interrogation” techniques like waterboarding.

Haspel’s past involvement with practices labeled by many as torture has already cost her the support of Sen. Rand Paul (R-Ky.), meaning she will require the support of at least one Democrat in order to be confirmed.

According to a Washington Post report published over the weekend, Haspel offered late last week to withdraw herself from consideration to lead the CIA over concerns that confirmation hearings scheduled for Wednesday could prove damaging to agency’s reputation and to her own. She reportedly expressed a desire to avoid being “the next Ronny Jackson,” a reference to the White House’s former pick to lead the Department of Veterans Affairs whose candidacy was scuttled by allegations of misconduct.

White House press secretary Sarah Huckabee Sanders, who the Post reported was among the administration officials who met with Haspel last Friday at CIA headquarters in Virginia after she offered to withdraw, praised Haspel over the weekend as eminently qualified to lead the agency. That she would be the first woman to do so, Sanders wrote, should garner her further support, especially from Democrats.

“There is no one more qualified to be the first woman to lead the CIA than 30+ year CIA veteran Gina Haspel,” the press secretary wrote on Twitter on Saturday. “Any Democrat who claims to support women’s empowerment and our national security but opposes her nomination is a total hypocrite.”

TRUMP TWEETS



Donald J. Trump ● @realDonaldTrump · 2h

To the great people of West Virginia we have, together, a really great chance to keep making a big difference. Problem is, Don Blankenship, currently running for Senate, can't win the General Election in your State...No way! Remember Alabama. Vote Rep. Jenkins or A.G. Morrissey!

4.0K 6.2K 23K



Donald J. Trump ● @realDonaldTrump · 2h

My highly respected nominee for CIA Director, Gina Haspel, has come under fire because she was too tough on Terrorists. Think of that, in these very dangerous times, we have the most qualified person, a woman, who Democrats want OUT because she is too tough on terror. Win Gina!

6.1K 11K 39K



Donald J. Trump ● @realDonaldTrump · 1h

The Russia Witch Hunt is rapidly losing credibility. House Intelligence Committee found No Collusion, Coordination or anything else with Russia. So now the Probe says OK, what else is there? How about Obstruction for a made up, phony crime. There is no O, it's called Fighting Back

9.7K 7.4K 28K



Donald J. Trump ● @realDonaldTrump · 1h

The 13 Angry Democrats in charge of the Russian Witch Hunt are starting to find out that there is a Court System in place that actually protects people from injustice...and just wait 'till the Courts get to see your unrevealed Conflicts of Interest!

8.6K 8.7K 30K

James Hewitt
Environmental Protection Agency
Press Secretary
(202) 578-6141

EPA News Highlights 5.7.18

E&E News: EPA's self-reporting plan could be rolled out by summer

An EPA plan that'll waive or reduce penalties for companies that self-report air emissions violations could be in place by June. A senior official in the agency's enforcement and compliance office discussed the program with state oil and gas regulators gathered here for a meeting of the Interstate Oil and Gas Compact Commission. EPA on Friday posted a description of the program it's developing. The program is designed to address the emissions from storage tanks used to hold oil, petroleum liquids and wastewater, said Patrick Traylor, EPA deputy assistant administrator for enforcement and compliance. It's one of the biggest sources of pollution from oil and gas operations.

The Palladium-Item: EPA money will help Richmond identify contaminated properties

Just how many properties around Richmond have some kind of environmental contamination issue? A federal grant will help city officials to better answer that question. The U.S. Environmental Protection Agency has awarded Richmond \$300,000 to assess various sites and update the city's brownfields inventory. Having an up-to-date listing of Richmond's troubled properties is necessary so officials can be ready to go with potential projects when the EPA makes future grants available. "We have an existing inventory that hadn't been updated in several years so to be ready for the rapid financing program that the EPA puts out, we need to have an updated inventory," City Controller Beth Fields said. "The overall vision was to identify all of the sites and then prioritize those sites for remediation."

The Washington Examiner: The EPA's new 'secret science' rule makes sense from a risk-assessment perspective

Environmental Protection Agency Administrator Scott Pruitt's recent announcement that EPA will not use "secret science" — that is science for which the underlying data is not available — is challenging. Whereas EPA is routinely in receipt of unpublished toxicity studies for chemicals designed for commerce, not all important scientific findings are publishable. Nor do scientific journals generally have sufficient space to include all data. Much has been made in recent weeks of this new EPA policy, including an op-ed opposing it by former EPA Administrator Gina McCarthy and former acting Assistant Administrator Janet McCabe. The media coverage has focused attention on how science is considered acceptable and useful in EPA's rulemaking.

Politico: EPA clamps down on document requests linked to Pruitt

Top aides to Scott Pruitt at the Environmental Protection Agency are screening public records requests related to the embattled administrator, slowing the flow of information released under the Freedom of Information Act — at times beyond what the law allows. Internal emails obtained by POLITICO show that Pruitt's political appointees reviewed documents collected for most or all FOIA requests regarding his activities, even as he's drawn scrutiny for his use of first-class flights and undisclosed dealings with lobbyists. While past administrations have given similar heads-ups to political aides for certain records requests, FOIA experts say this high-level vetting at EPA appears to have increased compared with the Obama era.

Michigan Live: Wolverine tannery back in EPA crosshairs 5 years later

Full federal scrutiny is finally coming to bear on the polluted Wolverine World Wide tannery in downtown Rockford, five years after the Environmental Protection Agency stepped away from its initial investigation and left the site under state control. The EPA says new contamination testing will begin mid-month at the former manufacturing grounds, where, from 1908 to 2009, Wolverine churned out treated leather that helped the footwear company grow into a global business with \$2.4 billion in

revenue last year. The testing will be more thorough than Wolverine desired. The EPA wants Wolverine to conduct extensive soil and groundwater sampling across the entire 15-acre property, which has been open to the public as an informal community green space used sporadically for downtown events since the buildings were razed in 2010.

The Daily Caller: Scott Pruitt's Head Bodyguard Takes On The 'False Dirty Laundry' Being Spread About EPA

Many of the accusations against Environmental Protection Agency Administrator Scott Pruitt and his close aides were concocted by "disgruntled employees" looking to damage the agency, the former head of Pruitt's security detail said. "I believe at the end of the day, these are disgruntled employees — staffers — who, for whatever reason, decided to air dirty laundry — false dirty laundry to the press," Nino Perrotta told The Daily Caller News Foundation in an exclusive interview. Perrotta served as the special agent in charge of Pruitt's security detail for about a year, leading the administrator's protective detail as accusations of overspending and ethical violations. Congress and EPA's Office of Inspector General have multiple investigations into Pruitt's actions.

National News Highlights 5.7.18

The Wall Street Journal: Oil Prices Reach Highest Level Since 2014 Ahead of Iran Deadline

Oil prices rallied to a 3½ year high on Monday, with the U.S. benchmark breaking above \$70 a barrel, as investors braced for the country's expected exit from the Iran nuclear deal this week. Brent crude, the global oil benchmark, was up 1% to \$75.59 a barrel on London's ICE Futures exchange having hit \$75.89 earlier, their highest level since 2014. On the New York Mercantile Exchange, West Texas Intermediate futures were trading up 1% at \$70.42 a barrel. Oil prices have risen over 10% in the past month as U.S. President Donald Trump has indicated it is likely the country will withdraw from a 2015 international agreement with Iran which eased sanctions in return for curbs to its nuclear program. A decision is due by May. 12.

The New York Times: Giuliani Says Trump Would Not Have to Comply With Mueller Subpoena

Rudolph W. Giuliani, reeling after a chaotic first week as President Trump's lawyer, tried again on Sunday to straighten out his client's story. But Mr. Giuliani raised new questions about whether Mr. Trump had paid hush money to other women and suggested the president might invoke the Fifth Amendment to avoid testifying in the special counsel's Russia investigation. Mr. Giuliani, a former federal prosecutor and New York City mayor hired by Mr. Trump to smooth communication between the White House and the special counsel, Robert S. Mueller III, instead painted Mr. Mueller as an out-of-control prosecutor bent on trapping Mr. Trump into committing perjury. The president, he said, could defy a subpoena to testify.

Politico: Trump defends CIA pick Haspel: 'Democrats want out because she is too tough on terror'

President Donald Trump issued an online vote of confidence Monday for Gina Haspel, his pick to be the next director of the CIA, and chided Democrats who have been critical of her for her role in waterboarding terrorism suspects at a secret agency prison. "My highly respected nominee for CIA Director, Gina Haspel, has come under fire because she was too tough on Terrorists," the president wrote on Twitter. "Think of that, in these very dangerous times, we have the most qualified person, a woman, who Democrats want OUT because she is too tough on terror. Win Gina!" Haspel is expected to be on Capitol Hill on Monday, meeting with senators ahead of confirmation hearings later this week.

TRUMP TWEETS

EPA's self-reporting plan could be rolled out by summer

By Mike Lee, 5/7/18

An EPA plan that'll waive or reduce penalties for companies that self-report air emissions violations could be in place by June.

A senior official in the agency's enforcement and compliance office discussed the program with state oil and gas regulators gathered here for a meeting of the Interstate Oil and Gas Compact Commission. EPA on Friday posted a description of the program it's developing.

The program is designed to address the emissions from storage tanks used to hold oil, petroleum liquids and wastewater, said Patrick Traylor, EPA deputy assistant administrator for enforcement and compliance. It's one of the biggest sources of pollution from oil and gas operations.

The program is the latest move under the Trump administration and EPA Administrator Scott Pruitt to forge a collaborative relationship with the energy industry, although Traylor said EPA isn't completely abandoning tougher enforcement.

"We actually expect to have faster compliance through the use of this self-audit tool," he said. "This is one of our tools, not the only tool we'll be using in this sector."

Although it's not a formal rulemaking, EPA is taking comments on the proposal for 30 days, and it could go into effect soon after that, Traylor said.

If it's approved, the proposal would allow companies that acquire new oil and gas operations to self-audit their newly acquired properties and report any problems to EPA. The companies would then have a flexible timeline to fix the problems. In exchange, EPA would waive all or most of the civil and criminal penalties that would normally apply.

EPA has had a "new owner" program for traditional manufacturing plants since 2008. The agency has had difficulty applying it to the oil and gas industry because a typical oil field can include hundreds of tanks and other facilities.

Storage tanks are one of the major sources of pollution from the oil and gas industry. Volatile organic compounds such as benzene can leak from pressure-relief valves or from improperly secured hatches. In many cases, truck drivers open the tanks to the atmosphere when they measure the liquids that collect in tanks (Energywire, Aug. 22, 2017).

EPA plans to use a standard audit, based on a self-audit that the Texas-based gas producer Range Resources Corp. conducted in 2016 (E&E News PM, April 20).

It's similar to the approach that a half-dozen oil producing states have taken, sometimes through informal processes.

Texas and North Dakota have laws on the books that allow their state oil regulators to waive penalties for companies that report their own violations, state officials said during a roundtable discussion. Texas doesn't allow penalties to be waived, though, in cases that cause actual harm.

The Colorado Oil and Gas Conservation Commission adopted a similar policy in 2014, but it stipulates that the program doesn't apply to cases involving fraud, willful misconduct or gross negligence.

Environmentalists are likely to object to the program because it could encourage companies to flout the rules when they are developing new oil and gas fields, particularly if they plan to sell the field quickly.

That's unlikely to happen, Traylor said in an interview after his presentation.

"This shouldn't be interpreted as an incentive to not comply with the law," Traylor said.

Palladium-Item

<https://www.pal-item.com/story/news/local/2018/05/06/epa-money-help-richmond-identify-contaminated-properties/568006002/>

EPA money will help Richmond identify contaminated properties

By Jason Truitt, 5/6/18

Just how many properties around Richmond have some kind of environmental contamination issue? A federal grant will help city officials to better answer that question.

The U.S. Environmental Protection Agency has awarded Richmond \$300,000 to assess various sites and update the city's brownfields inventory.

Having an up-to-date listing of Richmond's troubled properties is necessary so officials can be ready to go with potential projects when the EPA makes future grants available.

"We have an existing inventory that hadn't been updated in several years so to be ready for the rapid financing program that the EPA puts out, we need to have an updated inventory," City Controller Beth Fields said.

"The overall vision was to identify all of the sites and then prioritize those sites for remediation."

Richmond was one of five Indiana cities and one multi-town group awarded funding recently by the EPA. The others were Clarksville, Indianapolis, Jeffersonville and Michigan City and a regional planning commission in southern Indiana that represents six towns.

The city's grant can only be used for "developing inventories of brownfields, prioritizing sites, conducting community involvement activities, conducting site assessments and developing cleanup plans and reuse plans related to brownfield sites," according to the grant application.

Jack Cruse, director of Richmond's Department of Infrastructure and Development, said the city made the former Mechanics Laundry building on North E Street next to the depot the focal point of its application, but officials intend to look at sites throughout the city.

"We've got properties in the city of Richmond that have not been assessed but we know that they exist," he said.

"A lot of these are old places that either had petroleum products or were laundry areas."

This isn't the first time that the former Mechanics Laundry building has come up in city conversations.

Back in 2004, Richmond Common Council passed a resolution allowing the city to pursue a purchase of the building by getting a pair of environmental studies done on the property. Officials believed the site might be contaminated with a chemical used in dry cleaning.

The plan was to tear down the building and use the space for parking in the Historic Depot District, but the city never did buy the property.

In 2014, Roger Richert, then-owner of the former Pennsylvania Railroad Depot next door, got permission to clean up the outside of the laundry and have a mural painted on it depicting a train that looks as if it's approaching the station.

The Washington Examiner

<https://www.washingtonexaminer.com/opinion/op-eds/the-epas-new-secret-science-rule-makes-sense-from-a-risk-assessment-perspective>

The EPA's new 'secret science' rule makes sense from a risk-assessment perspective

By Michael L. Dourson, 5/6/18

Environmental Protection Agency Administrator Scott Pruitt's recent announcement that EPA will not use "secret science" — that is science for which the underlying data is not available — is challenging. Whereas EPA is routinely in receipt of unpublished toxicity studies for chemicals designed for commerce, not all important scientific findings are publishable. Nor do scientific journals generally have sufficient space to include all data.

Much has been made in recent weeks of this new EPA policy, including an op-ed opposing it by former EPA Administrator Gina McCarthy and former acting Assistant Administrator Janet McCabe.

The media coverage has focused attention on how science is considered acceptable and useful in EPA's rulemaking. But missing from this is the perspective of risk scientists charged with protecting public health. In the case of EPA, it is often not enough for any one positive study to be published in a peer-reviewed journal. Such work often needs replication because a positive finding occurs, on average, in one out of every 20 studies due to chance.

If a study cannot be replicated, then it at least needs to make sense within the pattern of available data. For pesticides regulated by EPA, these data are often from hundreds of studies done according to federal guidelines.

Studies that are not replicated or that do not make sense in an overall pattern are still considered, however. Risk scientists will often contact the authors to obtain additional information in order to conduct their own analysis, a common practice within EPA.

When such data are forthcoming, without the need to break confidentiality or disclose confidential business information, independent analyses can be conducted and the public health is better served. But when such information is withheld by the authors, government risk scientists are often left with a dilemma.

For example, imagine that a series of studies come out on a single human group that is exposed to a commonly used insecticide, and they show an unexpected effect at extremely low exposures. This finding has not been replicated and clashes with multiple animal and human studies that point to danger only at much higher exposures.

In this case, EPA scientists would ask the authors for the underlying data to confirm this unexpected low-dose effect. But let's say they can't get it. EPA is then left with neither confirmatory studies, nor information that makes sense in light of other studies, nor the ability to conduct its own analysis. Understandably, Pruitt has chosen a policy of not using such studies.

There is one sense in which McCarthy and McCabe are spot on. The judgment over which epidemiology and/or toxicology data to use for risk or safety assessment purposes should be left to risk scientists. But from my perspective as a risk scientist, Pruitt's decision is still correct. The public's interest is best served when science is replicable and consistent with other information. When studies cannot be replicated or are inconsistent with other information, access to their underlying data is vital to independent analysis. When the underlying data are not provided to a risk scientist, it is difficult to use this study to make a credible risk judgment, much less national rulemaking.

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In short, the public is often worried about chemical exposure, as they should be when such exposure exceeds a safety level. But the public's interest is best served by trusting in experts dedicated to public health protection, not by withholding scientific data from independent analysis.

Politico

<https://www.politico.com/story/2018/05/06/pruitt-epa-document-requests-570289>

EPA clamps down on document requests linked to Pruitt

By Alex Guillen, 5/6/18

Top aides to Scott Pruitt at the Environmental Protection Agency are screening public records requests related to the embattled administrator, slowing the flow of information released under the Freedom of Information Act — at times beyond what the law allows.

Internal emails obtained by POLITICO show that Pruitt's political appointees reviewed documents collected for most or all FOIA requests regarding his activities, even as he's drawn scrutiny for his use of first-class flights and undisclosed dealings with lobbyists.

While past administrations have given similar heads-ups to political aides for certain records requests, FOIA experts say this high-level vetting at EPA appears to have increased compared with the Obama era.

"This does look like the most burdensome review process that I've seen documented," said Nate Jones, director of the FOIA Project at The George Washington University's National Security Archive.

The emails also show Pruitt's aides chastising career employees who released documents about the administrator without letting them screen the records first. Meanwhile, several environmental groups say the agency has told them that political staffers' document reviews have delayed releases past legal deadlines.

The new processes described in the emails involve "awareness reviews" or "senior management reviews" conducted by top political staffers before the agency releases essentially any documents involving the administrator. The emails also show Pruitt's political appointees chastising career employees who released documents in accordance with FOIA without letting them screen the records first.

EPA sometimes conducted those types of reviews under the Obama administration when career staff thought documents would generate a lot of interest, agency officials from that era told POLITICO. But under Pruitt, the vetting by EPA chief of staff Ryan Jackson and other key appointees of any documents linked to the administrator appears to be on the rise, according to FOIA experts who reviewed the emails.

The increased scrutiny comes as the agency faces a wave of accusations of excessive secrecy. EPA has declined to provide information about Pruitt's public appearances in advance — a practice at odds with those of many other Cabinet members and the White House. And the agency releases his detailed calendars only when compelled by lawsuits.

That secrecy has prompted a boom in FOIA requests filed with the agency and lawsuits challenging its resistance to releasing information to the public. As POLITICO reported in February, production of documents under FOIA requests from Pruitt's office is drastically lower than the rest of EPA.

The newly released emails, which EPA gave to the Natural Resources Defense Council following legal action, show Jackson created a pilot program to "centralize" requests that go through the various suboffices that make up EPA's Office of the Administrator. The emails show that the political aides weren't just concerned about streamlining the FOIA process — they wanted to know about any requests anywhere at EPA that involved Pruitt.

In one exchange from last August, Jackson and Liz Bowman, the head of EPA's Office of Public Affairs, expressed concern about documents related to comments Pruitt made on CNBC disputing that carbon dioxide from human activities was the primary cause of climate change. Those documents had been released to E&E News without first going through their review.

"Why did Kevin Bogardus from E&E all of a sudden get a response to a FOIA today, without any awareness from our FOIA office?" Bowman wrote Aug. 2. She later added that the response "wasn't due until 8/30."

Officials quickly determined that the request had been filled by a career employee before Bowman had a chance to flag it "for attention." Although the request involved Pruitt, the records sought by E&E were kept at EPA's Office of Research and Development, and the request was routed there before being released by a FOIA expert from that office.

Anything related to Pruitt "will draw inquiries from press," Jackson replied, and he requested that he and the public affairs office be notified ahead of any Pruitt-related release from any EPA office.

The message was received loud and clear by EPA's career staff.

"I have instructed my staff that no [Office of the Administrator] requests are to be issued without the opportunity for an awareness review by you, [the Office of Public Affairs] and the senior leadership of any other affected offices," Becky Dolph, the head of a special team of FOIA experts in EPA's Office of General Counsel, wrote to Jackson later that day.

Emails sent later that month showed Jackson pressing staff on why documents related to a coal plant water pollution rule were already available online just one day after an awareness review began.

The documents were "inadvertently" posted, replied Kevin Minoli, then EPA's acting general counsel, who added that the process would be changed so that "nothing is uploaded at all until we have the final set of documents and their production has been authorized."

None of the emails given to the NRDC reveal exactly what actions the political staffers conducting these reviews took.

NRDC attorney Aaron Colangelo said he asked EPA for details about the reviews after an EPA attorney told him that "awareness reviews" were delaying the release of documents in other FOIA requests filed by the environmental group. Those requests were related to Pruitt's participation in ongoing legal cases that he'd previously been involved in during his time as Oklahoma's attorney general.

Colangelo and other FOIA experts said federal agencies have discretion to set up their own internal FOIA processes, and the political reviews are not illegal — unless the reviews caused EPA to miss deadlines for producing documents set out in the Freedom of Information Act.

"There's nothing necessarily wrong with political folks getting a heads-up before potentially sensitive documents are released," Colangelo said in an interview. "But we do have a legitimate objection if that political review delays compliance with deadlines in the law."

And that has happened for at least two of the NRDC's Pruitt-related FOIA requests, he said.

Another request from a coalition of environmental groups for documents about Pruitt's delay of a rule limiting water pollution from coal plants was held up over a "senior management review."

A judge mediating the lawsuit over that delay, Valerie Caproni of the U.S. District Court for the Southern District of New York, said during November proceedings that while EPA “can do whatever internal policies in particular they want on FOIA,” the agency cannot use political reviews to justify missing legal deadlines.

EPA still has to “comply with the law, and that means they have to produce documents in a timely way,” she said. EPA eventually handed over the documents in that case.

It’s not clear exactly how many FOIA requests have been delayed by political reviews, but experts say it is clearly having an impact.

Several Obama-era EPA political officials said they too occasionally received “heads-up” awareness reviews on high-profile requests, but not necessarily to the degree that Pruitt’s aides are doing them.

“It doesn’t seem abnormal to me that some political would get a chance to have review for awareness of productions that are going out that involve the administrator,” said one former official. But the close attention from top-ranking officials like Jackson and former policy chief Samantha Dravis seemed “a little bit odd,” the former official added.

Instead, awareness reviews generally went to the head of the agency program office in question and to congressional affairs staffers so they could coordinate with any requests from lawmakers, the former official said.

One Obama-era awareness review that was included in the new documents showed that a large batch of documents related to the Flint, Michigan, lead crisis was flagged to political officials in the Office of Water and the congressional affairs office, as well as the general counsel, the regional administrator and a public affairs official.

Bowman, the EPA spokeswoman, did not comment on questions from POLITICO about the political oversight of FOIA requests, but she noted that the Trump administration was not the first to use them.

“Each EPA program and Region does their own FOIAs, so an awareness review allows the press office, Congressional Affairs Office and senior officials to be informed of documents being released in response to FOIA requests, to facilitate inter-office coordination, and to prepare responses to inquiries,” she said.

Thomas Cmar, an Earthjustice attorney involved in multiple FOIA lawsuits with EPA, said the emails raise as many questions as they answer.

“Political staff appear to be keeping a very close eye on what information is being requested and released to the public,” he said. “It raises concerns and it raises questions that need to be answered about whether EPA is living up to its obligations to make basic information about its activities available to the public that it’s supposed to be serving.”

Michigan Live

http://www.mlive.com/news/grand-rapids/index.ssf/2018/05/wolverine_tannery_epa_rockford.html

Wolverine tannery back in EPA crosshairs 5 years later

By Garrett Ellison, 5/6/18

Full federal scrutiny is finally coming to bear on the polluted Wolverine World Wide tannery in downtown Rockford, five years after the Environmental Protection Agency stepped away from its initial investigation and left the site under state control.

The EPA says new contamination testing will begin mid-month at the former manufacturing grounds, where, from 1908 to 2009, Wolverine churned out treated leather that helped the footwear company grow into a global business with \$2.4 billion in revenue last year.

The testing will be more thorough than Wolverine desired.

The EPA wants Wolverine to conduct extensive soil and groundwater sampling across the entire 15-acre property, which has been open to the public as an informal community green space used sporadically for downtown events since the buildings were razed in 2010.

Data shows the property is fouled by arsenic, chromium and lead in addition to the per- and polyfluoroalkyl substances, or PFAS chemicals, that have sparked new site scrutiny.

The now-empty land where Wolverine reneged on a promise to build a downtown Rockford shoe store is back in federal crosshairs after extremely high PFAS levels were found at the tannery, Wolverine's House Street sludge dump and other places where the company cached toxic waste around northern Kent County.

The tannery scored high enough to warrant inclusion on the federal Superfund list of toxic sites, but the EPA acquiesced in 2012 to substantial pushback from Wolverine and community leaders who lobbied hard to keep the century-old factory grounds under a state-led, voluntary environmental cleanup program.

Whether the site attains Superfund status is an open question.

Although PFAS helped bring the EPA back to Rockford, the federal government doesn't have enforceable cleanup standards for the contamination caused by Wolverine's use of 3M Scotchgard to waterproof shoe leather. But the state of Michigan does.

This has resulted in a delicate state and federal coupling.

The EPA is focusing its probe on other contaminants besides PFAS at the tannery and federal investigators are picking up where they left off, when a site assessment identified historic contamination in places like "the pit," a 50-foot former maintenance basement area where toxic waste pooled and sometimes overflowed.

The EPA issued Wolverine an investigative subpoena for records related to the tannery and the House Streep dump in Plainfield Township in early December, prior to a Jan. 10 order that formally increased the federal role in the Wolverine investigation.

Those records are now under EPA examination.

Jeffrey Kimble, an EPA Region 5 on-scene coordinator assigned to the investigation, asked Wolverine to expand testing.

"They did not meet what I wanted them to do, so (the sampling plan) has been given back to Wolverine's consultant with directions from me," Kimble said. "I want this to be a complete extent of contamination survey, so we've had them adjust their approach."

Kimble is scrutinizing the site for contamination that could pose an immediate health risk and wants "a good number and spacing of actual soil samples, sediment samples in Rum Creek and adjacent Rogue River, and few more groundwater samples."

"I'm looking at what people could actually touch if they dug in the dirt, if they had to do excavation or what may migrate off site," he said.

Through a spokesperson, Wolverine confirmed that it received Kimble's feedback and subsequently modified its testing plan.

Wolverine said it is "diligently" working with regulators and anticipates its consultant Rose & Westra GZA beginning field work this summer.

In June, the company will allow the Rockford Start of Summer Celebration to use the tannery lawn for ballgames and festival fireworks viewing, but EPA says it's requiring the company test the surface soils used for backfill and grading first.

Although the property is fenced along the west side, the public has easy access because the rest of the fence was removed at the city's request in 2015. The EPA couldn't provide a date when more fencing and warning signs would go up, although both are stipulated.

Thad Beard, Rockford city manager, thinks the topsoil cap placed after demolition is enough to keep people safe.

"If you were to go dig a 10-foot hole and start eating the dirt, that would be a cause for concern," Beard said.

"From what I understand, there's no contaminants exposed to the public unless you were to dig below grade."

That may depend on the location. According to EPA testing, contamination above acceptable human contact levels exists "at or near the surface" of the tannery footprint along the heavily-used White Pine Trail, where "elevated levels of organic and inorganic contaminants have been detected in surficial soils."

That contamination data was collected several years before 2017 testing confirmed total PFAS at 532,000 parts per trillion in the groundwater at the tannery.

In the river nearby, sediment testing found elevated levels of arsenic, total chromium, hexavalent chromium, copper, lead, mercury and zinc. Wolverine used chromium in bulk to convert raw hides into leather. The hexavalent variety is a known carcinogen.

In a January memo, Kimble characterized both the House Street and tannery sites as "imminent and substantial" threats to public health and the environment. The memo notes that children have been observed swimming in the river downtown where "sediment and water contamination has been documented."

The EPA evaluated the site six years ago at the request of the Concerned Citizens for Responsible Remediation (CCRR), a local group which petitioned for federal involvement in 2011 after independently documenting contamination at the property.

Lynn McIntosh, a Rockford activist instrumental in bringing Wolverine's pollution to light, said she's spent years warning people enjoying the river downtown to "make sure they wash their kids' hands or wipe their kayak" afterwards.

On multiple occasions, McIntosh said she's quietly approached parents with children playing at the trailside canoe launch near the southwest corner of the former tannery site to warn them about elevated levels of mercury in the nearby riverbed.

"I shouldn't have to do that," she said.

McIntosh is pleased the EPA is back on the ground in Rockford after watching former elected officials like late city manager Michael Young and ex-state Sen. Mark Jansen lobby keep the tannery under Michigan Department of Environmental Quality oversight.

Both men wrote similarly-worded letters to regulators warning of "significant negative effect" on tannery redevelopment and downtown Rockford if EPA involvement were to continue; both citing their understanding that "there are no conditions at the property that present a health threat to the public."

Wolverine "has advised me that the remaining environmental issues at the property will be properly addressed by Wolverine with the DEQ," Young wrote to the EPA on April 19, 2012.

Both Young and Jansen asked that EPA "terminate" their involvement and let DEQ manage the site under the state's Part 201 law.

Under the state voluntary cleanup program, the DEQ has essentially allowed Wolverine to mothball the site, McIntosh argued.

Although Wolverine has done sampling and soil boring, little excavation and no bioremediation, containment, groundwater control or treatment has occurred under the state's oversight.

Rockford put "money and image over addressing a real possible public health and safety issue, and worked with the company to accomplish that," McIntosh said.

The DEQ counters that retaining control over the site has sped, not slowed, tannery cleanup work because it takes several years for a site to become Superfund listed. The site was designated an "Other Cleanup Authority" under state lead in 2012.

Were it placed on the National Priorities List, "it would have taken several more years to accomplish remedial investigation and remedial actions," said DEQ spokesperson Scott Dean.

"Wolverine has better defined the extent of soil and groundwater contamination and located leather and hide scraps buried on the 100-year-old tannery site" following the 2012 agreement, Dean said.

The state's oversight "made it possible for Wolverine to quickly begin monitoring for PFAS" after it became a concern in 2016, he said.

The company began testing for PFAS in August 2017.

"Although we have been frustrated by the pace of work at the tannery site, our primary focus has been on protecting the public," Dean said.

"We remain committed to holding Wolverine accountable for the contamination on their site and seeing it returned to productive use."

The Daily Caller

<http://dailycaller.com/2018/05/07/exclusive-epa-scott-pruitt-body-guard-nino-perrotta-false-dirty-laundry/>

Scott Pruitt's Head Bodyguard Takes On The 'False Dirty Laundry' Being Spread About EPA

By Michael Bastasch, 5/7/18

Many of the accusations against Environmental Protection Agency Administrator Scott Pruitt and his close aides were concocted by "disgruntled employees" looking to damage the agency, the former head of Pruitt's security detail said.

"I believe at the end of the day, these are disgruntled employees — staffers — who, for whatever reason, decided to air dirty laundry — false dirty laundry to the press," Nino Perrotta told The Daily Caller News Foundation in an exclusive interview.

Perrotta served as the special agent in charge of Pruitt's security detail for about a year, leading the administrator's protective detail as accusations of overspending and ethical violations. Congress and EPA's Office of Inspector General have multiple investigations into Pruitt's actions.

Perrotta retired at the end of April, ending his 14-year career at EPA amid investigations into Pruitt's security arrangements — including his 24/7 detail, hiring of more agents, and flying first class when traveling.

Former EPA official Kevin Chmielewski detailed many accusations against Pruitt, Perrotta and other top aides to congressional Democrats. Many of the accusations were "intentionally used to mislead the American people," Perrotta told TheDCNF.

Chmielewski was one of several EPA staffers allegedly sidelined for challenging Pruitt on spending decisions. However, Perrotta believes Chmielewski decided to come out against Pruitt after a January 2018 phone call.

During that call, Chmielewski vented to Perrotta about issues he was having with his pay, the former EPA security head said. Perrotta said he tried to help Chmielewski with his pay issue, but the former EPA official “began to threaten the EPA, specifically the administrator and the chief of staff, that he was going to talk to the press and everyone he could about,” using colorful language, “how f-ed up the EPA was and how f-ed up the administrator was and how f-ed up the chief of staff was.”

“I found that to be very, very bizarre,” Perrotta said. “If you have differences, it should be aired through your chain of command.”

Chmielewski called the next day, but given his tone and threatening statements on their previous call, Perrotta said he’d have to report the former EPA official. Perrotta filed the report with the agency.

Pruitt’s been increasingly mired in negative news stories — many of them likely the result of Chmielewski talking to the press and Congress. News reports have already called into question the veracity of many of Chmielewski’s claim.

For example, “a \$30,000 contract with private Italian security personnel entered into by” Perrotta ahead of Pruitt’s attendance of a G7 summit in Italy, Chmielewski told Congress. Perrotta would never have the authority to unilaterally enter into such a contract, the former EPA security head said.

“That is a false accusation,” Perrotta told TheDCNF. “A person at my level and grade in the agency would have the authority to do so.”

Chmielewski also told Democratic lawmakers “at least one security-related contract was awarded to an individual who works at Mr. Perrotta’s private security firm, and he believes that other contracts may also have been awarded to friends or associates of Mr. Perrotta’s.”

It’s true EPA hired Edwin Steinmetz to conduct a security sweep of Pruitt’s office in 2017, costing the agency \$3,000. Steinmetz is listed on the management team of Perrotta’s security firm he operates on the side, Sequoia Security Group.

Perrotta said he explained to superiors that Steinmetz, a security consultant, subcontracted through his side company, which EPA gave him approval to operate in 2013. EPA officials asked Perrotta in 2017 if he could recommend a company to conduct a security sweep of Pruitt’s office.

“The only reason that the vendor was selected,” Perrotta said, “is because there were issues within the agency of identifying a new vendor, which to me was bizarre.”

“It was clear to me, now, that certain people compared notes, shared information, and created this false narrative. And I believe the American people are going to see this, eventually,” Perrotta said.

You can watch TheDCNF’s entire interview with Perrotta here. And stay tuned for more.

The Wall Street Journal

<https://www.wsj.com/articles/oil-prices-continue-to-rise-fueled-by-iran-concerns-1525673680>

Oil Prices Reach Highest Level Since 2014 Ahead of Iran Deadline

By Sarah McFarlane and Biman Mukherji, 5/7/18

Oil prices rallied to a 3½ year high on Monday, with the U.S. benchmark breaking above \$70 a barrel, as investors braced for the country's expected exit from the Iran nuclear deal this week.

Brent crude, the global oil benchmark, was up 1% to \$75.59 a barrel on London's ICE Futures exchange having hit \$75.89 earlier, their highest level since 2014. On the New York Mercantile Exchange, West Texas Intermediate futures were trading up 1% at \$70.42 a barrel.

Oil prices have risen over 10% in the past month as U.S. President Donald Trump has indicated it is likely the country will withdraw from a 2015 international agreement with Iran which eased sanctions in return for curbs to its nuclear program. A decision is due by May. 12.

"There is some scope for profit-taking now that prices are at 42-month highs but that is been overshadowed by the potential re-imposition of sanctions on Iran," said Dubai-based Ehsan Khoman, head of research for the Middle East and North Africa region at MUFG bank.

Previously, international sanctions have cut Iranian exports by around 1 million barrels a day, but MUFG expects the U.S. will "go it alone" if they impose sanctions, meaning the impact will be a loss of 250,000-350,000 barrels a day.

"The EU may not deem it necessary to reinstate sanctions on shipping insurance which were paramount in restricting Iranian crude exports last time around," said Mr. Khoman.

The U.S. doesn't import any Iranian crude but certain allies including Japan and South Korea which do, may switch to other suppliers to comply with the changed stance of the U.S., analysts said.

There were also signs of discord among members of the Organization of the Petroleum Exporting Countries after Iran's deputy oil minister Amir Hossein Zamaminia said a "suitable price" for oil is \$60 to \$65 a barrel in an interview with Bloomberg on Sunday. Iran's position differs from OPEC's top producer Saudi Arabia, which is seeking to push oil to \$80 a barrel to fund economic reforms.

This creates uncertainty for the prospects of an extension to the group's deal to cut production, initially struck to target reducing a glut in global oil stocks, which had ballooned because of rising U.S. shale output. Saudi Arabia is expected to push for the cuts to continue beyond 2018 to keep oil prices closer to their target.

Oil production in the U.S. is expected to continue its march higher with the number of rigs drilling for oil rising by 9 last week to a three-year high of 834 rigs, according to oil-field services firm Baker Hughes (BHGE) data published on Friday.

Nymex reformulated gasoline blendstock—the benchmark gasoline contract—up 0.7% to \$2.13 a gallon. ICE gasoil changed hands at \$660.50 a metric ton, up \$11.50 from the previous settlement.

The New York Times

<https://www.nytimes.com/2018/05/06/us/politics/giuliani-says-trump-would-not-have-to-comply-with-mueller-subpoena.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=first-column-region®ion=top-news&WT.nav=top-news>

Giuliani Says Trump Would Not Have to Comply With Mueller Subpoena

By Mark Landler and Noah Weiland, 5/6/18

Rudolph W. Giuliani, reeling after a chaotic first week as President Trump’s lawyer, tried again on Sunday to straighten out his client’s story. But Mr. Giuliani raised new questions about whether Mr. Trump had paid hush money to other women and suggested the president might invoke the Fifth Amendment to avoid testifying in the special counsel’s Russia investigation.

Mr. Giuliani, a former federal prosecutor and New York City mayor hired by Mr. Trump to smooth communication between the White House and the special counsel, Robert S. Mueller III, instead painted Mr. Mueller as an out-of-control prosecutor bent on trapping Mr. Trump into committing perjury. The president, he said, could defy a subpoena to testify.

“We don’t have to to,” Mr. Giuliani said in a rambling, 22-minute interview on ABC’s “This Week” program. “He’s the president of the United States. We can assert the same privileges other presidents have.”

Mr. Giuliani, who met with the special counsel’s office shortly after joining the legal team last month, said he and another lawyer, Jay Sekulow, agreed that the president should not speak to Mr. Mueller. But he acknowledged that he had little, if any, control over the president, who said as recently as Friday that he still wanted to speak to the special counsel.

“How can I ever be confident of that?” Mr. Giuliani said, when asked whether Mr. Trump would not invoke his right to avoid self-incrimination. “I’m facing a situation with the president and all the other lawyers are, in which every lawyer in America thinks he would be a fool to testify, I’ve got a client who wants to testify.”

It was one of several startling admissions by Mr. Giuliani, during his first extended television appearance since Mr. Trump criticized him last week as not having his “facts straight” about payments made to a pornographic film actress, Stephanie Clifford. Mr. Giuliani said it was possible that Mr. Trump’s personal attorney, Michael D. Cohen, had made additional payments to other women on the president’s behalf.

“I have no knowledge of that,” Mr. Giuliani said when asked about other payments, “but I would think if it was necessary, yes.”

If Mr. Trump were to invoke the Fifth Amendment, he would undercut his longstanding claim that he has nothing to hide about his campaign’s ties to Russia. During the presidential campaign, he ridiculed his Democratic opponent, Hillary Clinton, when some of her aides invoked the Fifth Amendment during a congressional investigation of Mrs. Clinton’s use of a private email server.

“The mob takes the Fifth,” Mr. Trump said at a campaign rally in Iowa in September 2016. “If you’re innocent, why are you taking the Fifth Amendment?”

After his interview, Mr. Giuliani met with Mr. Trump at his golf club in Northern Virginia.

Mr. Giuliani told the ABC anchor, George Stephanopoulos, that he was still getting up to speed on Mr. Trump's legal issues — a fact that became apparent as the interview went on. As was the case during his interviews last week, Mr. Giuliani seemed to speak largely off the cuff. He speculated freely and contradicted himself, sometimes from one statement to the next.

He said, for example, that Mr. Mueller would be to blame if Mr. Trump refused to testify because his office had leaked a list of questions that the special counsel would like to ask him. But then he admitted he did not know who leaked the questions, which were reported by The New York Times.

Mr. Giuliani referred repeatedly to a federal judge's criticism of the special counsel's fraud case against Paul Manafort, the former chairman of the Trump campaign. The judge, T.S. Ellis III, said on Friday that the case seemed motivated by a desire to get Mr. Manafort to potentially incriminate Mr. Trump.

"There's no question that the amount of government misconduct is accumulating," Mr. Giuliani said. "Very embarrassing to my former Justice Department."

Mr. Giuliani created a furor on Wednesday when he contradicted the president about the payment to Ms. Clifford. Speaking on Fox News, Mr. Giuliani said Mr. Trump reimbursed Mr. Cohen for a \$130,000 payment that Mr. Cohen has said he made to Ms. Clifford, to keep her from making public a story about an affair she claims she had with Mr. Trump — a claim that he denies. When asked in April by reporters traveling on Air Force One whether he knew about the payment, Mr. Trump said he did not.

On Sunday, Mr. Giuliani said he was still trying to establish when Mr. Trump learned that Mr. Cohen had paid Ms. Clifford, whose stage name is Stormy Daniels. But he added that as a legal matter, it did not matter since the payment did not violate federal campaign finance rules.

Asked about the discrepancies between his account and the president's statement, Mr. Giuliani said: "Those don't amount to anything — what is said to the press. That's political."

Mr. Giuliani did not shed much new light on the nature of the payments themselves. He said Mr. Cohen "made payments for the president, or he conducted business for president, which means he had legal fees, moneys laid out and expenditures." But he characterized the sum Ms. Clifford received as a "nuisance" payment.

"I never thought \$130,000 was a real payment," Mr. Giuliani said. "People don't go away for \$130,000."

Mr. Giuliani accused Ms. Clifford of trying to make as much money as possible from her notoriety, noting that she made a cameo appearance during the opening skit on "Saturday Night Live."

Mr. Giuliani's admission on Wednesday caught Mr. Trump's staff off guard and prompted Mr. Trump to try to clarify the nature of payments he made to Mr. Cohen. The morning after Mr. Giuliani's comments, Mr. Trump said on Twitter that Mr. Cohen "received a monthly retainer, not from the campaign and having nothing to do with the campaign, from which he entered into, through reimbursement, a private contract between two parties, known as a non-disclosure agreement, or NDA."

A day later, he told reporters gathered outside the White House that Mr. Giuliani did not know the particulars of the case, even after Mr. Giuliani told The Times on Wednesday night that he had spoken

with the president before and after his interview on Fox News, and that Mr. Trump and other lawyers on the team were aware of what he would say.

“Virtually everything said has been said incorrectly, and it’s been said wrong, or it’s been covered wrong by the press,” Mr. Trump said on Friday. “He’ll get his facts straight.”

Seeming to chastise Mr. Giuliani, Mr. Trump added: “You know what? Learn before you speak. It’s a lot easier.”

Some of Mr. Trump’s legal and political advisers believe Mr. Giuliani’s comments could put the president in legal jeopardy, since federal officials are required to report liabilities of more than \$10,000 during the preceding year. Mr. Trump’s last disclosure, which he signed last June, does not mention any debt to Mr. Cohen.

On Sunday, Mr. Giuliani tried to clarify what Mr. Trump called a “retainer.”

“The retainer agreement was to repay expenses, which turns out to have included this one,” Mr. Giuliani said.

Appearing after Mr. Giuliani on the same program, Ms. Clifford’s lawyer, Michael Avenatti, called Mr. Giuliani’s interview an “absolute unmitigated disaster” and “one of the worst TV appearances by any attorney on behalf of a client in modern times.”

“He now expects the American people to believe that he doesn’t really know the facts,” Mr. Avenatti added. “I think it is obvious to the American people that this is a cover-up, that they are making it up as they go along.”

Politico

<https://www.politico.com/story/2018/05/07/trump-cia-gina-haspel-571566>

Trump defends CIA pick Haspel: 'Democrats want out because she is too tough on terror'

By Louis Nelson, 5/7/18

President Donald Trump issued an online vote of confidence Monday for Gina Haspel, his pick to be the next director of the CIA, and chided Democrats who have been critical of her for her role in waterboarding terrorism suspects at a secret agency prison.

“My highly respected nominee for CIA Director, Gina Haspel, has come under fire because she was too tough on Terrorists,” the president wrote on Twitter. “Think of that, in these very dangerous times, we have the most qualified person, a woman, who Democrats want OUT because she is too tough on terror. Win Gina!”

Haspel is expected to be on Capitol Hill on Monday, meeting with senators ahead of confirmation hearings later this week. Whether she will be confirmed to lead the CIA remains an open question amid concern about her role running a CIA “black site” prison in Thailand where terrorism suspects were subjected to so-called “enhanced interrogation” techniques like waterboarding.

Haspel's past involvement with practices labeled by many as torture has already cost her the support of Sen. Rand Paul (R-Ky.), meaning she will require the support of at least one Democrat in order to be confirmed.

According to a Washington Post report published over the weekend, Haspel offered late last week to withdraw herself from consideration to lead the CIA over concerns that confirmation hearings scheduled for Wednesday could prove damaging to agency's reputation and to her own. She reportedly expressed a desire to avoid being "the next Ronny Jackson," a reference to the White House's former pick to lead the Department of Veterans Affairs whose candidacy was scuttled by allegations of misconduct.

White House press secretary Sarah Huckabee Sanders, who the Post reported was among the administration officials who met with Haspel last Friday at CIA headquarters in Virginia after she offered to withdraw, praised Haspel over the weekend as eminently qualified to lead the agency. That she would be the first woman to do so, Sanders wrote, should garner her further support, especially from Democrats.

"There is no one more qualified to be the first woman to lead the CIA than 30+ year CIA veteran Gina Haspel," the press secretary wrote on Twitter on Saturday. "Any Democrat who claims to support women's empowerment and our national security but opposes her nomination is a total hypocrite."

TRUMP TWEETS



Donald J. Trump ● @realDonaldTrump · 2h

To the great people of West Virginia we have, together, a really great chance to keep making a big difference. Problem is, Don Blankenship, currently running for Senate, can't win the General Election in your State...No way! Remember Alabama. Vote Rep. Jenkins or A.G. Morrissey!

4.0K 6.2K 23K



Donald J. Trump ● @realDonaldTrump · 2h

My highly respected nominee for CIA Director, Gina Haspel, has come under fire because she was too tough on Terrorists. Think of that, in these very dangerous times, we have the most qualified person, a woman, who Democrats want OUT because she is too tough on terror. Win Gina!

6.1K 11K 39K



Donald J. Trump ● @realDonaldTrump · 1h

The Russia Witch Hunt is rapidly losing credibility. House Intelligence Committee found No Collusion, Coordination or anything else with Russia. So now the Probe says OK, what else is there? How about Obstruction for a made up, phony crime. There is no O, it's called Fighting Back

9.7K 7.4K 28K



Donald J. Trump ● @realDonaldTrump · 1h

The 13 Angry Democrats in charge of the Russian Witch Hunt are starting to find out that there is a Court System in place that actually protects people from injustice...and just wait 'till the Courts get to see your unrevealed Conflicts of Interest!

8.6K 8.7K 30K

Message

From: Jackson, Ryan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=38BC8E18791A47D88A279DB2FEC8BD60-JACKSON, RY]
Sent: 3/13/2018 3:21:44 PM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]
CC: Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]
Subject: RE:
Attachments: FR Notice on Data Access Guidelines_3.13.2018.docx

Deliberative Process / Ex. 5

From: Woods, Clint
Sent: Tuesday, March 13, 2018 11:21 AM
To: Jackson, Ryan <jackson.ryan@epa.gov>
Cc: Yamada, Richard (Yujiro) <yamada.richard@epa.gov>
Subject: Re:

Deliberative Process / Ex. 5

On Mar 13, 2018, at 11:16 AM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

Deliberative Process / Ex. 5

Ryan Jackson
Chief of Staff
U.S. Environmental Protection Agency

Personal Matters / Ex. 6

Message

From: Jackson, Ryan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=38BC8E18791A47D88A279DB2FEC8BD60-JACKSON, RY]
Sent: 2/21/2018 7:26:23 PM
To: Dickerson, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d0440d9f06994021827e0d0119126799-Dickerson,]
Subject: FW: latest version

From: Jackson, Ryan
Sent: Wednesday, February 21, 2018 2:26 PM
To: Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Beck, Nancy <beck.nancy@epa.gov>; Woods, Clint <woods.Clint@epa.gov>; Feeley, Drew (Robert) <Feeley.Drew@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>
Subject: RE: latest version

Thank you all for this. **Deliberative Process / Ex. 5**

From: Yamada, Richard (Yujiro)
Sent: Wednesday, February 21, 2018 1:10 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>
Subject: Fwd: latest version

Please see attached - apologies for slight delay

Sent from my iPhone

Begin forwarded message:

From: "Feeley, Drew (Robert)" <Feeley.Drew@epa.gov>
Date: February 21, 2018 at 1:05:57 PM EST
To: "Yamada, Richard (Yujiro)" <yamada.richard@epa.gov>
Cc: "Bolen, Brittany" <bolen.brittany@epa.gov>
Subject: RE: latest version

Deliberative Process / Ex. 5

From: Yamada, Richard (Yujiro)
Sent: Tuesday, February 20, 2018 10:37 PM
To: Feeley, Drew (Robert) <Feeley.Drew@epa.gov>
Cc: Bolen, Brittany <bolen.brittany@epa.gov>
Subject: Fwd: latest version

Hey Drew - can u work ur magic and get this back to us, so that I can send to Justin? Thanks much,
Richard

Sent from my iPhone

Begin forwarded message:

From: "Beck, Nancy" <Beck.Nancy@epa.gov>
Date: February 20, 2018 at 9:24:58 PM EST
To: "Woods, Clint" <woods.clint@epa.gov>, "Yamada, Richard (Yujiro)" <yamada.richard@epa.gov>
Subject: RE: latest version

Deliberative Process / Ex. 5

Nancy B. Beck, Ph.D., DABT
Deputy Assistant Administrator, OCSPP
P: 202-564-1273
M: Personal Matters / Ex. 6
Beck.Nancy@epa.gov

From: Woods, Clint
Sent: Tuesday, February 20, 2018 7:21 PM
To: Beck, Nancy <Beck.Nancy@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>
Subject: RE: latest version

Deliberative Process / Ex. 5 Thanks!

From: Beck, Nancy
Sent: Tuesday, February 20, 2018 7:07 PM
To: Yamada, Richard (Yujiro) <yamada.richard@epa.gov>
Cc: Woods, Clint <woods.clint@epa.gov>
Subject: RE: latest version

Thanks!

Nancy B. Beck, Ph.D., DABT
Deputy Assistant Administrator, OCSPP
P: 202-564-1273
M: Personal Matters / Ex. 6
beck.nancy@epa.gov

From: Yamada, Richard (Yujiro)
Sent: Tuesday, February 20, 2018 7:06 PM
To: Beck, Nancy <Beck.Nancy@epa.gov>
Cc: Woods, Clint <woods.clint@epa.gov>
Subject: Re: latest version

I believe this is latest - thanks

<https://www.congress.gov/115/bills/hr1430/BILLS-115hr1430rfs.pdf>

Sent from my iPhone

On Feb 20, 2018, at 6:48 PM, Beck, Nancy <Beck.Nancy@epa.gov> wrote:

Do either of you have the most recent version of the secret science bill?

Thanks.

Nancy B. Beck, Ph.D., DABT
Deputy Assistant Administrator, OCSP
P: 202-564-1273
M: Personal Matters / Ex. 6
beck.nancy@epa.gov

From: Yamada, Richard (Yujiro)
Sent: Thursday, February 15, 2018 6:13 PM
To: Beck, Nancy <Beck.Nancy@epa.gov>; Woods, Clint
<woods.clint@epa.gov>
Cc: Schwab, Justin <Schwab.Justin@epa.gov>; Bolen, Brittany
<bolen.brittany@epa.gov>; Feeley, Drew (Robert)
<Feeley.Drew@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>
Subject: latest version

(this email contains deliberative and pre-decisional information)

Deliberative Process / Ex. 5

Thanks much,

Richard

Richard Yamada
Deputy Assistant Administrator
Office of Research and Development
U.S. Environmental Protection Agency

Phone Personal Matters / Ex. 6
yamada.richard@epa.gov

May 22, 2018

MEMORANDUM FOR THE WHITE HOUSE STAFF SECRETARY AND CABINET SECRETARY

FROM: Ryan Jackson, Chief of Staff, U.S. Environmental Protection Agency

SUBJECT: Environmental Protection Agency 30-Day Look Ahead for the Week of May 21, 2018

A. Events/Travel

- **May 22** – PFAS National Dialogue Meeting (DC)
- **May 23** – Speaking Engagement: Aerospace Industries Association (WV)
- **June 1** – Speaking Engagement: Delta Council (MS)
- **June 4** – Speaking Engagement: American Agri-Women DC Fly-In (DC)
- **June 8** – Speaking Engagement: Faith & Freedom Coalition Conference (DC)
- **June 8** – Speaking Engagement: Western Conservatives Summit (CO)
- **June 15** – Weirton Brownfields Grant, Mine Visit (WV)
- **June 25-26** – CEC Council Session: Mexican, American, and Canadian Environmental Ministers Annual Meeting Hosted by U.S.

B. Top News

- **Summit, state visits will lead to national plan to manage PFAS** ([Detroit Free Press](#), 5/22/18): “Today, I will kick off the agency’s first-of-its-kind National Leadership Summit on PFAS at EPA headquarters in Washington, D.C. Representatives from more than 35 states – including Michigan – more than 20 federal partners, several tribes, dozens of industry, non-governmental groups and other national organizations will share valuable recommendations for how EPA should deal with PFAS in communities and communicate the risks associated with PFAS. Our summit gives states, tribes and stakeholders a key voice in the EPA’s efforts. It also gives our federal partners an opportunity to share their expertise and coordinate actions.”
- **EPA adds defunct San Antonio facility site to cleanup priority list** ([Fox San Antonio](#), 5/15/18): “The Environmental Protection Agency is working on a plan to clean up a hazardous waste site on the west side. The EPA says there are very high levels of chromium in the groundwater under a piece of land on Potranco Road about a mile outside Loop 1604. The site has been added to the EPA’s National Priority List, which is part of the Superfund program. Patillo estimates anywhere from 300 to 400 people live in the neighborhood.”
- **EPA sends air quality monitors to Hawaii Island** ([West Hawaii Today](#), 5/17/18): “The U.S. Environmental Protection Agency has deployed emergency responders and air monitoring equipment to Hawaii Island as part of the Federal Emergency Management Agency’s response to the Kilauea volcano eruption, according to a press release from the EPA. The EPA is also sending experts to analyze public health threats from volcanic gas emissions and to assist with data management support. The EPA is augmenting the multi-agency air monitoring efforts of acute threats to public health from the emission of volcanic gases. The agency is also working with the Hawaii Department of Health staff to evaluate

locations for additional air quality monitoring stations, as well as to integrate the multi-agency air quality data collection efforts by US Geological Survey/National Park Service, County of Hawaii, state Civil Defense and state Department of Health. EPA has deployed four staff and will mobilize additional equipment and personnel to support 12 monitoring stations for sulfur dioxide, hydrogen sulfide and particulates and support DOH requests for assistance in collecting, managing and interpreting air monitoring data.”

C. Policy Updates

1. **PFAS SUMMIT:** On May 22 and 23, EPA is hosting a National Leadership Summit on per- and poly-fluoroalkyl substances (PFAS). On the first day of the summit, Administrator Pruitt presented the keynote speech to announce EPA’s four-step action plan. First, EPA will initiate steps to evaluate the need for a maximum contaminant level (MCL) for PFOA and PFOS. Second, EPA is beginning the necessary steps to consider a proposal designating PFOA and PFOS as “hazardous substances” through one of the available statutory mechanisms, including potentially CERCLA Section 102. Third, EPA is currently developing groundwater cleanup recommendations for PFOA and PFOS at contaminated sites and will complete this task by fall of this year. Fourth, EPA is taking action in close collaboration with our federal and state partners to develop toxicity values for GenX and PFBS.

Contact: Lee Forsgren, Office of Water, Forsgren.Lee@epa.gov

2. **SCIENCE TRANSPARENCY:** Consistent with Executive Orders 13777 and 13783, on April 24, 2018, Administrator Pruitt signed a proposed rule to strengthen the science used in regulations issued by EPA. The rule would ensure that the regulatory science underlying agency actions is fully transparent, and will require that the underlying scientific information be publicly available, in a manner sufficient for independent validation. This action builds upon prior EPA actions in response to government-wide data access and sharing policies, as well as the experience of other federal agencies in this space.

Timing: This week, EPA plans to publish a Federal Register notice extending the comment deadline for the proposed rule from May 30 to August 16. The same notice will announce a public hearing on July 17 at EPA Headquarters.

Contact: Richard Yamada, Office of Research and Development, Yamada.Richard@epa.gov

3. **CLEAN POWER PLAN:** Consistent with Executive Order 13783, in March 2017, Administrator Pruitt announced EPA’s review of the Clean Power Plan (CPP). In October, EPA issued a proposed rule to repeal the CPP. On December 18, EPA issued an Advanced Notice of Proposed Rulemaking (ANPRM) on a potential rule that would establish emission guidelines for states to establish performance standards for GHG emissions from existing Electric Generating Units (EGUs).

Timing: EPA plans to send the proposed repeal to OMB in June.

Contact: Mandy Gunasekara, Office of Air and Radiation, Gunasekara.Mandy@epa.gov

4. **DEFINITION OF “WATERS OF THE UNITED STATES”:** Consistent with Executive Order 13778, EPA and the U.S. Army Corps of Engineers are using a three-step process to review the 2015 rule defining “Waters of the United States” (WOTUS). In Step 0, the

agencies extended the applicability date for the rule by 2 years. In Step 1, the agencies are withdrawing the rule and re-codifying the status quo. In Step 2, the agencies are reviewing and revising the definition consistent with this administration's policy. In June 2017, the agencies issued the Step 1 proposed rule. In November, the agencies issued the Step 0 proposed rule. In January, the agencies issued the Step 0 final rule. On April 11, the agencies sent a supplemental notice for the Step 1 proposed rule to OMB.

Timing: The agencies plan to issue the supplemental notice for the Step 1 proposed rule and send a Step 2 proposed rule to OMB in May.

Contact: Dave Ross, Office of Water, Ross.DavidP@epa.gov

- 5. RISK MANAGEMENT PROGRAM:** The original Risk Management Program (RMP) rule was issued in 1996, and has been modified 5 times. The prior administration issued a rule to amend the RMP regulations that raised concerns related to national security, inconsistencies with the Process Safety Management (PSM) standards issued by OSHA, and unnecessary burdens on local communities. In March 2017, Administrator Pruitt granted reconsideration of the RMP rule in response to petitions from two industry groups and one from a group of states, and issued a 90-day administrative stay of the rule. In June, EPA published a final rule to further delay the effective date of the rule until February 19, 2019. On May 17, EPA issued a reconsideration proposed rule. The proposed rule: (1) rescinds requirements for third-party audits, STAA, root cause analysis; (2) revises the requirements for local coordination and emergency exercises; (3) rescinds requirements for information availability while strengthening provisions that require a public meeting after an incident; and (4) extends compliance dates.

Timing: EPA plans to host a public hearing on the reconsideration proposed rule on June 14.

Contact: Steven Cook, Office of Land and Emergency Management, Cook.Steven@epa.gov

- 6. COAL COMBUSTION RESIDUALS:** In response to petitions for rulemaking from the utility industry, EPA decided in September 2017 to reconsider provisions of the final 2015 rule regulating the disposal of coal combustion residuals (CCR) as nonhazardous waste in light of the issues raised in the petitions and the Water Infrastructure Improvements for the Nation Act (WIIN Act), which includes provisions authorizing state regulatory programs and providing EPA new oversight authority. EPA issued a proposed rule to modify several provisions of the 2015 CCR rule to respond to a June 2016 voluntary remand ("remand rule"). In addition to the specific issues subject to the remand, EPA has drafted additional proposed changes to the CCR rule as part of the remand rule to address many of the issues stakeholders raised in their petitions. On March 1, 2018, Administrator Pruitt signed the first of two rules (Phases 1 and 2) that amend the 2015 CCR rule.

Timing: EPA plans to send a Phase 1 partial final rule to OMB in May.

Contact: Byron Brown, Brown.Byron@epa.gov

- 7. COST-BENEFIT REFORM:** On April 10, 2018, Administrator Pruitt announced a forthcoming Advanced Notice of Proposed Rulemaking (ANPRM) to consider proposing regulations on cost-benefit reform. Under the Obama administration, EPA used questionable methods, like the social cost of greenhouse gases and relying on "co-benefits," to inflate the purported benefits of its regulations and underestimate the true costs (as in the case of the Clean Power Plan). Additionally, several EPA statutes refer to the calculation of costs and

benefits, but implementation has been inconsistent. This has led to EPA creating uncertainty for the regulated community. On April 11, EPA sent the ANPRM to OMB.

Timing: EPA plans to issue the ANPRM on June 7, 2018.

Contact: Brittany Bolen, Office of Policy, Bolen.Brittany@epa.gov

- 8. MID-TERM EVALUATION (MTE) OF GREENHOUSE GAS STANDARDS FOR LIGHT-DUTY VEHICLES:** On April 2, 2018, Administrator Pruitt signed the new Midterm Evaluation (MTE) for the GHG emissions standards established for light-duty vehicles model years 2022-2025. The final determination found that, in light of recent data, the current standards are not appropriate and should be revised.

Timing: Administrator Pruitt announced the start of a joint process with the National Highway Traffic Safety Administration (NHTSA) to develop a notice and comment rulemaking to set more appropriate GHG emissions standards and Corporate Average Fuel Economy (CAFE) standards. The agencies plan to issue a joint proposed rule in the early summer.

Contact: Bill Wehrum, Office of Air and Radiation, Wehrum.Bill@epa.gov

- 9. OIL AND GAS NSPS:** Consistent with Executive Order 13783, in April 2017, Administrator Pruitt announced EPA's reconsideration of several aspects of the 2016 oil and gas New Source Performance Standards (NSPS). On March 1, 2018, EPA amended two provisions of the 2016 oil and gas NSPS to address immediate concerns with the fugitive emission requirements. On April 27, EPA sent the reconsideration proposed rule to OMB.

Timing: EPA plans to propose a technical package as part of the reconsideration of the 2016 oil and gas NSPS before it proposes a substantive policy package in June 2018.

Contact: Mandy Gunasekara, Office of Air and Radiation, Gunasekara.Mandy@epa.gov

- 10. TSCA PROBLEM FORMULATION DOCUMENTS:** Under the amended Toxic Substances Control Act (TSCA), EPA is required to release problem formulation documents that describe exposure scenarios and populations that will be included in risk evaluations for various chemicals.

Timing: Within the next few weeks, EPA will release for public comment the draft problem formulations for the first 10 chemicals undergoing risk evaluations: 1, 4 Dioxane, 1-Bromopropane, Asbestos, Carbon Tetrachloride, Cyclic Aliphatic Bromide Cluster (HBCD), Methylene Chloride, N-Methylpyrrolidone, Pigment Violet 29, Trichloroethylene, and Tetrachloroethylene.

Contact: Nancy Beck, Office of Chemical Safety and Pollution Prevention, Beck.Nancy@epa.gov

- 11. TSCA – LAUTENBERG ACT 2ND YEAR ANNIVERSARY:** Under the amended TSCA, EPA is required to meet more milestones which are coming due for its second anniversary of enactment, June 22, 2018. Those new milestones are the following:

- Mercury Use Reporting Rule: EPA will finalize reporting deadlines and requirements to assist in updating the inventory of mercury supply, use, and trade in the U.S.
- Alternative Animal Testing Strategy: EPA will issue a strategy to promote the development of alternative test methods to reduce vertebrate animal testing. On March 7, 2018, EPA released the draft strategy for public comment.

- Guidance on Generic Names: EPA will issue guidance regarding the determination of structurally descriptive generic names for chemicals.
- Policy on Unique Identifiers: EPA will issue a policy for assigning unique identifiers to chemicals and applying those identifiers to other information concerning the same chemical.
- Guidance on Confidential Business Information: EPA will issue guidance on expanding CBI access to states, tribes, and local governments; health and environmental professionals; and first responders.

Contact: Nancy Beck, Office of Chemical Safety and Pollution Prevention,
Beck.Nancy@epa.gov

12. TSCA – LAUTENBERG ACT FEES: Under the amended TSCA, EPA is required to institute new fees on the chemical manufactures to fund the approval program for new chemicals. On February 8, 2018, EPA issued a proposed Fees Rule to provide funding for Lautenberg Act implementation, including risk evaluations and reviewing CBI.

Timing: The original comment deadline for the fees rule was extended from April 27 to May 24. EPA will continue to work with OMB to finalize the new fees rule. The President’s Budget and the Appropriations Act propose changes to the programs’ budget anticipating this new fee structure.

Contact: Nancy Beck, Office of Chemical Safety and Pollution Prevention,
Beck.Nancy@epa.gov

13. DUST-LEAD AND LEAD-BASED PAINT: In 2009, EPA was petitioned to lower dust-lead hazard standards and modify the definition of lead-based paint. On December 27, 2017, the Ninth Circuit granted a petition for writ of mandamus to compel EPA to issue a proposed rule by March 27, 2018. On March 26, EPA received a 90-day extension to issue a proposed rule by June 24.

Timing: EPA plans to send a proposed rule to OMB in May.

Contact: Nancy Beck, Office of Chemical Safety and Pollution Prevention,
Beck.Nancy@epa.gov

14. SUPERFUND: The Superfund National Priorities List (NPL) was codified as Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) in 1983. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly known as Superfund) requires that EPA maintain the NPL and update it at least annually. On May 15, EPA signed an NPRM adding 3 sites to the NPL (Donnelsville, OH; Penuelas, Puerto Rico; Grand Prairie, TX) and a final rule adding 6 sites (Hockessin, DE; Spencer, IN; Spring Park, MN; Cheraw, SC; Dallas, TX; San Antonio, TX).

Contact: Nick Falvo, Falvo.Nick@epa.gov

D. Loans/Grants

1. NEW WIFIA LOANS

A. \$280,000,000 TO THE BALTIMORE CITY DEPARTMENT OF PUBLIC WORKS: The Baltimore City Department of Public Works was selected to receive a

WIFIA loan to complete a set of projects to repair, rehabilitate, replace, and upgrade its wastewater collection and treatment, water treatment and distribution, and stormwater management systems. These projects will help improve the city's sanitary sewer collection system; ensure the reliability and performance of the drinking water and wastewater systems; and improve stormwater management to meet Clean Water Act permit requirements.

Timing: EPA plans to issue this loan in the summer.

Contact: Lee Forsgren, Office of Water, Forsgren.Lee@epa.gov

- B. \$436,000,000 TO THE INDIANA FINANCE AUTHORITY:** The Indiana Finance Authority was selected to receive a WIFIA loan to expand the reach of its Clean Water and Drinking Water State Revolving Fund programs and fund dozens of additional projects in communities across the state.

Timing: EPA plans to issue this loan in the summer.

Contact: Lee Forsgren, Office of Water, Forsgren.Lee@epa.gov

- C. \$69,000,000 TO THE CITY OF OMAHA:** The City of Omaha was selected to receive a WIFIA loan to construct a new retention treatment basin to address combined sewer overflows in the Saddle Creek Basin as required by the city's consent decree, Clean Water Act permit, and long-term control plan. This project will address water quality concerns in Papillion Creek and the Missouri River by removing an estimated 1.2 billion gallons of combined sewage discharged into the Little Papillion Creek and removing floatables and other solids from combined sewer overflows.

Timing: EPA plans to issue this loan in the early summer.

Contact: Lee Forsgren, Office of Water, Forsgren.Lee@epa.gov

- D. \$706,000,000 TO THE SAN FRANCISCO PUBLIC UTILITY COMMISSION:** The San Francisco Public Utility Commission was selected to receive a WIFIA loan to replace its existing, outdated 60-year old solids treatment facilities with infrastructure that produces higher-quality Class A biosolids; captures and treat odors more effectively; and maximizes biogas utilization and energy recovery. This project will provide a new efficient solids treatment system to maintain regulatory compliance; ensure treatment reliability by meeting current seismic standards and improving standard operations; and provide advanced odor control and reduce impact on the adjacent community.

Timing: EPA plans to issue this loan in July.

Contact: Lee Forsgren, Office of Water, Forsgren.Lee@epa.gov

- 2. \$285,744 TO THE COALITION TO RESTORE COASTAL COALITION:** These funds will help restore or enhance coastal swamp forest habitat near the city of New Orleans and provide volunteer opportunities that are accessible and accommodating to urban communities. This project will engage approximately 300 volunteers in adding 5,000 or more native swamp forest trees to restore or enhance at least 25 acres of cypress-tupelo swamp habitat.

Timing: EPA will issue a press release on May 23.

3. **\$267,100 TO THE ARKANSAS DEPARTMENT OF HEALTH:** The agreement assists the state of Arkansas to develop and implement a public water system supervision program to adequately enforce the National Primary Drinking Water Regulations and the requirements of the Safe Drinking Water Act. Specific activities include: developing state drinking water regulations no less stringent than the federal regulations, maintaining an inventory of drinking water systems, managing information on public water systems, ensuring that public participation occurs regarding drinking water systems, providing technical assistance to public water systems and enforcing drinking water regulations.
Timing: EPA will issue a press release on May 30.
4. **\$321,521 TO THE ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY:** This agreement will provide assistance to the Arkansas Department of Environmental Quality (ADEQ) in its efforts to implement air pollution control programs throughout the State of Arkansas, including continuing development and implementation of stationary source regulations; continuing promulgation and update of enhanced mobile source regulations; improvement of emission inventories for modeling simulations; and to operate a monitoring network that collects air data. These activities are to improve and maintain the public's air quality.
Timing: EPA will issue a press release on May 30.
5. **\$821,775 TO THE ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY:** This agreement provides funding to the State of Arkansas to carry out its program to maintain, protect, and improve the water quality of its rivers, lakes, streams, groundwater, and other waterbodies. The environmental benefits of this program include preventing degradation of unimpaired waterbodies and reducing the number of impaired waterbodies in the state. Activities include: monitoring, standard-setting, TMDLs, surface and ground water enforcement and compliance activities and other water quality-related activities.
Timing: EPA will issue a press release on May 30.
6. **\$2,170,000 TO THE NEW YORK STATE DEPARTMENT OF HEALTH:** The agreement assists the New York State Department of Health in the implementation of its program to oversee and enforce drinking water programs and systems across the state. This includes: conducting annual reviews and sanitary surveys at all public water systems, providing technical project assistance, enforcing compliance with safe drinking water regulations.
Timing: EPA will issue a press release on May 31.
7. **\$149,600 TO THE ST. REGIS MOHAWK TRIBE (NEW YORK):** This agreement provides ongoing funding to the Saint Regis Mohawk Tribe to conduct activities that are not assignable to specific sites, but will support the recipient's site-specific hazardous waste response program. This includes training, development of non-site-specific plans and procedures, and the acquisition of equipment and supplies.
Timing: EPA will issue a press release on June 6.

E. Legal Actions

- 1. AIR ALLIANCE HOUSTON, ET AL. v. EPA (D.C. CIR.) – TWO-YEAR DELAY OF EFFECTIVE DATE IN RISK MANAGEMENT PROGRAM AMENDMENTS RULE:** On March 23, the Court ordered EPA to submit a comprehensive list of pre-2017 examples where any federal agencies have issued final notice-and-comment regulations (i) that change the effective or compliance dates for an earlier final regulation and (ii) that explicitly justify the change to the effective or compliance dates because the agency is reconsidering its earlier final regulation. EPA’s response to the March 23 order was filed on April 6, 2018, and Petitioners’ filed a response on April 16.
Timing: Awaiting action by the court.
Contact: David Fotouhi, Deputy General Counsel, Fotouhi.David@epa.gov
- 2. JULIANA v. UNITED STATES (D. OR./9TH CIR). MANDAMUS PROCEEDINGS – CLIMATE-CHANGE LITIGATION WITH CONSTITUTIONAL CLAIMS:** This case is a broad-based challenge alleging that EPA and the US government allowed excessive CO2 emissions from burning fossil fuel that have contributed to climate change. On May 9, DOJ filed a motion for judgment on the pleadings, moved for a protective order, and moved to stay discovery.
Timing: Oral argument is set for May 23 via telephonic conference. A status conference is set for June 6, 2018 in Oregon.
Contact: Justin Schwab, Deputy General Counsel, Schwab.Justin@epa.gov
- 3. NATIONAL PARKS CONSERVATION ASSOCIATION v. EPA (D.D.C.) – TEXAS REGIONAL HAZE & INTERSTATE POLLUTION TRANSPORT:** Under two consent decrees entered in separate deadline/mandatory duty suits under the previous administration, EPA must either issue a Federal Implementation Plan (FIP) or approve a State Implementation Plan (SIP), to satisfy the Clean Air Act’s requirements for Texas’s obligations under (1) the Best Available Retrofit Technology (BART) prong of the Regional Haze program (the *National Parks* case), and (2) the “good neighbor” provision addressing interstate pollution transport (the *Sierra Club* case). EPA issued a FIP on September 29, 2017. Plaintiffs on October 13, 2017 filed a statement of position and motion to enforce the consent decree, arguing that the FIP did not satisfy EPA’s consent decree obligations. DOJ filed a response and a motion to terminate the consent decree on October 25, 2017. On March 6, 2018, the Court issued a Minute Order staying this case.
Timing: The Court will continue the stay in this case. EPA must notify the Court within a week of the publication of the notice of proposed rulemaking in the Federal Register, or file a status report on June 22, 2018 if nothing has been filed by that date.
Contact: Justin Schwab, Deputy General Counsel, Schwab.Justin@epa.gov
- 4. SAFER CHEMICALS HEALTHY FAMILIES v. EPA (9TH Cir.) – CHALLENGE TO TSCA PRIORITIZATION RULE AND RISK EVALUATION RULE:** On November 27, 2017, the Ninth Circuit denied EPA’s motion to transfer the petitions for review of the TSCA prioritization rule to the Fourth Circuit. The court consolidated the various challenges to the TSCA framework rules and then issued a briefing schedule. Petitioners filed their opening brief on April 16, 2018.

Timing: EPA's response brief is due on July 5, 2018.

Contact: David Fotouhi, Deputy General Counsel, Fotouhi.David@epa.gov

- 5. MEXICHEM FLUOR, INC. v. EPA (D.C. CIR.) – CHALLENGE TO 2015 CLEAN AIR ACT RULE ON SUBSTITUTES FOR OZONE-DEPLETING SUBSTANCES:** On July 20, 2015, EPA published a final rule, "Protection of Stratospheric Ozone: Change of Listing Status for Certain Substitutes under the Significant New Alternatives Policy Program." The rule was challenged by Mexichem and Arkema, two chemical producers. On August 8, 2017, in *Mexichem Fluor v. EPA*, the U.S. Court of Appeals for the D.C. Circuit remanded the rule in part and vacated the rule in part.

Timing: On March 12, 2018, the D.C. Circuit received notice from the U.S. Supreme Court that the time within which to file a petition for writ of certiorari has been extended to June 25, 2018.

Contact: Erik Baptist, Senior Deputy General Counsel, Baptist.Erik@epa.gov

Message

From: Jackson, Ryan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=38BC8E18791A47D88A279DB2FEC8BD60-JACKSON, RY]
Sent: 5/22/2018 8:14:01 PM
To: Konkus, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=555471b2baa6419e8e141696f4577062-Konkus, Joh]; Gordon, Stephen [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7c8fb4d82bff4eec98f5c5d00a47f554-Gordon, Ste]
CC: Dickerson, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d0440d9f06994021827e0d0119126799-Dickerson,]
Subject: FW: EPA 30-Day Look Ahead 05.21.2018.docx
Attachments: EPA 30-Day Look Ahead 05.22.2018.docx

For tomorrow's 4:30.

May 21, 2018

MEMORANDUM FOR THE WHITE HOUSE STAFF SECRETARY AND CABINET SECRETARY

FROM: Ryan Jackson, Chief of Staff, U.S. Environmental Protection Agency

SUBJECT: Environmental Protection Agency 30-Day Look Ahead for the Week of May 21, 2018

A. Events/Travel

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- **June 8** – Speaking Engagement: Faith & Freedom Coalition Conference (DC)
- **June 8** – Speaking Engagement: Western Conservatives Summit (CO)
- **June 15** – West Virginia: Weirton Brownfields Grant, Mine Visit
- **June 25-26** – CEC Council Session: Mexican, American, and Canadian Environmental Ministers annual meeting hosted by US.

B. Top News

- **Summit, state visits will lead to national plan to manage PFAS** (Detroit Free Press, 5/22/18): “Today, I will kick off the agency’s first-of-its-kind National Leadership Summit on PFAS at EPA headquarters in Washington, D.C. Representatives from more than 35 states – including Michigan – more than 20 federal partners, several tribes, dozens of industry, non-governmental groups and other national organizations will share valuable recommendations for how EPA should deal with PFAS in communities and communicate the risks associated with PFAS. Our summit gives states, tribes and stakeholders a key voice in the EPA’s efforts. It also gives our federal partners an opportunity to share their expertise and coordinate actions.”
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emissions and to assist with data management support. The EPA is augmenting the multi-agency air monitoring efforts of acute threats to public health from the emission of volcanic gases. The agency is also working with the Hawaii Department of Health staff to evaluate locations for additional air quality monitoring stations, as well as to integrate the multi-agency air quality data collection efforts by US Geological Survey/National Park Service, County of Hawaii, state Civil Defense and state Department of Health. EPA has deployed four staff and will mobilize additional equipment and personnel to support 12 monitoring stations for sulfur dioxide, hydrogen sulfide and particulates and support DOH requests for assistance in collecting, managing and interpreting air monitoring data.”

C. Policy Updates

1. **PFAS SUMMIT:** On May 22 and 23, EPA is hosting a National Leadership Summit on per- and poly-fluoroalkyl substances (PFAS). On the first day of the summit, Administrator Pruitt presented the keynote speech to announce EPA’s four-step action plan. First, EPA will initiate steps to evaluate the need for a maximum contaminant level (MCL) for PFOA and PFOS. Second, EPA is beginning the necessary steps to consider a proposal designating PFOA and PFOS as “hazardous substances” through one of the available statutory mechanisms, including potentially CERCLA Section 102. Third, EPA is currently developing groundwater cleanup recommendations for PFOA and PFOS at contaminated sites and will complete this task by fall of this year. Fourth, EPA is taking action in close collaboration with our federal and state partners to develop toxicity values for GenX and PFBS.

Contact: Lee Forsgren, Office of Water, Forsgren.Lee@epa.gov

2. **SCIENCE TRANSPARENCY:** Consistent with Executive Orders 13777 and 13783, on April 24, 2018, Administrator Pruitt signed a proposed rule to strengthen the science used in regulations issued by EPA. The rule would ensure that the regulatory science underlying agency actions is fully transparent, and will require that the underlying scientific information be publicly available, in a manner sufficient for independent validation. This action builds upon prior EPA actions in response to government-wide data access and sharing policies, as well as the experience of other federal agencies in this space.

Timing: This week, EPA plans to publish a Federal Register notice extending the comment deadline for the proposed rule from May 30 to August 16. The same notice will announce a public hearing on July 17 at EPA Headquarters.

Contact: Richard Yamada, Office of Research and Development, Yamada.Richard@epa.gov

3. **CLEAN POWER PLAN:** Consistent with Executive Order 13783, in March 2017, Administrator Pruitt announced EPA’s review of the Clean Power Plan (CPP). In October, EPA issued a proposed rule to repeal the CPP. On December 18, EPA issued an Advanced Notice of Proposed Rulemaking (ANPRM) to open a 60-day comment period on a potential rule that would establish emission guidelines for states to establish performance standards for GHG emissions from existing Electric Generating Units (EGUs). The comment period for the proposed repeal closed on April 26.

Timing: EPA plans to send the proposed repeal to OMB in June.

Contact: Mandy Gunasekara, Office of Air and Radiation, Gunasekara.Mandy@epa.gov

- 4. DEFINITION OF “WATERS OF THE UNITED STATES”:** Consistent with Executive Order 13778, EPA and the U.S. Army Corps of Engineers are using a three-step process to review the 2015 rule defining “Waters of the United States” (WOTUS). In Step 0, the agencies extended the applicability date for the rule by 2 years. In Step 1, the agencies are withdrawing the rule and re-codifying the status quo. In Step 2, the agencies are reviewing and revising the definition consistent with this administration’s policy. In June 2017, the agencies issued the Step 1 proposed rule. On November 16, the agencies issued the Step 0 proposed rule. In January, the agencies issued the Step 0 final rule in the Federal Register. On April 11, the agencies sent a supplemental notice for the Step 1 proposed rule to OMB. **Timing:** The agencies plan to sign the supplemental notice for the Step 1 proposed rule and send a Step 2 proposed rule to OMB in May. **Contact:** Dave Ross, Office of Water, Ross.DavidP@epa.gov
- 5. RISK MANAGEMENT PROGRAM:** The original Risk Management Program (RMP) rule was issued in 1996, and has been modified 5 times. The prior administration issued a rule to amend the RMP regulations that raised concerns related to national security, inconsistencies with the Process Safety Management (PSM) standards issued by OSHA, and unnecessary burdens on local communities. In March 2017, Administrator Pruitt granted reconsideration of the RMP rule in response to petitions from two industry groups and one from a group of states, and issued a 90-day administrative stay of the rule. In June, EPA published a final rule to further delay the effective date of the rule until February 19, 2019. On March 9, EPA sent a draft reconsideration proposed rule to OMB for interagency review. The proposed rule: (1) rescinds requirements for third-party audits, STAA, root cause analysis; (2) revises the requirements for local coordination and emergency exercises; (3) rescinds requirements for information availability while strengthening provisions that require a public meeting after an incident; and (4) extends compliance dates. **Timing:** EPA plans host a public hearing on the reconsideration proposed rule on June 14. **Contact:** Veronica Darwin, Office of Land and Emergency Management, Darwin.Veronica@epa.gov
- 6. COAL COMBUSTION RESIDUALS:** In response to petitions for rulemaking from the utility industry, EPA decided in September 2017 to reconsider provisions of the final 2015 rule regulating the disposal of coal combustion residuals (CCR) as nonhazardous waste in light of the issues raised in the petitions and the Water Infrastructure Improvements for the Nation Act (WIIN Act), which includes provisions authorizing state regulatory programs and providing EPA new oversight authority. EPA issued a proposed rule to modify several provisions of the 2015 CCR rule to respond to a June 2016 voluntary remand (“remand rule”). In addition to the specific issues subject to the remand, EPA has drafted additional proposed changes to the CCR rule as part of the remand rule to address many of the issues stakeholders raised in their petitions. On March 1, 2018, Administrator Pruitt signed the first of two rules (Phases 1 and 2) that amend the 2015 CCR rule. The comment period for the proposed rule closed on April 30. **Timing:** EPA plans to send a Phase 1 partial final rule to OMB in May. **Contact:** Byron Brown, Brown.Byron@epa.gov

7. **COST-BENEFIT REFORM:** On April 10, 2018, Administrator Pruitt announced a forthcoming Advanced Notice of Proposed Rulemaking (ANPRM) to consider proposing regulations on cost-benefit reform. Under the Obama administration, EPA used questionable methods, like the social cost of greenhouse gases and relying on “co-benefits,” to inflate the purported benefits of its regulations and underestimate the true costs (as in the case of the Clean Power Plan). Additionally, several EPA statutes refer to the calculation of costs and benefits, but implementation has been inconsistent. This has led to EPA creating uncertainty for the regulated community. On April 11, EPA sent the ANPRM to OMB.
Timing: EPA plans to issue the ANPRM on June 7, 2018.
Contact: Brittany Bolen, Office of Policy, Bolen.Brittany@epa.gov
8. **MID-TERM EVALUATION (MTE) OF GREENHOUSE GAS STANDARDS FOR LIGHT-DUTY VEHICLES:** On April 2, 2018, Administrator Pruitt signed the new Midterm Evaluation (MTE) for the GHG emissions standards established for light-duty vehicles model years 2022-2025. The final determination found that, in light of recent data, the current standards are not appropriate and should be revised.
Timing: Administrator Pruitt announced the start of a joint process with the National Highway Traffic Safety Administration (NHTSA) to develop a notice and comment rulemaking to set more appropriate GHG emissions standards and Corporate Average Fuel Economy (CAFE) standards. The agencies plan to issue a joint proposed rule in the early summer.
Contact: Bill Wehrum, Office of Air and Radiation, Wehrum.Bill@epa.gov
9. **OIL AND GAS NSPS:** Consistent with Executive Order 13783, in April 2017, Administrator Pruitt announced EPA’s reconsideration of several aspects of the 2016 oil and gas New Source Performance Standards (NSPS). On March 1, 2018, EPA amended two provisions of the 2016 oil and gas NSPS to address immediate concerns with the fugitive emission requirements. On April 27, EPA sent the reconsideration proposed rule to OMB.
Timing: EPA plans to propose a technical package as part of the reconsideration of the 2016 oil and gas NSPS before it proposes a substantive policy package in June 2018.
Contact: Mandy Gunasekara, Office of Air and Radiation, Gunasekara.Mandy@epa.gov
10. **TSCA PROBLEM FORMULATION DOCUMENTS:** Under the amended Toxic Substances Control Act (TSCA), EPA is required to release problem formulation documents that describe exposure scenarios and populations that will be included in risk evaluations for various chemicals.
Timing: Within the next few weeks, EPA will release for public comment the draft problem formulations for the first 10 chemicals undergoing risk evaluations: 1, 4 Dioxane, 1-Bromopropane, Asbestos, Carbon Tetrachloride, Cyclic Aliphatic Bromide Cluster (HBCD), Methylene Chloride, N-Methylpyrrolidone, Pigment Violet 29, Trichloroethylene, and Tetrachloroethylene.
Contact: Nancy Beck, Office of Chemical Safety and Pollution Prevention, Beck.Nancy@epa.gov

11. TSCA – LAUTENBERG ACT 2ND YEAR ANNIVERSARY: Under the amended TSCA, EPA is required to meet more milestones which are coming due for its second anniversary of enactment, June 22, 2018. Those new milestones are the following:

- Mercury Use Reporting Rule: EPA will finalize reporting deadlines and requirements to assist in updating the inventory of mercury supply, use, and trade in the U.S.
- Alternative Animal Testing Strategy: EPA will issue a strategy to promote the development of alternative test methods to reduce vertebrate animal testing. On March 7, 2018, EPA released the draft strategy for public comment.
- Guidance on Generic Names: EPA will issue guidance regarding the determination of structurally descriptive generic names for chemicals.
- Policy on Unique Identifiers: EPA will issue a policy for assigning unique identifiers to chemicals and applying those identifiers to other information concerning the same chemical.
- Guidance on Confidential Business Information: EPA will issue guidance on expanding CBI access to states, tribes, and local governments; health and environmental professionals; and first responders.

Contact: Nancy Beck, Office of Chemical Safety and Pollution Prevention,
beck.nancy@epa.gov.

12. TSCA – LAUTENBERG ACT FEES: Under the amended TSCA, EPA is required to institute new fees on the chemical manufactures to fund the approval program for new chemicals. On February 8, 2018, EPA issued a proposed Fees Rule to provide funding for Lautenberg Act implementation, including risk evaluations and reviewing CBI.

Timing: The original comment deadline for the fees rule was extended from April 27 to May 24. EPA will continue to work with OMB to finalize the new fees rule. The President's Budget and the Appropriations Act propose changes to the programs' budget anticipating this new fee structure.

Contact: Nancy Beck, Office of Chemical Safety and Pollution Prevention,
beck.nancy@epa.gov.

13. DUST-LEAD AND LEAD-BASED PAINT: In 2009, EPA was petitioned to lower dust-lead hazard standards and modify the definition of lead-based paint. On December 27, 2017, the Ninth Circuit granted a petition for writ of mandamus to compel EPA to issue a proposed rule by March 27, 2018. On March 26, EPA received a 90-day extension to issue a proposed rule.

Timing: EPA plans to send a proposed rule to OMB in May.

Contact: Nancy Beck, Office of Chemical Safety and Pollution Prevention,
Beck.Nancy@epa.gov

14. SUPERFUND: The Superfund National Priorities List (NPL) was codified as Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) in 1983. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly known as Superfund) requires that EPA maintain the NPL and update it at least annually. On May 15, EPA signed an NPRM adding 3 sites to the NPL (Donnelsville, OH; Penuelas, Puerto Rico; Grand Prairie, TX) and a final rule adding 6 sites (Hockessin, DE; Spencer, IN; Spring Park, MN; Cheraw, SC; Dallas, TX; San Antonio, TX).

Contact: Nick Falvo, Falvo.Nick@epa.gov

D. Grants/Loans

1. NEW WIFIA LOANS

- 2. \$285,744 TO THE COALITION TO RESTORE COASTAL COALITION:** These funds will help restore or enhance coastal swamp forest habitat near the city of New Orleans and provide volunteer opportunities that are accessible and accommodating to urban communities. This project will engage approximately 300 volunteers in adding 5,000 or more native swamp forest trees to restore or enhance at least 25 acres of cypress-tupelo swamp habitat.

Timing: EPA will issue a press release on May 23.

- 3. \$267,100 TO THE ARKANSAS DEPARTMENT OF HEALTH:** The agreement assists the state of Arkansas to develop and implement a public water system supervision program to adequately enforce the National Primary Drinking Water Regulations and the requirements of the Safe Drinking Water Act. Specific activities include: developing state drinking water regulations no less stringent than the federal regulations, maintaining an inventory of drinking water systems, managing information on public water systems, ensuring that public participation occurs regarding drinking water systems, providing technical assistance to public water systems and enforcing drinking water regulations.

Timing: EPA will issue a press release on May 30.

- 4. \$321,521 TO THE ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY:** This agreement will provide assistance to the Arkansas Department of Environmental Quality (ADEQ) in its efforts to implement air pollution control programs throughout the State of Arkansas, including continuing development and implementation of stationary source regulations; continuing promulgation and update of enhanced mobile source regulations; improvement of emission inventories for modeling simulations; and to operate a monitoring network that collects air data. These activities are to improve and maintain the public's air quality.

Timing: EPA will issue a press release on May 30.

- 5. \$821,775 TO THE ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY:** This agreement provides funding to the State of Arkansas to carry out its program to maintain, protect, and improve the water quality of its rivers, lakes, streams, groundwater, and other waterbodies. The environmental benefits of this program include preventing degradation of unimpaired waterbodies and reducing the number of impaired waterbodies in the state. Activities include: monitoring, standard-setting, TMDLs, surface and ground water enforcement and compliance activities and other water quality-related activities.

Timing: EPA will issue a press release on May 30.

- 6. \$2,170,000 TO THE NEW YORK STATE DEPARTMENT OF HEALTH:** The agreement assists the New York State Department of Health in the implementation of its

program to oversee and enforce drinking water programs and systems across the state. This includes: conducting annual reviews and sanitary surveys at all public water systems, providing technical project assistance, enforcing compliance with safe drinking water regulations.

Timing: EPA will issue a press release on May 31.

7. **\$35,397 TO THE DEPARTMENT OF PUBLIC HEALTH FOR DAYTON & MONTGOMERY COUNTY, OHIO:** The Regional Air Pollution Control Agency (RAPCA) will implement a comprehensive Air Pollution Control Program in Clark, Darke, Greene, Miami, Montgomery, and Preble counties. RAPCA will improve air quality by implementing measures to reduce stationary, area and mobile sources of air pollution in the RAPCA service counties with the goal of meeting the national ambient air quality standards. In addition, RAPCA will address air toxics, and support the State's air quality monitoring, enforcement, and permitting efforts.
Timing: EPA will issue a press release on June 4.
8. **\$45,865 TO THE HAMILTON COUNTY BOARD OF COMMISSIONERS (OHIO):** Hamilton County will implement a comprehensive Air Pollution Control Program in the County's program area. The recipient will improve air quality by implementing measures to reduce stationary, area and mobile sources of air pollution in Hamilton County with the goal of meeting the national ambient air quality standards. In addition, the recipient will address air toxics, and support the State's air quality compliance, enforcement, and permitting efforts.
Timing: EPA will issue a press release on June 4.
9. **\$43,150 TO THE OHIO DEPARTMENT OF NATURAL RESOURCES:** The Ohio Department of Natural Resources will utilize federal funding to conduct activities related to protecting underground water sources. Responsibilities and anticipated activities include permitting for conventional Class II injection wells, witnessing all cementing operations for Class II and Class III injection wells, inspecting Class II and Class III injection wells, maintaining the Underground Injection Control (UIC) enforcement database, and ensuring that UIC enforcement actions are completed in a timely manner.
Timing: EPA will issue a press release on June 4.
10. **\$149,600 TO THE ST. REGIS MOHAWK TRIBE (NEW YORK):** This agreement provides ongoing funding to the Saint Regis Mohawk Tribe to conduct activities that are not assignable to specific sites, but will support the recipient's site-specific hazardous waste response program. This includes training, development of non-site-specific plans and procedures, and the acquisition of equipment and supplies.
Timing: EPA will issue a press release on June 6.
11. **\$40,422 TO THE BAY MILLS INDIAN COMMUNITY (MICHIGAN):** This is a Performance Partnership Grant (PPG) to the Bay Mills Indian Community (BMIC) consisting of funds for the Clean Water Act (CWA) Section 106 and Section 319. This award will enable BMIC to build tribal environmental capacity, and implement the water resource and nonpoint source programs. These activities will protect human health and the environment.

Timing: EPA will issue a press release on June 11.

E. Legal Actions

- 1. STATE OF WEST VIRGINIA, ET AL. v. EPA, NO. 15-1363 (D.C. CIR.) – CLEAN POWER PLAN – CONTINUED ABEYANCE.** On April 28, 2016, the *en banc* court issued an order holding the litigation challenging the Clean Power Plan in abeyance and instructing the parties to file briefs on the question of whether the case should remain held in abeyance or whether the court should remand the rule to the Agency. On May 15, 2017, DOJ requested that the court hold the case in abeyance pending EPA’s review of the rule. The rule’s supporters have asked the court to remand the rule to EPA. On August 8, 2017, the D.C. Circuit ordered that the case remain in abeyance. The court directed EPA to continue to file status reports. The case remains in abeyance, and EPA continues to file status reports.
Timing: EPA filed its most recent status report on May 2, and asked the court to continue to hold the case in abeyance. On May 9, parties filed notices opposing EPA’s request for continued abeyance.
Contact: Erik Baptist, Senior Deputy General Counsel, baptist.erik@epa.gov.
- 2. OHIO VALLEY ENVIRONMENTAL COALITION v. PRUITT, NO. 17-1430 (4TH CIR.) – “CONSTRUCTIVE SUBMISSION” OF “NO TMDLS” BY WEST VIRGINIA – AWAITING ACTION BY THE COURT.** In February 2017, the District Court held that EPA must approve and/or disapprove West Virginia’s “constructive submission” of no biological impairment/ionic toxicity Total Maximum Daily Loads (TMDLs) for 573 water bodies in the State. In June 2017, EPA and West Virginia negotiated a Memorandum of Agreement, which includes parameters under which the state will submit TMDLs for these water bodies. Relying on this agreement, EPA “conditionally approved” the submission of “no TMDLs,” conditioned on the state meeting its obligations under the MOA, subject to the outcome of DOJ’s appeal of the district court’s determination in the Fourth Circuit. The case is now fully briefed. Various state-government and industry associations have filed *amicus* briefs in support of EPA’s position. On appeal, EPA is arguing that (1) plaintiffs lacked standing to sue regarding all but 50 of the contested waters; (2) the district court misapplied the “constructive submission” doctrine to West Virginia, a state with a robust TMDL program that is working to complete the TMDLs at issue; and (3) the district court’s decision was based on flawed factual assumptions about West Virginia’s TMDL development efforts. Oral argument occurred on May 8, 2018 in Richmond, Virginia.
Timing: Awaiting decision from the court.
Contact: David Fotouhi, Deputy General Counsel, fotouhi.david@epa.gov.
- 3. AIR ALLIANCE HOUSTON, ET AL. v. EPA, NO. 17-1155 (D.C. CIR.)—TWO-YEAR DELAY OF EFFECTIVE DATE IN RISK MANAGEMENT PROGRAM AMENDMENTS RULE — AWAITING ACTION BY THE COURT.** Petitioners, in consolidated cases, seek review of EPA’s final action titled “Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Further Delay of Effective Date.” at 82 Fed. Reg. 27,133 (June 14, 2017). Petitioners requested expedited consideration and summary vacatur or a stay of the delay rule. On August 30, 2017, the court denied the motion to stay or summarily vacate the rule. The court granted the motion to

expedite proceedings and ordered the court to set the case for oral argument. Briefing concluded on January 31, 2018. On March 9, 2018, EPA submitted to OMB for interagency review a proposed rule that, if finalized, would change certain provisions of the RMP Amendments Rule. Oral argument took place on March 16, 2018. On March 23, the Court ordered EPA to submit a comprehensive list of pre-2017 examples where any federal agencies have issued final notice-and-comment regulations (i) that change the effective or compliance dates for an earlier final regulation and (ii) that explicitly justify the change to the effective or compliance dates because the agency is reconsidering its earlier final regulation. EPA's response to the March 23 order was filed on April 6, 2018, and Petitioners' filed a response on April 16. EPA filed a 28(j) letter on May 17, 2018.

Timing: Awaiting action by the court.

Contact: David Fotouhi, Deputy General Counsel, fotouhi.david@epa.gov.

4. **SOUTHWESTERN ELECTRIC POWER CO. v. EPA, NO. 15-60821 (5TH CIR.)—2015 STEAM ELECTRIC ELG RULE—BRIEFING COMPLETED.** This is a challenge to EPA's 2015 steam electric effluent limitations guidelines rule. The case was held in abeyance while EPA determined which provisions of the rule it intends to reconsider. On August 14, 2017, DOJ asked the court to sever and hold in abeyance all proceedings relating to the portions of the 2015 Rule concerning the new, more stringent BAT limitations and PSES applicable to (1) bottom ash transport water, (2) FGD wastewater, and (3) gasification wastewater. The court granted DOJ's motion. Under the order, EPA will file status reports every 90 days. Industry petitioners will not press their claims in light of EPA's decision to reconsider parts of the rule. Environmental petitioners are proceeding with their claims against the 2015 rule. EPA filed a brief on claims not held in abeyance on December 15, 2017. Briefing completed on February 22, 2018. EPA filed status reports in November of 2017 as well as February and April of 2018. Oral argument has not yet been scheduled.
- Timing:** The parties are awaiting the scheduling of oral argument by the Court.
- Contact:** David Fotouhi, Deputy General Counsel, fotouhi.david@epa.gov.

5. **JULIANA v. UNITED STATES, NO. 15-01517 (D. OR.)/NO. 17-71692 (9TH CIR.). MANDAMUS PROCEEDINGS – CLIMATE-CHANGE LITIGATION WITH CONSTITUTIONAL CLAIMS – DISTRICT COURT PROCEEDING.** This case is a broad-based challenge alleging that EPA and the US Government allowed excessive CO2 emissions from burning fossil fuel that have contributed to climate change. The district court denied our motion to dismiss. On June 8, 2017, the district court denied our motion for interlocutory appeal and our request to stay the proceedings. On June 9, 2017, we filed petition for mandamus with the Ninth Circuit seeking the same relief. On March 7, 2018, the 9th Circuit denied the petition for a writ of mandamus. On March 16, all Plaintiffs filed a motion for a hearing status conference. The District Court held a status conference via telephone on March 26, 2018, and a hearing on April 12, 2018. On May 9, DOJ filed a motion for judgment on the pleadings, moved for a protective order, and moved to stay discovery. The District Court has set various dates related to trial.
- Timing:** DOJ in conjunction with EPA and other named federal agency defendants are considering options for further review of the district court's action at this time. Oral argument regarding scheduling is set for May 23 via telephonic conference. A status conference is set for June 6, 2018 in Oregon.

Contact: Justin Schwab, Deputy General Counsel, schwab.justin@epa.gov.

6. **AMERICAN LUNG ASSOCIATION v. EPA, NO. 17-1172 (D.C. CIR.) – NOW-WITHDRAWN OZONE DESIGNATION DELAY – AWAITING ACTION BY THE COURT.** This is a Clean Air Act petition for review of EPA’s June 28, 2017 Federal Register notice extending the deadline for area designations for the 2015 ozone NAAQS. On August 3, 2017, EPA published a Federal Register notice withdrawing the June 28 notice and clarifying that, going forward, it will exercise its designation-delay authority for those areas where technical, informational, and methodological questions make it impossible to designate by the statutory deadline. Challengers moved for summary vacatur of the deadline extension or, in the alternative, a stay of the extension pending judicial review of the merits. On August 3, 2017, DOJ moved the court to dismiss the challenge as moot, and challengers opposed. On October 6, 2017, the court granted the challengers’ alternative request to hold the litigation in abeyance and deferred consideration of the remaining motions pending further order of the court. On November 8, 2017, EPA filed a 28(j) letter informing the court of a final rule which made air quality designations for some areas. EPA then filed a status report on January 12, 2018 wherein EPA identified with “precision and specificity” when the Agency plans to file a final rule establishing air quality designations for the 2015 ozone NAAQS for areas that remain undesignated. EPA filed a Status Report on May 15, 2018 detailing the status of all final designations for the 2015 ozone national ambient air quality standards. (EPA finalized designations for all areas except San Antonio on April 30, pursuant to a court order entered in another case. San Antonio must be designated by July 17.)

Timing: The court has deferred action on pending motions.

Contact: Justin Schwab, Deputy General Counsel, schwab.justin@epa.gov.

7. **NATIONAL PARKS CONSERVATION ASSOCIATION v. EPA, NO. 11-cv-1548 (D.D.C.) & SIERRA CLUB v. EPA, NO. 10-cv-1541 (D.D.C.) – TEXAS REGIONAL HAZE & INTERSTATE POLLUTION TRANSPORT – CASE STAYED.** Under two consent decrees entered in separate deadline/mandatory duty suits under the previous administration, EPA must either issue a Federal Implementation Plan (FIP) or approve a State Implementation Plan (SIP), to satisfy the Clean Air Act’s requirements for Texas’s obligations under (1) the Best Available Retrofit Technology (BART) prong of the Regional Haze program (the *National Parks* case), and (2) the “good neighbor” provision addressing interstate pollution transport (the *Sierra Club* case). On August 18, 2017, EPA filed motions with both courts requesting extension of the consent decree deadlines to the end of 2018, attaching a Memorandum of Agreement between EPA and the state environmental agency, as well as a letter from Governor Abbott, laying out Texas’s commitment to develop and submit for EPA’s approval a SIP establishing an intrastate trading program to satisfy both the BART/haze requirements and the interstate transport requirements. The district court denied the request for a long-term extension. EPA issued a FIP on September 29, 2017. Plaintiffs on October 13, 2017 filed a statement of position and motion to enforce the consent decree, arguing that the FIP did not satisfy EPA’s consent decree obligations and requesting that the court order EPA to finalize within 30 days the previous administration’s proposed source-by-source BART FIP. DOJ filed a response and a motion to terminate the consent decree on October 25, 2017. This issue is now fully briefed. On March 6, 2018, the Court issued a Minute Order staying this case. The Court will hold in abeyance any decision on whether to

enforce or terminate the consent decree pending the resolution of plaintiffs' petition for reconsideration of the Rule promulgated by the EPA on October 17, 2017 and/or plaintiffs' appeal of that Rule in the Fifth Circuit. The parties filed joint status reports on May 3 and May 11, 2018.

Timing: The Court will continue the stay in this case. EPA must notify the Court within a week of the publication of the notice of proposed rulemaking in the Federal Register, or file a status report on June 22, 2018 if nothing has been filed by that date.

Contact: Justin Schwab, Deputy General Counsel, schwab.justin@epa.gov.

8. UTILITY SOLID WASTE ACTIVITIES GROUP V. EPA, NO. 15-1219 (D.C. CIR.) – CHALLENGE TO COAL COMBUSTION RESIDUAL (CCR) RULE – AWAITING DECISION.

Industry petitioners and environmental groups challenged EPA's final rule entitled "Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities," 80 Fed. Reg. 21,302 (April 17, 2015). On May 12, 2017, USWAG submitted a Petition to reconsider provisions of the CCR Rule and to hold in abeyance the current challenge to the CCR Rule. The Administrator sent a letter to these petitioners on September 13, 2017 indicating that the Agency would reconsider the rule in light of the issues raised in the petitions and the Agency's new authority under the Water Infrastructure Improvements for the Nation ("WIIN") Act. On September 18, 2017, DOJ filed a motion to, among other things, hold the case in abeyance in light of this impending reconsideration. The court deferred ruling on EPA's request for abeyance, delayed oral argument, directed EPA to file a status report specifying which portions of the rule the agency intends to reconsider and the specific timeline for reconsideration, and directed the parties to file supplemental briefing addressing the relevance to this case of the WIIN Act. On November 7, 2017, DOJ filed a motion for voluntary remand of six provisions of the CCR rule that EPA intends to reconsider. EPA filed a status report regarding reconsideration on November 15, 2017, and oral argument occurred on November 20, 2017. Since that time, several 28(j) letters have been filed.

Timing: EPA is awaiting a decision.

Contact: David Fotouhi, Deputy General Counsel, fotouhi.david@epa.gov.

9. MASSACHUSETTS RIVERS ALLIANCE v. EPA, NO. 17-cv-11825 (D. MASS.)—APA 705 STAY OF MASS. MS4 PERMIT—MOTION FOR SUMMARY JUDGMENT FILED.

Massachusetts Rivers Alliance and nine other environmental groups filed a complaint against the EPA in U.S. District Court in Massachusetts with regards to EPA's June 29, 2017 action under Section 705 of the Administrative Procedure Act ("APA") to postpone the effective date of the Massachusetts small MS4 (municipal separate storm sewer system) general permit by one year, from July 1, 2017 to July 1, 2018. Multiple parties had already challenged the general permit in the First Circuit and the D.C. Circuit Court of Appeals; the cases have been transferred and consolidated in the D.C. Circuit, and we are now awaiting its decision on whether to hold those cases in abeyance indefinitely to allow for the parties to pursue court-sponsored alternative dispute resolution. Briefing concluded in January of 2018.

Timing: Awaiting action from the Court.

Contact: David Fotouhi, Deputy General Counsel, fotouhi.david@epa.gov.

10. MARYLAND v. PRUITT, NO. 17-2873 (D. MD.)— FAILURE TO TAKE ACTION ON MARYLAND’S CAA SECTION 126 PETITION—BRIEFING COMPLETE.

The State of Maryland, through the Maryland Department of the Environment, filed suit against the EPA alleging a failure to take mandatory duties associated with the State’s CAA Section 126 Petition. That petition asked the EPA to issue a finding that 36 electric generating units located in Indiana, Kentucky, Ohio, Pennsylvania, and West Virginia are in violation of the prohibition of 42 U.S.C. § 7410(a)(2)(D)(i), commonly referred to as the “good neighbor provision” (i.e., that emissions from these sources are contributing to air pollution issues in Maryland). The complaint alleges the agency failed to hold a hearing and failed to issue a decision within the statutory time limits.

Timing: The case is fully briefed. The court will either rule on the pleadings or schedule a hearing.

Contact: Justin Schwab, Deputy General Counsel, schwab.justin@epa.gov.

11. SAFER CHEMICALS HEALTHY FAMILIES v. EPA, No. 17-72260 (9TH Cir.) – CHALLENGE TO TSCA PRIORITIZATION RULE AND RISK EVALUATION RULE – RESPONSE BRIEF DUE.

On November 27, 2017, the Ninth Circuit denied EPA’s motion to transfer the petitions for review of the TSCA prioritization rule to the Fourth Circuit. The court consolidated the various challenges to the TSCA framework rules and then issued a briefing schedule. Petitioners filed their opening brief on April 16, 2018.

Timing: EPA’s response brief is due on July 5, 2018.

Contact: David Fotouhi, Deputy General Counsel, fotouhi.david@epa.gov.

12. CLEAN AIR COUNCIL V. UNITED STATES, No. 2:17-cv-04977 (E.D. Pa.)— CLIMATE-CHANGE LITIGATION WITH CONSTITUTIONAL CLAIMS – MOTION TO DISMISS BRIEFING.

The Clean Air Council and two minors represented by their guardians filed a complaint in the District Court for the Eastern District of Pennsylvania against the United States, President Trump, the EPA (and its Administrator), and the Department of Energy (and its Secretary), alleging that those entities have engaged in or initiated “rollbacks” of several initiatives related to climate change and the electric power sector. According to the plaintiffs, these actions violate two aspects of the U.S. Constitution: (1) A fundamental right to “a life-sustaining climate system and an atmosphere and oceans that are free from dangerous levels of anthropogenic CO₂,” embodied in the Fifth and Ninth Amendments; and (2) a federal “public trust doctrine” that is rooted in both common law and the Fifth and Ninth Amendments. The plaintiffs seek (1) declaratory relief that the federal defendants “cannot effectuate or promulgate any rollbacks” that exacerbate “the life-threatening effects of climate change based on junk science,” in such a way that would violate those alleged constitutional rights, as well as (2) any “other and further relief” the court deems just and proper. DOJ’s motion to dismiss Plaintiffs’ Amended Complaint has been fully briefed.

Timing: The pretrial conference date is yet to be determined. On May 3, 2018, the Court denied DOJ’s original motion to dismiss as moot. Briefing on DOJ’s supplemental motion to dismiss (filed per the amended complaint) is still ongoing.

Contact: Justin Schwab, Deputy General Counsel, schwab.justin@epa.gov.

13. STATE OF NEW YORK V. PRUITT, ET AL., No. 18-1030 (S.D.N.Y.); NATURAL RESOURCES DEFENSE COUNCIL, INC., ET AL. V. EPA, ET AL., No. 18-1048 (S.D.N.Y.); SOUTH CAROLINA COASTAL CONSERVATION LEAGUE, ET AL., V. PRUITT, ET AL., No. 18-330 (D.S.C.) - CHALLENGES TO THE APPLICABILITY DATE RULE FOR THE WATERS OF THE UNITED STATES RULE –MOTIONS TO TRANSFER PENDING.

To date, EPA has received three challenges to the Army Corps and EPA's rule adding an applicability date to the 2015 Rule defining "waters of the United States" under the Clean Water Act (CWA). Plaintiffs are seeking an order vacating the rule, claiming that the agencies promulgated the rule in excess of statutory authority and in violation of the Administrative Procedure Act (APA) and CWA. The complaints alleged that the agencies failed to consider or provide a meaningful opportunity for public comment on the implications of suspending the 2015 Rule and reinstating the pre-2015 regulatory scheme. Moreover, the complaints allege that the rationale for the rule is not supported by the record, and that the agencies acted arbitrarily and capriciously by, among other things, failing to consider how adding an applicability date would meet the CWA's objectives. On February 14 and 15, 2018 respectively, DOJ filed motions to transfer in all three cases. The contested motions each ask that the respective case be transferred to the Southern District of Texas. The Southern District of New York has not yet ruled on these motions to transfer. The District Court in South Carolina denied EPA's motion to transfer. On May 1 and May 3, Plaintiffs filed motions for summary judgment in the two Southern District of New York cases. DOJ filed an answer in all cases on May 18.

Timing: In the Southern District of New York, EPA's opposition to the motion for summary judgment is due 30 days from the date of the Court's opinion on the pending motions to transfer.

Contact: David Fotouhi, Deputy General Counsel, fotouhi.david@epa.gov.

14. MEXICHEM FLUOR, INC. v. EPA, No. 15-1328 (D.C. CIR.) – CHALLENGE TO 2015 CLEAN AIR ACT RULE ON SUBSTITUTES FOR OZONE-DEPLETING SUBSTANCES – PETITIONS FOR REHEARING DENIED.

On July 20, 2015, EPA published a final rule, *"Protection of Stratospheric Ozone: Change of Listing Status for Certain Substitutes under the Significant New Alternatives Policy Program."* The July 2015 Final Rule changed the listings of a number of hydrofluorocarbon (HFCs) from acceptable to unacceptable for use in some refrigeration, aerosol, and foam blowing uses. The rule was challenged by Mexichem and Arkema, two chemical producers. On August 8, 2017, in *Mexichem Fluor v. EPA*, the U.S. Court of Appeals for the D.C. Circuit remanded the rule in part and vacating the rule to the extent it requires anyone who is already using alternatives to ozone-depleting substances (ODS) (e.g., HFCs) in lieu of ODS to switch to another substance. The Court upheld the SNAP rule to the extent that it applies to anyone who is still using an ODS from moving into the HFCs whose listings were changed. Several parties petitioned the D.C. Circuit to rehear the case. On January 26, 2018, the Court denied those rehearing requests.

Timing: On March 12, 2018, the D.C. Circuit received notice from the U.S. Supreme Court that the time within which to file a petition for writ of certiorari has been extended to June 25, 2018.

Contact: Erik Baptist, Senior Deputy General Counsel, baptist.erik@epa.gov.

Message

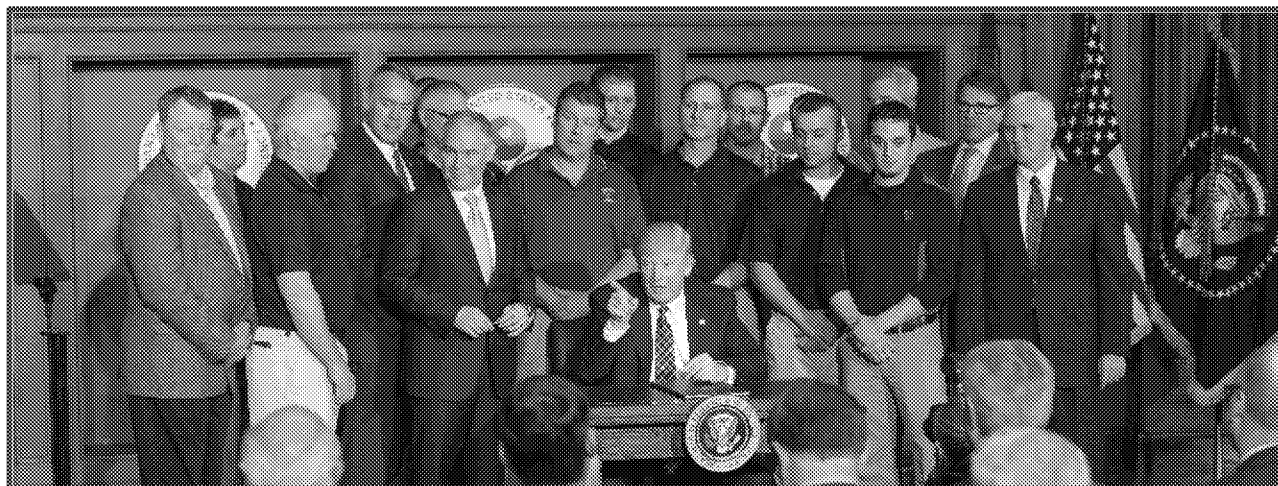
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Subject: EPA 30-Day Look Ahead 05.21.2018.docx
Attachments: EPA 30-Day Look Ahead 05.21.2018.docx

Importance: High

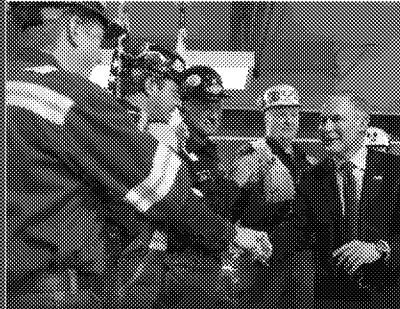
Lee, I need you to as soon as possible provide us with the WIFIA announcements coming between now and the end of July to add to the attached document.

Will, I have added some edits. Please use the attached.

Will, moving forward we need to shorten the cases substantially. They really don't change and could be summed up in just a few lines. Let me know before you send to WH Cabinet affairs. Thanks.


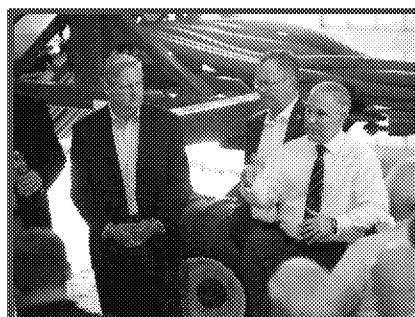
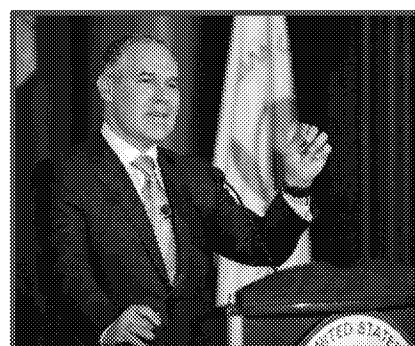
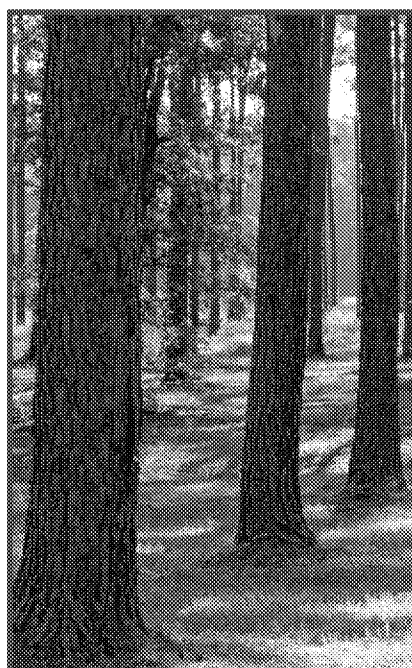


EPA Year in Review 2017-2018



**EPA'S
BACK-TO-BASICS
AGENDA**

- ✓ Protecting the **environment**
- ✓ Engaging with partners
- ✓ Sensible regulations for **economic growth**



E. SCOTT PRUITT
ADMINISTRATOR

Friends and Colleagues –

We have been hard at work enacting President Donald Trump's agenda during my first year as EPA Administrator. His courage and leadership have been key to our success. From his decision to exit the Paris Accord to his executive order empowering EPA to review and rescind the Clean Power Plan, the President is delivering on his promises and getting results for the American people.

We are following his lead. Days after being sworn in, I addressed EPA's employees and committed to listening and working cooperatively with states and stakeholders to tackle today's environmental challenges. In my first year, I traveled to 30 states and U.S. territories and met with 34 bipartisan governors and over 350 stakeholder groups. We are taking important actions in collaboration with – not opposition to – the states.

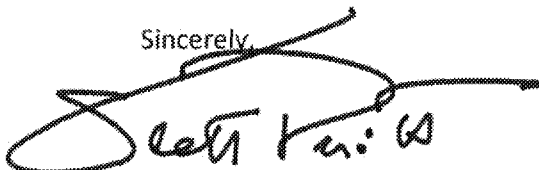
I committed to refocusing the Agency on its core mission. Today, we are focusing on cleaning up contaminated lands, improving air quality and rebuilding America's water infrastructure. Finally, I promised that we would restore the rule of law. We are rescinding and replacing the burdensome Waters of the U.S. rule, and we ended the harmful and wrongful practice of "sue and settle."

These are just a few examples of my commitment to fulfilling these promises. This report details EPA's accomplishments and what they mean for the American people and the environment. The sum of these actions is monumental: **In year one, EPA finalized 22 deregulatory actions, saving Americans more than \$1 billion in regulatory costs.**

We have made tremendous progress in year one to implement the President's vision. EPA today is more efficient, more effective and more transparent in carrying out its all-important task of protecting human health and the environment. Much work remains to be done though. We will help repair our nation's crumbling water infrastructure; we will continue to clean up and revitalize more Superfund sites; and we will work with states to continue to improve air quality. Thanks to our reforms and improvements in year one, we now have the framework and policies in place to tackle these problems head on.

I look forward to working together to accomplish even more progress in 2018.

Sincerely,



E. Scott Pruitt

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Accomplishments

- ✓ Halted Job-Killing, Burdensome, Duplicative Regulations
- ✓ Eliminated Agency Backlogs, Improved Efficiency
- ✓ Increased Transparency, Accountability
- ✓ Returned to Cooperative Federalism
- ✓ Restored the Rule of Law, Process
- ✓ Improved Compliance and Assistance

In one year, EPA Administrator Scott Pruitt spearheaded 22 deregulatory actions that could save the American people more than \$1 billion in regulatory costs.

By the Numbers:

- ✓ IMPLEMENTING EXECUTIVE ORDERS (E.O.): EPA quickly acted on President Donald Trump's E.O. to review the 2015 definition of "Waters of the U.S.," President Trump's Energy Independence E.O. to propose a repeal of the so-called "Clean Power Plan," and President Trump's "Regulatory Reform" E.O. 13777 by finalizing two deregulatory actions for each regulatory action – with ZERO net costs to the U.S. economy.
- ✓ REGULATORY REFORM: 22 deregulatory actions were finalized, which could save more than \$1 billion in regulatory costs; EPA also initiated work on an additional 44 deregulatory actions and announced the reconsideration of over a dozen overreaching and burdensome regulations.
- ✓ OUTREACH: Administrator Pruitt consulted with 95 bipartisan members of Congress, 34 bipartisan governors, visited 30 states and U.S. territories, and met with over 350 stakeholder groups.
- ✓ AIR: EPA acted on 322 State Implementation Plans (SIPs) and turned one Federal Implementation Plan (FIP) into a SIP each month since March 1, 2017.
- ✓ WATER: 3,000 Total Maximum Daily Loads were approved and EPA focused on the priority water bodies selected by states. EPA also: cut the amount of time it took to review state water quality standards in half (from 120 days to 60); committed \$25 million in water infrastructure loans; disbursed \$8.9 billion in State Revolving Funds to improve our nation's water quality; and awarded \$100 million to Flint, Michigan for water infrastructure upgrades.
- ✓ LAND: Seven contaminated sites were eliminated, substantially or entirely, from the National Priorities List (NPL) of contaminated sites; only two sites were removed the previous year. EPA also awarded \$60 million in Brownfields cleanup grants to local communities.
- ✓ CHEMICALS: 600 new chemical submissions were stuck in the Agency's backlog as of January 2017; EPA cleared the backlog and ensured that all new chemicals coming to market received a safety determination within about 90 days.
- ✓ ENFORCEMENT: In FY17, \$1.6 billion was collected in administrative and civil judicial penalties, higher than any of the previous ten years, other than FY16, which included one \$5.7 billion action taken. EPA also celebrated an increase in the value of commitments by private parties to clean up land to more than \$1.2 billion, an increase in the total of criminal fines, restitution and mitigation to \$2.98 billion, and an increase in the value of actions to improve compliance to nearly \$20 billion.

Introduction

U.S. Environmental Protection Agency (EPA) plays a vital role in American society. It is a role that is clearly defined by Congress, its statutes, and – from time to time – the courts. EPA most-effectively protects the environment and human health when it operates within the bounds of its authority. However, when EPA strays outside that role, it encumbers both environmental protections and economic growth.

At the outset of EPA Administrator Scott Pruitt's tenure, he set forth a "back-to-basics agenda" centered on returning EPA to its proper role via three objectives:

- 1) **Refocusing the Agency back to its core mission**
- 2) **Restoring power to the states through cooperative federalism**
- 3) **Adhering to the rule of law and improving Agency processes**

In one year, EPA has made tremendous environmental progress in line with these goals, and it shows that the Agency can be both pro-environment and pro-growth.

The combination of a refocused Agency, cooperative federalism, and rule of law has unleashed new optimism throughout the nation. Americans can trust that environmental hazards will be addressed quickly and thoroughly; states and industry will be treated as partners, not opponents; and regulations will provide clarity, not confusion. The results are a cleaner, safer, and stronger America for all.

Core Mission

The first of the three pillars of Administrator Pruitt's "back-to-basics agenda" is to refocus the Agency on its core mission: clean air, land,

and water. EPA was founded in 1970 in order to consolidate the federal government's environmental efforts under one roof and better enforce the environmental laws passed by Congress. In recent years, however, EPA expanded its authority and jurisdiction into areas outside its core mission. In the process, central responsibilities of the Agency took a backseat to ideological crusades, allowing some environmental threats – like cleaning up toxic land – to go unaddressed. Administrator Pruitt returned the Agency to its core mission and prioritized issues at the heart of EPA's purpose: ensuring access to clean air and water, cleaning up contaminated lands and returning them to communities for reuse, improving water infrastructure, and ensuring chemicals entering the marketplace are reviewed for safety. In just one year, EPA made immense progress on these fronts, and the American people have seen real, tangible results.



AIR: Improve Air Quality

Clean Power Plan

The Clean Power Plan (CPP) appears to have far exceeded the Agency's statutory authority, while imposing massive regulatory burdens on affordable energy for hardworking American families. The U.S. Supreme Court issued an unprecedented stay of the rule in 2016. After calls for a review in President Trump's Energy Independence Executive Order, Administrator Pruitt proposed a repeal of the CPP on October 10, 2017. EPA's proposed action on CPP is estimated to save the U.S. economy up to \$33 billion in avoided compliance costs.

As part of the ongoing repeal process, the Agency heard directly from stakeholders and citizens most impacted by the rule, including a listening session in Charleston, West Virginia – the heart of coal country. Three additional listening sessions took place in Kansas City, Missouri; San Francisco, California; and Gillette, Wyoming.

"Consistent with our commitment to the rule of law, we've already set in motion an assessment of the previous administration's questionable legal basis in our proposed repeal of the Clean Power Plan. With a clean slate, we can now move forward to provide regulatory certainty. It ensures adequate and early opportunity for public comment from all stakeholders about next steps the Agency might take to limit greenhouse gases from stationary sources, in a way that properly stays within the law, and the bounds of the authority provided to EPA by Congress."

- EPA Administrator Scott Pruitt

In a separate but related action, EPA issued an Advance Notice of Proposed Rulemaking to solicit information from the public about a potential new rule regulating greenhouse gas emissions from power plants consistent with the Clean Air Act and proper relations between EPA and the states.

Ozone

EPA is committed to prioritizing air quality improvements and partnering with states to ensure more Americans are living and working in areas that meet our nation's stringent air quality standards. Under current measurements, roughly 40 percent of the nation fails to meet attainment standards set under the National Ambient Air Quality Standards (NAAQS). Under Administrator Pruitt's leadership, EPA is working with states to develop air quality plans and address underlying technical issues. In November 2017, consistent with Administrator Pruitt's pledge to be more responsive to local needs, EPA found that more than 2,600 counties – roughly 85 percent of the U.S. – met the stringent 2015 NAAQS for ground-level ozone. The Agency is now working to finalize designations for the remaining areas. Administrator Pruitt also established an Ozone Cooperative Compliance Task Force to develop additional flexibilities for states to comply with ozone standards.

State Implementation Plans

Rather than work cooperatively with states to implement clean air programs, President Obama's EPA imposed more than 50 FIPs – the equivalent of a top-down mandate – on states. EPA recognizes that states have an enormous role to play in environmental protection and the Agency can improve outcomes through collaboration, not federal dictates. Under Pruitt's leadership, EPA has turned an average of one FIP into a SIP every month. Since March 2017, EPA has worked with states to approve more than 200 SIPs. Under its FY18 – FY19

Agency Priority Goals, EPA, in close collaboration with states, will reduce the number of nonattainment areas by nearly 20 percent.

- During the Obama Administration, more than 50 FIPs were imposed on states, including nearly 20 under the Regional Haze program.
- Under the Trump Administration, with EPA Administrator Pruitt's leadership, EPA has turned at least one FIP into a SIP approximately every month.

Renewable Fuel Standard

As directed by the Clean Air Act, EPA finalized volume requirements for the Renewable Fuel Standard (RFS) maintaining renewable fuel volumes at levels comparable to the 2017 standards, recognizing limits to the growth of cellulosic and advanced biofuels, and understanding both market realities and consumer demand. Finalizing these volumes consistent with the statutory timeline helped stabilize the renewable fuels program and provide regulatory certainty.

Permitting Reform for New Source Review

Consistent with President Trump's priorities and under Administrator Pruitt's direction, EPA is taking steps to clarify, revise, and streamline preconstruction requirements under the New Source Review (NSR) permitting program. EPA's permitting requirements will no longer stifle a company's ability to invest in the latest and greatest technologies or make continued improvements to their operations. On December 7, 2017, EPA took an important step to achieving this goal by issuing a guidance

memorandum. The memo makes clear that, under current NSR regulations, the Agency is not to "second guess" an owner or operator's analysis, as long as it is done in a manner consistent with NRS requirements. It further clarified that the true environmental impacts of the project – via post-construction actual emissions data – will guide enforcement actions.

"Once In Always In" Is Out

In a 1995 memo, EPA established a "once in always in" policy that required any facility subject to major source standards for hazardous air pollutants to always remain subject to those standards, even if production processes changed or controls were implemented that eliminated or permanently reduced that facility's potential to emit hazardous air pollutants. This policy served as a disincentive for efforts to improve air quality and was also inconsistent with the Clean Air Act.

"This guidance is based on a plain language reading of the statute that is in line with EPA's guidance for other provisions of the Clean Air Act. It will reduce regulatory burden for industries and the states, while continuing to ensure stringent and effective controls on hazardous air pollutants."

**- EPA's Office of Air and Radiation
Assistant Administrator Bill Wehrum**

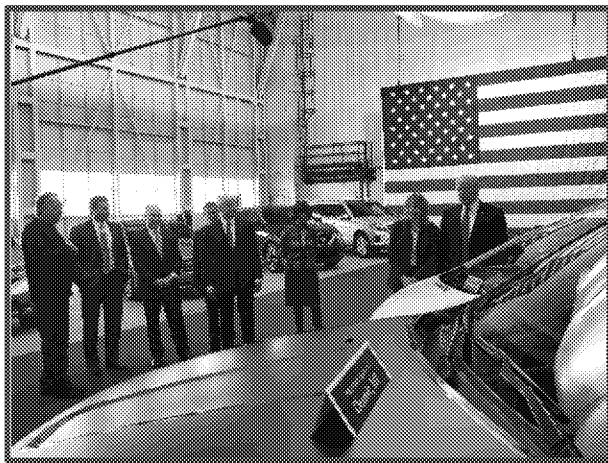
EPA issued a guidance memorandum in January 2018 withdrawing the "once in always in" policy. The memo from EPA's Office of Air and Radiation Assistant Administrator Bill Wehrum finds that EPA had no statutory authority under the Clean Air Act to place a time limit on when a facility may be determined to be an area source. Under the Clean Air Act, facilities can be reclassified as "area" (minor) sources once their potential to

emit hazardous air pollutants falls below the levels that define major sources. This action represents another major step by EPA to reduce burdens that deterred a core mission: improving air quality.

National Program for Greenhouse Gas Emissions and Fuel Economy Standards

EPA has taken multiple steps over the past year to review the regulatory overreach of the previous administration in the transportation sector.

Alongside U.S. Department of Transportation (DOT) Secretary Elaine Chao, Administrator Pruitt announced the agencies' intentions to reestablish the original timeline for public input for the Midterm Evaluation (MTE). This process is a key to assessing the appropriateness of the previous administration's standards for greenhouse gases and fuel economy for light-duty vehicles for Model Years 2022-2025. Under Administrator Pruitt's leadership, forward-looking actions will ensure that the program is beneficial for both consumers and the environment.



Administrator Pruitt traveled to Ypsilanti, Mich. with DOT Secretary Chao and President Trump to discuss CAFE standards.

EPA also reviewed, and then issued, a proposal to undo the regulatory overreach of the Phase II Fuel Efficiency Standards for medium- and

heavy-duty trucks as applied to the glider industry. Gliders are a specially manufactured type of heavy-duty highway vehicle. Proposing to repeal this provision is a direct result of Administrator Pruitt's commitment to regulate consistent with the rule of law as the previous administration's rule for gliders did not comply with the Clean Air Act.

Carbon Neutrality for Biomass

As directed by Congress and in conjunction with President Trump's Executive Order "Promoting Energy Independence and Economic Growth," a multi-agency effort has been initiated between EPA, the U.S. Department of Energy, and U.S. Department of Agriculture to establish a mechanism for federal cooperation and consistency on the use of biomass. EPA is working to develop a range of options in accordance with a carbon-neutral policy for biomass from forests and other lands and sectors as part of its ongoing review of the Clean Air Act permitting programs. Incorporating these sources into an "all of the above" energy portfolio will ensure biomass plays a key role in addressing the energy needs of the U.S. in an economically and environmentally beneficial way.

"For years, the federal government rendered most U.S. forestry producers ineligible for federal procurement projects and created confusion around biomass carbon neutrality. EPA is focused on clarifying regulations that were encumbering the industry."

- EPA Administrator Scott Pruitt

WATER: Provide for Clean and Safe Water

Waters of the United States (WOTUS)

On February 28, 2017, President Donald Trump issued an Executive Order directing EPA and the U.S. Army Corps of Engineers (Army Corps) to review this issue. Within a few months, the agencies proposed a rule to rescind the 2015 "Waters of the United States" rule to provide regulatory certainty to American farmers, landowners, and businesses, and put an end to one-size-fits-all regulations from Washington.

"We are taking significant action to return power to the states and provide regulatory certainty to our nation's farmers and businesses. This is the first step in the two-step process to redefine 'Waters of the U.S.' and we are committed to moving through this re-evaluation to quickly provide regulatory certainty, in a way that is thoughtful, transparent, and collaborative with other agencies and the public."

- EPA Administrator Scott Pruitt

In the interim, EPA and the Army Corps finalized a rule to postpone the applicability date of the 2015 WOTUS rule until February 6, 2020. This postponement provides regulatory certainty, will allow EPA to reevaluate the 2015 rule, and ensure the status quo is maintained until that process is complete.



Administrator Pruitt addresses members of the Tennessee Farm Bureau in Franklin, Tenn.



Administrator Pruitt talks with members of Nevada, Iowa Future Farmers of America.

Water Infrastructure

Our nation's water infrastructure is in dire need of repair. Roughly 700 water main breaks occur across the U.S. every day – over 200,000 annually. Not surprisingly, the American Society of Civil Engineers gave our nation's drinking water, wastewater, and hazardous waste infrastructure a "D" grade.

Then there's the problem of lead in our drinking water. EPA has taken important steps to support the State of Michigan in Flint's recovery and improve water infrastructure across the nation.

Flint, Michigan

In March 2017, EPA awarded a \$100 million grant to the Michigan Department of Environmental Quality to accelerate and expand its work to replace lead service lines and make other critical infrastructure improvements. Later in the year, EPA completed a periodic review of Michigan's drinking water program and released a report identifying key steps the state should take to ensure they are providing safe and clean drinking water.

In addition, EPA concurred with Michigan's plans to forgive Flint's past drinking water debt. Over the past year, EPA has worked in

partnership with the State of Michigan and the City of Flint to ensure that water quality continues to improve. This partnership has produced one of the most robust drinking water data sets in the country. EPA remains committed to working closely with the State of Michigan, Flint and local partners to protect public health and ensure that Flint's water quality continues to remain safe to drink.

BY THE NUMBERS:

\$100 Million grant to Michigan Department of Environmental Quality

\$1 Billion will be leveraged from WIFIA loans for water infrastructure upgrades

\$5.1 Billion in total water infrastructure investment estimated to be spurred from EPA grants and loans

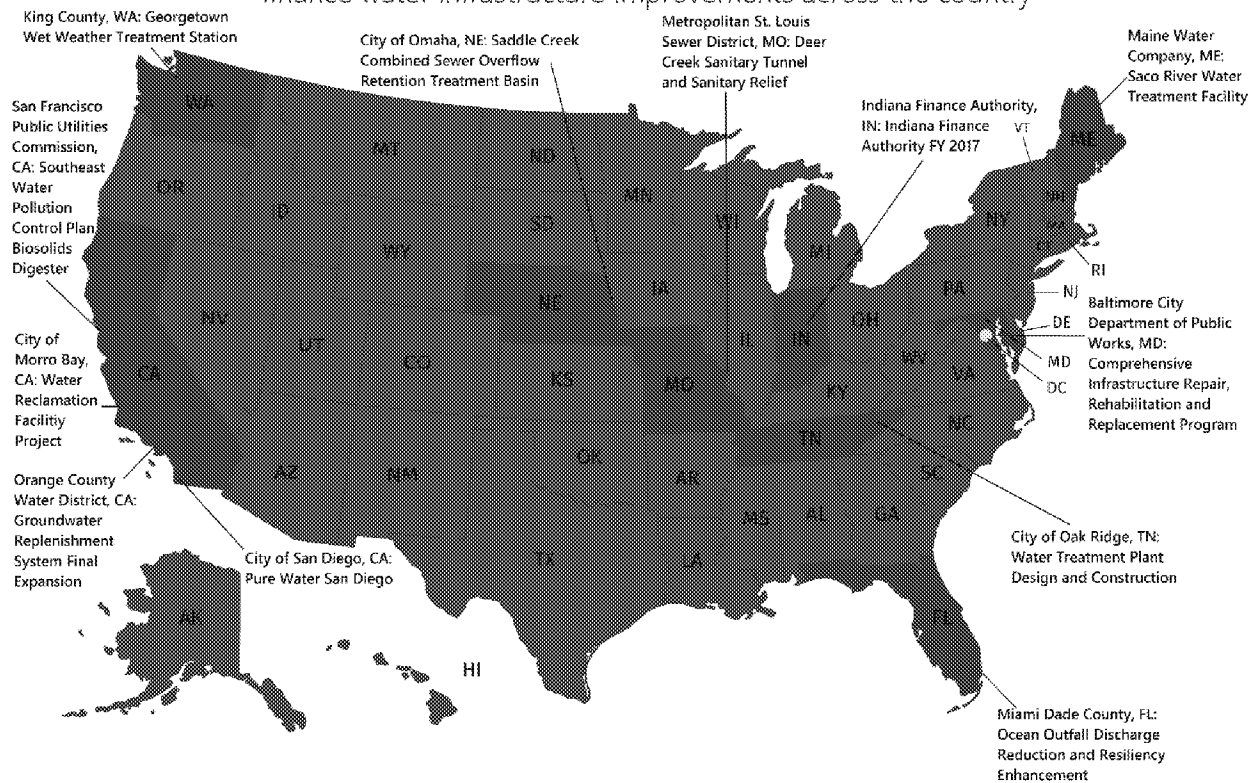
WIFIA

Critical to improving the nation's water infrastructure is the Water Infrastructure Finance and Innovation Act (WIFIA). The selected projects – once finalized – will leverage more than \$1 billion in private capital and other funding sources, including EPA's State Revolving Fund (SRF) loans, to help finance a total of \$5.1 billion in water infrastructure investments.

Stream Electric Effluent Limitations Guidelines Rule

After careful reconsideration, EPA finalized a rule postponing certain compliance dates by two years for the effluent limitations guidelines and standards for steam electric power plants under the Clean Water Act. It had been estimated to cost an average of \$480 million annually including \$1.2 billion annually during the first five years of compliance.

From wastewater and drinking water to storm water and water recycling projects, WIFIA loans will finance water infrastructure improvements across the country



LAND: Revitalize Land for Reuse

Superfund

The number of toxic sites being added to EPA's National Priorities List (NPL) has increased under every administration since the first list was released under President Ronald Reagan. By the end of 2018, EPA will be on track to delete from the NPL, in whole or part, over 20 Superfund sites.

Ensuring the Superfund program and EPA's land and water cleanup efforts operate effectively and efficiently is a cornerstone of the Agency's core mission. In elevating EPA's focus on Superfund cleanup, Administrator Pruitt created a Superfund Task Force – comprised of Agency experts from the Office of Land and Emergency Management, Office of Enforcement and Compliance Assurance, Office of General Counsel, and Regional Offices – to streamline and improve the program.

Within a few months, the Superfund Task Force released its report providing 42 specific and detailed recommendations under the following overarching goals:

1. **Expediting Cleanup and Remediation**
2. **Re-Invigorating Responsible Party Cleanup and Reuse**
3. **Encouraging Private Investment**
4. **Promoting Redevelopment and Community Revitalization**
5. **Engaging Partners and Stakeholders**

Following the recommendations of the Superfund Task Force, Administrator Pruitt released two dynamic lists of Superfund sites on the NPL including an initial set of 21 sites targeted for immediate and intense attention and 31 sites with the greatest expected redevelopment and commercial potential.

East Chicago, Indiana:

As one of his first acts in office, Administrator Pruitt visited the USS Lead Superfund Site in East Chicago, Ind., a site that was listed on the NPL in 2009. In meetings with East Chicago residents, and federal, state, and local offices, he pledged improved coordination and communications as cleanup continues. The site is now on Administrator Pruitt's list of sites targeted for immediate and intense action.

West Lake, Missouri:

On February 1, 2018, after decades of inaction, EPA put forth its proposed plan to clean up the West Lake Landfill, a dumping ground for radioactive waste from the Manhattan Project. The plan calls for the removal of a majority of the most radiologically impacted material.

"We've gone without a decision at the site for 10 years, and it's time that we have direction," said Karen Nickel of the Just Moms St. Louis advocacy group. (*St. Louis' CBS Radio*, 02/01/18)

San Jacinto, Texas:

The cleanup plan to address highly toxic dioxin contamination at the San Jacinto Waste Pits Superfund site in Harris County was approved by Administrator Pruitt in the fall of 2017. By permanently addressing risks posed by the contamination, the plan provides certainty to both people living near the site and economic interests, including the businesses that rely on the San Jacinto River for navigation and the Interstate-10 transportation corridor.

"Not long after Hurricane Harvey battered Houston last summer, Environmental Protection Agency Administrator Scott Pruitt stood on the banks of the San Jacinto River and surveyed a decades-old toxic waste site as divers checked whether the storm had unearthed dangerous chemicals. Days later, he ordered two corporations to spend \$115 million to excavate the contamination rather than leaving it covered." (*Washington Post*, 01/23/18)

The first Superfund list includes sites that will benefit from Administrator Pruitt's direct engagement and have identifiable actions to protect human health and the environment. These are sites requiring timely resolution of specific issues to expedite cleanup and redevelopment efforts. Ultimately, this list is designed to spur action at sites where opportunities exist to act quickly and comprehensively.

Superfund redevelopment will help countless communities reclaim and reuse thousands of acres of formerly contaminated land. The redevelopment list easily directs interested developers and potential owners to some Superfund sites with redevelopment potential.

In 2017, EPA completed deletion activities at seven sites on the Superfund NPL in Administrator Pruitt's first year, up from two in 2016. These sites, spanning from Minnesota and Massachusetts to Wyoming and Nebraska, reflect Administrator Pruitt's commitment to accelerating progress, reducing risks at Superfund sites, and returning sites to productive use.

CERCLA Hardrock Mining

In January 2017, the previous administration proposed regulations under section 108(b) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) that would have imposed additional financial responsibility requirements on certain hardrock mining facilities. After careful analysis of nearly 11,000 public comments, EPA announced in December 2017 that it would not finalize the proposed requirements. The risks associated with these facilities' operations are already addressed by existing federal and state programs and requirements and industry practice. Finalizing these requirements would have cost American businesses and the mining industry up to \$171 million annually.

"I urged then President-elect Trump to stop the EPA's overreach into state regulation harming Montana businesses. Instead of threatening the very industries that are a backbone of our Western economies, we need to support American families and American businesses to secure our mineral and energy independence. I am pleased the EPA has taken action."

**- U.S. Senate Western Caucus
Chairman Steve Daines (R-MT)**

Coal Ash

EPA's core mission reflects the belief that states play an integral role in environmental protection. In keeping with this notion, Administrator Pruitt provided Agency guidance to states for implementing state permitting programs to manage the safe disposal of coal combustion residuals (CCR), also known as "coal ash." The new state permitting authority – included in the Water Infrastructure Improvements for the Nation Act – allows flexibility in individual CCR permits that better reflect their environment and the continued beneficial use of coal ash.

EPA released this guidance to help states develop and submit permit programs that will put more states on track to obtain EPA approval of their CCR permitting program. The guidance outlines a framework of EPA's expected approval process and also provides checklists to aid states as they develop their programs.

CHEMICALS: Ensure Safety of Chemicals

Implemented the Updated Toxic Substances Control Act

EPA is working diligently to properly implement the 2016 Frank R. Lautenberg Chemical Safety for the 21st Century Act, which amended the Toxic Substances Control Act (TSCA), and ensure that the most modern and safe chemicals get to market quickly in order to provide regulatory certainty for manufacturers and confidence for American consumers.

Under the Lautenberg Chemical Safety Act – the first major update to an environmental statute in 20 years – EPA is responsible for reviewing and approving the safety of new chemicals intent on entering the U.S. marketplace. When Administrator Pruitt was confirmed, over 600 new chemicals were stuck in review. Within four months of being confirmed, EPA halved the backlog of new chemical submissions being reviewed under TSCA, and by August, Administrator Pruitt effectively eliminated the backlog.

In addition, EPA exceeded expectations and met its statutory responsibilities under TSCA on time and the one-year anniversary of the Lautenberg Chemical Safety Act. This included issuing three new framework rules, providing a guidance document for external parties, and releasing the scoping documents for the first 10 risk evaluations, under a reformed TSCA.

Chlorpyrifos

In 2007, EPA received a petition asking the Agency to revoke the tolerances for the pesticide chlorpyrifos. In March 2017, EPA denied the petition citing that: the Ninth Circuit would not provide additional time to review the issue; there were divergent views from cabinet departments; and the scheduled FIFRA

pesticide review process would be transparent, and allow more time to further evaluate the science.

On July 18, 2017, the Ninth Circuit ruled in EPA's favor, refusing to short-circuit the process established by Congress to challenge a denial of a petition to revoke a tolerance, affording EPA additional time to conduct a proper evaluation of the science and the studies on chlorpyrifos and provide greater certainty about the pesticide's safety to the American people.

Dicamba

On October 13, 2017, EPA reached an agreement with manufacturers on measures to further minimize the potential for dicamba drift to damage neighboring crops. New requirements for the use of dicamba "over the top" (application to growing plants) will allow farmers to make informed choices for seed purchases for the 2018 growing season. EPA worked cooperatively with states, land-grant universities, and pesticide manufacturers to examine the underlying causes of recent crop damage in certain regions and reach an agreement that will provide regulatory certainty for farmers.

TSCA MILESTONES:

- ✓ Swiftly implemented the Lautenberg Chemical Safety Act updates to TSCA
- ✓ Finalized 3 new framework rules
- ✓ Released scoping documents for first 10 risk evaluations
- ✓ Provided guidance on risk evaluation process
- ✓ Proposed final framework rule on TSCA fees

ENFORCEMENT

Enforcement of environmental protection laws is sustained by collaborative efforts of states, businesses, private citizens, and federal agencies like EPA. Within the last year, Administrator Pruitt implemented a two-pronged approach to enforcement: 1) ensuring the regulated community understands and complies with the law, and 2) vigorously holding bad actors accountable. This was achieved through a wide range of enforcement tools, including: compliance assistance, civil actions, administrative actions, informal actions, work-sharing with states, criminal fines, and incarceration where appropriate.

The Seattle Times

Amazon, EPA Reach \$1.2 Million Settlement
Over Online Sales of Illegal Pesticides

"Seattle-based Amazon has agreed to pay more than \$1.2 million in administrative penalties as part of an agreement with the U.S. Environmental Protection Agency that the agency says will protect consumers from hazards of illegal and misbranded pesticides sold by the online retail giant ...

"The penalty was one of the largest ever of its kind by the agency ...

"[A]s a result of the settlement, Amazon has indicated it is now 'committed to closely monitoring and removing illegal pesticides from its website,' [EPA Region 10 Administrator Chris] Hladick said in the agency's news release."

BY THE NUMBERS:

From January 20, 2017 through the end of FY17, EPA and the U.S. Department of Justice imposed:

- ✓ More than \$1.72 billion in civil penalties, cost recovery, natural resource damages, and other monetary recoveries;
- ✓ More than \$2.91 billion in criminal fines, restitution, and other assessments; and
- ✓ More than \$3.13 billion in injunctive relief and environmental mitigation projects.

Enforcement Actions Announced Since Close of FY17:

- ✓ ExxonMobil: \$300 million air pollution settlement with Exxon, 10/31/17
- ✓ PDC Energy: EPA, Colorado reached \$21 million-plus settlement with PDC, 10/31/17
- ✓ Indiana Harbor Coke Company: Settled with EPA and agreed to reduce annual emissions of pollutants from their coke ovens by 2,075 tons, 1/25/18
- ✓ Superfunds: In one case, EPA held 40 parties responsible to finance and perform a \$51.5 million EPA-approved cleanup, 10/13/17
- ✓ Silver Bow Creek Butte Area Superfund site: Reached an agreement in principle with responsible parties after languishing on the NPL for more than 35 years, 1/26/18
- ✓ Middletown, Ohio: EPA entered into agreement with the city to address the discharge of millions of gallons untreated sewage into the Great Miami River and Hydraulic Canal, 2/12/18

Cooperative Federalism and Public Participation

Under Administrator Pruitt's leadership, states are once again being treated as partners in efforts to protect the environment. In his first year, Administrator Pruitt worked to empower state and local partners to develop regulations that achieve positive environmental outcomes. Putting his words into action, Administrator Pruitt got out of Washington and heard directly from stakeholders in 30 states and territories.



Enhanced Shared Accountability

Governor Steve Bullock (D-MT): "The change in the federal administration offers us as governors the opportunity to develop new relationships and to build stronger state and federal relationships."



Administrator Pruitt meets with the bipartisan Western Governors Association with U.S. Department of Labor Secretary Alexander Acosta and U.S. Department of the Interior Secretary Ryan Zinke.



Governor Rick Scott (R-FL): "It is great to have a partner in Administrator Pruitt and the Trump Administration and I am glad to see their focus on protecting Florida's environment for future generations."

Governor Mark Dayton (D-MN): "Gov. Mark Dayton described a meeting Wednesday with EPA Administrator Scott Pruitt as 'productive and cordial' and said he's hopeful the Trump administration will eliminate some of the federal government red tape dealt to state agencies. 'We don't believe we need to be micromanaged by Region 5 in Chicago,' Dayton said during a news conference following a meeting at the Capitol that lasted more than an hour."

Governor Kim Reynolds (R-IA): "The governor said Pruitt indicated the new regulations would define what areas are not under federal jurisdiction. A court suspended the 'Waters of the U.S.' rules written by the Obama Administration before they took effect, but Reynolds said farmers delayed conservation measures and other land improvements because of the uncertainty about what might come next, which 'Dramatically had an impact on our ability to move forward with conservation practices for not only water quality, for soil health,' she said."

Leader Mitch McConnell (R-KY): "It's great to have an administrator of the EPA," McConnell said as he introduced Pruitt, "who's not afraid to come to Kentucky."



Administrator Pruitt hosts U.S. Department of Housing and Urban Development Secretary Ben Carson, U.S. Department of Labor Secretary Alexander Acosta, U.S. Department of Health and Human Services Deputy Secretary Eric Hargan and other members of the *President's Task Force on Environmental Risks and Safety Risks to Children* to address childhood lead exposure.

Stakeholder Engagement

Smart Sectors

In October 2017, EPA launched Smart Sectors, a voluntary partnership program between the Agency and regulated sectors that takes a collaborative approach to consider more forward-thinking ways to protect the environment and provide regulatory certainty. Since the program's official launch, the Smart Sectors team met with over 80 trade associations, companies, or stakeholder groups. The team conducted seven informational site visits with a variety of sectors including ports, iron and steel, oil and gas, chemical manufacturing, and agriculture and has many site visits planned for 2018. The Smart Sectors program maintains open dialogue with these partners and their environmental committees and is developing reports that profile the impact of each sector on the environment and the economy.



"The American Wood Council supports a smarter, more sensible and cost-effective regulatory process, such as the approach taken by EPA's Smart Sectors Program."

- Robert Glowinski, President and CEO of the American Wood Council

Grants

EPA awards over \$4 billion grants annually to states, tribes, and local communities. In FY17:

- ✓ \$20.2 million was provided through National Estuary Program grants to 32 communities
- ✓ \$56.8 million in Brownfields grants to 172 communities for revitalizing land
- ✓ \$33 million Clean Diesel Program grants to 72 communities

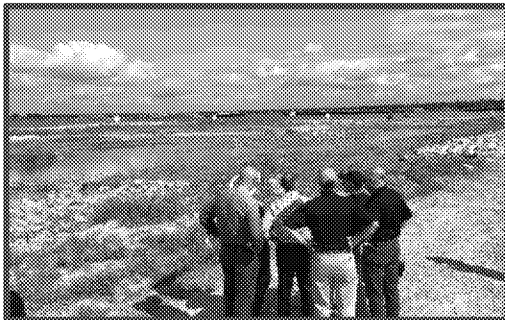
HEADLINES & HIGHLIGHTS

- ✓ EPA awarded \$1.2 million in competitive grants to 36 local-based community and tribal organizations for community-driven solutions to local health and environmental issues in minority, low-income, and tribal communities.
- ✓ EPA Announces \$7.2 Million in Brownfields Grants to Promote Economic Redevelopment Across the Pacific Southwest
- ✓ EPA Awards \$2.6 Million to Cut Diesel Emissions in New York and New Jersey
- ✓ EPA Awards \$4.4 Million to Restore Lake Champlain and Protect Against Harmful Algal Blooms
- ✓ EPA Awards \$173.5 million for California Drinking Water and Wastewater Projects
- ✓ EPA Awards \$32 Million for Tribal Environmental Programs in Alaska and the Pacific Northwest

Natural Disaster Preparedness, Response and Recovery

Throughout 2017, EPA worked closely with states and territories to prepare for and respond to a number of natural disasters including: Hurricanes Harvey, Irma, and Maria, and catastrophic wildfires in the West.

As a result of the continuing impacts on Gulf Coast-area refineries and disruption to the fuel distribution system caused by the 2017 hurricanes, Administrator Pruitt acted quickly to exercise EPA's emergency fuel waiver authority to help ensure adequate supply of fuel throughout the country by approving emergency fuel waivers for 38 states, Washington, D.C., and Puerto Rico. Governors across the country praised EPA's quick actions, which ensured there was no disruption in the fuel supply for power generators, evacuations and emergency response efforts.



Administrator Pruitt traveled to Houston, Texas to review the Agency's response efforts and meet with stakeholders monitoring cleanup efforts at the San Jacinto Waste Pits Superfund site (pictured above).

In the aftermath of Hurricane Maria, Administrator Pruitt joined President Trump in Puerto Rico to review the Agency's response efforts. EPA focused its efforts on environmental impacts and potential threats to human health in the affected areas by coordinating with local governments in Puerto Rico and U.S. Virgin Islands (USVI) to assess the conditions of drinking water, which includes sampling, analysis and lab support, and getting wastewater treatment systems up and running.

STATS AT A GLANCE

Hurricane Harvey:

- ✓ Conducted on-site assessments at approximately 625 drinking water and 440 wastewater treatment facilities
- ✓ Collected more than 1,000 orphan containers, which included drums and tanks found floated in or washed up near waterways
- ✓ Safely disposed of over 20 million cubic yards of debris

Hurricane Irma:

- ✓ Reviewed and secured 23 Superfund sites in Puerto Rico and USVI and 80 sites from Miami to North Carolina
- ✓ Extended fuel waiver for 38 states and D.C.

Hurricane Maria:

- ✓ Completed over 1,000 drinking water assessments in USVI
- ✓ Collected more than 225,000 items of household hazardous waste, goods and electronic waste in Puerto Rico and USVI
- ✓ Assessed close to 400 vessels in Puerto Rico and 500 in USVI with the U.S. Coast Guard



Rick Scott
@FLGovScott

Following



.@EPA has approved an emergency fuel waiver, allowing more fuel to enter FL quickly for #HurricaneIrma prep: bit.ly/2j6apgc

9:14 PM · 6 Sep 2017

Rule of Law

Agency Reform

Sue and Settle

Over the years, special interest groups skirted the regulatory process by using lawsuits that seek to force federal agencies – especially EPA – to issue regulations that advance their interests and priorities, on their specified timeframe. During this process, known as “sue and settle,” EPA would get sued by an outside party that asked the court to compel the Agency to take certain steps, either through change in a statutory duty or enforcing timelines set by the law, and then EPA would acquiesce through a consent decree or settlement agreement, affecting the Agency’s obligations under the statute.

“The days of regulation through litigation are over. We will no longer go behind closed doors and use consent decrees and settlement agreements to resolve lawsuits filed against the Agency by special interest groups where doing so would circumvent the regulatory process set forth by Congress. Additionally, gone are the days of routinely paying tens of thousands of dollars in attorney’s fees to these groups with which we swiftly settle.”

- EPA Administrator Scott Pruitt

“Sue and settle” cases establish Agency obligations without participation by states and/or the regulated community; foreclose meaningful public participation in rulemaking; effectively force the Agency to reach certain regulatory outcomes; and, cost the American taxpayer millions of dollars.

In fulfilling his promise to end the practice of regulation through litigation that has harmed

the American public, EPA Administrator Pruitt issued an Agency-wide directive in October 2017 designed to end “sue and settle” practices within the Agency, providing an unprecedented level of public participation and transparency in EPA litigation, in addition to consent decrees and settlement agreements.

Advisory Committees

EPA’s Federal Advisory Committees (FACs) provide invaluable, independent scientific advice to the Agency. However, according to EPA calculations, in just three years, members of three of EPA’s FACs – the Science Advisory Board (SAB), Clean Air Scientific Advisory Committee (CASAC), and the Board of Scientific Counselors (BOSC) – received upwards of \$77 million in direct EPA grant funding while concurrently serving on these committees.

Administrator Pruitt’s directive ensures that EPA’s FACs provide a diverse and independent range of perspectives. Members serving on an EPA FAC shall not simultaneously receive grants from the Agency. In addition, Administrator Pruitt called for more geographic diversity, more frequent rotation in membership, and greater involvement by state, local, and tribal officials. The new membership for SAB, CASAC, and BOSC hails from over 40 states and D.C., compared to the prior total of 30 states and D.C. EPA received more than 700 applications from interested individuals throughout the country to serve on EPA’s science boards.

Media Highlights

EDITORIALS

The Wall Street Journal: Pruitt's ends sue and settle practices also known as 'extortion by environmental lawsuit.' "Scott Pruitt continues to press reform at the Environmental Protection Agency, this week issuing a directive to curb the collusive Washington game of "sue and settle" lawsuits. This is a victory for democratic consent over legal extortion." (10/18/17)

The Wall Street Journal: Pruitt's clean power break. "The Trump Administration is giving the economy a boost with its deregulatory agenda, and the latest example comes Tuesday when Environmental Protection Agency chief Scott Pruitt will propose to repeal the Obama Administration's Clean Power Plan. Ending this power grab will uphold the letter of the law and restore cooperative federalism with the states." (10/08/17)

Washington Examiner: Praise for Pruitt's commitment to the Agency's core mission. "We applaud Pruitt's mission of restoring the EPA to its proper shape and size. And we hope he has the humility, the diligence, and the skill to pull it off, for the sake of the Constitution, the economy, and the environment." (09/18/17)



Denver Post: Pruitt Right to Pursue Funds for Gold King Mine Victims. "Scott Pruitt, head of the Environmental Protection Agency, is doing the right thing in his efforts to make whole the victims of the Gold King Mine spill that spewed 3 million of gallons of toxic water into the Animas River and downstream to New Mexico." (08/18/17)

Tulsa World: Pruitt gets out of Washington and 'talks to ordinary Americans.' "We prefer it when the people at the top of the nation's bureaucratic pyramid get out of the Beltway once in a while to talk to ordinary Americans. If Pruitt is coming home to see his friends, family, neighbors and some of the people he regulates, then good for him. That sounds like the acts of a balanced man who wants to know the thinking of the public, not just the pro-regulation lobbyists." (07/30/17)

The Oklahoman: Pruitt meets with stakeholders, including energy industry. "...the fact Pruitt regularly corresponded and dealt with energy industry officials as attorney general of a state where energy is the No. 1 industry should not be surprising nor should it, by itself, be considered nefarious." (06/21/17)

The Wall Street Journal: Cleaning up the Superfund mess. "One cost of making climate change a religion is that more immediate environmental problems have been ignored—not least by the Environmental Protection Agency. New EPA Administrator Scott Pruitt plans to address that in an underreported effort to clean up toxic waste sites under the so-called Superfund program." (06/12/17)

The Wall Street Journal: Highway from the endangerment zone. "Mr. Pruitt is a natural target for the left, but when conservatives are impugning one of the leaders of President Trump's economic deregulation project as a

sellout, maybe the problem is the critics, not Mr. Pruitt." (04/18/17)

Tulsa World: Congratulations, Scott Pruitt. "Pruitt is a serious, intelligent man who has worked hard for the people of Oklahoma. Like most Oklahomans, he is a genuine conservative. He has taken seriously his promises to voters that he would resist federal intrusions on state authority and personal freedom, and anyone who is surprised by that must not have been paying attention." (02/21/17)

ADMINISTRATOR PRUITT'S OP-EDs

USA Today: Clean air, land and water: Time for the EPA to start keeping its promises. "A few months ago, I promised the people of Missouri that I would make a decision and propose a cleanup plan for the West Lake Landfill. Recently, I made good on that commitment. On Feb. 1, the Environmental Protection Agency put forth its plan to clean up the West Lake Landfill ... In less than a year, this administration will solve a problem that previous administrations could not fix in the years since 1990, when the site was added to the Superfund priorities list." (02/14/18)



The Washington Times: Paving the path to U.S. energy dominance. "An energy-dominant America will export to markets around the world, increasing our global leadership and

influence. Becoming energy dominant means that we are getting government out of the way so that we can share our energy wealth with developing nations. For years, Washington stood in the way of our energy dominance. That changes now." (06/26/17)

The Washington Times: EPA is putting American workers first. "Americans who want a healthy and clean environment expect lawful, effective and economically sound regulation — the Clean Power Plan failed on all three counts. EPA can and should now focus on getting real results in the fight for clean air, land and water." (05/01/17)

USA Today: We're protecting jobs and the environment. "There's a phrase I've used often over the past several weeks — 'The future ain't what it used to be.' After my first full month serving as administrator to the Environmental Protection Agency, there's no question times are changing..." (03/20/17)

NATIONAL TV

Christian Broadcast Network: Unraveling the 'Weaponization' of the EPA is Top Priority for Scott Pruitt. "Actions taken by the executive branch were really actions that the legislative branch should have been taking or addressing and it impacted liberty," said Pruitt. "When you declare a 'war on coal' from a regulatory perspective, the question has to be asked: where's that in the statute? Where did Congress empower the EPA to declare a war on coal? ... There's a role for the EPA. There's a very important role for the agency. The problem is in the last several years that role has been morphed into something it's not," he added." (02/26/18)

Fox News' Justice with Judge Jeanine: Scott Pruitt talks changes to the EPA under Trump. "When you think about the last year, \$8 billion in cost savings with the deregulatory effort

Administration-wide. In our agency alone, \$1 billion of cost savings." (02/24/18)

CBS Evening News: Pruitt discussed the role of the EPA. "We should be about administering the statutes we're required to administer, but we shouldn't come in and say that the way forward in environmental protection is prohibition vs. stewardship. We can feed the world and we can power the world, and we should do that." (01/18/18)

Reuters TV: Trump's EPA aims to replace Obama-era climate, water regulations in 2018. "[Pruitt] said the agency was also planning to rewrite the Waters of the United States rule, another Obama-era regulation, this one defining which U.S. waterways are protected under federal law. Pruitt and Trump have said the rule marked an overreach by including streams that are shallow, narrow, or sometimes completely dry - and was choking off energy development." (01/08/18)

MSNBC's Morning Joe: Pruitt said the Paris agreement put our economy at a disadvantage. "When you look at what was agreed to in Paris, it put this country, our country, at a disadvantage economically." (06/07/17)

NBC's Meet the Press: Scott Pruitt: American carbon reductions predate Paris Climate Deal. "Paris is a bad deal for this country." (06/05/17)

ABC's This Week: Pruitt discussed how small businesses across the country are celebrating President Trump's decision to pull out of the Paris agreement. "Well, when you look at, even *The New York Times* had an article, I think, within the last couple of days that talked about small business celebrating, euphoria with respect to the president's decision." (06/04/17)

Fox News Sunday: Pruitt explained how the U.S. is the energy technology leader of the world. "If China and India want to reduce their CO2 footprint, they should learn from us," Pruitt told Fox News' Chris Wallace." (06/04/17)

CNBC: EPA takes aim at CAFE standards. "We can be both pro-growth, pro-jobs and pro-environment, says Scott Pruitt, EPA administrator, discussing the agency's new agenda and plans to roll back regulations and tackle fuel standards." (03/09/17)

NATIONAL PRINT

GQ Magazine: The 50 Most Powerful People in Trump's Washington. "#5 EPA Administrator Scott Pruitt: In a Cabinet that doesn't get much done, Pruitt has been dangerously effective." (02/22/18)

Wall Street Journal: Pruitt said West Lake sends a results-driven message. "This sends a message that we're actually going to get results," Mr. Pruitt said. "Frankly it's just what we ought to be doing." (02/01/18)

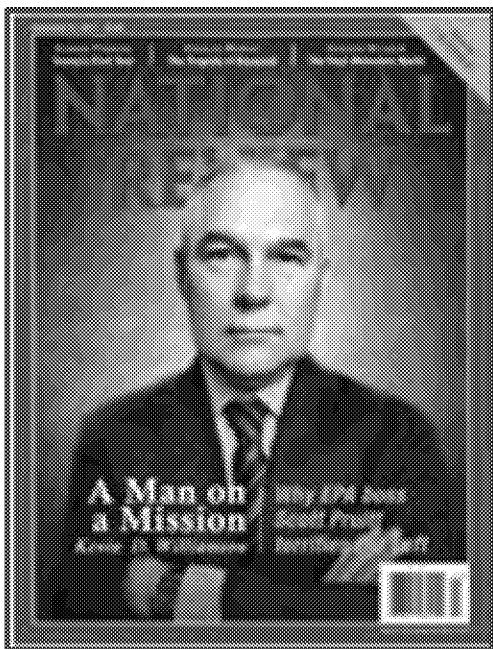
Washington Examiner: EPA's Scott Pruitt declares 'war on lead.' "EPA Administrator Scott Pruitt has begun an effort to 'eradicate' lead poisoning from drinking water, more than three years after the crisis in Flint, Michigan, started. Pruitt hosted a meeting Jan. 8 for state and local officials at agency headquarters in Washington to obtain feedback on ways to update the 1991 Lead and Copper Rule ... It has not been revised in more than a decade." (01/23/18)

Wall Street Journal: Pruitt aims to accelerate his efforts to remake the EPA. "Environmental Protection Agency chief Scott Pruitt plans to use his second year on the job to accelerate efforts to remake the agency, saying he wants to speed its permitting processes and

transform a culture he says is bureaucratic.” (01/17/18)

E&E News: Pruitt Meets with Moms Clean Air Force. Dominique Browning ... co-founder and senior director of Moms Clean Air Force, along with other officials from her organization, met last week with Pruitt and three members of his staff at EPA’s Washington, D.C., headquarters ... “Browning said her impression of Pruitt was that he is ‘determined’ as well as ‘intense, aggressive and focused. And the other thing on my impression is [he is] really, really smart,’ she added.” (1/15/18)

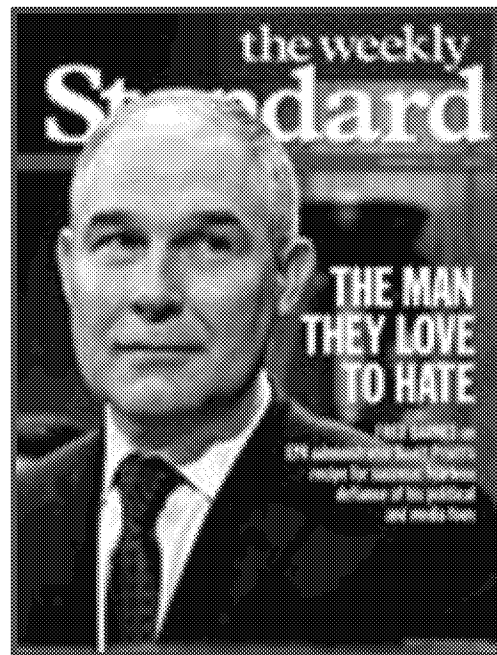
The Hill: EPA staffing falls to Reagan-era levels. “EPA’s staffing is now lower than it was in former President Reagan’s final year in office. An EPA spokeswoman said Tuesday that, as of Jan. 3, the agency had 14,162 employees, down from about 15,000 at the beginning of last year. That’s even lower than the 14,400 employees the agency had in fiscal year 1988, Reagan’s final year.” (01/09/18)



National Review: Scott Pruitt’s Reformation. “Stewardship, Pruitt says, is making responsible use of our national blessings, including our

natural resources: ‘Feed the world and fuel the world,’ he says, over and over. But the Left — and the EPA, which has long been dominated by it — is not interested in stewardship. It’s interested in prohibition, in a lot of Thou shalt and a whole heck of a lot more Thou shalt not. ‘You have two different approaches, two different worldviews, two very different sets of assumptions,’ Pruitt says.” (12/31/17)

The Washington Post: How Scott Pruitt turned the EPA into one of Trump’s most powerful tools. “... aggressiveness on issues from coal waste to vehicle emissions has made Pruitt one of Trump’s most high-profile and consequential Cabinet members. It also has made him one of the most controversial ... Yet, allies praise Pruitt for returning more power to individual states while scaling back what they see as the previous administration’s regulatory excesses.” (12/31/17)



The Weekly Standard: The Man They Love to Hate. “Pruitt lauded the president for his ‘unflinching commitment to put America first’ and followed with what has become the theme of his EPA tenure. The United States does ‘better than anyone in the world in striking the

balance between growing our economy, growing jobs while also being a good steward of our environment,' he said. Between 2000 and 2014, America reduced 'its carbon emissions by 18-plus percent. And this was accomplished not through government mandate, but accomplished through innovation and technology of the American private sector.'" (12/15/17)

Bloomberg: Administrator Pruitt lands on the list of 50 people defining global business in 2017. (11/30/17)

USA Today: Scott Pruitt on a mission to change the climate of the EPA. "He's on a mission to re-engineer the agency's culture by returning power to states and away from the Washington bureaucrats and coastal elites he said have led it astray." (11/26/17)

TIME: Inside Scott Pruitt's Mission to Remake the EPA. "Pruitt has pioneered a radically different approach to environmental regulation, weighing impact on job growth and the concerns of business groups on a level plane with environmental protection when the law allows." (10/26/17)

Bloomberg: EPA's Pruitt Vows to Get Tough on Polluters. "Scott Pruitt, the head of the Environmental Protection Agency, vowed that he will get tough on corporate polluters, dismissing critics who cast him as too cozy with industry. 'They don't know me,' Pruitt said, during an interview with Bloomberg News in his Washington office. 'I've led a grand jury. We are going to do enforcement, to go after bad actors and go after polluters.'" (10/25/17)

The Daily Signal: Trump's EPA Chief Charts a New Course. "My job is to enforce the laws as passed by whom? Congress. They give me my authority. That's the jurisdictional responsibilities that I have, and when litigation

is used to regulate...that's abusive. That's wrong." (10/20/17)

TIME: Administrator Pruitt on Enforcement: "I don't spend any time with polluters. I prosecute polluters." (10/20/17)

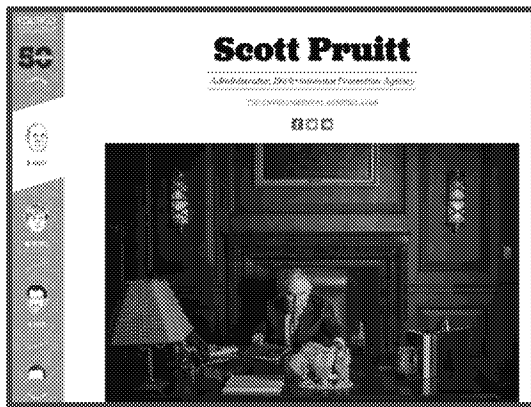
Talking Points Memo: Pruitt Talks About New 'Sue and Settle' Policy. "Pruitt pledged that the agency would no longer reimburse attorneys' fees in cases where it decides to avoid a lawsuit, arguing that both environmental and business groups had abused it to enrich themselves in the past. 'This is not particular to one type of plaintiff,' he said. 'There should be no attorneys' fees paid, period, no matter who the plaintiff is.'" (10/16/17)

Fox News: EPA moves to repeal Obama's Clean Power Plan coal regulations. "'That rule really was about picking winners and losers,' Pruitt said. 'The past administration was unapologetic, they were using every bit of power, authority to use the EPA to pick winners and losers on how we pick electricity in this country. That is wrong.'" (10/09/17)

The New York Times: EPA Announces Repeal of Major Obama-era Carbon Emissions Rule. "Mr. Pruitt, who had signaled the move at an event with coal miners in eastern Kentucky on Monday, said in a news release that his predecessors had departed from regulatory norms in writing the Clean Power Plan, which was finalized in 2015 and would have pushed states to move away from coal in favor of sources of electricity that produce fewer carbon emissions." (10/09/17)

Politico Top 50: #9 Scott Pruitt. "Donald Trump's pledge to unravel Barack Obama's climate agenda may be—in the long run—the single most significant action he takes as president. And there's one man tasked with

turning Trump's rhetoric into reality: Scott Pruitt." (09/01/17)



The Daily Caller: EPA's Scott Pruitt: What was so great about Obama's environmental record? "Everyone looks at the Obama administration as being the environmental savior. Really? He was the environmental savior...Well, he left us with more Superfund sites than when he came in. He had Gold King [the 2015 mine wastewater spill] and Flint, Michigan [drinking water crisis]. He tried to regulate CO2 twice and flunked twice. Struck out. So what's so great about that record? I don't know." (09/13/17)

Washington Examiner: Pruitt advances Back-to-Basics agenda. "Few Trump administration agency chiefs have moved as decisively to implement an agenda as Scott Pruitt, the administrator of the Environmental Protection Agency, and he's quite clear about what he wants to do. He calls it a 'back to the basics' agenda, removing the government from what he considers extraneous activity." (09/13/17)

The Washington Free Beacon: EPA workforce approaching lowest levels since Reagan. "We're giving long-serving, hard-working employees the opportunity to retire early," Pruitt said. "We're proud to report that we're reducing the size of government, protecting taxpayer dollars, and staying true to our core mission of protecting the environment and American jobs." (09/06/17)

The Washington Examiner: Scott Pruitt criticizes Obama as 'environmental savior,' moves EPA away from climate change. "Few Trump administration agency chiefs have moved as decisively to implement an agenda as Scott Pruitt, the administrator of the Environmental Protection Agency, and he's quite clear about what he wants to do. He calls it a 'back to the basics' agenda, removing the government from what he considers extraneous activity — namely, the climate change battle taken up by former President Barack Obama, who he questioned as an "environmental savior." (09/13/17)

Reuters: Pruitt gave a wide-ranging interview about protecting the environment and American jobs. "The past administration was all about words. This administration is all about action. Look at the actions this country has taken. We have reduced our greenhouse gas levels to pre-1994 levels primarily through technology and innovation, not through government mandate. We have nothing to be apologetic about with the rest of the world." (07/11/17)

Wall Street Journal: EPA to Unveil New Chemical Testing Rules. "The Environmental Protection Agency on Thursday will release new rules to clarify the agency's process of testing the chemicals used in everyday products and other commerce, a matter of deep importance to manufacturers, consumers and environmental advocates." (06/22/17)

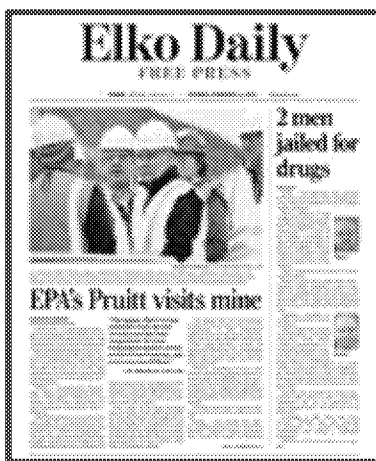
The Daily Caller: Trump Delays One of the Most Expensive EPA Regulations Ever. "The Trump administration announced Tuesday evening it would delay the implementation of a smog rule that's been called one of the costliest clean air regulations ever." (06/07/17)

The Washington Post: EPA head Scott Pruitt defends Paris exit. "When we joined Paris, the

rest of the world applauded ... because it put this country at disadvantage... It's a bad deal for this country. We're going to make sure as we make deals we're going to put the interests of America first." (06/04/17)

The Washington Post: Scott Pruitt, outspoken and forceful, moves to the center of power within the Trump administration. "Less than four months ago, Scott Pruitt arrived in Washington with few connections to President Trump's inner circle and took the helm of an agency where many employees were openly hostile to him. But the administrator of the Environmental Protection Agency has emerged as one of the most influential policy architects in the president's Cabinet, a skilled and sometimes brash lawyer who is methodically taking apart a slew of regulations and agreements affecting a range of issues, from manufacturing operations to landfills." (06/02/17)

Need to Know Network: Pruitt promises to put states back in the driver's seat on regulations. "Pruitt said during the interview that the Obama administration used the authority of Washington to walk over the states, and looked at states as mere vessels of federal will." (05/11/17)



The Hill: EPA seeks governors' input in rewriting Obama water rule. "EPA is restoring

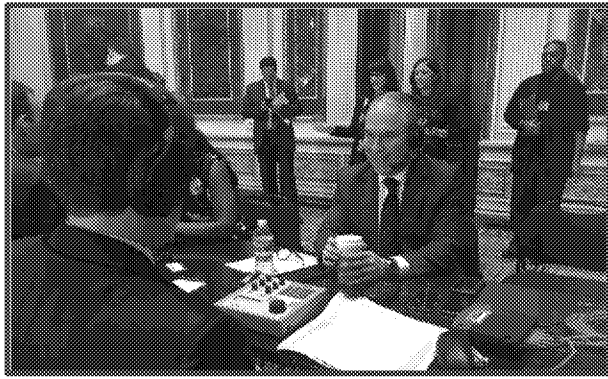
states' important role in the regulation of water,' Pruitt said in a statement. 'Like President Trump, I believe that we need to work with our state governments to understand what they think is the best way to protect their waters, and what actions they are already taking to do so. We want to return to a regulatory partnership, rather than regulate by executive fiat.'" (05/09/17)

The Washington Examiner: EPA Head Pruitt: We hear East Chicago's concerns 'loud and clear.' "Environmental Protection Agency Administrator Scott Pruitt visited East Chicago on Wednesday to assure residents, state and local leaders that Washington is meeting its commitments to protect citizens from lead contamination. 'Their concerns were heard loud and clear, and I am committed to ensuring that the EPA works with our federal, state and local partners to find solutions that protect the health and safety of East Chicago,' Pruitt said." (04/19/17)

The Wall Street Journal: Scott Pruitt's Back-to-Basics Agenda for the EPA. "You might call him an EPA originalist... When Mr. Pruitt sat down Thursday for his first interview since his November nomination, he spent most of the time waxing enthusiastic about all the good his agency can accomplish once he refocuses it on its statutorily defined mission: working cooperatively with the states to improve water and air quality." (02/17/17)

NATIONAL RADIO & PODCAST

The Daily Signal Podcast: EPA Administrator Scott Pruitt explains how the Agency has changed under President Trump's leadership. "'The weaponization of the Environmental Protection agency is over,' says Administrator Scott Pruitt." (02/26/18)



The New York Times' 'The Daily': Pruitt discusses how he's focused on protecting the environment and human health. "The role of a regulator is to make things regular. To take a statue, to use its authority, to fairly enforce it." (02/02/18)

The Hugh Hewitt Show: EPA Administrator Scott Pruitt on 'so called' Clean Power Plan. "For the first time ever, the EPA took its authority and said we can dictate, really coerce states and utility companies across the country and tell them how to generate electricity. You know, when you look at how we generate electricity in this country, we obviously use multiple energy sources." (10/11/17)



ABC News "Powerhouse Politics Podcast:" Scott Pruitt talks about Hurricane Irma recovery efforts. "There's many issues, from drinking water to Superfund to debris management and landfills, that we're dealing with in this kind of situation." (09/08/17)

Fox News' Brian Kilmeade Show: EPA Chairman Scott Pruitt on potential ramifications of pulling out of the Paris Climate Agreement. "We are leading the world now, we are at pre-1994 levels with our CO-2 footprint, not because of Paris, not because of a government mandate but because of innovation and technology. For those who say we are going to lose our seat at the table, we are the United States, we don't lose our seat at the table." (05/19/17)

The Hugh Hewitt Show: EPA Administrator Scott Pruitt on new direction for science boards at the EPA. "You know, Hugh, as you know, the board of scientific counselors that we have at the EPA, they serve three year terms. And so those are reviewed every three years. Those same individuals can apply through the competitive process. And what's really been emphasized by Congress as I went through the confirmation process is geographical representation, because you want to ensure as you're dealing with rulemaking – air, water, whatever rulemaking we're doing, that the geographical uniqueness of our country as we're patching rules is taken in consideration." (05/11/17)

REGIONAL MEDIA

Reno KRNK-TV: Pruitt discusses his visit to Nevada. "Administrator of the Environmental Protection Agency Scott Pruitt sat down with News 4's Bill Frankmore on Monday morning to discuss his event with Governor Brian Sandoval at Anaconda Mine in Lyon County regarding future clean-up and his visit with miners at Coeur Rochester Mine in Lovelock." (02/05/18)



The St. Louis Post-Dispatch: Pruitt outlined his course of action to cleanup West Lake. "In a long-awaited decision that appears to be a compromise, the Environmental Protection Agency on Thursday recommended partial excavation of the West Lake Landfill in Bridgeton to remove radioactive waste linked to the Manhattan Project." (02/01/18)

St. Louis KMOX-TV: Just Moms STL was happy with Pruitt's decision regarding West Lake. "Dawn Chapman and Karen Nickel of the Just Moms STL advocacy group say at first, the group was worried a partial removal would mean only 5percent removed. With a 70percent or more removal — they are pleased. 'I can tell you that we are happy with this decision, and what this does for us is it gives us direction,' Nickel says. 'We've gone without a decision at the site for 10 years, and it's time that we have direction.'" (02/01/18)

Cedar Rapids Gazette: Pruitt wants to work hand in hand with states. "'What's important for us in Washington, D.C., to do is to learn and partner and work with folks at the state level to achieve good outcomes together. That just simply has not happened for a number of years,' said EPA Administrator Scott Pruitt, during a stop in Nevada." (12/01/17)

Des Moines Register: Pruitt called farmers the first "conservationists, environmentalists."

"Pruitt said the country needed to discuss what 'true environmentalism' means: 'We have been blessed with a bounty of natural resources. And some view that as 'We should simply not use them' — that we should put up fences and not use our natural resources. 'I don't buy that. We, as a country, have an obligation to feed the world and power the world,' he said, getting applause. 'When you have the natural resources like we do, we should use them to benefit our neighbors, our country and world.'" (12/01/17)

Louisville WHAS-TV: Pruitt will have changes to Obama's WOTUS. "The head of the United States Environmental Protection Agency was in Louisville Thursday with a promise of change to one of the most controversial environmental regulations for Kentucky farmers. Administrator Scott Pruitt told the Kentucky Farm Bureau's 98th Annual Meeting that the "Waters of the United States" regulation will be changed forever by mid-2018." (12/01/17)

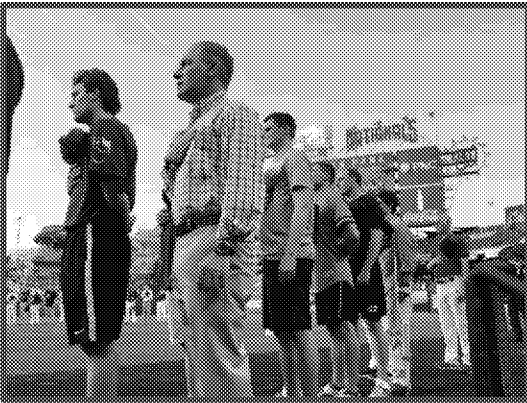
The Chicago Tribune: Pruitt orders companies blamed for East Chicago contamination to pay for cleanup. "'We continue to make cleaning up East Chicago a priority, to protect the health and well-being of the residents who live in the impacted areas,' said EPA Administrator Scott Pruitt in a statement. The EPA estimated the companies will have to pay \$24 million for the remediation, according to the announcement, and \$2.25 million for the indoor dust cleaning.'" (10/18/17)



The Clarion Ledger: Pruitt addressed energy issues in Mississippi. "U.S. Environmental Protection Agency Administrator Scott Pruitt visited Mississippi Thursday to discuss proposed changes to the Waters of the United States rule, just days after announcing the repeal of the Clean Power Plan." (10/13/17)

Houston Chronicle: After Harvey, Pruitt vows bold response to polluted sites around Houston. "Environmental Protection Agency Administrator Scott Pruitt, who has visited Texas twice since Hurricane Harvey, vowed Thursday to have 'an answer' by next month for a permanent solution to clean up the San Jacinto River Waste Pits." (09/22/17)

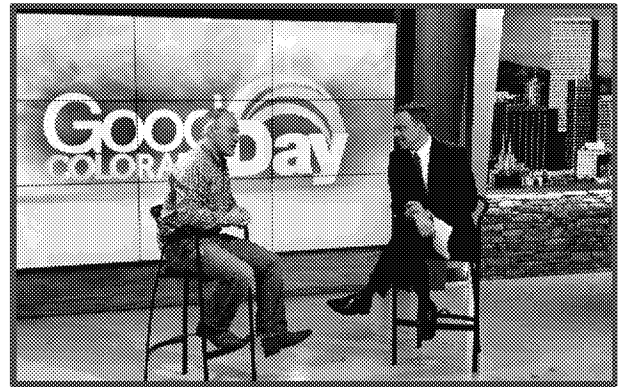
Des Moines WHO-TV: EPA chief, a former baseball exec, wants 'world, world series.' "I think baseball is one of those sports we can actually truly have a world series, we can have a world competition. We've seen it in other instances and I think that's an opportunity that we need to be pursuing." (08/14/17)



Administrator Pruitt stands for the National Anthem at the Congressional Baseball game on June 15, 2017.

Des Moines WHO-TV: EPA Head Agrees That Des Moines Superfund Site Needs to Develop, But When? "Political Director Dave Price talked to Environmental Protection Agency Administrator Scott Pruitt about efforts to redevelop superfund sites, like Des Moines, all over the country." (08/08/17)

Radio Iowa: Pruitt visits Iowa to discuss WOTUS. "Pruitt said his goal is to provide 'regulatory clarity' with a new rule, so property owners will know where federal jurisdiction begins and ends. 'If you want to build a pond on your land,' Pruitt said, 'if you have natural springs on your land and you want to want to water your livestock and build (a retention) pond...and you're not really sure whether if you do that you're going to be subject to \$37,000-plus a day in fines if you don't get a permit and you find it out five years from now, what does that mean? You don't build the pond or you don't build the subdivision or you don't use your land the way you want.'" (08/08/17)

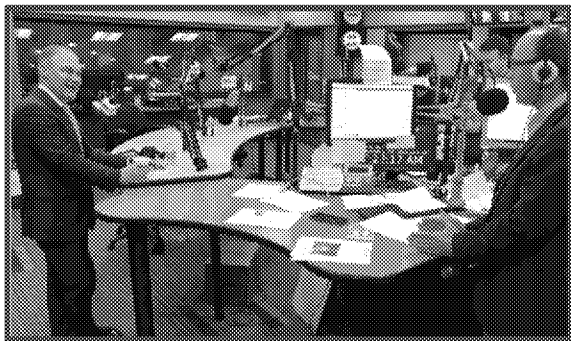


Denver KDVR-TV: Pruitt Gold King Mine on 2-Year Anniversary of Spill Caused by Agency. "Environmental Protection Agency Administrator Scott Pruitt and Colorado leaders will tour the site of the Gold King mine spill on Friday to mark the second anniversary of the spill that dumped 3 million gallons of tainted wastewater into the Animas River." (08/04/17)

Arkansas Democrat Gazette: Pruitt discusses WOTUS in Arkansas. "EPA Administrator Scott Pruitt visited with Arkansas Cabinet officials and agriculture representatives Thursday about changes they would like to see made to the nation's definition of protected water bodies." (07/21/17)

Minneapolis Star-Tribune: Pruitt Signals Welcome Support for Great Lakes Restoration Project. "Environmental Protection Agency Secretary Scott Pruitt's visit to Minnesota last week yielded an unexpected boon for those who care about clean water. In an interview with a Star Tribune reporter, Pruitt affirmed his support for federal funding of the Great Lakes Restoration Initiative, which provides landmark protections for Lakes Huron, Erie, Michigan, Ontario and, most treasured by Minnesotans, Superior." (07/21/17)

Minneapolis Star-Tribune: Pruitt is working hard to protect the Great Lakes. "Scott Pruitt, the nation's top environmental officer, said Wednesday he endorses continued federal funding for a landmark cleanup of the Great Lakes... 'It's a continuing need, and we have to see that it's adequately funded.'" (07/20/17)



Twin Cities WCCO-TV: Pruitt gave an in-depth interview about the EPA's Back-To-Basics Agenda. "EPA Administrator Scott Pruitt was in studio for an exclusive interview while he was in the state to meet with Gov. Mark Dayton. He's in Minnesota as part of his Back-To-Basics tour and talked about rolling back regulations." (07/19/17)

Deseret News: Pruitt visited Utah and talked about WOTUS. "EPA Administrator Scott Pruitt visited Utah as part of multistate tour to get input on how the agency can be more responsive to states' needs in general and in specific how the controversial Waters of the

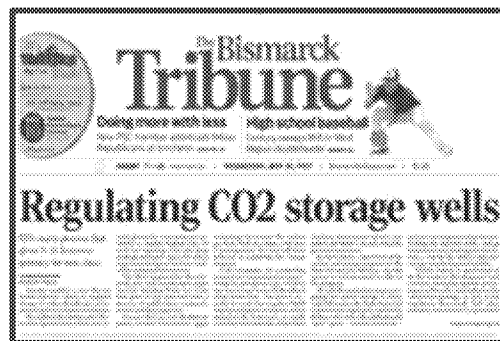
United States rule should be retooled." (07/18/17)

Salt Lake City KTVX-TV: Pruitt discusses his Back-To-Basics agenda. "EPA Administrator Scott Pruitt made his first stop on the State Action Tour here in Utah. This morning he sat down with Glen Mills on Good Morning Utah exclusively to talk about the tour." (07/18/17)

Tulsa World: EPA Chief Scott Pruitt says he's 'determined to prioritize Superfund cleanups.' "'It's important that we address state and tribal rights when protecting the environment and natural resources,' Pruitt said upon announcement of a new grant awarded the Quapaw Tribe." (05/31/17)

Tulsa World: EPA's Pruitt: Agency is 'doing what it's supposed to do' at Osage pollution site. "'This is just leadership,' Pruitt said. 'It's our agency doing what it's supposed to do, coming in, finding out what the source of the problem is, getting it corrected.'" (05/28/17)

Minot Daily News: Governor Burgum says Pruitt is good for North Dakota. "Burgum said he feels Scott Pruitt, the new administrator of the Environmental Protection Agency, will have the biggest single impact on North Dakota. Pruitt, an attorney, is a Republican politician from Oklahoma. He has been a leading advocate against the EPA's activist agenda, including suing the EPA to block its Clean Power Plan and Waters of the United States rule." (05/01/17)



WHAT THEY'RE SAYING

Air

Senator Tom Cotton, (R-Ark.): "It's decisions like this one that are slowly but surely rebuilding trust between rural America and the EPA. I'm glad to see the EPA focus on concrete problems, like haze and other forms of pollution, and also show respect for our state officials' authority. It's a much-needed corrective to the heavy-handed ways of the previous administration, and I look forward to our state developing its own implementation plan, working in cooperation with—not under the thumb of—the EPA." (01/29/18)

Becky Keogh, director, Arkansas Department of Environmental Quality: "Today we are pleased to accept an EPA grant to drive further innovative, cost-effective solutions and continuous improvement in Arkansas's air, which is critical for healthy communities and economic progress. Through cooperative efforts, Arkansas's state of air quality is one of the best in the nation—achieving all national air quality standards. Our progress is most effectively achieved through actions and support from local, state, and federal partners." (01/29/18)

Todd Sax, head, California Air Resources Board Enforcement Division: "California Air Resources Board rules are designed to protect public health by ensuring all Californians breathe clean air. We appreciate our partners at U.S. EPA who are helping to achieve federal air quality standards throughout the State." (11/29/17)

Denise Koch, director, Alaska Department of Environmental Conservation Division of Air Quality: "We are encouraged by the Borough's efforts to work with the community to reduce emissions and appreciate EPA's approval of the

moderate area plan. This will enable us to focus our efforts on developing the serious area plan and improving air quality in the area. The improved local ordinance, long running changeout program to provide funding to upgrade wood stoves and hydronic heaters to cleaner heating appliances, and the annual Fairbanks Clear the Air Forum and Expo are providing the local community with the information and tools needed to solve the air quality problem locally." (08/29/17)

Bryan Shaw, Ph.D., chairman, Texas Commission of Environmental Quality: "We are pleased with the improvement in air quality, and the Texas Commission on Environmental Quality will continue to monitor during on-going remediation activities to make sure compliance with federal standards continues." (06/29/17)

Chemicals and Pesticides

Angela Logomasini, Ph.D., senior fellow, Competitive Enterprise Institute: "Pruitt's action [to deny chlorpyrifos ban] sets an important pro-science approach to regulation that the agency should continue to follow." (08/10/17)

Cal Dooley, president and chief executive officer, American Chemistry Council: "We commend Administrator Pruitt for his attention to improving the efficiency of new chemical review under an amended TSCA. U.S. businesses, jobs, and competitiveness depend on a functioning new chemicals program. In just the last month, significant progress has been made to relieve the backlog, and we welcome the Administrator's commitment to have the program functioning smoothly again by the end of July." (06/05/17)

Mike Witt, corporate director of health and environmental research, Dow Chemical: "Administrator Pruitt and his team at the EPA have made great progress over a very short

period of time to accelerate new chemical reviews, providing American manufacturers with new and safe materials that will help drive innovation and manufacturing growth." (06/05/17)

The California Cotton Ginners and Growers Association: "EPA's denial of [the petition to ban chlorpyrifos] is based off of the foundation in which EPA was created on, relying on sound-science and a transparent process. EPA will now direct its efforts to updating and revising its human health assessment for chlorpyrifos under the standard procedures of the ongoing registration review process, scheduled for completion on October 1, 2022. This is great news for producers and shows the EPA's redirection towards supporting a scientific process!" (03/30/17)

Clean Power Plan

Senator John Barrasso (R-Wyo.), chairman, U.S. Senate Committee on Environment and Public Works: "The Trump administration is listening to the people of Wyoming. Today's announcement that the EPA will hold a listening session in Gillette, on the impacts of the so-called 'Clean Power Plan,' demonstrates the administration's commitment to hear directly from the people who would have been hurt most by this punishing regulation. The Clean Power Plan would have meant lost jobs for energy workers in Gillette and across Wyoming. I am thankful to EPA Administrator Scott Pruitt for his leadership on this important issue." (12/06/17)

Paul Bailey, president and chief executive officer, The American Coalition for Clean Coal Electricity: "The Clean Power Plan is the poster child for bad regulation. It is illegal, expensive, and ineffective, and we commend Administrator Pruitt for repealing it." (10/10/17)

Congressman Paul A. Gosar (R-Ariz.), chairman, Congressional Western Caucus: "The so-called 'Clean Power Plan...picked winners and losers at the expense of American job creators. I applaud Administrator and the Trump Administration for acting to rollback the unconstitutional and fundamentally-flawed Obama mandate." (10/10/17)

Jay Timmons, president and chief executive officer, National Association of Manufacturers: "Manufacturing workers can feel a tremendous sense of relief today. The Trump administration has made the right decision and ended a policy that threatened manufacturers' access to affordable, reliable energy and did not even adhere to existing law." (10/10/17)

Chrissy Harbin, vice president of external affairs, Americans for Prosperity: "This is a welcome departure from the Washington-first, Americans-last approach that characterized energy and environmental policy under the previous administration. The Clean Power Plan (CPP) was an overreach of executive power... It's great to see President Trump and EPA Administrator Pruitt rein in this sweeping mandate." (10/09/17)

Hal Quinn, president and chief executive officer, National Mining Association: "Administrator Pruitt will signal a decisive break with past policies that have used regulation of doubtful legality to circumvent the will of Congress, usurp States' authority and raise costs on American consumers. Repealing this Obama-era rule would close a chapter of regulatory overreach that set standards without regard to the steep costs or availability of technology necessary to meet them. The Clean Power Plan represented an unlawful attempt to transform the nation's power grid." (10/06/17)

Jim Matheson, chief executive officer, National Rural Electric Cooperative Association: "Affordable and reliable power is fundamental to a successful economy. We appreciate the Trump administration working to protect American families and businesses from the potentially devastating impacts of the Clean Power Plan." (03/28/17)

Cooperative Federalism

Amanda Bowen, executive director, Manufacturers Association of Florida: "The Manufacturers Association of Florida commends EPA Administrator Scott Pruitt's laser focus on ensuring the protection and conservation of Florida's unique natural resources and ecosystems, while also maintaining sustainable and economically productive communities." (02/05/18)

John L. Hoblick, president, Florida Farm Bureau: "I applaud Administrator Pruitt's visit to Florida and his willingness to listen to the concerns of our growers. These concerns often stem from an oppressive regulatory environment, and the EPA has taken encouraging steps to curb federal overreach, such as rescinding the 2015 'Waters of the United States' rule." (02/05/18)

Brian Kraft, owner, Alaska Sportsman's Lodge: "This is an encouraging step for many Alaskan businesses and families that depend on Bristol Bay salmon. The EPA made the right decision by listening to local people, dozens of Alaskan business owners, and sportsmen and women around the country." (01/26/18)

Chris Blankenship, commissioner, Alabama Department of Conservation and Natural Resources: "The State of Alabama welcomes EPA as the new Chairperson of the RESTORE Council. Alabama strongly supports the collaborative nature of the RESTORE Council between the five Gulf States and our federal

partners which is so foundational to restoration of the Alabama coast resulting from the impacts of the Deepwater Horizon oil disaster, as well as the cumulative effects of hurricanes on the sustainability of our important coastal resources and the people that rely on them." (12/06/17)

Mark Haney, president, Kentucky Farm Bureau: "We appreciate the EPA Administrator visiting our annual meeting to listen to farmers about their conservation efforts and concerns related to their operations. Administrator Pruitt, a fellow Kentuckian, knows the hard work our farmers put in on a daily basis to keep our farms financially and environmentally sustainable." (11/30/17)

Governor Phil Bryant, (R-Miss.): "Mississippi farmers are the original conservationists. I am grateful for Administrator Pruitt's commitment to working with us to develop strategies that will strengthen agriculture in Mississippi while protecting our environment." (10/12/17)

Evaristo Cruz, chairman, National Tribal Caucus: "The 1984 EPA Indian Policy is a critical instrument that provides both the EPA and Native American tribes with principles that illustrate the federal trust relationship. On behalf of the National Tribal Caucus we would like to thank Administrator Pruitt for upholding and honoring this legacy that EPA has instituted." (10/11/17)

Disaster Relief

Julia M. Nazario Fuentes, Mayor of Loíza: "This work in conjunction with the EPA is a great example of how our administration is building partnerships with federal, state and nonprofit organizations. It is important that our citizens follow the instructions provided by the EPA and our Recycling Office, so that we can keep Loíza clean. Our thanks to the EPA staff for the

speed with which we have worked on this project." (01/12/18)

Governor Greg Abbott, (R-Texas): "Both the EPA and the state are working closely and collaboratively [to monitor the Texas sites and make sure the public health is not imperiled]." (09/05/17)

Bob Dinneen, president and chief executive officer, Renewable Fuels Association: "The RFA applauds the EPA's decision to waive certain fuel regulations for 12 states and D.C. due to the fuel supply emergency caused by Hurricane Harvey. We believe the waiver has the potential to provide much-needed relief to consumers in these areas facing gasoline supply shortages and price spikes." (08/10/17)

Forestry

Bob Cleaves, president and chief executive officer, Biomass Power Association: "The biomass industry greatly appreciates Administrator Pruitt's strong commitment to create regulatory certainty for biomass power producers and all contributors to the wood supply chain." (02/14/18)

Jason Stock, executive director, New Hampshire Timberland Owners Association: "The New Hampshire Timberland Owners Association is pleased Administrator Pruitt took the time to come to New Hampshire to meet with timberland owners, and members of the forest products industry. As the second most forested state in the nation, New Hampshire's forests are an important part of our heritage, culture, and economy. Having a regulatory environment that promotes the growing, management and processing of timber will ensure this legacy continues." (02/14/18)

Fuel Economy Standards

Mitch Bainwol, president and chief executive officer, The Auto Alliance: "With this

announcement, the Administration is fulfilling its commitment to reinstate the midterm evaluation of future vehicle fuel economy and greenhouse gas standards. This review is important to consumers nationwide who want government to rely on the facts to drive improvements in fuel economy. We're delighted to see the two federal agencies align and coordinate their programs, and we thank Secretary Chao and Administrator Pruitt for working closely together to harmonize a review driven by the most current data, consumer preferences and marketplace realities. (8/10/17)

Peter Welch, president and chief executive officer, National Automobile Dealers Association: "NADA applauds the Trump Administration for reaffirming our shared commitment to a transparent, fair and data-driven midterm review of fuel-economy standards." (03/15/17)

International Cooperation

Gian Luca Galletti, Italian Minister of the Environment: "The protection of the environment and public health is a common goal for Italy and the United States. There are many themes that see our common commitment. The presence of Administrator Pruitt at the G7 Environment in Bologna has been a very important element that allowed us to start constructive dialogue on all environmental issues as well as to open new channels of business cooperation between our two countries." (06/11/17)

Brad Wall, Premier of Saskatchewan, Canada: "I was grateful for the chance to meet with Administrator Pruitt. Canada and the U.S. can work together on a continental approach to energy and the environment that focuses on technological innovation like CCS and clean coal initiatives without tax and regulatory policies that cost jobs." (04/04/17)

Regulatory Reform

Barry Hart, executive vice president and chief executive officer, Association of Missouri Electric Cooperatives: "We are encouraged to see that the Trump Administration understands the concerns of people in rural America and is committed to bringing the change they want. We look forward to working with Administrator Pruitt and other administration officials as they work to ensure Washington regulations don't harm the people who can least afford it — our members — and help rural communities create jobs." (04/20/17)

Mike Jackson, chief executive officer, Auto Nation: The Trump Administration is "absolutely doing the right thing" when it comes to rolling back environmental regulations from the Obama Administration. (02/16/17)

Senator Mitch McConnell (R-Ky.), U.S. Senate Majority Leader: "I applaud Administrator Scott Pruitt for his decision to delay this Obama Administration issued regulation. [The 2015 Ozone Standards were] yet another attack on the Middle Class by the Obama Administration and was forced through despite significant concern from communities across the country. Today's postponement will give states and municipalities relief in the interim while EPA continues to review NAAQS levels." (06/06/17)

Scientific Advisory Board Reforms

Howard Feldman, senior director for regulatory and scientific affairs, American Petroleum Institute: "Smart, science-based regulations are essential to our nation meeting its energy and environmental needs well into the future. Administrator Pruitt's actions today advance the administration's commitment to promoting American energy production, transportation, refining, and use while protecting the environment." (10/31/17)

Senator Jim Inhofe (R-Okla.), senior member, U.S. Senate Committee on Environment and Public Works: "Administrator Pruitt's directive to increase transparency and impartiality at the EPA is welcome news... The reforms implemented today will restore integrity to the science advisory boards and demonstrate a commitment to ensuring that diverse voices are heard from the scientific community and increasing participation from state, local and tribal governments." (10/31/17)

Congressman Lamar Smith (R-Tex.), chairman, U.S. House of Representatives Science, Space, and Technology Committee: "Today's announcement shows that we have an administrator with common sense, commitment and courage. Administrator Pruitt is restoring the EPA advisory boards to their original purpose – to provide the administrator objective advice on science and technology policies." (10/31/17)

Smart Sectors

Michael D. Bellaman, president and chief executive officer, Associated Builders and Contractors: "The Smart Sectors Program shows it's a new day at EPA—and that's good news for the environment and the economy. The nation's construction industry welcomes the opportunity to collaborate with regulators to ensure that environmental protection is streamlined and cost effective. That's the way government can help industry be more productive, create more jobs and grow the economy." (10/03/17)

John McKnight, senior vice president of government relations, National Marine Manufacturers Association: "We are thrilled to be part of the EPA's launch of its Smart Sectors Program and are proud to represent an industry that's always first in line when it comes

to partnering with EPA to improve its processes and benefits." (10/03/17)

Sue and Settle

Tom Donohue, president and chief executive officer, U.S. Chamber of Commerce: "The U.S. Chamber of Commerce applauded

Administrator Pruitt's announcement that he would end the so-called sue and settle scheme, which allowed special interest groups to sue EPA in an attempt to force it to take action on their pet issues." (11/13/17)

American Farm Bureau Federation: "In fulfilling his promise to end the practice of regulation through litigation that has harmed the American public, EPA Administrator Scott Pruitt issued an Agency-wide directive designed to end 'sue and settle' practice with the Agency, providing an unprecedented level of public participation and transparency in EPA consent decrees and settlement agreements." (10/16/17)

Richard Guebert, Jr., president, Illinois Farm Bureau: "We're pleased to see the U.S. EPA move away from the previous administration's closed-door dealings which directed agency policy and into a more transparent form of revisions and rule-making...We would like to thank EPA Administrator Scott Pruitt for working to increase transparency in the regulatory process and helping ensure that all stakeholders have a voice when new environmental rules are developed." (10/16/17)

Steve Milloy, senior policy fellow, Energy and Environmental Legal Institute: "By ending the Environmental Protection Agency's (EPA) 'Sue and Settle' practice as well as improving transparency in consent decrees and settlement agreements, EPA Administrator Scott Pruitt is following through on President Trump's promise to 'drain the swamp.'" (10/16/17)

William Yeatman, senior fellow, Competitive Enterprise Institute: "We agree with Administrator Pruitt's goal of ensuring that the agency—and not special interests—establish federal policymaking priorities." (10/16/17)

Superfund

Governor Brian Sandoval (R-Nev.): "The State of Nevada has secured a path forward to restore and reclaim the full Anaconda mine site on a predictable and transparent timeline...it was an honor to host Administrator Scott Pruitt in Weed Heights for this special announcement. This is a landmark day for those who have worked to accomplish a path toward achieving our shared goal of cleaning up the mine site and I am grateful for the trust of the EPA to defer management of the process to Nevada and the incredible partnership with Atlantic Richfield Company." (02/09/18)

Dawn Chapman, co-founder, Just Moms St. Louis: "We consider 70-plus percent removal of the waste [at the West Lake Landfill] a victory and step in the right direction. Our goals, along with relocating the residents, have always been getting the radioactive waste out of the Missouri River floodplain and away from the threat of the underground fire." (02/01/18)

Congresswoman Ann Wagner (R-Mo.): "After years of broken promises and inaction by previous administrations, Administrator Pruitt and the EPA are proposing a viable, permanent solution for cleaning up the West Lake Landfill. I commend them for delivering on this promise to our community and prioritizing Missourians who have lived in fear and uncertainty for too long." (02/01/18)

Maritza Lopez, East Chicago resident: "Administrator Pruitt recognized that the USS Lead Superfund site was important enough to serve as the first Superfund site that he visited.

His continued attention is appreciated. This should be the standard at all sites where residents are exposed to hazardous contamination." (05/31/17)

WOTUS

Michael Turner, president, Dallas Builders Association: "The Dallas Builders Association commends EPA Administrator Pruitt for holding this roundtable in Dallas to get direct feedback from home builders and developers who are affected by burdensome regulations that raise the cost of housing and harm small businesses. The nation's home builders support the administrator's efforts to enact a revised waters of the U.S. rule that will protect the environment without adding unnecessary regulatory burdens that will hurt housing and other industries in Texas that rely on a predictable permitting process." (08/10/17)

Senator Chuck Grassley (R-Iowa), chairman, Senate Judiciary Committee: "The federal government works for the people of Iowa and the rest of the United States. Administrator Pruitt is right to come to Iowa and hear firsthand how the WOTUS rule and other regulations affect the farmers on the ground who are good stewards of the land while feeding the world." (08/08/17)

Leslie Rutledge, Attorney General, Ark.: "Administrator Pruitt's decision last month to completely re-evaluate the WOTUS rule, minimizing the regulatory burden on countless landowners, demonstrates his commitment to building stronger relationships with state partners." (07/20/17)

Message

From: Jackson, Ryan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=38BC8E18791A47D88A279DB2FEC8BD60-JACKSON, RY]
Sent: 6/18/2018 3:28:08 PM
To: Hewitt, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=41b19dd598d340bb8032923d902d4bd1-Hewitt, Jam]
CC: Block, Molly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=60d0c681a16441a0b4fa16aa2dd4b9c5-Block, Moll]; Konkus, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=555471b2baa6419e8e141696f4577062-Konkus, Joh]
Subject: Re: Obama Official Supporting Science Transparency

Personal Matters / Ex. 6

Ryan Jackson
Chief of Staff
U.S. EPA

Personal Matters / Ex. 6

On Jun 18, 2018, at 11:22 AM, Hewitt, James <hewitt.james@epa.gov> wrote:

Ryan,

Molly spotted this earlier today. Thought you might be interested.

From: Block, Molly
Sent: Monday, June 18, 2018 8:13 AM
To: Abboud, Michael <abboud.michael@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>; Daniell, Kelsi <daniell.kelsi@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>; Hewitt, James <hewitt.james@epa.gov>; Konkus, John <konkus.john@epa.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>
Subject: Obama Official Supporting Science Transparency

<https://www.theregreview.org/2018/06/18/dudley-increasing-epas-scientific-transparency/>

Susan Dudley directs the George Washington University Regulatory Studies Center and served from 2007 to 2009 as the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget.

Increasing EPA's Scientific Transparency

Despite concerns, environmental agency's "transparent science" proposed rule supports existing guidelines.

The Regulatory Review
6/18/18

Contrary to what the strong reactions to the U.S. Environmental Protection Agency's (EPA) "transparent science" proposal might suggest, the proposal is not as dramatic as either supporters or detractors imply. Its core principles actually conform with guidelines adopted by previous administrations.

Principle #1: EPA will clearly identify and make publicly available the studies and science relied on for significant regulatory actions. When the Office of Information and Regulatory Affairs(OIRA) tallies up the estimated benefits of all federal regulations, EPA's rules compose 65 percent to 80 percent of the total. Given the significance of these estimates, documenting and making available for public review the underlying science supporting them is essential, as previous administrations have acknowledged.

In 2009, President Barack Obama issued a memorandum to agencies that encouraged "transparency in the preparation, identification, and use of scientific and technological information in policymaking" and affirmed that "scientific and technological information...should ordinarily be made available to the public." The Office of Management and Budget's (OMB) 2002 information quality guidelines directed agencies to make publicly available any relevant peer-reviewed studies that provide support for or contradict estimated effects.

Principle #2: EPA will make dose-response data and models underlying pivotal regulatory science publicly available for independent validation. The selection of the model used to estimate responses to exposures to contaminants can have significant impacts on estimated regulatory benefits. In 2007, OIRA and the Office of Science and Technology Policy (OSTP) observed that a "high degree of transparency with respect to data, assumptions, and methods will increase the credibility of the risk analysis, and will allow interested individuals, internal and external to the agency, to understand better the technical basis of the analysis."

In 2010, the OSTP directed agencies to develop policies to "facilitate the free flow of scientific and technical information, consistent with privacy and classification standards." President Obama's science advisor, John Holdren, instructed agencies to "expand and promote access to scientific and technological information"—including data and models underlying regulatory proposals—"by making it available online in open formats."

EPA's proposal to make the data and models underlying its pivotal regulatory science public also conforms with developments in scholarly journals. In 2013, for example, Nature took steps to ensure it reported key methodological details and prompted "authors to be transparent," by, for example, including the raw data used in their studies. The journal Science has also focused "on making data more open, easier to access, more discoverable, and more thoroughly documented."

EPA's proposal states that it would consider information to be "'publicly available in a manner sufficient for independent validation' when it includes the information necessary for the public to understand, assess, and replicate findings." This emphasis on replicability can encourage the process of challenge and validation that underscores the scientific method. The proposal conforms with OMB's 2002 information quality guidelines, which require that significant information disseminated to the public be "'capable of being substantially reproduced'...subject to an acceptable degree of imprecision."

Principle #3: EPA will describe and document its assumptions and methods and show how sensitive modeled results are to those and alternative assumptions. In 2010, the OSTP directed agencies to communicate scientific and technological findings to the public "by including a clear explication of

underlying assumptions; accurate contextualization of uncertainties; and a description of the probabilities associated with both optimistic and pessimistic projections, including best-case and worst-case scenarios where appropriate.”

Documentation and sensitivity analysis are important, because assumptions and judgments become embedded in predictions of health risk under different policy options and can—intentionally or not—influence the ultimate advice that researchers give to decision-makers and the public. Documenting these assumptions and estimating how predicted outcomes vary with alternative assumptions and judgments, could greatly improve the transparency and quality of EPA’s decisions. As a group of 19 regulatory analysis experts warned, “analyses that do not provide information on how sensitive the primary estimate is to assumptions, data, and models, and the range of outcomes possible under reasonable alternative analytic assumptions should raise questions.”

Principle #4: EPA will explicitly consider high-quality studies that offer new dose response information that may allow the agency to move away from default assumptions. In estimating adverse effects of exposure to many pollutants, EPA relies on a default linear, no-threshold dose-response model. Both theory and observation suggest that thresholds exist below which further reductions in exposure do not yield changes in mortality response. More accurate dose-response functions, however, are elusive. The default linear no-threshold assumption is convenient in that it allows EPA to estimate incremental health improvements in proportion to estimated reductions in exposure, but, if the assumption is inaccurate, it can lead to under- or over-estimates of risks at relevant exposure levels and to a misallocation of resources.

EPA’s proposed commitment to consider research that can help clarify the effect of low-dose exposure to key pollutants would not only improve short-term policy outcomes, but the commitment would also provide incentives for researchers to devote attention and resources to exploring and reducing this key uncertainty.

Principle #5: EPA will conduct independent peer review on all pivotal regulatory science used to support regulatory decisions. Peer review represents a fundamental component of the scientific process and EPA’s proposed approach conforms with OMB’s 2004 guidelines to all federal agencies and departments on using external peer review. When engaging experts in peer review, EPA should also consider the recommendations of recent interdisciplinary efforts in the context of scientific advisory panels. Such advisors can provide a necessary and valuable source of information and peer review for agency science, but care should be taken in both the composition of the panels and the charges they are given.

Principle #6: EPA will apply practices to protect privacy and confidentiality of information. EPA acknowledges concerns that increased transparency and public access to data may risk exposing confidential or private information. The agency, however, points to practices at other federal agencies and in scientific publishing that can ensure the protection of confidential or personally identifiable information. Depending on the situation and sensitivity of the information, data can be shared through a range of measures that allow access for replication and validation purposes while protecting personally identifiable information.

In conclusion, EPA’s proposed rule attempts to balance the competing public goals of ensuring policy decisions are transparent and based on the best available science, while protecting privacy and confidentiality. Building on existing guidelines, the rule includes reasonable principles that could improve the evidentiary basis for EPA’s regulatory policies and thus improve regulatory outcomes by targeting resources where the largest benefits can be achieved.

Constructive public comment on this proposal will be essential. As President Obama’s science advisor once observed, “Open communication among scientists and engineers, and between these experts and the public, accelerates scientific and technological advancement, strengthens the economy, educates the nation, and enhances democracy.”

Message

From: Linkins, Samantha [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B7A94AA2975D4933981A8A9BF12AAA40-LINKINS, SAMANTHA]
Sent: 8/8/2018 6:50:07 PM
To: Orme-Zavaleta, Jennifer [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3c5a111dc377411595e5b24b5d96146b-Orme-Zavaleta, Jennifer]
Subject: FW: McNerney-Pallone-Tonko response
Attachments: McNerney-Tonko ORD - OW + mk.docx

FYI I requested that OW give us written approval of **Deliberative Process / Ex. 5** of ORD signing it - rather than just hearing indirectly through OCIR that OW was okay with it. So, that's what this note from Peter is all about.

Samantha Linkins
Science Communication
Office of Research and Development, US EPA
Washington, DC
Office: 202-564-1834
Cell: 202-604-5742

From: Grevatt, Peter
Sent: Wednesday, August 08, 2018 2:40 PM
To: Orme-Zavaleta, Jennifer <Orme-Zavaleta.Jennifer@epa.gov>; Linkins, Samantha <Linkins.Samantha@epa.gov>
Cc: Klasen, Matthew <Klasen.Matthew@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Tiago, Joseph <Tiago.Joseph@epa.gov>
Subject: McNerney-Pallone-Tonko response

Jennifer and Sam,

Per your request, I wanted to let you know that I have reviewed the draft response to Congressmen McNerney, Tonko, and Pallone. **Deliberative Process / Ex. 5** and support ORD signing the response, once it comes to ORD for signature after OCIR review.

Please let me know if you have any questions.

Thanks,
P. Grevatt

Message

From: Moody, Christina [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=813EB7F985C845EAA91EDC10C6E9A914-CMOODY]
Sent: 1/26/2018 9:03:52 PM
To: Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]; Orme-Zavaleta, Jennifer [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3c5a111dc377411595e5b24b5d96146b-Orme-Zavaleta, Jennifer]
CC: Linkins, Samantha [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b7a94aa2975d4933981a8a9bf12aaa40-Linkins, Samantha]; Gomez, Laura [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=575ba24fc19d429c8302a05102353238-lgomez]; Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]
Subject: Briefing Materials for the Honest Act

Hello,

I understand that there is an effort within ORD to develop some internal materials for the upcoming briefing with HSST on the Honest Act. Please be sure to include myself and Laura Gomez, in addition to Aaron, on the distribution email.

Thanks – enjoy your weekend!

Christina J. Moody
US Environmental Protection Agency
Office of Congressional Affairs & Intergovernmental Relations
Moody.Christina@epa.gov



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON D.C. 20460

OFFICE OF THE ADMINISTRATOR
SCIENCE ADVISORY BOARD

June 28, 2018

EPA-SAB-18-003

The Honorable E. Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Subject: Science Advisory Board (SAB) Consideration of EPA Proposed Rule:
Strengthening Transparency in Regulatory Science

Dear Administrator Pruitt:

As part of its statutory duties, the Environmental Protection Agency's (EPA) Science Advisory Board (SAB) met on May 31, 2018, to discuss whether to review the adequacy of the scientific and technical basis of the planned regulatory actions in the 2017 Unified Regulatory Agendas, as authorized by section (c) of the Environmental Research, Development and Demonstration Authorization Act of 1978 (ERDDAA). During this meeting, the SAB also discussed possible review of the science supporting the proposed rule *Strengthening Transparency in Regulatory Science (RIN 2080-AA14)*. The SAB found that the proposed rule deals with issues of scientific practice and proposes constraints to the use of scientific studies in particular contexts. The proposed rule solicits comment on a number of scientific issues that would benefit from expert advice and comment from the SAB.

Initiating the Screening Review

The ERDDAA requires the EPA to make available to the SAB proposed criteria documents, standards, limitations, or regulations provided to any other Federal agency for formal review and comment, together with the relevant scientific and technical information upon which the proposed action is based. The SAB may then make available to the Administrator, within the time specified by the Administrator, its advice and comments on the adequacy of the scientific and technical basis of the proposed action.

EPA's usual process is to provide the SAB with information about the publication of the semi-annual regulatory agenda and to provide descriptions of major planned actions that are not yet proposed but appear in the semi-annual regulatory agenda, augmented to include proposed regulations, criteria documents, standards, or limitations that are expected to undergo interagency review¹. The EPA's descriptions provide available information regarding the science that is informing these agency actions.

SAB members and the SAB Staff Office were made aware of a proposed rule entitled *Strengthening Transparency in Regulatory Science* (RIN 2080-AA14) through an April 25, 2018, press event and an April 30, 2018, *Federal Register* notice, as well as news articles. The EPA announced the proposed rulemaking with a 30-day public comment period. SAB members had no information regarding the timeline for finalizing the rule and the proposed rule was not identified as a major action in either of the Spring 2017 or Fall 2017 semi-annual Regulatory Agendas.

An SAB Work Group met by teleconference on May 3, 2018, to discuss its recommendations on major planned actions in the Fall 2017 semi-annual regulatory agenda and included the proposed rule *Strengthening Transparency in Regulatory Science* (RIN 2080-AA14) as part of the discussion. That Work Group provided the SAB with a memorandum² documenting the discussions and recommending that the proposed rule merits review by the SAB. Subsequently the SAB became aware that the proposed rule was included in the Spring 2018 semi-annual Regulatory Agenda published on May 9, 2018. A second *Federal Register* notice was published May 25, 2018 extending the public comment period to August 16, 2018 and announcing a public hearing to be held in Washington, DC on July 17, 2018.

The SAB Should Consider the Proposed Rule's Scientific and Technical Basis

During the meeting on the May 31, 2018, the full SAB agreed with the Work Group that the proposed rule merits review by the Board and discussed the scientific issues that should be considered. For example, there are important scientific considerations needed for transparency. The Board recognizes that the long-term trend in most scientific fields is for authors to supply public access to data and analytic methods after scientific findings are published. Such transparency may help to ensure scientific integrity and facilitate robust analysis, as well as allowing supplementary lines of knowledge to be developed from the same data. Some fields of science are moving faster than others in the direction of transparency. For studies published many years ago, it may not be feasible to deliver public access to data and analytic methods.

¹ EPA Memorandum: Coordination with the Science Advisory Board Regarding Proposed Criteria Documents, Standards, Limitations and Regulations. (See page 9 of Attachment A in the Fall 2017 memorandum available at: [https://yosemite.epa.gov/sab/sabproduct.nsf/9263940BB05B89A885258291006AC017/\\$File/WG_Memo_Fall17_RegRevAitsABC.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/9263940BB05B89A885258291006AC017/$File/WG_Memo_Fall17_RegRevAitsABC.pdf))

² Preparations for Chartered Science Advisory Board (SAB) Discussions of Proposed Rule: Strengthening Transparency in Regulatory Science RIN (2080-AA14) Available at: [https://yosemite.epa.gov/sab/sabproduct.nsf/E21FFAE956B548258525828C00808BB7/\\$File/WkGrp_memo_2080-AA14_final_05132018.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/E21FFAE956B548258525828C00808BB7/$File/WkGrp_memo_2080-AA14_final_05132018.pdf)

There are also sensitive situations where public access may infringe on legitimate confidentiality and privacy interests, and where exceptions from complete public access may be appropriate. In addition, there are considerations associated with the cost and effort that would be required in making large and complex existing datasets available within Institutional Review Board requirements, including the issue of who would be responsible for implementing the rule and any additional obligations. Thus, the development of guidelines and rules in this arena requires careful collaboration with the scientific community.

Although the proposed rule cites several valuable publications that support enhanced transparency, the precise design of the proposed rule appears to have been developed without a public process for soliciting input specifically from the scientific community. Nor does the preamble to the rule describe precisely how the proposal builds on previous efforts to promote transparency such as the Information Quality Act and EPA's Information Quality Guidelines.

Other key science issues associated with the proposed rule to increase transparency that may benefit from SAB advice are:

- Considerations related to the use of epidemiologic studies and methods that are based on confidential human subject data while also providing transparency in the underlying data;
- Consideration of the multiple existing methods to assess the validity of prior epidemiologic studies, that do not provide public access to data and analytic methods;
- Consideration of the selection of dose-response models and factors such as biological plausibility, mode of action, or mechanism of action to identify the most scientifically-appropriate model(s);
- The need to clearly define crucial sound science concepts such as “replication” and “validation”; and
- The identification and evaluation of mechanisms used by expert panels in vetting science that do not engage in reanalysis of original data with original methods, yet entail a rigorous review process that goes beyond typical journal peer review procedures.

The SAB recognizes that the EPA has already received thousands of public comments in addition to the large number of comments from grassroots write-in campaigns. The SAB urges the Agency to fully consider those comments and request, receive, and review scientific advice from the SAB before revising the proposed rule.

The EPA has long been a leader in the use of science in decision-making. The proposed rule, *Strengthening Transparency in Regulatory Science*, would focus on the EPA's foundational policies related to the use of science in rulemaking and policy development. Further, the rule has the potential to influence policy development and guidance across the government. The SAB looks forward to defining the set of scientific and technical issues upon which the proposed rule rests and developing a charge for an SAB work group to provide advice and comments on those issues.

On behalf of the SAB, I thank you for the opportunity to support EPA through consideration of the science supporting actions in the Agency's regulatory agenda.

Sincerely,

/s/

Dr. Michael Honeycutt, Chair
Science Advisory Board

Enclosure
(1) Roster of SAB Members

NOTICE

This report has been written as part of the activities of the EPA Science Advisory Board (SAB), a public advisory group providing extramural scientific information and advice to the Administrator and other officials of the Environmental Protection Agency. The SAB is structured to provide balanced, expert assessment of scientific matters related to problems facing the Agency. This report has not been reviewed for approval by the Agency and, hence, the contents of this report do not necessarily represent the views and policies of the Environmental Protection Agency, nor of other agencies in the Executive Branch of the Federal government, nor does mention of trade names of commercial products constitute a recommendation for use. Reports of the SAB are posted on the EPA Web site at <http://www.epa.gov/sab>

U.S. Environmental Protection Agency Science Advisory Board

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Dr. Robert E. Mace, The Meadows Center for Water and the Environment, Texas State University, San Marcos, TX

Dr. Clyde F. Martin, Horn Professor of Mathematics, Emeritus, Department of Mathematics and Statistics, Texas Tech University, Crofton, MD

Dr. Sue Marty, Senior Toxicology Leader, Toxicology & Environmental Research, The Dow Chemical Company, Midland, MI

Dr. Kristina D. Mena, Associate Professor, Epidemiology, Human Genetics and Environmental Sciences, School of Public Health, University of Texas Health Science Center at Houston, El Paso, TX

Dr. Surabi Menon, Director of Research, ClimateWorks Foundation, San Francisco, CA

Mr. Robert W. Merritt, Independent Consultant, Houston, TX

Dr. Larry Monroe, Independent Consultant, Braselton, GA

Dr. Thomas F. Parkerton, Senior Environmental Associate, Toxicology & Environmental Science Division, ExxonMobil Biomedical Science, Houston, TX

Dr. Robert Phalen, Professor, Air Pollution Health Effects Laboratory, Medicine, Department of

Medicine, University of California-Irvine, Irvine, CA

Mr. Richard L. Poirot, Independent Consultant, Burlington, VT

Dr. Kenneth M. Portier, Independent Consultant, Athens, GA

Dr. Robert Puls, Owner/Principal, Robert Puls Environmental Consulting, Hilton Head Island, SC

Dr. Kenneth Ramos³, Associate Vice-President of Precision Health Sciences and Professor of Medicine, Arizona Health Sciences Center, University of Arizona, Tucson, AZ

Dr. Tara L. Sabo-Attwood, Associate Professor and Chair, Department of Environmental and Global Health, College of Public Health and Health Professionals, University of Florida, Gainesville, FL

Dr. William Schlesinger, President Emeritus, Cary Institute of Ecosystem Studies, Millbrook, NY

Dr. Anne Smith, Managing Director, NERA Economic Consulting, Washington, DC

Dr. Richard Smith, Professor, Department of Statistics and Operations Research, University of North Carolina, Chapel Hill, NC

Dr. Jay Turner, Associate Professor and Vice Dean for Education, Department of Energy, Environmental and Chemical Engineering, School of Engineering & Applied Science, Washington University, St. Louis, MO

Dr. Jeanne M. VanBriesen, Duquesne Light Company Professor of Civil and Environmental Engineering, and Director, Center for Water Quality in Urban Environmental Systems (Water-QUEST), Department of Civil and Environmental Engineering, Carnegie Mellon University, Pittsburgh, PA

Dr. Donald vanderVaart, Independent Consultant, Raleigh, NC

Dr. Kimberly White, Senior Director, Chemical Products and Technology Division, American Chemistry Council, Washington, DC

Dr. Peter J. Wilcoxon, Laura J. and L. Douglas Meredith Professor for Teaching Excellence, Director, Center for Environmental Policy and Administration, The Maxwell School, Syracuse University, Syracuse, NY

Dr. S. Stanley Young, Chief Executive Officer, CGStat, Raleigh, NC

SCIENCE ADVISORY BOARD STAFF

Mr. Thomas Carpenter, Designated Federal Officer, U.S. Environmental Protection Agency, Science Advisory Board Washington, DC

³ Dr. Ramos did not attend the May 31-June 1 meeting.



APPROPRIATIONS & CROSSCUTTING WEEKLY NEWS

Office of Congressional and Intergovernmental Relations

Week Ending February 9, 2018

BIPARTISAN SENATE BUDGET DEAL REACHED

The Senate has reached a massive two-year budget deal that would increase spending levels for both defense and domestic programs. The deal is expected to increase budget caps by \$300 billion over the next two years. The bill includes some key things:

- Funds the government through March 23
- Raises the debt ceiling beyond the midterm elections
- Includes over \$81B in disaster aid funding
- Removes sequestration

The agreement, if passed, allows House and Senate Appropriations chairmen to finish an omnibus spending package, ending the cycle of short-term government funding bills, at least for a few months. The deal effectively deals with many stalled policy priorities that have stalled in the Senate for some time now.

Once passed in the Senate, the bill must go back to the House for a vote. Nancy Pelosi said Wednesday that Democrats would not support the two year package without a commitment from Speaker Paul Ryan to an open floor debate on immigration that includes a vote to protect Dreamers from deportation—similar to the promise made from Senate Majority Leader Mitch McConnell to democrats in his chamber.

Meanwhile, the current stopgap funding resolution expires at midnight on Thursday, February 8, and we will continue to monitor the funding saga as it unfolds.

Nominee for EPA Deputy Advances in Committee

The Senate Environment and Public Works Committee voted Wednesday, 11-10 along party lines, to approve the nomination of former fossil fuel lobbyist Andrew Wheeler to be EPA's Deputy Administrator. Wheeler's nomination had previously won committee approval in November, but didn't get a vote on the Senate floor. Democrats had threatened to block environmental nominees because they objected to the nomination of Kathleen Hartnett White to lead the Council on Environmental Quality. White withdrew her nomination on Sunday, clearing the way for Democrats to agree to a vote on Wheeler.



Earth Day 2018

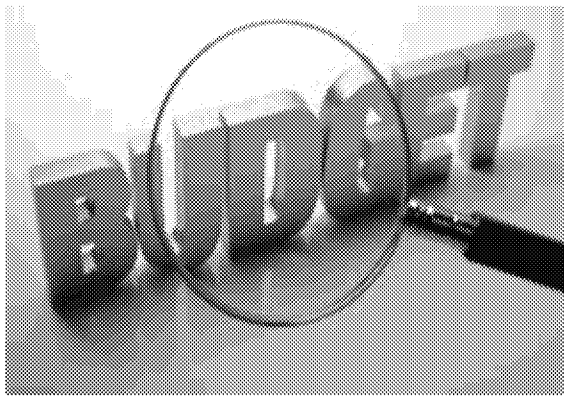
It may be hard to imagine that before 1970, a factory could spew black clouds of toxic into the air or dump tons of toxic waste into a nearby stream, and that was perfectly legal. They could not be taken to court to stop it.

How was that possible? Because there was no EPA, no Clean Air Act, no Clean Water Act. There were no legal or regulatory mechanisms to protect our environment.

In 1970, President Richard Nixon and Congress established the U.S. EPA in response to the growing public demand for cleaner water, air, and land. EPA was tasked with monitoring, standard-setting, and enforcement activities to help protect our environment and to help Americans make a cleaner and safer environment. EPA research has been crucial to environmental legislature such as the Clean Air Act, the Clean Water Act, the Pollution Prevention Act, and the Safe Drinking Water Act.

In spring 1970, Senator Gaylord Nelson created Earth Day as a way to force this issue onto the national agenda. Twenty million Americans demonstrated in different U.S. cities, and it worked!

Although Earth Day is celebrated on April 22 each year, let's strive to make every day Earth Day!



2018 EPA Budget Symposium

The Team continues to move forward on planning EPA's first Budget Symposium for Congressional Authorizing Committees. The President's FY 2019 Budget Request is currently scheduled for February 12, 2018. The Symposium will be held onsite at EPA's Washington DC Headquarters. More information will be provided on the details of this historical event soon. Stay tuned!

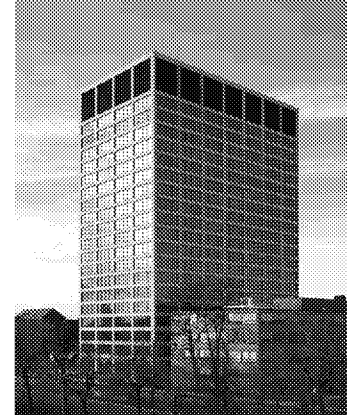
Facilities and Space Consolidation

EPA is consolidating human resources support services into EPA owned buildings in Cincinnati, OH and Research Triangle Park, NC. This decision will save taxpayer dollars and streamline management layers. EPA staff will be given the opportunity to relocate to an EPA owned facility by the summer of 2018.

What does this mean? EPA delivers HR support to its workforce through a variety of organizations and support models, both centralized, through three HR shared service centers, and decentralized, with HR resources embedded in organizations.

Who is the customer? The goal is to continue to improve customer service, provide more consistent HR support, and foster increased confidence from customers. The change further illustrates the agency's commitment to providing service in the most efficient manner to customers across the agency, and this consolidation will positively impact staff coordination and service delivery.

The centers in Cincinnati and RTP will process personnel and benefits actions for the agency's employees. The move will be completed in the summer of 2018. Staff affected by this consolidation will be given the option to relocate to one of the other locations, retire, or separate from the Agency. The Agency will pay for relocation costs.



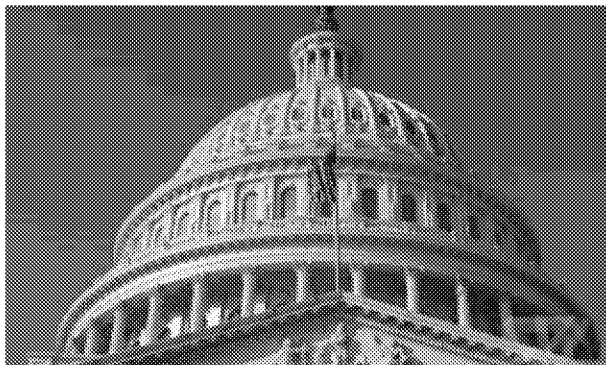
Congressional Inquiries

Homeland Security and Governmental Affairs: Agency Rulemakings

Senator Markey: Formaldehyde Risk Assessment Status Update

Interior Subcommittee on Appropriations/Environment & Public Works Committee: IRIS, National Academy of Sciences Review Process

House Science, Space, and Technology: Honest Act Implementation



White House Aide Resigns

White House staff secretary Rob Porter, a mostly unknown but deeply influential aide who spends almost every day by the President's side, said Wednesday he plans to resign following abuse allegations from his ex-wives.

In a pair of reports published by the Daily Mail, Porter's two ex-wives detailed episodes of verbal and physical abuse. The Daily Mail published a copy of a protective order obtained by Porter's wife in 2010 and later published photographs of Porter's first wife with a black eye she alleges came from Porter punching her.

Miscellaneous Tidbit

The President wants to have a military parade in DC. Not all lawmakers are on board with that idea, with Senator Lindsey Graham calling the idea "cheesy and shows a sign of weakness".

Program Spotlight This Week

ORD

Improved Usability of EPA Database Supporting TSCA Implementation

This week, EPA ORD is making available a significantly updated version of the Web-based Ecotoxicology Knowledgebase (ECOTOX), which serves as the source of toxicity effects data currently being used to evaluate the safety of existing chemicals under the Lautenberg Act. ECOTOX includes data on more than 11,000 chemicals and 12,000 species, and is available online to users all over the world. Each month, 6,000-10,000 unique users perform 150,000 to 200,000 data downloads. This database provides users with a cost-effective, non-duplicative means of locating high-quality ecological effects data to support chemical decision making across a wide range of uses. ECOTOX data are used for all ecological risk assessments supporting pesticide registrations and re-registrations, all ambient water quality criteria for chemicals published since 1985, and assessments used in emergency response. The updated version of ECOTOX is being released in beta form to gather feedback before becoming final. It includes new visualization tools and other improvements to help users better identify the most critical data from current outputs more quickly.

Building Statistical Capacity to Assess Waters in Virginia

On Monday, at a meeting organized by the Virginia Department of Environmental Quality, ORD's Karen Blocksom demonstrated a function she created in the R programming language to identify distinct taxa in water samples to a group of state and regional biologists. The R programming language is used for statistical analysis by many state programs using National Aquatic Resource Survey (NARS) approaches and tools to monitor and report on the condition of their waters. This technical support helps EPA better support states that might be struggling with R, which has a steep learning curve, while enabling EPA to learn about tools that states are developing that we may be able to use.

Moving from Contamination to Economic Revitalization in Great Lakes

ORD researchers will join federal and state partners Tuesday and Wednesday in Chicago, at the EPA Region 5 and EPA Great Lakes National Program Office-hosted Great Lakes Area of Concern (AOC) Revitalization Summit. Great Lakes AOCs were established in response to legacy contamination of heavy metals, polychlorinated biphenyls, and dioxin, as well as to combined sewage overflows and stormwater runoff from Great Lakes Coastal communities. There are 27 remaining AOCs on the U.S. side of the Great Lakes. The goals are to restore the beneficial uses of the aquatic ecosystems that have been impaired and, in many cases, to accomplish economic revitalization. NHEERL researchers have worked with partners to apply Remediation to Restoration to Revitalization in the St. Louis River estuary and plan to take lessons learned from that work to the summit. NRMRL has five active field projects within the Great Lakes AOCs that are venues for development of alternative monitoring technologies and innovative analysis approaches to evaluate remedy effectiveness.



APPROPRIATIONS & CROSSCUTTING WEEKLY REPORT

Office of Congressional and Intergovernmental Relations

Week Ending April 27, 2018

FY 2019 BUDGET HEARINGS

April 26, 2018

House Energy and Commerce and House Appropriations

WASHINGTON DC—Administrator Pruitt appeared at back-to-back hearings by the House Energy and Commerce Committee's Energy Subcommittee and the House Appropriations Interior-Environment Subcommittee Thursday. He rejected a litany of ethics complaints against him as lies intended to derail President Donald Trump's agenda, and put much of the blame for any agency missteps on his staff.

During the two tense congressional hearings, the Administrator faced tough questions from Democrats and even some fellow Republicans in marathon high-stakes testimony. "Facts are facts and fiction is fiction," he told a House of Representatives panel. "And a lie doesn't become true just because it appears in the front page of the newspaper." "Those who attack the EPA and attack me are doing so because they want to attack and derail the president's agenda and undermine this administration's priorities," the Administrator testified.

Although the hearings were scheduled to discuss the EPA budget, they focused mainly on the Administrator's performance. Nonetheless, he was able to tout his accomplishments, highlighting "measurable achievements" that have thus far occurred since he has taken office, in addition to new regulatory reforms. "There is consequential and important work being done at the EPA since the beginning of the administration, both in terms of improved environmental outcomes as well as substantial regulatory reforms," Administrator Pruitt said. Topics raised in both hearings related to WIFIA, Hurricane Recovery, GHG & Corporate Average Fuel Economy (CAFE) standards, cooperative federalism with States, and Brownfields.

Hearing Transcripts are expected to be released next week. Questions for the Record are expected to be received from both committees within the next two weeks.



BUDGET HEARINGS:

Senate Appropriations Committee: May 15– Tentative

Senate Environment and Public Works: TBD

CONFIRMATION HEARING:

Assistant Administrator Charles McIntosh– Office of International and Tribal Affairs (OITA)- May 9

UPCOMING EVENTS:

PADs/Comms Directors Meeting - May 2-3, 2018

PUBLIC HAPPENINGS : Science Advisory Board Staff Office

Public Meeting: SAB CAAC-ETBE/tBA Panel Teleconference: Chartered Science Advisory Board (SAB) Meeting May 31-June 1, 2018: A Federal Register Notice was published on April 18th, 2018, announcing a public face to face meeting for the Chartered SAB on May 31-June 1, 2018. This will be the first face to face for the newly appointed board. The draft agenda proposes review of the finalized report on the risk and technology review for NESHAPs (National Emissions Standards for Hazardous Air Pollutants), discussion on the planned actions on the regulatory agenda, and briefings on the agency's efforts on the Lead Task Force and PFAS (perfluoroalkyl substances). A request for the Administrator to welcome the new Chartered Board was submitted.

Public Meeting: SAB CAAC-ETBE/tBA Panel Teleconference June 6, 2018: A follow up public teleconference of the SAB Chemical Assessment Advisory Committee (CAAC) augmented for ETBE and TBA Panel is in the planning stages. . A Federal Register Notice (FRN) package to announce the public teleconference is currently being prepared and will be submitted to the Office of Policy the week of April 30th. The purpose of the teleconference (to be held June 6, 2018) is to continue deliberation on the panel's draft report responding to the Agency's request for SAB Peer Review of the documents: *Toxicological Review for Ethyl Tertiary Butyl Ether (ETBE) (External Review Draft, dated June 2017)* and *Toxicological Review of tert-Butyl Alcohol (tert-butanol or tBA) (External Review Draft, dated June 2017)*.

SCIENCE HAPPENINGS: Office of Research and Development

Field Studies at Reynolds Metals Company Superfund Site, Troutdale, OR

This week, at the request of Region 10, NRMRL's Robert Ford, Steve Acree, and Randall Ross will travel to the Reynolds Metals Company Superfund Site to demonstrate tools for mapping groundwater and surface water interactions with lakes and rivers that border the site. The planned work will provide Region 10 and the Oregon Department of Environmental Quality with tools to evaluate where groundwater may be reaching above-ground levels and entering surface waters near the site. The Reynolds Metals Company site is the former location of the Reynolds/Alcoa aluminum smelter. Activities at the site generated metals-bearing wastes that contaminated soil, groundwater, surface water and sediment.

Interagency Collaborative for Environmental Modeling and Monitoring (ICEMM) Meeting

This week, in Rockville, Maryland, ICEMM will hold a meeting with the six federal agencies, including ORD, cooperating in the research and development of multimedia environmental models, software, and related databases. The public meeting will include information on developments in environmental modeling applications, tools and frameworks, and new operational initiatives among the participating agencies. Brenda Rashleigh, NHEERL's MI to the SSWR research program, will present on the history and priorities of the ICEMM. More information

Sharing Expertise in China

This week, NHEERL's Christopher Lau will present on "PFAS Toxicology and Recent Risk Assessment Activities," at the 2018 International Symposium on Chemical Risk Prediction and Management in Dalian, China. After the symposium, Dr. Lau will visit the School of Environmental Science and Technology at Dalian University of Technology and present a seminar on the same topic. NCCT scientist Maureen Gwinn was also invited to present at Dalian University of Technology on the use of new approach methodologies in chemical risk assessment in the US, specifically related to her work with other international collaborators through the Accelerating the Pace of Chemical Risk Assessment (APCRA) workshops. This effort is an important initiative to increase US and international interaction and engagement related to the safety of chemicals.

ASTM Waste Management Meeting to Develop Consensus Standards

Last week, NERL's Brian Schumacher and John Zimmerman hosted the American Society for Testing and Materials (ASTM) Waste Management Committee Meeting (i.e., ASTM Committee D34) at the NERL-Las Vegas facility. The meeting was attended by members representing EPA, states, and industry. Participants discussed and edited multiple consensus standards over the course of the two-day meeting. An ASTM consensus standard is developed by seeking the input of a cross-section of stakeholders with an interest in its use. ASTM technical committees, like ASTM Committee D34, meet as part of the process of standards development.

ECOS Air and Water Calls on Research Planning

In an effort to prioritize states' needs, ORD is coordinating media-specific calls with ECOS and its research arm – the Environmental Research Institute of the States (ERIS) – to gather information that will inform future planning and contribute to the development of ORD's Strategic Research Action Plans refresh. This week, two calls will be held focused on Air and Water research planning. For these initial project formulation calls, ORD will discuss proposed high level changes/priorities, and how the 2016 ERIS states' research priorities have informed ORD's research planning to date. State media associations have also been invited to participate, as well as EPA program and regional office representatives. The goal is to better connect state research needs with Agency priorities to ensure that ORD's research and development is useful and practical to help states address their on-the-ground problems.

Superfund Support

Last week, Jonathan Essoka, Felicia Barnett, Jan Szaro (OSP) and Dave Burden (NRMRL) discussed potential technical support needs related to passive groundwater and surface water sampling methods at the Central Chemical Superfund Site in Hagerstown, MD. The site is a former pesticide/fertilizer blending and packaging facility where plumes of agricultural pesticides have contaminated the surface and groundwater.



U.S. ENVIRONMENTAL PROTECTION AGENCY

NEWS RELEASE

WWW.EPA.GOV/NEWSROOM

EPA Administrator Pruitt Proposes Rule To Strengthen Science Used In EPA Regulations

WASHINGTON (April 24, 2018) – Today, U.S. Environmental Protection Agency (EPA) Administrator Scott Pruitt signed a proposed rule to strengthen the science used in regulations issued by EPA. The rule will ensure that the regulatory science underlying Agency actions is fully transparent, and that underlying scientific information is publicly available in a manner sufficient for independent validation.

“The era of secret science at EPA is coming to an end,” **said EPA Administrator Scott Pruitt.** “The ability to test, authenticate, and reproduce scientific findings is vital for the integrity of rulemaking process. Americans deserve to assess the legitimacy of the science underpinning EPA decisions that may impact their lives.”

This proposed rule is in line with the scientific community’s moves toward increased data sharing to address the “replication crisis”—a growing recognition that a significant proportion of published research may not be reproducible. The proposal is consistent with data access requirements for major scientific journals like [*Science*](#), [*Nature*](#), and [*Proceedings of the National Academy of Sciences*](#) as well as recommendations from the Bipartisan Policy Center’s [*Science for Policy Project*](#) and the Administrative Conference of the United States’ [*Science in the Administrative Process Project*](#).

The proposed rule builds upon President Trump’s executive orders on regulatory reform and energy independence:

Executive Order 13777, issued in March 2017, provides that regulatory reform efforts shall attempt to identify “those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard of reproducibility.”

Executive Order 13783, also issued in March 2017, provides that “It is the policy of the United States that necessary and appropriate environmental regulations comply with the law, are of greater benefit than cost, when permissible, achieve environmental improvements for the American people, and are developed through transparent processes that employ the best available peer-reviewed science and economics.”

Chairman Lamar Smith (R-TX): “Administrator Pruitt’s announcement ensures that data will be secret no more. For too long, the EPA has issued rules and regulations based on data that has been withheld from the American people. It’s likely that in the past, the data did not justify all regulations. Today, Administrator Pruitt rightfully is changing business as usual and putting a stop to hidden agendas.”

Senator Mike Rounds (R-SD): “Sound, reliable science is vital to helping us make important policy decisions that impact the health of American families and their livelihoods. Inserting new levels of transparency in the EPA rulemaking process will help make the agency more accountable to the American people and help everyone understand the impact of EPA’s decisions. Today’s directive is a significant step toward making sure these decisions are not made behind closed doors with information accessible only to those writing the regulations, but rather in the full view of those who will be affected.”

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Newsroom**

Message

From: Christian, Megan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=64A0F5E0E9D94271B23CAD28DB653851-LIZOTTE, ME]
Sent: 7/25/2018 2:31:44 PM
To: Orme-Zavaleta, Jennifer [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3c5a111dc377411595e5b24b5d96146b-Orme-Zavaleta, Jennifer]
Subject: FOR REVIEW_NOON DEADLINE: Hearing Prep Materials for Admin Wheeler
Attachments: Final Fact Sheets 7.18.18 ORD fact sheets updates 7-23-18.docx; Questions for Admin Hearing - ORD 7-24-18.docx

Jennifer,

Richard is still reviewing the hearing prep materials, but we have a hard noon deadline this afternoon, so I wanted to get these now front of you for your review.

Megan Christian, MPH
Office of Research and Development
U.S. Environmental Protection Agency
Christian.Megan@epa.gov
202-564-6184

From: Christian, Megan
Sent: Tuesday, July 24, 2018 11:33 AM
To: Kuhn, Kevin <Kuhn.Kevin@epa.gov>
Subject: RICHARD REVIEW: Hearing Prep Materials for Admin Wheeler

With updated Questions for Admin Hearing document, which includes Chris' edits to question #9.

Megan Christian, MPH
Office of Research and Development
U.S. Environmental Protection Agency
Christian.Megan@epa.gov
202-564-6184

From: Christian, Megan
Sent: Tuesday, July 24, 2018 8:30 AM
To: Kuhn, Kevin <Kuhn.Kevin@epa.gov>
Subject: FW: For Review: Hearing Prep Materials for Admin Wheeler

Kevin,

Bruce provided feedback on the prep materials for Admin Wheeler last night. His edits are in red line strike out in the attached documents.

Sam mentioned a hard deadline of noon tomorrow.

Best.
Megan

Megan Christian, MPH
Office of Research and Development
U.S. Environmental Protection Agency
Christian.Megan@epa.gov

From: Rodan, Bruce
Sent: Monday, July 23, 2018 7:21 PM
To: Linkins, Samantha <Linkins.Samantha@epa.gov>
Cc: Blackburn, Elizabeth <Blackburn.Elizabeth@epa.gov>; Fleming, Megan <Fleming.Megan@epa.gov>; Christian, Megan <Christian.Megan@epa.gov>
Subject: RE: For Review: Hearing Prep Materials for Admin Wheeler

I managed to do a quick review, attached in redline.

From: Linkins, Samantha
Sent: Monday, July 23, 2018 6:54 PM
To: Rodan, Bruce <rodan.bruce@epa.gov>
Cc: Blackburn, Elizabeth <Blackburn.Elizabeth@epa.gov>; Fleming, Megan <Fleming.Megan@epa.gov>; Christian, Megan <Christian.Megan@epa.gov>
Subject: Fwd: For Review: Hearing Prep Materials for Admin Wheeler

Hey Bruce - Liz and I were wondering if you could take a look at these hearing prep documents tonight. Could you please? They should be in good shape as most are simply updated from spring budget hearings. The only ones that might need a little more focus are

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Sent from my iPhone

Begin forwarded message:

From: "Linkins, Samantha" <Linkins.Samantha@epa.gov>
Date: July 23, 2018 at 6:31:17 PM EDT
To: "Christian, Megan" <Christian.Megan@epa.gov>, "Fleming, Megan" <Fleming.Megan@epa.gov>, "Kuhn, Kevin" <Kuhn.Kevin@epa.gov>
Cc: "Blackburn, Elizabeth" <Blackburn.Elizabeth@epa.gov>, "D'Amico, Louis" <DAmico.Louis@epa.gov>, "Hubbard, Carolyn" <Hubbard.Carolyn@epa.gov>
Subject: For Review: Hearing Prep Materials for Admin Wheeler

Hi guys,

As you know, the Administrator will likely testify at SEPW on August 1. To prep the Administrator, OCIR

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

-Sam

Samantha Linkins
Science Communication
Office of Research and Development, US EPA
Washington, DC
Office: 202-564-1834
Cell: 202-604-5742

From: Moody, Christina
Sent: Friday, July 20, 2018 12:00 PM
To: Feeley, Drew (Robert) <Feeley.Drew@epa.gov>; Kime, Robin <Kime.Robin@epa.gov>; Cooper, Marian <Cooper.Marian@epa.gov>; Grogard, Megan <Grogard.Megan@epa.gov>; Jones-Parra, Lisa <Jones-Parra.Lisa@epa.gov>; Albores, Richard <Albores.Richard@epa.gov>; Dieu, Martin <Dieu.Martin@epa.gov>; Linkins, Samantha <Linkins.Samantha@epa.gov>; Walsh, Ed <Walsh.Ed@epa.gov>; Kelty, Diane <Kelty.Diane@epa.gov>; Brennan, Thomas <Brennan.Thomas@epa.gov>; Johnston, Khanna <Johnston.Khanna@epa.gov>
Subject: ACTION AND RESPONSE NEEDED - HEARING PREP FOR ACTING ADMINISTRATOR
Importance: High

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thank you all for your hard work in preparing the Administrator for the August 1st hearing. Please let me know if you have any questions.

Christina J. Moody | Office of Congressional & Intergovernmental Relations
U.S. Environmental Protection Agency | 1200 Pennsylvania Ave NW (MC-1301A) |
Washington DC | 20460
Moody.Christina@epa.gov

From: Moody, Christina

Sent: Wednesday, July 18, 2018 7:31 PM

To: Feeley, Drew (Robert) <Feeley.Drew@epa.gov>; Kime, Robin <Kime.Robin@epa.gov>; Cooper, Marian <Cooper.Marian@epa.gov>; Grogard, Megan <Grogard.Megan@epa.gov>; Jones-Parra, Lisa <Jones-Parra.Lisa@epa.gov>; Albores, Richard <Albores.Richard@epa.gov>; Dieu, Martin <Dieu.Martin@epa.gov>; Linkins, Samantha <Linkins.Samantha@epa.gov>; Walsh, Ed <Walsh.Ed@epa.gov>; Kelty, Diane <Kelty.Diane@epa.gov>

Subject: Hearing

Importance: High

Colleagues:

It is likely the Administrator will be testifying before EPW on August 1 – as we found out today. This means we will need to put together a briefing binder very quickly for him and the team.

Can you please work with your respective program offices to update the fact sheets with the latest info? Attached, for your information and reference, is a file with the latest fact sheets that were used and approved for the previous round of hearings. We will need your updated (if appropriate) fact sheets no later than Noon Wednesday, July 25th. Earlier of course would be better if possible, but please note that this is an ironclad date.

Thank you and please let me know if you have any questions. If there are no updates to provide, please let me know that as well.

Christina J. Moody
US Environmental Protection Agency
Office of Congressional Affairs & Intergovernmental Relations
Moody.Christina@epa.gov

Message

From: Matthews, Lisa [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=47122F6AD7DB43B8953AC69696DB9719-MATTHEWS, LISA]
Sent: 6/22/2018 7:23:11 PM
To: Robbins, Chris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=958b4b78eb42457eacf53514e428efd6-Robbins, Chris]; Orme-Zavaleta, Jennifer [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3c5a111dc377411595e5b24b5d96146b-Orme-Zavaleta, Jennifer]
Subject: FW: ECOS panel discussion on Transparency in Science

From: Barbery, Andrea
Sent: Friday, June 22, 2018 3:22 PM
To: Sinks, Tom <Sinks.Tom@epa.gov>; Matthews, Lisa <Matthews.Lisa@epa.gov>; Scheuer, Amy <Scheuer.Amy@epa.gov>; Burden, Susan <Burden.Susan@epa.gov>
Subject: ECOS panel discussion on Transparency in Science

Hi –

Flagging for you a panel discussion in the works for the ECOS meeting in Stowe, VT:

Point-Counterpoint: State Perspectives on Acceptable Science

U.S. EPA recently proposed a rule requiring underlying data for all of the agency's scientific studies to be publicly available so that it can be independently validated. Supporters and critics alike believe the transparency rule will have far-reaching implications that will change how the agency regulates. In this session, ECOS members will explore the case for and against the proposed new approach, weighing potential benefits and drawbacks.

- ❖ Patrick McDonnell, ECOS Innovation & Productivity Committee Vice Chair and Secretary, Pennsylvania Department of Environmental Protection (moderator)
- ❖ Martha Rudolph, Director, Colorado Department of Public Health and the Environment
- ❖ Bryan Shaw, Chairman, Texas Commission on Environmental Quality (invited)

Current draft available at: <https://www.ecos.org/event/2018-ecos-fall-meeting/>

You may recall ECOS Past President John Linc Stine of MN penned a comment letter to EPA about this, back in May.

Thanks,
Andrea Barbery
Office of Intergovernmental Relations
U.S. Environmental Protection Agency
202-564-1397

Message

From: Sinks, Tom [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=001007B7D256453A8A19B91DF704E22C-SINKS, TOM]
Sent: 5/10/2018 9:15:52 PM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]
CC: Siciliano, CarolAnn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a0e84b7f6ddd4d92b99b2dba90aa86b1-CSICILIA]; Sinks, Tom [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=001007b7d256453a8a19b91df704e22c-Sinks, Tom]; Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]; Orme-Zavaleta, Jennifer [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3c5a111dc377411595e5b24b5d96146b-Orme-Zavaleta, Jennifer]; Cawiezell, Thomas [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eb3be5507fbc4947bf3ac3d03af1f3ab-Cawiezell,]; Hawkins, CherylA [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d917bee23e774e0dbb05ce06d694985e-Hawkins, CherylA]
Subject: FW: Draft FR notice
Attachments: FRN for Hearing and to Extend the Comment Period for Proposed science transp rule.docx; ATT00001.htm

Hi Clint – CarolAnn dropped by my office to discuss this proposed FRN. She made some notes and will be sending a revised version before she heads home tonight.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

ORD/OSA has no experience with putting on public hearings related to rule making. I'm hoping we can get together on Monday with you and OAR staff experienced with public hearings to 1) get the FRN finished and 2) better understand the task ahead of us to do this correctly.

Tom Cawiezell manages my calendar. I will be off tomorrow but available if needed by cell phone.

Personal Phone / Ex. 6

Tom

From: Siciliano, CarolAnn
Sent: Thursday, May 10, 2018 4:48 PM
To: Sinks, Tom <Sinks.Tom@epa.gov>
Subject: Fwd: Draft FR notice

Carol Ann Siciliano
Associate General Counsel
Cross-Cutting Issues Law Office
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-5489
siciliano.carolann@epa.gov

Begin forwarded message:

From: "Sheppard, Tracy" <Sheppard.Tracy@epa.gov>
Date: May 10, 2018 at 3:52:24 PM EDT
To: "Siciliano, CarolAnn" <Siciliano.CarolAnn@epa.gov>, "Simons, Andrew" <Simons.Andrew@epa.gov>
Subject: RE: Draft FR notice

I've made the edit.

Tracy L. Sheppard, Attorney-Advisor,
US EPA, Office of General Counsel
Sheppard.Tracy@epa.gov
(202) 564-1305 office
(202) 839-2038 mobile

CONFIDENTIAL communication for internal deliberations only; may contain deliberative, attorney-client, attorney work product, or otherwise privileged material; do not distribute outside EPA or DOJ.

From: Siciliano, CarolAnn
Sent: Thursday, May 10, 2018 3:44 PM
To: Sheppard, Tracy <Sheppard.Tracy@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>
Subject: RE: Draft FR notice

Deliberative Process / Ex. 5

Carol Ann Siciliano
Associate General Counsel
Cross-Cutting Issues Law Office
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-5489
siciliano.carolann@epa.gov

From: Sheppard, Tracy
Sent: Thursday, May 10, 2018 3:43 PM
To: Siciliano, CarolAnn <Siciliano.CarolAnn@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>
Subject: RE: Draft FR notice

Deliberative Process / Ex. 5

Tracy L. Sheppard, Attorney-Advisor,
US EPA, Office of General Counsel
Sheppard.Tracy@epa.gov
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(202) 839-2038 mobile

CONFIDENTIAL communication for internal deliberations only; may contain deliberative, attorney-client, attorney work product, or otherwise privileged material; do not distribute outside EPA or DOJ.

From: Siciliano, CarolAnn
Sent: Thursday, May 10, 2018 3:30 PM
To: Sheppard, Tracy <Sheppard.Tracy@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>
Subject: RE: Draft FR notice

Thank you, Tracy. I hope to talk to Tom Sinks today. I'll keep you & Andy informed.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Carol Ann Siciliano
Associate General Counsel
Cross-Cutting Issues Law Office
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-5489
siciliano.carolann@epa.gov

From: Sheppard, Tracy
Sent: Thursday, May 10, 2018 3:27 PM
To: Siciliano, CarolAnn <Siciliano.CarolAnn@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>
Subject: Draft FR notice

Here's the draft notice for the comment period extension and hearing.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

I hadn't planned to work tomorrow but I will be available before 10am and after 1pm if there's anything you need me to do.

Tracy L. Sheppard, Attorney-Advisor,
US EPA, Office of General Counsel
Sheppard.Tracy@epa.gov
(202) 564-1305 office
(202) 839-2038 mobile

CONFIDENTIAL communication for internal deliberations only; may contain deliberative, attorney-client, attorney work product, or otherwise privileged material; do not distribute outside EPA or DOJ.

Message

From: Hubbard, Carolyn [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=2A93CE3245494318B109E87F7D826284-HUBBARD, CAROLYN]
Sent: 5/23/2018 6:14:29 PM
To: Orme-Zavaleta, Jennifer [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3c5a111dc377411595e5b24b5d96146b-Orme-Zavaleta, Jennifer]; Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]; Sinks, Tom [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=001007b7d256453a8a19b91df704e22c-Sinks, Tom]; Blackburn, Elizabeth [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a080eb90549a453aaa6a357f5257c0b7-Blackburn, Elizabeth]; Rodan, Bruce [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Rodan, Bruce]; Radzikowski, Mary Ellen [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2ac0a54e43bb4ac08276b57c5563c725-Radzikowski, Mary Ellen]; Robbins, Chris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=958b4b78eb42457eacf53514e428efd6-Robbins, Chris]
CC: Linkins, Samantha [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b7a94aa2975d4933981a8a9bf12aaa40-Linkins, Samantha]
Subject: FW: Comment Deadline Extension Request on Proposed "Strengthening Transparency in Regulatory Science" Rule
Attachments: Science Comment Extension v2.pdf; ATT00001.htm

FYI

Carolyn Hubbard
Communications Director
EPA Office of Research and Development
202-564-2189
202-379-6744

From: Bowles, Jack
Sent: Wednesday, May 23, 2018 1:21 PM
To: Hubbard, Carolyn <Hubbard.Carolyn@epa.gov>
Subject: Fwd: Comment Deadline Extension Request on Proposed "Strengthening Transparency in Regulatory Science" Rule

Hi Carolyn,

FYI.

Best,
Jack

Sent from my iPhone

Jack Bowles
Director of State and Local Relations
U.S. Environmental Protection Agency
202-564-3657 (office)
202-306-5196 (mobile)

Begin forwarded message:

From: Julia Anastasio <janastasio@acwa-us.org>
Date: May 23, 2018 at 11:47:17 AM EDT
To: Jack Bowles <Bowles.Jack@epa.gov>
Subject: Fwd: Comment Deadline Extension Request on Proposed "Strengthening Transparency in Regulatory Science" Rule

Jack

Per our conversation yesterday, Our letter requesting a comment extension was just sent to your EPA colleagues.

Let me know if you have any questions.

Sent from my iPhone

Begin forwarded message:

From: Katie Foreman <kforeman@acwa-us.org>
Date: May 23, 2018 at 11:44:13 AM EDT
To: "staff_osa@epa.gov" <staff_osa@epa.gov>, "Sinks.tom@Epa.gov" <Sinks.tom@Epa.gov>
Cc: Julia Anastasio <janastasio@acwa-us.org>, "chanson@ecos.org" <chanson@ecos.org>, "ssankar@ecos.org" <ssankar@ecos.org>, "jsloan@csg.org" <jsloan@csg.org>, "daniar@astswmo.org" <daniar@astswmo.org>, "ASchaefer@NGA.ORG" <ASchaefer@NGA.ORG>, "aroberson@asdwa.org" <aroberson@asdwa.org>, "ross.davidp@epa.gov" <ross.davidp@epa.gov>
Subject: Comment Deadline Extension Request on Proposed "Strengthening Transparency in Regulatory Science" Rule

Good Afternoon,

Please see the attached letter outlining a comment deadline extension request for the Strengthening Transparency in Regulatory Science Proposed Rule from seven associations, on behalf of the states. Should you have questions regarding this request, please feel free to contact Julia Anastasio (janastasio@acwa-us.org, 202-756-0600).

Thank you,

Katie Foreman
Environmental Program Associate
Association of Clean Water Administrators
1634 I Street NW, Suite 750
Washington, DC 20006
kforeman@acwa-us.org



May 23, 2018

Tom Sinks
Office of the Science Advisor
U.S. Environmental Protection Agency
Mail Code 28221T
1200 Pennsylvania Avenue NW, Washington, DC 20460



Via regulations.gov: Docket ID No. EPA-HQ-OA-2018-0259

RE: Strengthening Transparency in Regulatory Science – Comment Deadline Extension Request

Dear Mr. Sinks:

On behalf of the states, we write to request a 60-day extension to the comment period for the Strengthening Transparency in Regulatory Science Proposed Rule 83 FR 18768 (April 30, 2018).

The stated intent of the proposed rule is to strengthen regulatory transparency associated with the science the Environmental Protection Agency (EPA) uses for regulatory decision making and to ensure the data and models underlying rules are publicly available in a manner sufficient for independent validation and analysis.

Increased transparency is a worthy goal that can enhance agency deliberations and the regulatory process. More co-regulatory discussions regarding the intent, scope, and implementation processes associated with this rule will improve the quality of the comments the agency receives. Extending the comment period would allow those discussions to occur.

As our state associations and individual states prepare our comments, we require adequate time to thoughtfully evaluate the likely effect of the proposed rule and assess the scope, potential consequences of the rule, and the manner in which it may impact and/or alter state programs, decisions, and actions.

Given the critical importance of this regulatory action, we respectfully submit that a 60-day extension on the comment period is necessary so that state environmental programs can provide the agency with thoughtful and well reasoned comments on the proposal. This extension is essential to EPA's evaluation of state impacts, and will contribute to an enhanced and improved final rule.

Thank you and we look forward to the Agency's response to this request. Should you have questions regarding this request, please contact Julia Anastasio, (janastasio@acwa-us.org, 202-756-0600) or any of the signatories below.



Sincerely,



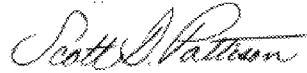
Julia Anastasio
Executive Director & General Counsel
Association of Clean Water Administrators



Jason E. Sloan
Executive Director
Association of Air Pollution Control Agencies



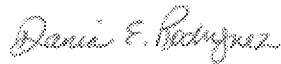
Sam Sankar
Executive Director
Environmental Council of the States



Scott Pattison
CEO and Executive Director
National Governors Association



Alan Roberson
Executive Director
Association of State Drinking Water
Administrators



Dania Rodriguez
Executive Director
Association of State and Territorial Solid Waste
Management Officials



Jeanne Christie
Executive Director
Association of State Wetland Managers

Message

From: Greaves, Holly [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=ABCB6428B3DF40A9A78B059A8BA59707-GREAVES, HO]
Sent: 1/18/2018 4:22:58 PM
To: Orme-Zavaleta, Jennifer [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3c5a111dc377411595e5b24b5d96146b-Orme-Zavaleta, Jennifer]
Subject: RE: BRIEFING REQUEST: HONEST ACT-HSST : EPA PRE-PLANNING CALL

Thank you Jennifer! I appreciate the time you have taken to keep our congressional leaders and OMB informed!

From: Orme-Zavaleta, Jennifer
Sent: Thursday, January 18, 2018 9:32 AM
To: Greaves, Holly <greaves.holly@epa.gov>
Subject: Fwd: BRIEFING REQUEST: HONEST ACT-HSST : EPA PRE-PLANNING CALL

And last one to share w you

Sent from my iPad

Begin forwarded message:

From: "Linkins, Samantha" <Linkins.Samantha@epa.gov>
Date: January 17, 2018 at 5:53:08 PM EST
To: "Orme-Zavaleta, Jennifer" <Orme-Zavaleta.Jennifer@epa.gov>, "Yamada, Richard (Yujiro)" <yamada.richard@epa.gov>, "Rodan, Bruce" <rodan.bruce@epa.gov>
Cc: "Kuhn, Kevin" <Kuhn.Kevin@epa.gov>, "Fleming, Megan" <Fleming.Megan@epa.gov>, "Christian, Megan" <Christian.Megan@epa.gov>
Subject: BRIEFING REQUEST: HONEST ACT-HSST : EPA PRE-PLANNING CALL

Hey Jennifer, Bruce, and Richard –

HSST staff have requested a meeting about the HONEST Act: **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

-Sam

Samantha Linkins
Science Communication Specialist and Congressional Lead
Office of Research and Development, US EPA
Washington, DC
Office: 202-564-1834

Personal Matters / Ex. 6

From: Gomez, Laura
Sent: Wednesday, January 17, 2018 4:39 PM
To: Feeley, Drew (Robert) <Feeley.Drew@epa.gov>; Linkins, Samantha <Linkins.Samantha@epa.gov>; Albores, Richard <Albores.Richard@epa.gov>; Kuhn, Kevin <Kuhn.Kevin@epa.gov>
Cc: Moody, Christina <Moody.Christina@epa.gov>; Haman, Patricia <Haman.Patricia@epa.gov>
Subject: BRIEFING REQUEST: HONEST ACT-HSST : EPA PRE-PLANNING CALL

Hi Everyone,

Chairman Smith of the House Science, Space and Technology Committee (HSST) recently met with the Administrator regarding the subject area of HONEST Act implementation. Resulting from that meeting OCIR will be coordinating a follow-up meeting with HSST committee staff.

Deliberative Process / Ex. 5

To make things easier, I'd like coordinate schedules via-outlook, and set up an invitation with agenda and details. As I do this, please let me know whom else to include.

Happy to answer any questions or concerns.

Best,

Laura

Laura E. Gómez Rodríguez

Congressional Liaison Specialist

US Environmental Protection Agency (EPA)

Office of Congressional and Intergovernmental Relations (OCIR)

1200 Pennsylvania Ave., N.W. MC-2650R

Washington DC, 20004

gomez.laura@epa.gov

Message

From: Blackburn, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A080EB90549A453AAA6A357F5257C0B7-BLACKBURN, ELIZABETH]
Sent: 4/25/2018 4:45:46 PM
To: Orme-Zavaleta, Jennifer [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3c5a111dc377411595e5b24b5d96146b-Orme-Zavaleta, Jennifer]
Subject: RE: SIGNED: Strengthening Transparency in Regulatory Science

Sigh. I just talked to him.

Liz Blackburn
Chief of Staff
EPA Office of Research and Development
202-564-2192

Personal Phone / Ex. 6

From: Orme-Zavaleta, Jennifer
Sent: Wednesday, April 25, 2018 12:32 PM
To: Blackburn, Elizabeth <Blackburn.Elizabeth@epa.gov>
Subject: FW: SIGNED: Strengthening Transparency in Regulatory Science

So you are aware

Jennifer Orme-Zavaleta, PhD
Principal Deputy Assistant Administrator for Science
USEPA Office of Research and Development

Personal Phone / Ex. 6

From: Sinks, Tom
Sent: Wednesday, April 25, 2018 8:10 AM
To: STPC Members <STPC_Members@epa.gov>; STPC_SSP <STPC_SSP@epa.gov>
Cc: Sinks, Tom <Sinks.Tom@epa.gov>
Subject: FW: SIGNED: Strengthening Transparency in Regulatory Science

Yesterday today Administrator Pruitt announced this proposed rule. The proposed rule touches upon three aspects of OSA work – public access to EPA funded research, human subjects research protection, and scientific integrity. It has highly significant implications for EPA programs and regions in defining how access to research data is used in rulemaking.

I presume it will be released in the Federal Register shortly. The proposed rule seeks comments and I suspect your state, local, academic, industry, and NGO partners will be interested. Please feel free to distribute it to them.

From: Orme-Zavaleta, Jennifer
Sent: Tuesday, April 24, 2018 4:01 PM
To: Sinks, Tom <Sinks.Tom@epa.gov>; Rodan, Bruce <rodan.bruce@epa.gov>; Robbins, Chris <Robbins.Chris@epa.gov>; Blackburn, Elizabeth <Blackburn.Elizabeth@epa.gov>; Hubbard, Carolyn <Hubbard.Carolyn@epa.gov>; Hauchman, Fred

<hauchman.fred@epa.gov>; ORD-Exec-Council-Directors <Execcouncildirectors@epa.gov>

Subject: FW: SIGNED: Strengthening Transparency in Regulatory Science

From: Johnson, Laura-S

Sent: Tuesday, April 24, 2018 3:10 PM

To: Jackson, Ryan <jackson.ryan@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>; Bennett, Tate <Bennett.Tate@epa.gov>; White, Elizabeth <white.elizabeth@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>; Leopold, Matt <Leopold.Matt@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>; Wheeler, Andrew <wheeler.andrew@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Orme-Zavaleta, Jennifer <Orme-Zavaleta.Jennifer@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>
Cc: Wooden-Aguilar, Helena <Wooden-Aguilar.Helena@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>; Hope, Brian <Hope.Brian@epa.gov>; Fonseca, Silvina <Fonseca.Silvina@epa.gov>; Hewitt, James <hewitt.james@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>; Gaines, Cynthia <Gaines.Cynthia@epa.gov>; Nickerson, William <Nickerson.William@epa.gov>; Lovell, Will (William) <lovell.william@epa.gov>; Kime, Robin <Kime.Robin@epa.gov>; Maguire, Kelly <Maguire.Kelly@epa.gov>; Blackburn, Elizabeth <Blackburn.Elizabeth@epa.gov>
Subject: SIGNED: Strengthening Transparency in Regulatory Science

Good afternoon

Today, the Administrator signed the proposed rule "Strengthening Transparency in Regulatory Science."

This proposed regulation is intended to strengthen the transparency of EPA regulatory science. The proposed regulation provides that when EPA develops regulations, including regulations for which the public is likely to bear the cost of compliance, with regard to those scientific studies that are pivotal to the action being taken, EPA should ensure that the data underlying those are publicly available in a manner sufficient for independent validation.

In this notice, EPA solicits comment on this proposal and how it can best be promulgated and implemented in light of existing law and prior Federal policies that already require increasing public access to data and influential scientific information used to inform federal regulation.

Attached is the signed and dated proposed rule. For your convenience, please go to p. 19 for the Administrator's signature.

Please contact me if you have any questions.

Sincerely,
Laura

Laura S. Johnson | U.S. Environmental Protection Agency
Special Assistant, Office of the Administrator | Cell (202) 819-4941
Office (202) 566-1273 | johnson.laura-s@epa.gov

Message

From: Grantham, Nancy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=12A3C2ED7158417FB0BB1B1B72A8CFB0-GRANTHAM, NANCY]
Sent: 7/30/2018 10:17:38 PM
To: Carpenter, Thomas [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c286cf1692fa46dc9636a7c49c0925b8-Carpenter, Thomas]; Press [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b293283291dc44e0b5d1c36be9281d8a-Press]
CC: Brennan, Thomas [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=78caa4c8d91743c887c1bb5dc8cdb369-Thomas Brennan]; Orme-Zavaleta, Jennifer [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3c5a111dc377411595e5b24b5d96146b-Orme-Zavaleta, Jennifer]; Johnston, Khanna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4ee74eeb7ad744e58f6dbf7d2f20243b-Johnston, Khanna]
Subject: RE: invitation to SEJ panel

Thanks .. we have a couple of other SEJ requests and will handle them all together.

Thanks ng

Nancy Grantham
Office of Public Affairs
US Environmental Protection Agency
202-564-6879 (desk)
202-253-7056 (mobile)

From: Carpenter, Thomas
Sent: Monday, July 30, 2018 6:13 PM
To: Press <Press@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>
Cc: Brennan, Thomas <Brennan.Thomas@epa.gov>; Orme-Zavaleta, Jennifer <Orme-Zavaleta.Jennifer@epa.gov>; Johnston, Khanna <Johnston.Khanna@epa.gov>
Subject: FW: invitation to SEJ panel

This request was originally for the Chair of the Science Advisory Board to participate on the panel discussion topic of "Science in the Trump Administration." Ms. Shogren thought Dr. Honeycutt was the EPA Science Advisor. She was forwarded to me by Dr. Honeycutt's offices. I explained the SAB Chair is not the appropriate position and offered to forward her request to the Office of Public Affairs. Please see below for the Society's request for a panelist.

Tom Carpenter
Thomas Carpenter
Designated Federal Officer / Sr. Biologist
US EPA Science Advisory Board, MC 1400R
1200 Pennsylvania Avenue, NW
Washington DC 20460
ph 202 564 4885 Fax 202 565 2098

From: Elizabeth Shogren [mailto:eshogren@revealnews.org]
Sent: Monday, July 30, 2018 5:50 PM

To: Carpenter, Thomas <Carpenter.Thomas@epa.gov>

Subject: invitation to SEJ panel

Mr. Carpenter.

Thank you for speaking with me.

I'm moderating a panel on October 5 about science in Trump administration as part of the Society of Environmental Journalism's annual conference, which this year will be in Flint, Michigan.

I would greatly appreciate if Jennifer Orme-Zavaleta would participate in the panel.

The conference will be in Flint Michigan. Each panelist will be asked to give a brief opening statement and then we will field questions from the audience and I will likely ask some questions as well. Panelists will be encouraged to engage each other as well. Perhaps Orme-Zavaleta could speak briefly about why the Trump administration proposed its secret science rule: <https://www.epa.gov/newsreleases/epa-administrator-pruitt-proposes-rule-strengthen-science-used-epa-regulations>.

I would be very grateful if you would relay the invitation.

Thank you.

Best wishes,
Elizabeth Shogren

--

Elizabeth Shogren
Science Reporter

Personal Phone / Ex. 6 | ShogrenE@epa.gov

Revealnews.org

...and subscribe [to our podcast](#)



Message

From: Lyons, Troy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=15E4881C95044AB49C6C35A0F5EEF67E-LYONS, TROY]
Sent: 7/28/2018 12:22:01 AM
To: Moody, Christina [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=813eb7f985c845eaa91edc10c6e9a914-CMoody]
CC: Linkins, Samantha [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b7a94aa2975d4933981a8a9bf12aaa40-Linkins, Samantha]; Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]; Orme-Zavaleta, Jennifer [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3c5a111dc377411595e5b24b5d96146b-Orme-Zavaleta, Jennifer]; Palich, Christian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=330ad62e158d43af93fcbbece930d21a-Palich, Chr]; Frye, Tony (Robert) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=58c08abdfc1b4129a10456b78e6fc2e1-Frye, Rober]; Richardson, RobinH [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2fa5c9eb65dc497c81a8dc9ccdb1ffa7-Richardson, RobinH]
Subject: Re: Updated ORD Fact Sheets and Qs & As

Thanks

Sent from my iPhone

On Jul 27, 2018, at 7:16 PM, Moody, Christina <Moody.Christina@epa.gov> wrote:

See attached files

Christina J. Moody | Office of Congressional & Intergovernmental Relations
U.S. Environmental Protection Agency | 1200 Pennsylvania Ave NW (MC-1301A) | Washington DC | 20460
Moody.Christina@epa.gov

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Message

From: Orme-Zavaleta, Jennifer [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3C5A111DC377411595E5B24B5D96146B-ORME-ZAVALITA, JENNIFER]
Sent: 5/15/2018 4:37:48 PM
To: Christian, Megan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=64a0f5e0e9d94271b23cad28db653851-Lizotte, Me]
Subject: FW: Transparency in Science Updated Draft FR notice
Attachments: FRL-9978-31-ORD Elizabeth Thomas.docx

Would you print for me pls? thanks

Jennifer Orme-Zavaleta, PhD
Principal Deputy Assistant Administrator for Science
Office of Research and Development
US Environmental Protection Agency

Personal Phone / Ex. 6

From: Nickerson, William
Sent: Tuesday, May 15, 2018 11:58 AM
To: Siciliano, CarolAnn <Siciliano.CarolAnn@epa.gov>; Sinks, Tom <Sinks.Tom@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Feeley, Drew (Robert) <Feeley.Drew@epa.gov>
Cc: Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Orme-Zavaleta, Jennifer <Orme-Zavaleta.Jennifer@epa.gov>; Cawiezell, Thomas <Cawiezell.Thomas@epa.gov>; Hawkins, CherylA <Hawkins.CherylA@epa.gov>; Sheppard, Tracy <Sheppard.Tracy@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Green, Noelle <Green.Noelle@epa.gov>
Subject: RE: Transparency in Science Updated Draft FR notice

Here is a version of this with edits from EPA's Federal Register staff. Incorporating these edits into the latest version of the document will smooth its eventual passage to publication.

Deliberative Process / Ex. 5

Let me know if you need anything else. Thank you.

Bill

William (Bill) Nickerson
Associate Office Director
Office of Regulatory Policy and Management
Office of Policy
Phone: (202) 566-0326

From: Siciliano, CarolAnn
Sent: Thursday, May 10, 2018 5:47 PM

To: Sinks, Tom <Sinks.Tom@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Feeley, Drew (Robert) <Feeley.Drew@epa.gov>; Nickerson, William <Nickerson.William@epa.gov>
Cc: Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Orme-Zavaleta, Jennifer <Orme-Zavaleta.Jennifer@epa.gov>; Cawiezell, Thomas <Cawiezell.Thomas@epa.gov>; Hawkins, CherylA <Hawkins.CherylA@epa.gov>; Sheppard, Tracy <Sheppard.Tracy@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Green, Noelle <Green.Noelle@epa.gov>
Subject: Transparency in Science Updated Draft FR notice

Tom – Attached is a new draft of an Federal Register notice that **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

We have a good team of OGC lawyers helping on this matter. Andy Simons is available on Friday. I and Tracy Sheppard, our lead attorney on this rulemaking, are back in the office on Monday. We look forward to helping you in any way we can.

Carol Ann Siciliano
Associate General Counsel
Cross-Cutting Issues Law Office
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-5489
siciliano.carolann@epa.gov

From: Sinks, Tom
Sent: Thursday, May 10, 2018 5:16 PM
To: Woods, Clint <woods.clint@epa.gov>
Cc: Siciliano, CarolAnn <Siciliano.CarolAnn@epa.gov>; Sinks, Tom <Sinks.Tom@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Orme-Zavaleta, Jennifer <Orme-Zavaleta.Jennifer@epa.gov>; Cawiezell, Thomas <Cawiezell.Thomas@epa.gov>; Hawkins, CherylA <Hawkins.CherylA@epa.gov>
Subject: FW: Draft FR notice

Hi Clint – CarolAnn dropped by my office to discuss this proposed FRN. She made some notes and will be sending a revised version before she heads home tonight. **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Tom Cawiezell manages my calendar. I will be off tomorrow but available if needed by cell phone **Personal Phone / Ex. 6**

Tom

Message

From: Orme-Zavaleta, Jennifer [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3C5A111DC377411595E5B24B5D96146B-ORME-ZAVALITA, JENNIFER]
Sent: 1/18/2018 4:58:41 PM
To: Fleming, Megan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=14b4c2e10bf84f1fa9a3f91f5ca1c4c0-Fleming, Megan]
Subject: Re: BRIEFING REQUEST: HONEST ACT-HSST : EPA PRE-PLANNING CALL

Great! Thanks

Sent from my iPad

On Jan 18, 2018, at 10:13 AM, Fleming, Megan <Fleming.Megan@epa.gov> wrote:

I added the files to your read folder. Thanks!

Megan Fleming
Immediate Office of the Assistant Administrator
U.S. EPA Office of Research and Development
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
202-564-6604 (desk), **Personal Phone / Ex. 6**

From: Orme-Zavaleta, Jennifer
Sent: Thursday, January 18, 2018 8:13 AM
To: Fleming, Megan <Fleming.Megan@epa.gov>
Subject: Fwd: BRIEFING REQUEST: HONEST ACT-HSST : EPA PRE-PLANNING CALL

Are you able to add this to my read folder on the google drive?

Sent from my iPad

Begin forwarded message:

From: "Linkins, Samantha" <Linkins.Samantha@epa.gov>
Date: January 17, 2018 at 6:10:31 PM EST
To: "Orme-Zavaleta, Jennifer" <Orme-Zavaleta.Jennifer@epa.gov>
Cc: "Yamada, Richard (Yujiro)" <yamada.richard@epa.gov>, "Rodan, Bruce" <rodan.bruce@epa.gov>, "Kuhn, Kevin" <Kuhn.Kevin@epa.gov>, "Fleming, Megan" <Fleming.Megan@epa.gov>, "Christian, Megan" <Christian.Megan@epa.gov>, "Bahadori, Tina" <Bahadori.Tina@epa.gov>, "Vandenberg, John" <Vandenberg.John@epa.gov>
Subject: RE: BRIEFING REQUEST: HONEST ACT-HSST : EPA PRE-PLANNING CALL

Added John & Tina. For reference, I've attached what we developed in response to CBO questions about the HONEST Act last spring. **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Samantha Linkins
Science Communication Specialist and Congressional Lead
Office of Research and Development, US EPA
Washington, DC

Office: 202-564-1834

Personal Phone / Ex. 6

From: Orme-Zavaleta, Jennifer
Sent: Wednesday, January 17, 2018 5:54 PM
To: Linkins, Samantha <Linkins.Samantha@epa.gov>
Cc: Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Rodan, Bruce <rodan.bruce@epa.gov>; Kuhn, Kevin <Kuhn.Kevin@epa.gov>; Fleming, Megan <Fleming.Megan@epa.gov>; Christian, Megan <Christian.Megan@epa.gov>
Subject: Re: BRIEFING REQUEST: HONEST ACT-HSST : EPA PRE-PLANNING CALL

Include us plus tina and john vanderberg

Jennifer Orme-Zavaleta, PhD
Principal Deputy Assistant Administrator for Science
USEPA Office of Research and Development

Personal Phone / Ex. 6

On Jan 17, 2018, at 5:53 PM, Linkins, Samantha <Linkins.Samantha@epa.gov> wrote:

Hey Jennifer, Bruce, and Richard –

HSST staff have requested a meeting about the HONEST Act.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

-Sam

Samantha Linkins
Science Communication Specialist and Congressional Lead
Office of Research and Development, US EPA
Washington, DC
Office: 202-564-1834

Personal Phone / Ex. 6

From: Gomez, Laura
Sent: Wednesday, January 17, 2018 4:39 PM
To: Feeley, Drew (Robert) <Feeley.Drew@epa.gov>; Linkins, Samantha <Linkins.Samantha@epa.gov>; Albores, Richard <Albores.Richard@epa.gov>; Kuhn, Kevin <Kuhn.Kevin@epa.gov>
Cc: Moody, Christina <Moody.Christina@epa.gov>; Haman, Patricia <Haman.Patricia@epa.gov>
Subject: BRIEFING REQUEST: HONEST ACT-HSST : EPA PRE-PLANNING CALL

Hi Everyone,

Chairman Smith of the House Science, Space and Technology Committee (HSST) recently met with the Administrator regarding the subject area of HONEST Act implementation. Resulting from that

meeting OCIR will be coordinating a follow-up meeting with HSST committee staff.

Deliberative Process / Ex. 5

To make things easier, I'd like coordinate schedules via-outlook, and set up an invitation with agenda and details. As I do this, please let me know whom else to include.

Happy to answer any questions or concerns.

Best,

Laura

Laura E. Gómez Rodríguez

Congressional Liaison Specialist

US Environmental Protection Agency (EPA)

Office of Congressional and Intergovernmental Relations (OCIR)

1200 Pennsylvania Ave., N.W. MC-2650R

Washington DC, 20004

gomez.laura@epa.gov

Message

From: Alex Bard [abard124@uw.edu]
Sent: 3/30/2018 1:10:27 AM
To: Pruitt, Scott [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=757bedfd70ca4219b6d8046f5ce5681e-Pruitt, Sco]
Subject: "Secret" science

Dear Administrator Pruitt-

As a scientist and a concerned citizen, I am writing to ask some questions about your recent remarks regarding "secret" and "sound" science, and to raise some concerns about what appears to be a pattern of a lack of respect for science and scientists from the highest levels of an agency that ostensibly exists to protect the environment.

Firstly, you seem very concerned about "secret" science, and in some sense, there is a shared concern for openness in methods and data in the scientific community as well. I applaud your concern for reproducibility in science, but I think your approach is misguided and perhaps better left to experts. By ignoring any science that doesn't make public the entire cache of unedited raw data or does not meet the requirements of the "Honest" act, it would preclude the use, for example, of any public health data that contains personal information about the study's subjects, any experiment that uses proprietary technology or methods, or any study that literally cannot be ethically reproduced, such as data collection after a natural disaster such as an oil spill. This is sound science, and there are ways of reproducing it or statistically verifying it using other methods or other subjects. A one-size-fits-all approach is not practical and it requires the EPA to ignore a lot of good data.

Of course, there are those who would argue that the whole point of this is, in fact, to allow the EPA to ignore a lot of good data. I can't imagine that that could be true though. How could anybody whose job it is to protect the environment want to ignore data that would allow them to do a better job of protecting the environment? They wouldn't want to make their job harder. So it would be in the best interest of anybody who is faithfully attempting to protect the environment to make use of as much data as possible. Furthermore, it is simply unimaginable that somebody whose job it is to protect the environment would ignore scientists, including such prestigious organizations as the AAAS and the Association of American Universities--whose job it is to interpret data--when they caution him about how his regulations on data use can lead to ideological cherry-picking, which is why I'm confident that you will take these concerns to heart and rethink your policy. Surely anybody whose job it is to protect the environment would listen to people who are experts on protecting the environment. And surely you would like to protect the environment. It is your job, after all. You were confirmed by 52 US Senators, who clearly believed that you were up to the task. If you don't believe in environmental protection, surely you would not have accepted the job, and if you had since found that science is outside your wheelhouse and you were not able to appropriately interpret the science that is required for your job, surely you would have resigned, as the environment is far too important to allow pride to interfere with its continued protection. So I don't know what I'm missing, but somehow none of these things are getting done, yet you are still on the job. It is your choice whether you would like to accomplish these these things or whether you would like to resign, but "none of the above" is not an acceptable choice. Your job is far too important for that.

Administrator Pruitt, I don't think you would disagree with my assertion that you are not a scientist. There is nothing wrong with that; there are many people with valid opinions on environmental protection who are not scientists. But if you're going to lead an agency tasked with protecting the environment without being a scientist yourself, then you're going to have to listen to scientists when their area of expertise comes up in policy. If you're not willing to do that, please allow somebody who is willing to do that to take your job. I'm sure there are several oil companies that would be thrilled to pay you a whole lot more than what the government does right now.

Thank you for reconsidering your ill-advised regulations on data.

-Alex

--

Alex Bard

Graduate Student in Chemistry, University of Washington

B.S. Chemistry, 2016, University of Texas at Austin

M.S. Chemistry, 2017, University of Washington

Message

From: Clarizio, Michele (MPCA) [michele.clarizio@state.mn.us]
Sent: 5/16/2018 1:04:03 PM
To: DAYZEROPREFIX Pruitt, Scott [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=757bedfd70ca4219b6d8046f5ce5681e-Pruitt, Sco]; Lyons, Troy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=15e4881c95044ab49c6c35a0f5eef67e-Lyons, Troy]
Subject: Minnesota Comments on Strengthening Transparency in Regulatory Science (Docket ID No. EPA-HQ-OA-2018-0259)
Attachments: MPCA-MDH Joint Letter to EPA Science Transparency 5 15 18.pdf

Good morning,

The attached correspondence is being sent on behalf of Commissioner John Linc Stine, Minnesota Pollution Control Agency, and Commissioner Jan Malcolm, Minnesota Department of Health.

Michele Clarizio | Executive Aide to the Commissioner

Minnesota Pollution Control Agency (MPCA)
520 Lafayette Road | St. Paul, MN | 55155
Office Phone: (651) 757-2023
michele.clarizio@state.mn.us | www.pca.state.mn.us



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Message

From: Robert Rutkowski [r_e_rutkowski@att.net]
Sent: 4/24/2018 8:58:16 PM
To: Pruitt, Scott [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=757bedfd70ca4219b6d8046f5ce5681e-Pruitt, Sco]
Subject: Scorning Science Once Again

The Honorable Scott Pruitt, Administrator
U.S. Environmental Protection Agency Headquarters
William Jefferson Clinton Building
1200 Pennsylvania Ave., NW; Mail Code 1101A
Washington, DC 20460
pruitt.scott@epa.gov

Re: Scorning Science Once Again

Dear Administrator Pruitt:

You announced today that the EPA would ignore scientific studies if they don't conform to a set of arbitrary and implausible specifications.

If adopted, this proposed regulation would mean the agency wouldn't consider many peer-reviewed research results when setting important health safeguards.

Your disdain for sound science and health protections knows no bounds. Just as you ignore the conclusions of climate scientists, you now want to disregard the robust scientific results that have helped us clean up our air and water since the toxic heyday of the 1970s.

It's time for a new direction at the EPA, one that accepts the simple scientific result that toxic pollutants like mercury and arsenic are dangerous to our own health and that of our children.

This has nothing to do with transparency and everything to do with helping out your industry benefactors.

Stop this arbitrary proposal from being adopted.

Examples

Medical studies, clinical reports, and real-world field studies all include data and information that cannot be made public without violating confidentiality and patient protection rules under HIPPA. Such studies are used by EPA to provide realistic credible information to the public, including consumers, manufacturers and businesses. For example:

- A landmark study in 1993 established that the tiniest particles of pollution (PM 2.5) can cause heart problems, lung cancer and early death. Industry critics, borrowing an argument they had used to try and prevent regulation of tobacco, decried the research as relying on "secret science." But there is nothing secret about it. In fact, after complaints from members of Congress in the 1990s, an industry-friendly science firm reanalyzed the data of that landmark Harvard Six Cities study and reconfirmed the basic results. Other scientists have also analyzed the same or other data since then and reached the same basic conclusion: Microscopic pollutants are dangerous to our health. If this proposed regulation is adopted, it

would deny EPA the ability to rely upon peer-reviewed studies like the Harvard Six Cities research, which involve commitments to patient confidentiality.

- Scientists reported that the highly toxic pesticide chlorpyrifos impairs brain development and function in children exposed prenatally. The Trump administration is doing the bidding of the agrochemical industry by permitting the use of the pesticide on food crops. The foundational research, published in numerous prestigious scientific journals, is under attack from industry. Pruitt's announcement undercuts EPA technical experts from using this critical evidence of harm to children.

EPA routinely relies upon models such as pollution projection models, economic models, health benefits models and other that inform EPA's rules and regulations. Many of these models including proprietary or confidential components.

Thank you for the opportunity to bring these remarks to your attention.

Yours sincerely,
Robert E. Rutkowski

cc: House Democratic Whip Office

2527 Faxon Court
Topeka, Kansas 66605-2086
P/F: 1 785 379-9671
E-mail: r_e_rutkowski@att.net

Message

From: sciencepolicy [sciencepolicy@agu.org]
Sent: 4/23/2018 3:36:24 PM
To: Pruitt, Scott [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=757bedfd70ca4219b6d8046f5ce5681e-Pruitt, Sco]
CC: Wooden-Aguilar, Helena [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=991ab84f64be4b6b9dd10a68c81887b0-HAWodd]
Subject: Letter regarding secret science and transparency
Attachments: AGU letter to EPA re secret science and transparency.pdf

Dear Administrator Pruitt –

Attached, please find a letter on behalf of the American Geophysical Union regarding transparency and accuracy of scientific data. If you have any questions or if we can be of any help, please do not hesitate to contact Timia Crisp, Public Affairs Analyst at tcrisp@agu.org.

Cheers,

Timia Crisp, PhD
Public Affairs Analyst



sciencepolicy
sciencepolicy@agu.org | www.agu.org
2000 Florida Ave., NW | Washington, DC 20009



UPCOMING DEADLINES, MEETINGS AND EVENT LINKS:

18 April: Fall Meeting Session Proposal Deadline
[10 -14 December: 2018 Fall Meeting | Washington, DC](#)



23 April 2018

Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Administrator Pruitt:

On behalf of the American Geophysical Union (AGU) and its 60,000 scientist members, I am writing to express concerns about planned policy changes at the Environmental Protection Agency (EPA) regarding transparency and accuracy of scientific information. We urge you to evaluate the unintended consequences of these policies and reconsider them.

Recent reports indicate that EPA is planning to implement new policies that would require the agency to use only scientific data and information that is publicly available when considering science in rule-making. The legislation this policy is based on, the HONEST Act¹, has received significant opposition from the scientific community and other organizations because of the potential for this policy to exclude data vital to informed decision-making.²

AGU is fully committed and would be willing to provide assistance to efforts to ensure that scientific information is communicated openly with policymakers and the public. However, it is critical that such scientific information undergo the peer review process, which remains the gold standard of academic achievement. Despite suggestions to the contrary,³ the peer review process affords the type of informed discourse necessary for the objectivity, rigor, and legitimacy of scientific information.

The Congressional Budget Office estimated that implementing a secret science policy like the one proposed by EPA would cost between an estimated \$5 million over five years to \$250 million annually.⁴ At a time when the Administration is proposing significant cuts to EPA funding, this policy would become an unnecessary burden on the agency and further hamstring its ability to protect public health and the environment. In general, to exclude vital scientific information from consideration would put our local communities' health and well-being at risk.

¹ H.R. 1430, sponsored by Rep. Lamar Smith (R-TX-21), passed the House on 29 March 2017.

² <https://sciencepolicy.agu.org/files/2013/07/AAAS-Secret-Science-letter-McCarthy-2015.pdf>

³ <http://dailycaller.com/2018/03/19/epa-scott-pruitt-secret-science/>

⁴ <https://www.cbo.gov/publication/50025>



ADVANCING EARTH
AND SPACE SCIENCE

Of additional concern to AGU are reports that EPA has directed its employees to use talking points regarding climate change that are contrary to the robust scientific data and the consensus of scientists across the nation and the world.⁵ The reported guidance requires EPA employees to emphasize that “clear gaps remain including our understanding of the role of human activity and what we can do about it.” This is not only inaccurate, but also jeopardizes the ability of communities to respond appropriately to protect people’s health and well-being from challenges related to climate change.

AGU stands with the scientific community⁶ regarding the scientific consensus that climate change is occurring and is primarily driven by human activities.⁷ The data that supports this conclusion is not only strong but growing all the time. Failing to acknowledge and inform the public about this fact, as well as the ways in which the public can mitigate the effects and build resiliency is scientifically misleading, dangerous, and against the very mission of EPA. We as a nation need to ensure that we are addressing the pressing issues facing our communities by using and disseminating accurate, peer-reviewed and up-to-date scientific information.

AGU would welcome the opportunity to work with you on these critical issues and ensure that science can continue to appropriately inform decision-making and benefit the American public.

Respectfully,

A handwritten signature in black ink that reads 'Christine W McEntee'.

Christine McEntee
Executive Director/CEO
American Geophysical Union

⁵ https://www.washingtonpost.com/news/powerpost/paloma/the-energy-202/2018/03/29/the-energy-202-scott-pruitt-s-climate-message-is-now-official-epa-guidance/5abbfd3630fb042a378a2f23/?utm_term=.272c755ae673

⁶ <https://sciencepolicy.agu.org/files/2013/07/2016climateletter6-28-16.pdf>

⁷ <https://sciencepolicy.agu.org/files/2018/02/AGU-Climate-Change-Position-Statement-Final-2013.pdf>

Message

From: Environmental Defense Fund [takeaction@edf.org]
on behalf of irvin godofsky [takeaction@edf.org]
Sent: 7/4/2018 1:39:36 AM
To: Pruitt, Scott [/o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=757bedfd70ca4219b6d8046f5ce5681e-Pruitt, Sco]
Subject: Walk back your latest dangerous attack on strong science

Jul 3, 2018

Administrator E. Scott Pruitt

Dear Administrator Pruitt,

I'm writing today gravely concerned about your recent proposal to restrict EPA's ability to use life-saving science.

This proposal doesn't roll back red tape. Instead, it binds the process of legitimate scientific inquiry with it. It will obstruct EPA's ability to use highly reliable scientific information, including data used to determine whether chemicals and pollutants cause cancer, heart disease, and other health problems.

This proposal will undermine EPA's ability to safeguard the health and well-being of American families. Please abandon this attack on strong science. America's communities are counting on an EPA that uses the best and latest science to protect us.

The tactic of confusing "secret science" with the need for patient confidentiality is cynical, willfully deceptive, and dangerous to the American people you swore an oath to protect. Shame on you

Irvin D. Godofsky M.D.

Thank you,

Dr. irvin godofsky

Personal Matters / Ex. 6

Message

From: Environmental Defense Fund [takeaction@edf.org]
on behalf of William Baker [takeaction@edf.org]
Sent: 5/10/2018 6:19:09 AM
To: Pruitt, Scott [/o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=757bedfd70ca4219b6d8046f5ce5681e-Pruitt, Sco]
Subject: Walk back your latest dangerous attack on strong science

May 10, 2018

Administrator E. Scott Pruitt

Dear Administrator Pruitt,

Your phony attack on "secret science" is a smoke screen for violating Congress' intent in setting up the Environmental Protection Agency.

At the very least, the comment period should be extended. If this is such a great idea, it should stand up to public scrutiny.

Thank you,

Mr. William Baker

Personal Matters / Ex. 6

Message

From: Nelson Ribeiro [Personal Matters / Ex. 6]
Sent: 3/30/2018 12:35:48 PM
To: Pruitt, Scott [/o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=757bedfd70ca4219b6d8046f5ce5681e-Pruitt, Sco]
Subject: THANK YOU

Thank you for getting rid of “secret science” in the EPA!!!

Appointment

From: Ringel, Aaron [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1654BDC951284A6D899A418A89FB0ABF-RINGEL, AAR]
Sent: 2/9/2018 6:59:01 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]; Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]
Subject: House Science Committee/HONEST Act Reforms
Location: 3442WJCN
Start: 2/13/2018 5:00:00 PM
End: 2/13/2018 5:30:00 PM
Show Time As: Busy

Richard to call Aaron's office:

Personal Matters / Ex. 6

Appointment

From: Gomez, Laura [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=575BA24FC19D429C8302A05102353238-LGOMEZ]
Sent: 1/23/2018 9:18:59 PM
To: Gomez, Laura [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=575ba24fc19d429c8302a05102353238-lgomez]; Yamada, Richard (Yujiro) [yamada.richard@epa.gov]; Orme-Zavaleta, Jennifer [Orme-Zavaleta.Jennifer@epa.gov]; Bahadori, Tina [Bahadori.Tina@epa.gov]; Vandenberg, John [Vandenberg.John@epa.gov]; Rodan, Bruce [rodan.bruce@epa.gov]; Linkins, Samantha [Linkins.Samantha@epa.gov]; Davis, Matthew [Davis.Matthew@epa.gov]; Lubetsky, Jonathan [Lubetsky.Jonathan@epa.gov]; Schwab, Justin [Schwab.Justin@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]; Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]; Rodrick, Christian [rodrick.christian@epa.gov]; Moody, Christina [Moody.Christina@epa.gov]; Woods, Clint [woods.clint@epa.gov]; Shoaff, John [Shoaff.John@epa.gov]; Feeley, Drew (Robert) [Feeley.Drew@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Sinks, Tom [Sinks.Tom@epa.gov]; Blancato, Jerry [Blancato.Jerry@epa.gov]; Teichman, Kevin [Teichman.Kevin@epa.gov]

Subject: CONFIRMED: EPA PRE-INTERNAL CALL : HONEST ACT IMPLEMENTATION

Attachments: BILLS-115hr1430rfs.pdf

Location: Personal Matters / Ex. 6

Start: 1/26/2018 7:00:00 PM

End: 1/26/2018 8:30:00 PM

Show Time As: Busy

Purpose: To internally discuss EPA implementation of HR 1430 (ATTACHED)

This is an internal call in preparation for a briefing with Committee on House Science, Space and Technology (HSST). DAA Ringel (OCIR) will lead a discussion with respective program offices regarding the agency's implementation efforts of the HONEST ACT.

Appointment

From: Rodrick, Christian [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6515DBE46DAE466DA53C8A3AA3BE8CC2-RODRICK, CH]
Sent: 1/19/2018 6:54:09 PM
To: Rodrick, Christian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6515dbe46dae466da53c8a3aa3be8cc2-Rodrick, Ch]; Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]; Gomez, Laura [Gomez.Laura@epa.gov]; Moody, Christina [Moody.Christina@epa.gov]
Subject: HONEST Act meeting
Location: Personal Matters / Ex. 6 Aaron's Office)
Start: 1/23/2018 8:00:00 PM
End: 1/23/2018 8:30:00 PM
Show Time As: Busy

Appointment

From: Gomez, Laura [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=575BA24FC19D429C8302A05102353238-LGOMEZ]
Sent: 1/18/2018 11:16:55 PM
To: Gomez, Laura [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=575ba24fc19d429c8302a05102353238-lgomez]; Moody, Christina [Moody.Christina@epa.gov]; Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]; Rodrick, Christian [rodrick.christian@epa.gov]

Subject: HONEST ACT - Overview Planning for HSST

Location: **Personal Matters / Ex. 6**

Start: 1/19/2018 4:00:00 PM

End: 1/19/2018 5:00:00 PM

Show Time As: Busy

Recurrence: (none)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 27 2018

OFFICE OF CONGRESSIONAL AND
INTERGOVERNMENTAL RELATIONS

Honorable John Shimkus
Chairman
Subcommittee on Environment
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your May 30, 2018, letter and the opportunity to respond to the questions for the record from the Subcommittee on Environment hearing on April 26, 2018, entitled *The Fiscal Year 2019 Environmental Protection Agency Budget*. Please find our responses in the enclosed documents.

Again, thank you for your letter. If you have further questions, please contact me, or your staff may contact Christina J. Moody, in EPA's Office of Congressional and Intergovernmental Relations, at moody.christina@epa.gov or 202.564.0260.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Ringel", is written over the typed name and title.

Aaron E. Ringel
Deputy Associate Administrator

Enclosures

cc: The Honorable Paul Tonko, Ranking Member
Subcommittee on Environment

NOT A S 30A

Attachment 1—Additional Questions for the Record

The Honorable John Shimkus

1. While some are interested in ensuring EPA actions to limit one or more FIFRA-regulated substances, I am more interested in all FIFRA related activities, particularly in view of the uncertainty about the future deployment of user fees now made available under the Pesticide Registration Improvement Act.

a. If PRIA fees were to expire:

- i. Would this mean the reinstatement of tolerance fees?

ANSWER – PRIA prohibits EPA from levying these tolerance fees, but with a lapse of PRIA, the prohibition would expire and EPA could take action to resume collection of these fees.

- ii. If yes, would the reinstatement of tolerance fees produce enough revenue to ensure the robustness reviews mandated by FIFRA?

ANSWER – While it is EPA’s goal that the robustness of EPA review would not change with a reduction in fees, it is likely that the time frames in which EPA conducts its reviews would be impacted. As the majority of maintenance fees collected go to support of pesticide registration review activities, this reduction in fees would severely impact EPA’s ability to meet the statutory deadline of completion of the 725 chemical cases by October 1, 2022. EPA’s performance reviewing other maintenance fee-supported activities such as fast-track amendments to registered products and notifications would also be impacted. In addition, registration service fee actions received after a lapse of PRIA would not receive statutorily-mandated decision review time frames.

b. What percentage of staffing expenses are covered by PRIA fees?

ANSWER - PRIA fees provide approximately 33 percent of the funding for EPA’s pesticide program activities. Currently operating under the third iteration of the statute, PRIA provides two funding sources to EPA’s pesticide program:

- **One time registration service fees (i.e., PRIA fees) for the evaluation of new applications submitted to the EPA; and**
- **Annual FIFRA maintenance fees assessed to products currently in the marketplace, a significant portion of which are used to support the re-evaluation of pesticides in order to meet the statutory deadline of October 1, 2022, for completing the first round of registration review.**

c. If PRIA fees expire:

- i. How many EPA employees – both FTE and contract workers – would be impacted, including through the loss of employment?

ANSWER – Activities reliant on maintenance fee and pesticide registration service fee funds could be supported for a duration of time after a lapse in PRIA relying on carryover registration service and maintenance fee money. Starting on October 1, 2020, EPA would not be able to support approximately 75 FTEs funded by the PRIA fund. Beginning on October 1, 2021, EPA would no longer be able to support an estimated additional 91 FTEs with FIFRA funds, bringing the total FTE count that EPA could no longer support with PRIA and FIFRA funds to approximately 166FTEs. For reference, the current “on-board” OPP count is right around 600 employees, down 42 from the start of FY 2017.

There are 32 contracts supported by PRIA pesticide user fees with 49 on-site contractors administering the functions of those contracts.

- ii. How much in budget resources would EPA need to transfer to OCSPP to make up for lost PRIA revenues for FIFRA activities?

ANSWER – EPA’s pesticide program activities through two fee funds. On average, EPA collects approximately \$46M in fees each year to support pesticide program activities. To continue to complete registration and registration review decision-making in current timeframes, in the absence of fees, funding for OCSPP’s pesticide activities would need to increase by \$46M. In addition, if PRIA were not reauthorized, \$2 million per year for worker protection activities, pesticide safety education programs, and partnership grants, monies that currently come from PRIA funds, would not be available and these programs would not be funded.

- iii. What is the impact on the pace of pesticide applications reviews? How much longer will they take?

ANSWER – Pesticide registration applications received prior to a lapse of PRIA would retain the decision time frames specified in FIFRA section 33. Applications received after the expiration of PRIA would not receive decision time frames. EPA would continue reviewing these applications as expeditiously as possible provided the resources available.

2. Legislation pending in Congress would provide PRIA fees for another 3 years, but also address other matters as well.

- a. Please explain the need for and characterize the significance of having, including in practical terms:

- i. \$500,000 in funding for efficacy guidelines for public health pesticides;

ANSWER – This proposed maintenance fee set-aside would provide EPA resources to develop and implement guidance and rulemaking for product performance data requirements to evaluate products claiming efficacy against pests of significant public health or economic importance. This effort, desired by the regulated community and of benefit to those who might be subject to vector-borne illnesses, would give EPA better information on how well a product works against public health pests and organisms, which is part of EPA’s evaluation in determining whether to allow a product onto the market. These products include hospital disinfectants as well as repellants and insecticides that control mosquitoes that are vectors of the Zika virus.

- ii. \$500,000 for good laboratory practices funding;

ANSWER – This proposed maintenance fee set-aside would be used to increase the number of laboratory inspections and data audits conducted in support of pesticide product registrations under PRIA, an outcome desired by the registrant community and important to the data integrity of the studies that EPA uses to support its regulatory decisions.

- iii. An increase in maintenance fees from \$27.8 to \$31 million for review and registration;

ANSWER – Raising maintenance fees by \$3.2 million annually would provide additional resources for registration review and other specified activities on which maintenance fees can be spent. These additional resources are important to helping EPA meet its statutory obligation to complete the first round of registration review by October 1, 2022.

- iv. Additional categories and deadlines for products reviewed; and

ANSWER – PRIA 4 proposes new fee for service categories as well as revisions to existing categories. To name a few examples, PRIA categories for antimicrobial products are revised to be consistent with subpart 158W, there are revisions to time frames and fees for antimicrobial and conventional new products and amendments to existing products that involve the review of product performance data for public health pests, new plant-incorporated protectant (PIP) categories are added, categories for safer inert ingredients are established, and a new category is created whereby applicants can receive a determination from EPA on whether or not a proposed product would be subject to registration requirements under FIFRA. These new categories better align time frames and fees to the resources it takes EPA to review those types of applications.

- v. Removal of FIFRA section 4(k)(2).

ANSWER – Maintenance fees are annual fees assessed to registrants to maintain their product registrations in the marketplace, and are deposited by EPA into the Reregistration and Expedited Processing Fund. These fees are primarily used to support the re-evaluation of pesticides as part of the statutorily-mandated registration review program, the first round of which FIFRA mandates is to be completed by October 1, 2022. These fees also support the agency’s review of inert ingredients, the expedited processing and review of certain applications for products that are substantially similar to registered product and products intended for public health, and the enhancement of information technology systems to improve the review of pesticide registration applications. An unspent balance of over \$40 million has built up in the fund due to decreases in staff levels administering functions that can be charged to the fund (due to attrition, a hiring freeze, and typical time lags involved in recruiting qualified staff to fill key scientific and regulatory positions), and the spending restriction in FIFRA section 4(k)(2)(A), commonly referred to as the “1-to-1” provision.

FIFRA section 4(k)(2)(A) states “moneys derived from fees may not be expended in any fiscal year to the extent such moneys derived from fees would exceed money appropriated for use by the Administrator and expended in such year . . .” This provision effectively limits the amount of fees that can be spent in any given fiscal year relative to the amount of annually appropriated dollars that are spent on the same functions in that fiscal year, and likewise prevents EPA from being able reduce the unspent balance of the maintenance fee fund unless appropriated spending exceeds maintenance fee collection in a given fiscal year. To the extent fee collections have exceeded appropriation spending on the specified functions, the unspent balance has continued to grow and EPA has not been able to reduce the unspent balance in the maintenance fee fund. The removal of FIFRA section 4(k)(2) is essential to EPA’s ability to access these funds paid by registrants in support of registration review and other specified activities.

- 3. Beginning in 2023, the agency will have more flexibility to set targets under the Renewable Fuel Standard (RFS). Given EIA projections of a 31 percent decrease in motor gasoline consumption between 2017 and 2050, based upon increases in fuel economy standards and electric vehicles market penetration:
 - a. Will EPA have authority in 2023 and subsequent years to reduce biofuel volume requirements below the existing statutory guidelines? Could this result in fewer gallons of biofuel in the market in the future than exist today?

ANSWER – EPA has broad authority under CAA 211(o)(2)(B)(ii) to determine the applicable volumes for years beyond 2023, including volumes lower than those provided in the statutory tables.

- b. Will EPA have authority in 2023 and subsequent years to allow a RIN to be generated by recharging an electric vehicle with electricity generated from a biogas power plant or other renewable energy source?

ANSWER – EPA’s authority to assess biofuel production pathways to determine if they satisfy the lifecycle greenhouse gas emissions reduction levels required in the statute for different types of renewable fuels is not modified for 2023 and subsequent years. Similarly, the requirement that renewable fuels be produced from renewable biomass remains unchanged. Accordingly, EPA will be authorized in 2023 to evaluate particular biofuel pathway, such as electricity derived from biogas that may be sourced from different locations and used as transportation fuel, to determine if the fuel satisfies the requirements of the statute.

- c. Will EPA have authority in 2023 and subsequent years to reorganize the program’s four existing nested categories?

ANSWER – The statute does not specifically grant EPA authority to reorganize these categories in 2023 and subsequent years. The nested categories are a result of statutorily defined categories of fuel, which are not modified for 2023 and subsequent years.

4. Is EPA engaged in planning for 2023 and subsequent years with regard to the agency’s reset authority and the RFS? If so, please describe the range of options that EPA is considering.

ANSWER – EPA is not currently engaged in any substantive planning process for determining the applicable volumes for 2023 and subsequent years.

5. The Folcroft Landfill (Operable Unit 2 of the Lower Darby Creek Superfund Site in Pennsylvania) was placed on the NPL in 2001, and the Remedial Investigation has not been finalized. The July 2017 Superfund Taskforce report recommends inquiry and additional resources for sites on the NPL for five years or more without a significant movement. What inquiries and additional resources have been directed to the Folcroft Landfill which has been on the NPL since 2001 without completion of the Remedial Investigation?

ANSWER – The schedule and length of time to complete the Remedial Investigation and Feasibility Study (RI/FS) for the Folcroft Landfill, Operable Unit 2 (OU2) of the Lower Darby Creek Area Superfund Site is not attributable to a lack of resources, nor does EPA believe that additional resources are necessary at this time. The duration of the RI is primarily due to lengthy negotiations with a group of potentially responsible parties (PRP Group) to finance and perform the RI/FS, as well as unanticipated findings during the RI/FS and challenging field conditions, as described in detail below.

The RI/FS at Folcroft Landfill is being performed by a PRP Group that consists of 14 companies that historically disposed of waste at the landfill. After listing the Site on the National Priorities List in 2001, EPA began negotiations with the PRP Group, which concluded in November 2006 with the signature of an Administrative Order on Consent (AOC) for the RI/FS. The duration of the negotiations was due to both the number of PRPs and technically complicated enforcement evidence.

Initial RI field activities were completed in 2008 by the PRP Group in accordance with EPA-approved RI/FS Work Plan. However, in May 2010, based on a review of the initial RI data, EPA identified contaminated groundwater outside of the boundary of the Folcroft Landfill that was not anticipated in the RI/FS Work Plan. The RI/FS Work Plan was subsequently amended in December 2011 to investigate groundwater contamination outside the boundary of the Folcroft Landfill. Significant technical challenges were encountered during the supplemental RI field work due to the location of the landfill in a tidal marsh area within the John Heinz National Wildlife Refuge. The supplemental RI field activities were completed in July 2016.

The PRP Group submitted the draft RI Report in May 2017, and the EPA has worked with the PRP Group for the past year to resolve outstanding issues. The PRP Group submitted the draft final RI Report on May 22, 2018, and EPA is currently reviewing the document to ensure that all remaining issues have been addressed. A scoping meeting for the FS was held on May 8, 2017, and subsequent FS discussions were held throughout 2017 and early 2018. EPA and the PRP Group, as well as other site stakeholders such as the Pennsylvania Department of Environmental Protection (PADEP) and US Fish and Wildlife Service (USFWS), met on June 18, 2018, to discuss next steps in the FS process.

6. The EPA Taskforce Report recommends the establishment of a clarification to the principles for groundwater restoration. What is the goal for groundwater remediation at the Folcroft Landfill (Operable Unit 2 of the Lower Darby Creek Superfund Site in Pennsylvania)?

ANSWER – The Record of Decision (ROD) for the Folcroft Landfill (Operable Unit 2 of the Lower Darby Creek Superfund Site in Pennsylvania) has not yet been issued; therefore, no groundwater cleanup level has been established. The National Oil and Hazardous Substances Pollution Contingency Plan (NCP) sets forth certain guiding principles for addressing groundwater, particularly “to return usable groundwaters to their beneficial uses wherever practicable, within a timeframe that is reasonable given the particular circumstances of the site.” The NCP further states that federal Maximum Contaminant Levels (MCLs) “shall be attained by remedial actions for ground or surface waters that are current or potential sources of drinking water.”

Contaminated groundwater within the boundary of the Folcroft Landfill is within a waste management area and is not considered a potential source of drinking water. However, the contaminated groundwater that extends outside of boundary of the Folcroft Landfill is considered a potential source of drinking water through a classification system by the State of Pennsylvania. Therefore, EPA anticipates that

federal MCLs will be evaluated as potential cleanup levels for contaminated groundwater outside of the boundary of the Folcroft Landfill.

7. This Operable Unit, which is owned by the Department of the Interior, is within the John Heinz Wildlife Refuge.
 - a. Do EPA's goals for groundwater restoration take into account the Department of Interior's long range plan for the Refuge?

ANSWER – EPA has coordinated extensively with the Department of the Interior (DOI) and the U.S. Fish and Wildlife Service (USFWS) with regard to Operable Unit 2 (OU2), Folcroft Landfill, throughout the Remedial Investigation (RI). Additionally, EPA entered into a Memorandum of Understanding with DOI in 2005 to clearly define the roles of both agencies at this OU. USFWS indicated in a letter dated February 23, 2018, that groundwater extraction for various uses is routinely permitted in refuges, if the refuge manager determines that it is appropriate to do so. Currently, the John Heinz National Wildlife Refuge (the Refuge) Comprehensive Conservation Plan (CCP) does not prohibit groundwater extraction on the Refuge, and the USFWS cannot eliminate the possibility that groundwater extraction may be necessary in the future. This is consistent with the State and EPA's position that groundwater at OU2 is considered a potential future source of drinking water.

- b. Is the Folcroft Landfill eligible for a Technical impracticability waiver for groundwater?

ANSWER – Any Superfund site is eligible for a technical impracticability (TI) waiver if it is demonstrated that it is technically impracticable, from an engineering perspective, of achieving applicable or relevant and appropriate requirements (ARARs), such as federal maximum contaminant levels (MCLs), throughout the groundwater contaminant plume. EPA and the Potentially Responsibility Party Group (PRP Group) at OU2 have discussed the possibility of a TI waiver at OU2. The PRP Group is currently evaluating the collection of additional groundwater data that would be required to support a TI waiver application.

- c. What is the process and standard to receive a TI waiver?

ANSWER – The detailed process for requesting a TI waiver is provided in the following the EPA guidance documents:

- **OSWER Directive 9234.2-25, Guidance for Evaluating Technical Impracticability of Groundwater Restoration September, 1993;**
- **OSWER Directive 9200.4-14, Consistent Implementation of the FY 1993 Guidance on Technical Impracticability of Groundwater Restoration at Superfund Sites, January 19, 1995;**

- **OLEM Directive 9200.3-117, Clarification of the Consultation Process for Evaluating the Technical Impracticability of Groundwater Restoration at CERCLA Sites, December 28, 2016.**

In general, in accordance with the guidance, the applicant is required to provide the following information in a TI waiver application:

- **Specific applicable or relevant and appropriate requirements (ARARs) or media cleanup standards for which TI determinations are sought;**
- **Spatial area over which the TI decision will apply;**
- **Conceptual model that describes site geology, hydrology, groundwater contamination sources, transport, and fate;**
- **An evaluation of the restoration potential of the site, including data and analyses that support any assertion that attainment of ARARs or media cleanup standards is technically impracticable from an engineering perspective. At a minimum, this generally should include a demonstration that contamination sources have been identified and have been, or will be, removed and contained to the extent practicable; an analysis of the performance of any ongoing or completed remedial actions; predictive analyses of the timeframes to attain required cleanup levels using available technologies; and a demonstration that no other remedial technologies (conventional or innovative) could reliably, logically, or feasibly attain the cleanup levels at the site within a reasonable timeframe;**
- **Estimates of the cost of the existing or proposed remedy options, including construction, operation, and maintenance costs;**
- **Any additional information or analyses that the EPA deems necessary for the TI evaluation.**

EPA will then evaluate the TI waiver application and decide if a TI waiver is warranted, and issue a Record of Decision documenting the TI waiver.

- d. How would changes to the process and standards for awarding a TI waiver, as recommended by the July 2017 EPA Taskforce Report, impact the Superfund process at the Folcroft Landfill?

ANSWER – To date, no changes to the groundwater restoration policy have resulted from the Superfund Task Force Recommendations. If changes to the groundwater restoration policy occur in the future, the groundwater cleanup approach at OU2 will be evaluated accordingly.

8. EPA's recently released proposed rule on increasing transparency in regulatory science states that the proposal is consistent with the requirements for major scientific journals like Science, Nature, and the Proceedings of the National Academy of Sciences.
 - a. Why are more journals and scientific institutions implementing these transparency policies?

ANSWER –The proposed rule is in line with the scientific community’s moves toward increased data sharing to allow for transparency and reproducibility. EPA believes that making regulatory science publicly available in a manner sufficient for independent validation will strengthen the integrity of EPA’s regulatory actions and its obligation to ensure the Agency is not arbitrary in its conclusions.

- b. Isn’t replication and verification a key step in the scientific process?

ANSWER – Replicating and verifying science and data are important ways to help ensure that the resulting data was not skewed or based on other factors outside the scientific process.

9. Despite the many claims made prior to the release of this proposal, would this proposed rule violate any existing federal laws on privacy?

ANSWER – EPA has sought to ensure that this proposed rule is consistent with existing privacy laws; as we note in the NPRM, the intention is to make data available in a manner consistent with statutory requirements for protection of privacy and confidentiality of research participants, protection of proprietary data and confidential business information, and other compelling interests.

10. What is this proposed rule’s impact on confidential business information (CBI)? Please state how you plan to ensure that in any final rule EPA will neither: be (1) prevented from using science that cannot be published (because it has CBI in it) nor forced into the default position that EPA should endeavor to publicly release all scientific data – including legally colorable CBI – so that this science can be used by the Agency?

ANSWER – The proposed rule is consistent with existing laws on CBI. EPA will follow all laws relating to CBI in developing the final rulemaking.

11. I understand the Agency is looking at its work force to see how it can better function.

- a. How many people does EPA have working full-time for the Agency in headquarters?

ANSWER – As of June 6, 2018, the EPA has a total of 7,266 full-time employees in its headquarters program offices. Of these, 4,444 work in the Washington, D.C.-area offices and 2,822 work in EPA’s field offices.

- b. How many people does EPA have working full-time for it in its regional offices?

ANSWER – As of June 6, 2018, the EPA has 6,574 full-time employees at its regional offices.

- c. How many contractors currently work for EPA? [if he doesn’t know what number ask him for a percentage. If that fails, ask him why not]?

ANSWER – As of June 6, the number of active EPA contractors with EPA contractor badges is 4,007 including 1,164 contractors in the Washington, D.C.-area offices, and 2,843 contractors in EPA regions and field offices ¹.

12. One of the priorities for the proposed budget includes an “EPA Reform Plan.” Projects under this plan include streamlining the permit review process, developing a Lean Management System, and reducing the reporting burden on the regulated community.

- a. Why were these areas made priorities?

ANSWER – EPA’s Reform Plan reflects a balance of improvements EPA must achieve to provide both better customer service to those we regulate and better mission outcomes for the American taxpayer who expects a return on their investment.

- b. What progress has been made so far on these efforts?

ANSWER – Before this Administration, EPA had no system to track the amount of time it took to issue permits. We have now established such a system and it is reviewed on a monthly basis as part of the Lean Management System (LMS). Using this data we have initiated several lean process improvement projects to shorten the amount of time it takes for EPA to issue permits in those areas with the longest lead time and highest volume. We have also established a working group to identify opportunities for reducing the reporting burden on the regulated community. This work is ongoing. As for developing EPA’s LMS, each national program and regional office now has a set of draft performance measures that they review during a monthly executive meeting and submit to the Chief of Operations. As a result, over 400 measures are reported in a standard red/yellow/green “bowling chart” showing whether monthly targets are being met. If a target is not met over several months, documentation is submitted stating what actions will be taken to get the measure back on track. The Administrator also holds Quarterly Performance Reviews with his leadership team to track progress on Strategic Measures and Reform Plan priority areas. Furthermore, EPA has developed a Readiness Assessment to prepare the entire agency for full-scale LMS deployment and has begun deploying in Region 7.

- c. Do you have benchmarks and timelines for the Reform Plan?

¹The count includes active contractors on active contracts where the individuals have been issued a badge in compliance with the requirements of Homeland Security Presidential Directive (HSPD) 12. HSPD 12 badges are issued when a contractor requires physical or logical access to EPA facilities or network for more than 6 months.

ANSWER – We are actively working on setting benchmarks and timelines for the Reform Plan. Many of the priority areas lacked data or comprehensive information from the previous administration.

13. What are the biggest obstacles to meaningfully reforming EPA to engage the 21st Century?

ANSWER – The biggest obstacle to reform is creating urgency in implementing institutional reforms and ensuring that leaders within EPA understand the importance of breaking with the status quo and addressing long needed institutional change.

14. The proposed budget has four Agency Priority Goals, including that EPA intends to meet statutory deadlines for chemical reviews under the Toxic Substances Control Act. In particular, EPA plans 100 percent compliance with “existing” chemicals and only 80 percent compliance certain “new” chemicals.

Under the law, EPA is the gatekeeper to innovation because these chemicals cannot go to onto the market until EPA decides they can and companies cannot work to improve these chemicals unless EPA says there is a problem.

As of April 17, 2018, EPA’s website was reporting that EPA had 449 pending applications for new chemicals. In addition, the EPA website claims the typical caseload for new chemicals under review is approximately 300 cases.

- a. Is the increase in pending applications – at one-third of EPA’s historical output, due to a higher number of new chemicals applications coming into the Agency at the same time or EPA falling behind again on getting them processed?

ANSWER – Although the Agency has not seen a significant increase in the number of notifications received, the current caseload number does not mean that EPA is “falling behind.” While the average caseload is around 300, that number can be higher or lower at any given time. Companies often voluntarily agree to suspend the review period to have technical discussions with EPA or to work on developing additional supporting information. Completing these reviews in a timely manner remains a top priority for the Agency. The Agency is taking several steps to address the immediate backlog, and to identify ways to increase overall efficiency for the program to maintain its viability over the long term. For example, we are continuing to increase the number of staff working in the new chemicals program. We’re also currently implementing process improvements identified through a recent LEAN event.

- b. What do you intend to do to eliminate the backlog and keep it at bay?

ANSWER – See response to question 14(a).

- c. One thing the EPA website does not give data on is just how long some of those applications have been sitting at EPA. The law is very clear 90 days and no more than 180 days to review and regulate.

- i. How many of the 449 new chemicals applications sitting at EPA are less than 90 days old?

ANSWER – It is important to note that companies often voluntarily agree to suspend the TSCA review period to have technical discussions with EPA or to work on developing additional supporting information. Thus, there is a difference between the time that has elapsed (A) since EPA’s receipt of a notice and (B) for purposes of the TSCA review period. For the responses below, EPA is providing statistics for the number of calendar days that a notice has been with EPA – not for purposes of the TSCA review period.

46 cases have been with EPA for less than 90 days.

- ii. How many of the 449 new chemical applications sitting at EPA are more than 90 days old, but less than 180 days?

ANSWER – 63 cases have been with EPA for less than 180 days.

- iii. How many of the 449 new chemical applications have been filed with EPA for more than 180 days and what is the range of time on them?

ANSWER – 340 cases have been with EPA for 180 days or more. The TSCA review period has been voluntarily suspended by the submitters for all of these cases. Of these 93 cases were reset on June 22, 2016, so they have been with EPA the longest. Of those 93 oldest cases:

- **40 are cases where the submitter is undertaking testing or gathering additional data;**
- **12 are cases involving Consent Orders that have not yet been signed by submitters; and**
- **41 cases involve various types of ongoing issues including: pending EPA issuance of Non-Order SNURs; company is exploring possible ways to mitigate identified risks; and company is in discussions with EPA about developing test protocols and other necessary testing information.**

15. Under TSCA section 26, the Agency has authority to set fees to defray the costs of chemical testing, new and existing chemical review and regulation and to offset related costs for processing confidential business information. For new chemicals, EPA moved the fee from \$2,500 to \$16,000 – a more than 6-fold increase – and for small manufacturing entities – EPA raised the fee for new chemicals from \$100 to \$2,800 – or a 28-fold increase.

- a. How much impact with these dramatic fee increases have on improving the speed at which the Agency is reviewing new chemicals?

ANSWER – The fees collected by the Agency under TSCA Section 26 are expected to improve our ability to effectively and efficiently administer the new chemicals program and improve the timeliness of our reviews. Additional fee revenue is expected to enable the Agency to increase the number of staff working in the new chemicals program, further enhance ongoing efforts to increase overall efficiency for the program to maintain its viability over the long term, and implement process improvements identified through a recent LEAN event.

b. If not much, then what is the problem?

ANSWER – See above. The Agency anticipates that fee revenues will help further efforts to improve the timeliness of new chemical reviews.

16. The proposed fee rule suggests EPA will see 10 percent fewer new chemical applications based on legal changes to how EPA is supposed to review new chemicals. What kind of new chemical applicant attrition is expected due to the combined fee increase and lack of generated revenue from the chemical?

ANSWER – The proposed fee rule includes a planning assumption that the Agency will receive 20% fewer new chemicals applications as a result of the increased fees. This assumption is based on the notion that companies may be more selective in terms of which chemicals they submit for review and the timing of those submissions given the higher upfront investment due to the increased fee.

17. Portland Harbor is complex site at which almost 100 potentially responsible parties (PRPs) have been identified. It is my understanding that on March 16, 2018, EPA sent all of the PRPs a letter indicating that EPA will be issuing Special Notice Letters for full performance of the remedial design/remedial action (RD/RA) at the Portland Harbor Site by the end of 2019. However, several of the PRPs have indicated that the allocation process will not be complete by that time, and that the issuance of Special Notice Letters will actually slow the clean-up, because companies will choose to litigate rather than potentially bear the full cost of the clean-up at that point. How will EPA balance the allocation process timeline and issuing the Special Notice Letters?

ANSWER – EPA is focused on getting the cleanup selected in the Record of Decision (ROD) underway at the Portland Harbor Superfund site as soon as possible. EPA is not privy to the allocation process among the PRPs at the Portland Harbor Superfund site and generally does not get involved in how responsible parties allocate costs among themselves. EPA issued the ROD at the Portland Harbor Site in January 2017. At Portland Harbor, the PRPs are conducting additional sampling to help design the remedy. That sampling also may be relevant to the PRP cost allocation, and is expected to be complete by early 2019.

Taking into account the ongoing sampling work and its potential relevance to the allocation process while still maintaining the overall goal to proceed with cleanup, on March 16, 2018, EPA sent a letter to the PRPs to notify them that EPA plans to issue

Special Notice letters to commence settlement negotiations, but not until the end of 2019. To maintain progress towards cleanup while the sampling is taking place, EPA also is working with parties to perform remedial design work at specific locations of the site. By the end of 2019, the PRPs should be able to proceed on a parallel path of presenting a plan to implement the Portland Harbor ROD even if there are remaining allocation issues.

The Honorable David B. McKinley

1. I appreciate your commitment to supporting cooperative federalism under the Coal Combustion Residuals (CCR) permitting program by working with states to develop, submit, and implement state CCR permit programs. How is EPA working with states as they develop and submit these plans, particularly those that are seeking to incorporate WIIN Act authorities rather than just adopting the current, self-implementing federal rule?

ANSWER – EPA has been actively working with states since the passage of the WIIN Act. The agency developed an interim final guidance outlining the process and procedures that the agency generally intends to use to review and make determinations on state Coal Combustion Residual (CCR) permit programs. This document provides guidance to the states for developing and submitting a program to EPA for approval. The guidance is divided into four chapters:

- **Chapter 1 provides an overview of the provisions of the Water Infrastructure Improvements for the Nation Act (WIIN Act).**
- **Chapter 2 contains the process and procedures the EPA is planning to use to review and make determinations on state CCR permit programs as well as the documentation EPA will ask states seeking approval of a program to submit.**
- **Chapter 3 contains a checklist of all the requirements of the current CCR rule at 40 CFR Part 257 subpart D.**
- **Chapter 4 provides a checklist of those items a state would submit when seeking approval of its CCR permit program.**

EPA encourages states who are or may be considering submitting a CCR permit program for approval to consult with the agency early in the process. Such consultations will enable EPA and the state to work through any areas where the state program may be different from the federal CCR regulation. The agency is currently working with about a dozen states and we look forward to working with these and other states and key stakeholders as we move forward in implementing the WIIN Act.

2. As states develop these programs, guidance from EPA will be important. With that in mind, Congress appropriated \$6 million to EPA for FY18 to develop its own federal permitting program for “non-participating states”. Please provide an update on and timeline for the development of that federal permit program.

ANSWER – EPA has several activities underway which support the development of a federal permit program. First, the agency has been engaged in modifications to the 2015 CCR rule which will provide the basis for both state and federal permit programs. EPA anticipates another rulemaking later this year, and as part of that, EPA hopes to further modify regulations for the federal permit program. In addition, EPA is developing draft templates for permit applications and also permits. Finally, EPA is working with our state partners to determine which states will be developing their own permit program and which will not, so that federal permitting efforts will not duplicate state efforts.

The National Association of Scholars recently published a report titled, “THE IRREPRODUCIBILITY CRISIS OF MODERN SCIENCE, Causes, Consequences, and the Road to Reform”. They state, “The Federal government should also consider instituting review commissions for each regulatory agency to investigate whether existing regulations are based on well-grounded, reproducible research. These should establish the scope of the problem by identifying those regulations that rely on un-replicated or irreproducible research, and recommending which regulations should be revoked.”

3. Will you commit the EPA to investigate whether existing regulations are based on well-grounded, reproducible research?

ANSWER – EPA supports efforts to ensure that the regulations it promulgates are based on well-grounded, reproducible research. In accordance with Executive Order 13777, EPA is taking steps to identify regulatory issues, including the basis for existing regulations (Section 3(d)(v) specifically addresses reproducibility), through ongoing regulatory reform efforts.

4. Will you commit the EPA to identify those regulations that rely on un-replicated or irreproducible research?

ANSWER – EPA supports efforts to ensure that the regulations it promulgates are based on well-grounded, reproducible research. As discussed above, per E.O. 13777, EPA is taking steps to identify regulatory issues through continuing regulatory reform efforts.

5. Will you provide a report to our committee and my office with the results of your investigation?

ANSWER – EPA is open to providing updates on its regulatory reform efforts as they continue. EPA provides ongoing information about its regulatory reform efforts at <https://www.epa.gov/laws-regulations/regulatory-reform>.

6. Will you provide a report to our committee and my office regarding if the endangerment finding for CO2 was based upon well-grounded, reproducible research?

ANSWER – EPA welcomes the opportunity to address specific issues with the committee, and encourages you to reach out to EPA staff to further discuss this request.

Administrator Pruitt, I know that the ethanol industry has recently attacked the EPA for granting small refinery hardship relief.

7. Does the Clean Air Act establish small refinery hardship relief?

ANSWER – Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery’s exemption from compliance with its renewable fuel volume obligations for a given year based on a small refinery’s demonstration of “disproportionate economic hardship” in that year. The statute also directs EPA to consult with the Department of Energy (DOE) in evaluating small refinery exemption petitions. EPA will grant a hardship exemption if we conclude, after review of available information and in consultation with DOE, that a refinery will experience disproportionate economic hardship that can be relieved in whole or in part by removing its RFS obligations for that year.

8. Has the Congress affirmed this on several occasions by directing the DOE to study this issue and, more recently, reminding the EPA that it did not intend for small refineries to bear a disproportionate regulatory burden?

ANSWER – In the Consolidated Appropriations Act of 2017, an explanatory statement directed EPA “to follow DOE’s recommendations which are based on the original 2011 Small Refinery Exemption study prepared for Congress and the conference report to division D of the Consolidated Appropriations Act of 2016.”

9. Did the DOE’s 2011 report for Congress predict that harm to small refineries would increase over time, not diminish?

ANSWER – DOE’s 2011 report did not make any predictions regarding whether the number of small refineries seeking relief would increase or decrease over time.

10. Did the 10th circuit decision last year instruct the EPA to grant small refinery hardship relief?

ANSWER – No. The 10th Circuit, in *Sinclair Wyoming Refining Company v. EPA*, 874 F.3d 1159 (2017), vacated EPA’s decisions to deny petitions for exemption from the Renewable Fuel Standard for 2014 for two of Sinclair’s small refineries and remanded those decisions back to EPA.

Some have made the argument that hardship relief results in “demand destruction” for ethanol by resulting in less blending. Regardless of if small refineries receive hardship relief, they are incentivized to blend ethanol for many economic reasons: 1) it is cheaper than gasoline, 2) they must meet their RVO, and 3) they can sell RINS not needed for compliance.

11. Was ethanol consumption up in the first quarter of 2018?

ANSWER – According to ethanol consumption data from the Energy Information Administration (EIA), ethanol consumption was 6% lower in the first quarter of 2018 relative to the fourth quarter of 2017, and 2% higher in the first quarter of 2018 relative to the first quarter of 2017.

12. Was it, in fact, higher than projected in November of 2017 when RINS were 80-90 cents a gallon?

ANSWER – According to ethanol consumption data from the EIA, the monthly average ethanol consumption in the first quarter of 2018 was 6% lower than ethanol consumption in November 2017.

13. Did ethanol consumption increase throughout 2017 despite hardship relief?

ANSWER – According to ethanol consumption data from the EIA, ethanol consumption increased through the first three quarters of 2017 (from 3.37 billion gallons in the first quarter to 3.66 billion gallons in the second quarter and 3.70 billion gallons in the third quarter) before decreasing in the 4th quarter (to 3.67 billion gallons).

President Obama used an EPA “veto” twice in unprecedented fashion. The Spruce Coal Mine located in West Virginia, had the required permits and approvals in hand, when the EPA “vetoed” the project. The project went through the entire regulatory process and was approved by ALL parties. Then the Obama Administration’s “War on Coal” went into high gear. The EPA vetoed the project. The second instance was the Pebble Mine in Alaska, where they vetoed the project prior to the approval process starting. Both instances of using the EPA veto are very dangerous if they are allowed to stay in place. A future administration can use the veto to shut down the entire coal mining industry if both precedents are not reversed by the EPA. I can think of no greater threat to the industry.

14. Will you consider revoking both the Spruce Mine and Pebble Mine vetoes?

ANSWER – Regarding Pebble Mine, the EPA has not made a Final Determination pursuant to Section 404(c). In 2014, the EPA issued a Proposed Determination pursuant to 404(c) regarding Pebble Mine. In 2017, the EPA considered withdrawing that Proposed Determination but, as outlined in its January 26, 2018, decision, the EPA suspended the proceeding to withdraw the Proposed Determination and left that Proposed Determination in place pending consideration of any other information that is relevant to the protection of the world-class fisheries contained in the Bristol Bay watershed in light of the permit application that has now been submitted to the U.S. Army Corps of Engineers by the mine proponent. The EPA’s January 2018 decision neither deters nor derails the Corps’ review of Pebble’s Section 404 permit application, which is currently ongoing. Regarding Spruce Mine, the EPA issued a Final Determination under 404(c) in 2011 that protected portions of the mine site with high ecological value from being adversely impacted by the mine’s development. The mine

proponent has been exploring development of revised proposals to expand mining at the site. If a revised proposal is developed and submitted to the EPA, the agency would review and consider it.

15. Do you believe that the EPA should have the authority to preemptively veto development projects under Section 404 of the Clean Water Act before any permit applications have been submitted to the Army Corps of Engineers?

ANSWER – EPA believes it has the authority to exercise its discretion under Section 404(c) to restrict, prohibit, or deny the discharge of dredged or fill material “whenever” it makes the requisite finding that the discharge will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery, wildlife, or recreation areas, and EPA takes very seriously the authority it was provided by Congress pursuant to Section 404(c). As a general matter, EPA has policy concerns about issuing a final determination under Section 404(c) before the submission of a permit application to the Corps or the completion of an EIS. EPA’s decision whether to exercise such authority preemptively would involve considerations of basic fairness and due process.

16. President Trump, in his Infrastructure Initiative, has proposed legislation that eliminates entirely EPA’s authority to veto projects under the Clean Water Act. Why have you taken a position, by leaving in place the Pebble veto, that is different than the President’s policy?

ANSWER – The EPA’s January 26, 2018 decision suspends the proceeding to withdraw the Proposed Determination and leaves that Determination in place pending consideration of any other information that is relevant to the protection of the world-class fisheries contained in the Bristol Bay watershed in light of the permit application that has now been submitted to the Corps. This decision neither deters nor derails the Corps’ review of Pebble’s Section 404 permit application, which is currently ongoing.

In making the decision regarding whether to withdraw the 2014 Proposed Determination at this time, the EPA considered its relevant statutory authority, applicable regulations, and the input it received as part of the tribal consultation, Alaska Native Claims Settlement Act, Corporation consultation, and public comment periods regarding the agency’s reasons for its proposed withdrawal, as well as recent developments, including Pebble’s submittal of a Section 404 permit application to the U.S. Army Corps of Engineers in December of 2017. The EPA received more than one million public comments regarding its proposal to withdraw the 2014 Proposed Determination, the overwhelming majority of which expressed opposition to withdrawal.

17. Isn’t it correct that under the applicable regulations the Army Corps of Engineers cannot issue a permit to a project developer if the EPA has even begun the process of issuing a veto?

ANSWER – While it is true that the Army Corps cannot issue a permit while a pending 404(c) determination proceeding is ongoing, the Corps’ regulations allow it to

accept, review, and process a permit application for a proposed project even if EPA has an ongoing Section 404(c) review for that project. The Corps is processing Pebble's permit application consistent with its regulations, including developing an Environmental Impact Statement for the Pebble Project. EPA's decision to suspend the withdrawal process states that it will review and consider any relevant information that becomes available to inform future Section 404(c) decisions regarding the Pebble Project.

18. Is there any environmental harm that occurs whatsoever by allowing a permit application to be considered by the Army Corps of Engineers without a veto pending?

ANSWER – As a general matter, EPA has policy concerns about issuing a final determination under Section 404(c) before the submission of a permit application to the Corps or the completion of an EIS. EPA believes that a decision regarding whether to exercise its section 404(c) authority preemptively would involve considerations of basic fairness and due process. To be sure, the Corps' regulations allow it to accept, review, and process a permit application for a proposed project even if the EPA has an ongoing Section 404(c) review for that project. Pebble has now submitted its permit application to the Corps and the Corps has initiated its permit review process and begun taking steps to develop an EIS for this project. These actions resolve any potential uncertainty about Pebble's ability to submit a permit application and have that permit application reviewed by the Corps.

The EPA's January 26, 2018 decision to suspend the withdrawal process states that the EPA will review and consider any relevant information that becomes available. This will allow EPA to get the information needed to determine what specific impacts the proposed mining project will have on those critical resources.

19. Isn't it better to wait until the Army Corps of Engineers has decided whether to grant a permit before EPA issues a veto, if one is to be issued at all?

ANSWER – As a general matter, EPA has policy concerns about issuing a final determination under Section 404(c) before the submission of a permit application to the Corps or the completion of an EIS. EPA believes that a decision regarding whether to exercise its section 404(c) authority preemptively would involve considerations of basic fairness and due process. To be sure, the Corps' regulations allow it to accept, review, and process a permit application for a proposed project even if the EPA has an ongoing Section 404(c) review for that project. Pebble has now submitted its permit application to the Corps and the Corps has initiated its permit review process and begun taking steps to develop an EIS for this project. These actions resolve any potential uncertainty about Pebble's ability to submit a permit application and have that permit application reviewed by the Corps.

The EPA's January 26, 2018 decision to suspend the withdrawal process states that the EPA will review and consider any relevant information that becomes available. This will allow EPA to get the information needed to determine what specific impacts the proposed mining project will have on those critical resources.

20. Has EPA ever before issued a preemptive veto of the sort you have left in place with your decision not to withdraw the veto of the Pebble mine?

ANSWER – Of the 13 Final Determinations completed by the EPA, two involved circumstances where permit applications had not yet been submitted to the Corps, both of which were completed nearly thirty years ago. Although Section 404(c) actions are extremely rare, and rarer still in advance of the submittal of a permit application, the EPA’s 2014 Proposed Determination is not unprecedented.

21. In the Agency’s decision not to withdraw the preemptive Pebble veto, you cited the risk created by the project. In doing so, you are relying on the Bristol Bay Watershed Assessment, which many of the Agency’s own peer reviewers said was insufficient to support a regulatory decision. Why are you relying on science that has been discredited?

ANSWER – The EPA published its proposal to withdraw its CWA Section 404 (c) Proposed Determination in July 2017 and took public comment, held two public hearings in the Bristol Bay region, and consulted with tribal governments and Alaska Native Claims Settlement Act (ANCSA) Corporations from the Bristol Bay region. The EPA received more than a million public comments on its withdrawal proposal. In making its decision not to withdraw the Proposed Determination at this time, the EPA considered its relevant statutory authority, applicable regulations, and the input it received as part of the tribal consultation, ANCSA consultation, and public comment periods regarding the agency’s reasons for its proposing withdrawal as well as the recent developments (e.g., the submittal of Pebble’s permit application to the Army Corps).

The Honorable Gregg Harper

1. Does the Clean Air Act establish small refinery hardship relief?

ANSWER - Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery’s exemption from compliance with its renewable fuel volume obligations for a given year based on a small refinery’s demonstration of “disproportionate economic hardship” in that year. The statute also directs EPA to consult with the Department of Energy (DOE) in evaluating small refinery exemption petitions. EPA will grant a hardship exemption if we conclude, after review of available information and in consultation with DOE, that a refinery will experience disproportionate economic hardship that can be relieved in whole or in part by removing its RFS obligations for that year.

2. Has the Congress affirmed this on several occasions by directing the DOE to study this issue and, more recently, reminding the EPA that it did not intend for small refineries to bear a disproportionate regulatory burden?

ANSWER - In the Consolidated Appropriations Act of 2017, an explanatory statement directed EPA “to follow DOE’s recommendations which are based on the original 2011

Small Refinery Exemption study prepared for Congress and the conference report to division D of the Consolidated Appropriations Act of 2016.”

3. Did the DOE’s 2011 report for Congress predict that harm to small refineries would increase over time, not diminish?

ANSWER - DOE’s 2011 report did not make any predictions regarding whether the number of small refineries seeking relief would increase or decrease over time.

4. Do small refineries typically produce more diesel than gasoline?

ANSWER - Based on EIA data, most small refineries produce more gasoline than diesel.

5. Blending gasoline with ethanol to current standards will separate more RINs than blending the same volume of diesel. EPA’s RVO calculation, however, imposes the same proportional ethanol RIN obligation on all refiners even though some produce significantly less gasoline and more diesel than others. Even if they blend all their production, these diesel rich refiners cannot separate enough RINs to meet their total obligation while their gasoline rich competition will separate more than required. These refiners who produce more diesel are then forced to buy RINS.

Does the hardship process give EPA a tool to mitigate this structural discrimination against these small refineries?

ANSWER - One of the metrics that DOE uses when scoring small refinery hardship petitions is whether the small refinery has an above-average percentage of diesel production.

6. RFA has made the argument that hardship relief results in “demand destruction” for ethanol by resulting in less blending. Regardless of whether or not small refineries receive hardship relief, they are incentivized to blend ethanol for a number of economic reasons: 1) it is cheaper than gasoline, 2) they must meet their RVO, and 3) they can sell RINS not needed for compliance.

- a. Was ethanol consumption up in the first quarter of 2018?

ANSWER - According to ethanol consumption data from EIA, ethanol consumption was 6% lower in the first quarter of 2018 relative to the fourth quarter of 2017, and 2% higher in the first quarter of 2018 relative to the first quarter of 2017.

- b. Was it, in fact, higher than projected in November of 2017 when RINS were 80-90 cents a gallon?

ANSWER - According to ethanol consumption data from the EIA, the monthly average ethanol consumption in the first quarter of 2018 was 6% lower than ethanol consumption in November 2017.

- c. Did ethanol consumption increase throughout 2017 despite the EPA granting small refinery hardship relief?

ANSWER - According to ethanol consumption data from the EIA, ethanol consumption increased through the first three quarters of 2017 (from 3.37 billion gallons in the first quarter to 3.66 billion gallons in the second quarter and 3.70 billion gallons in the third quarter) before decreasing in the 4th quarter (to 3.67 billion gallons).

- 7. Some of my constituents have raised an issue regarding oil spill response training. I am told that the funding for certain training courses for federal and local responders involved in inland oil spill prevention and cleanup has been eliminated and that the EPA Environmental Response Team is no longer able to consistently make these courses available.
 - a. With an increase in oil production across the country, there remains a need for oil spill response training for local, state, and federal responders. Would you commit to looking into whether funding can and will be made available for this important training?

ANSWER - The agency will continue to provide oil spill inspector training to federal and state inspectors.

- 8. I want to applaud the work EPA is doing to streamline or eliminate unnecessarily costly regulations. And while most of the attention is focused on major rules like the Clean Power Plan or Waters of the United States, I am particularly pleased that under your leadership EPA is taking a second look at other regulations that may not be major but nonetheless have a serious impact on small businesses. In particular, I hear that EPA is reviewing the Obama era rule targeting wood heater manufacturers such as Hardy Manufacturing back in my district. But time is of the essence, as the regulatory deadlines are coming soon. Can you assure us that you will do all you can to provide timely regulatory relief for wood heater manufacturers?

ANSWER - EPA is considering steps to provide relief for manufacturers of certain types of wood-burning heaters while the agency works to ensure its New Source Performance Standards (NSPS) for Residential Wood Heaters are based on real-world conditions. The EPA expects to issue shortly a proposed rule which will set forth certain specific issues in the NSPS on which the agency is ready to take comment. In addition, the EPA expects to issue an advance notice of proposed rulemaking (ANPR) to take comment on additional issues. The EPA will use the comments received in response to the ANPR to develop a second proposed rule later this year covering these additional issues.

The Honorable Tim Walberg

1. This is a very technical issue but an extremely important one to manufacturers in Michigan. In 2011, EPA approved the use of Isobutane as a refrigerant and limited the amount of refrigerant that could be used in a refrigerator to 57 grams. This amount was based on a well-recognized safety standard limit at the time. However, the safety standard has since been updated to increase the allowable amount of refrigerant to 150 grams. These refrigerants are more environmentally friendly and supported by both industry and environmental advocates yet manufacturers are still in limbo as they await EPA's rulemaking.

a. Can you commit to working on this issue to recognize the updated safety standard so manufacturers can begin retooling and redesigning refrigeration products? Delay will only add cost to American workers and our manufacturing shop floors.

ANSWER - Yes, this past December, EPA issued a direct final rule (82 FR 58122; December 11, 2017) and companion proposal to incorporate by reference the revised UL safety standard that allows for a larger charge size for the approved flammable refrigerants in household refrigerators and freezers. Because we received adverse comment during the public comment period, we withdrew the direct final rule (83 FR 9703; March 7, 2018). EPA is moving forward to address the relevant comments in a subsequent final rule.

b. I know you have a lot of issues to deal with at the EPA, but I urge you to publish the technical correction without delay. It's my understanding refrigerator manufacturers have been working with your staff at the EPA for over a year now on this and would welcome the update.

ANSWER - We understand the interest and importance of this issue to the industry. EPA has been working with a number of equipment manufacturers and trade associations which has been very helpful.

2. ENERGY STAR is an important program and one that consumers in my district value. Over the past year, manufacturers in my state have stressed the need for the program to be reformed. In the FY18 Omnibus Appropriations package, EPA and DOE were directed to revisit the Obama era Memorandum of Understanding (MOU) that changed the way the program was managed and report back to Congress within 90 days.

a. The 2009 MOU for example moved home appliances out of DOE and over to EPA, where the products had never been managed before. DOE has the expertise in these products because they regulate them through the appliance standards program required by EPCA. It doesn't make sense to me to have duplicative programs built up within two agencies. From a good governance perspective and in the era of streamlining programs under the EPA's purview, I would like to hear from you on this specific topic.

ANSWER - As you acknowledge, language in the conference report for the Consolidated Appropriations Act of 2018 directed EPA to “work with the DOE to review the 2009 MOU and report to the Committees within 90 days of enactment of this Act on whether the expected efficiencies for home appliance products have been achieved.” EPA is currently working with DOE to review the 2009 MOU and to draft a report to Congress as directed. Prior to the signing of the 2009 MOU, EPA managed more than 50 product categories, including two appliances, and DOE managed seven product categories, including four appliances. In September 2009, EPA and DOE signed a Memorandum of Understanding (MOU) that redefined roles and responsibilities for EPA and DOE in response to industry concerns and to enhance and expand the various aspects of ENERGY STAR. The 2009 MOU realigned roles for the ENERGY STAR products program to capitalize on each Agency’s expertise. Under the MOU, EPA and DOE work together to implement the ENERGY STAR program. The division of responsibilities established by the MOU have resulted in significant improvements to the program including standardized program approaches, program enhancements, and reduced duplication of effort, benefiting American consumers, ENERGY STAR partners, and the environment. It also has helped resolve market confusion. EPA remains committed to improving the ENERGY STAR program in response to stakeholder feedback and to work closely with our industry partners to ensure the ENERGY STAR program continues to work well for those partners and American consumers.

- b. Would you support moving the ENERGY STAR program for home appliances back to DOE while still maintaining a majority of the management within EPA? It’s my understanding a broad set of industries are eager to work with your agency on these issues and I look forward to working with you to revisit the MOU.

ANSWER - As stated above, EPA is currently working with DOE to review the 2009 MOU and to draft a report to Congress, as directed, on whether the expected efficiencies for home appliance products have been achieved. The division of responsibilities established by the MOU have resulted in significant improvements to the program including standardized program approaches, program enhancements, and reduced duplication of effort, benefiting American consumers, ENERGY STAR partners, and the environment. It also has helped resolve market confusion. EPA remains committed to improving the ENERGY STAR program in response to stakeholder feedback and to work closely with our industry partners to ensure the ENERGY STAR program continues to work well for those partners and American consumers.

The Honorable Earl L. “Buddy” Carter

EPA Marine Engine Waivers

In a recent Energy & Commerce Committee hearing, you mentioned that you would now be personally involved in the marine engine waiver issue for pilot boats, after giving the commitment

to look into in your December testimony from the committee. This is a pressing issue that could have a wide-ranging impact on our port operations and growth.

1. Mr. Administrator, can you please provide a breakdown of the actions the EPA has taken to address the Tier 4 concerns?

ANSWER - EPA staff performed outreach with affected stakeholders including meeting with the Savannah Bar Pilots with specific questions about their concerns, as well as the pilot boat builder. After the April 26 hearing, EPA sent technical experts to Seattle to meet with the pilot boat builder to discuss technical issues in detail. EPA staff also met with seven marine engine manufacturers to better understand what Tier 4 engines are available now or will be available in the near future. EPA staff also spoke with NOAA to discuss the NOAA whale strike rule impacts on pilot boat operations. EPA will use information gathered in these meetings to inform a path forward.

2. Please provide a timeline of what the EPA has done and any upcoming actions that will be taken by the EPA to address this concern.

ANSWER - Since October 2017, EPA has engaged in technical outreach with industry stakeholders and NOAA, as described above. Currently, EPA is reviewing our options for moving forward.

3. After you send technical experts to California, what will need to be done?

ANSWER - EPA's technical experts have recently met with the boat builder in Seattle (not California). EPA will use information gathered in that meeting and other discussions to inform any future action.

4. Does the EPA have the authority to move forward with a waiver system? If not, what are your legal restrictions?

ANSWER - EPA regulations provide limited exemptions from the Tier 4 marine engine standards for specific circumstances such as national security. However, these exemptions would not apply in these circumstances. Additionally, there is no waiver process for Tier 4 marine engine standards where a compliant engine is not available that meets a boat operator's needs. Any potential waiver process for boat operators or other change to EPA's existing regulations would require a rulemaking.

Tier 4 Restrictions for Generators

1. Administrator Pruitt, I have a similar concern for the Tier 4 restrictions placed on large, 1-megawatt generators. It's my understanding that the Tier 4 restrictions are preventing Tier-4 generators from being sold in the market due to that and the portability restrictions. It's forecasted that there won't be a viable solution in the market until the early 2020s. Is this something you are working on?

ANSWER - Engine manufacturers had several years of lead time before the Tier 4 standards took effect, which provided ample time to develop compliant engines. Engine manufacturers have a low volume of sales in this power category and chose not to initially focus on developing Tier 4 engines. Engine manufacturers prepared their customers for the lag time in engine availability and have indicated that Tier 4 generators will be available soon.

2. What would need to be done by the EPA to remedy this situation and allow for the sale of currently developed generators?

ANSWER - Any revisions to the emission standards would need to go through notice and comment rulemaking. The emission standards would have to be revised. This likely could not be accomplished before Tier 4 generators become available, due to the need to undertake a notice and comment rulemaking. In addition, it would greatly disrupt the market to allow new Tier 2 generators to be sold, since some engine manufacturers have already invested resources to develop Tier 4 generators.

3. Is the EPA currently reviewing this concern or working on any changes that would remedy it?

ANSWER - EPA has reviewed this issue and does not currently believe that revisions to the regulations are warranted.

Biomass

I commend you for your policy statement clarifying biomass carbon neutrality on Monday, April 23 in my home state of Georgia. As you know, the Consolidated Appropriations Act of 2018 included language in Section 431 Policies Relating to Biomass Energy directing the Secretaries of Energy and Agriculture and the Administrator of the Environmental Protection Agency to establish clear and simple policies that reflect the carbon-neutrality of forest bioenergy and recognize biomass as a renewable energy source provided the use of forest biomass does not cause the conversion of forests to non-forest use.

1. What is the EPA's progress in implementing a regulation on carbon neutrality of biomass? What are the next steps?

ANSWER - As follow up to the April 23, 2018 memo regarding EPA's policy on the treatment of biogenic carbon dioxide emissions and to align with the Consolidated Appropriations Act of 2018, the EPA is considering how this policy may be implemented in EPA permitting programs and other parts of the Clean Air Act. In addition, the Agency is having a dialogue with USDA and DOE on how to best coordinate on this topic to align our policies.

The Honorable Jeff Duncan

Some of my corporate constituents are subject to complex and, at times, inconsistent regulation by the Environmental Protection Agency. Inconsistent actions or interpretations by EPA are

particularly burdensome to my constituents when the Agency's Policy and Enforcement Offices take positions that are at odds with each other. To that end, please explain whether, and to what extent, EPA's Office of Enforcement and Compliance Assurance ("OECA") consults with EPA's Office of Transportation and Air Quality ("OTAQ") prior to initiating any enforcement action involving a certification issued by OTAQ (for example, an enforcement action alleging uncertified engine parameters).

1. In addition, what steps can be taken by EPA to improve and streamline consultation between OTAQ and OECA to avoid unnecessary hardship on the regulated community?

ANSWER: EPA's Office of Enforcement and Compliance Assurance (OECA) consults with the Office of Transportation and Air Quality (OTAQ) on all significant enforcement actions. OECA staff and middle management have weekly meetings with their OTAQ counterparts on enforcement matters. This partnership ensures efficient use of government resources and consistent compliance expectations for the regulated community.

EPA believes the current process for coordination between OECA and OTAQ is appropriate.

During the last Administration, many Energy Star program operations were shifted from the Department of Energy, where they had been since 1996, to EPA. I understand from home appliance manufacturers that they would like Energy Star efforts related to home appliances transferred back to the DOE. One of these is Electrolux, a home appliance manufacturer that has a large presence in my district in Anderson, SC. This is an important issue for South Carolina as we have recently seen a great deal of investment in the home appliance industry. In Newberry, SC Samsung recently opened its first U.S. based home appliance manufacturing facility and is on track to create over 1,000 jobs by 2020.

1. With the Appliance Standard program at DOE and Energy Star at EPA, companies currently have two federal agencies attempting to coordinate changes in product specifications and test procedures on the same products. This creates unnecessary cost, confusion and uncertainty for manufacturers and does not appear to bring any benefit to consumers. **Administrator Pruitt**-are there any efforts to make such a change?

ANSWER - EPA and DOE work together to implement the ENERGY STAR program under an MOU jointly agreed upon in 2009. There is language in the conference report for the Consolidated Appropriations Act of 2018 that directs EPA to "work with the DOE to review the 2009 MOU and report to the Committees within 90 days of enactment of this Act on whether the expected efficiencies for home appliance products have been achieved." EPA is currently working with DOE to review the 2009 MOU and to draft a report to Congress as directed. Prior to the signing of the 2009 MOU, EPA managed more than 50 product categories, including two appliances, and DOE managed seven product categories, including four appliances. In September 2009, EPA and DOE signed a Memorandum of Understanding (MOU) that redefined roles and responsibilities for EPA and DOE in response to industry concerns and to enhance and expand the various aspects of ENERGY STAR. The 2009 MOU realigned roles for

the ENERGY STAR products program to capitalize on each Agency's expertise. The division of responsibilities established by the MOU resulted in significant improvements to the program including standardized program approaches, program enhancements, and reduced duplication of effort, benefiting American consumers, ENERGY STAR partners, and the environment. It also helped resolve market confusion. EPA remains committed to improving the ENERGY STAR program in response to stakeholder feedback and to work closely with our industry partners to ensure the ENERGY STAR program continues to work well for those partners and American consumers.

2. Wouldn't this change fit in with your desire to get EPA back to its core functions?

ANSWER - The ENERGY STAR program was established in 1992 under the authority of the Clean Air Act Section 103(g). Section 103(g) of the Clean Air Act directs EPA to "develop, evaluate, and demonstrate nonregulatory strategies and technologies for air pollution prevention... with opportunities for participation by [stakeholders]... including end-use efficiency" (42 USC Section 7403g). In 2005, Congress enacted the Energy Policy Act. Section 131 of the Act amended Section 324 of the Energy Policy and Conservation Act, and directed the Environmental Protection Agency and the Department of Energy to implement "a voluntary program to identify and promote energy-efficient products and buildings in order to reduce energy consumption, improve energy security, and reduce pollution through voluntary labeling of or other forms of communication about products and buildings that meet the highest energy efficiency standards" (42 USC Section 6294a).

The FY 2019 President's Budget includes a proposal to authorize the EPA to establish user fees for entities that participate in the ENERGY STAR program. By administering the ENERGY STAR program through the collection of user fees, the EPA would continue to provide a trusted resource for consumers and businesses who want to purchase products that save them money and help protect the environment.

The Honorable Frank Pallone, Jr.

During your appearance on April 26th, you stated that purchasing real estate through a Limited Liability Corporation, or LLC, is "normally how you buy real estate in Oklahoma." Your ownership stake in that LLC was not included in your financial disclosures at the time.

1. How often have you purchased real estate through an LLC?

ANSWER - Effective July 6, 2018, former Administrator Pruitt resigned from his position as Administrator of the EPA and is no longer an employee of the Agency. Therefore, EPA is not able to discuss your question with Mr. Pruitt to provide you with an answer.

2. Do you currently own property through an LLC or have a stake in an LLC that owns property?

ANSWER - Effective July 6, 2018, former Administrator Pruitt resigned from his position as Administrator of the EPA and is no longer an employee of the Agency. Therefore, EPA is not able to discuss your question with Mr. Pruitt to provide you with an answer.

3. Please list all property you have purchased and/or owned a stake in through an LLC.

ANSWER - Effective July 6, 2018, former Administrator Pruitt resigned from his position as Administrator of the EPA and is no longer an employee of the Agency. Therefore, EPA is not able to discuss your question with Mr. Pruitt to provide you with an answer.

4. Please explain why your ownership stake in Capital House, LLC was not listed in your financial disclosures at the time.

ANSWER - Effective July 6, 2018, former Administrator Pruitt resigned from his position as Administrator of the EPA and is no longer an employee of the Agency. Therefore, EPA is not able to discuss your question with Mr. Pruitt to provide you with an answer.

Also at the April 26th hearing, you disavowed knowledge of whether you had paid taxes on the income from your ownership stake in Capital House LLC. You said “you provide information to your accountant, they determine what you pay.”

5. Did you sign your tax filings for the years in question? Do you take responsibility for the accuracy of the information contained therein?

ANSWER - Effective July 6, 2018, former Administrator Pruitt resigned from his position as Administrator of the EPA and is no longer an employee of the Agency. Therefore, EPA is not able to discuss your question with Mr. Pruitt to provide you with an answer.

Extensive questions have been raised about your tax liability for the expenses of your security detail when they accompanied you on personal travel, including to Disney World and the Rose Bowl.

6. Did you pay taxes on that benefit?

ANSWER - Effective July 6, 2018, former Administrator Pruitt resigned from his position as Administrator of the EPA and is no longer an employee of the Agency. Therefore, EPA is not able to discuss your question with Mr. Pruitt to provide you with an answer.

It has been revealed that the EPA reimbursed your former landlord, Vicki Hart, for the repair of a door at your residence.

7. Did you reimburse the EPA for that expense?

ANSWER - Effective July 6, 2018, former Administrator Pruitt resigned from his position as Administrator of the EPA and is no longer an employee of the Agency. Therefore, EPA is not able to discuss your question with Mr. Pruitt to provide you with an answer.

8. If not, did you pay taxes on that income?

ANSWER - Effective July 6, 2018, former Administrator Pruitt resigned from his position as Administrator of the EPA and is no longer an employee of the Agency. Therefore, EPA is not able to discuss your question with Mr. Pruitt to provide you with an answer.

During the Administrator's April appearance before the Subcommittee, Chairman Walden underscored the importance of staffing and internal management issues at EPA, stating "it is essential that EPA have the staff with proper expertise, implementing and enforcing programs that correlate with their experience."

9. Please provide the Committee a copy of the EPA's reorganization plan submitted to OMB pursuant to Executive Order 13781, including any interim and final drafts submitted to OMB.

ANSWER – Following a briefing on this issue, the Agency has provided all relevant information on the reform plan to your staff in June of 2018.

10. Please provide the Committee a copy of the EPA reform plan.

ANSWER – Following a briefing on this issue, the Agency has provided all relevant information on the reorganization plan to your staff in June of 2018.

11. Explain the similarities and differences between the reform plan and the reorganization plan.

ANSWER – Following a briefing on this issue, the Agency has provided all relevant information on the reform plan to your staff in June of 2018.

12. Please provide the Committee a copy of the EPA's operating plan for new hires and indicate how many new employees EPA plans to hire in each program office.

ANSWER – Following a briefing on this issue in June of 2018, the Agency has provided all relevant information on this topic to your staff.

13. Please provide the Committee with the names of political and career members of the hiring review panel.

ANSWER - Career members of the panel: Mike Flynn, Donna Vizian, David Bloom, Jennifer Orme-Zavaleta, Michelle Pirzadeh, Cheryl Newton. Political Members of the panel: Henry Darwin.

- a. On what criteria were the panel members chosen?

ANSWER - The panel members represented a cross section of the agency career management including the senior career official at the agency.

- b. What procedures do the offices need to do to make a hiring request of the panel?

ANSWER - Offices completed a template summarizing their strategy for managing their interim FTE levels. The template included the current on-board FTE level: the FY18 interim FTE level: the number FTE over/under FY 18 interim level: the strategy to meet the new level by end of FY18 and any special requests to meet short term critical needs.

The panel is no longer operative since it was an interim mechanism until the agency received its 2018 operating plan.

14. When filling a position from within the agency, how is it determined a staff member possesses the technological skills appropriate for the office of which they are being transferred?

ANSWER - There are several factors considered when deciding whether an internal employee is qualified for a reassignment. The human resources specialist within a human resources shared service center in the Office of Administration and Resources Management reviews the position description of the position to which the employee will be reassigned and reviews the employees' resume to determine whether the employee possesses the requisite knowledge, skills and abilities to successfully perform the assigned major duties and responsibilities. The human resources specialist also reviews the employees' college/university transcripts when the position has a positive education requirement.

Attention should be bestowed to qualification reviews whereby the proposed reassignment moves the employee to a position with a positive education requirement. There are instances whereby the employee meets positive education requirements, but lacks the one year of specialized experience which would render the employee qualified for the reassignment. The management official, with support from the servicing HRSSC, has the flexibility to use OPM's In-service Placement Provisions whereby an employee who does not meet specialized experience may be reassigned to the position. Please note for positions with positive education requirements, the employee would need to meet education requirements under In-service Placement Provisions.

15. Please provide the following information:

- a. FTE on EPA payroll in regional offices and in HQ.

**FTE
As of July 2018**

RPIO	RPIO Title	FY 2017 Ena	FY 2018 Ena
01	REGION 1, BOSTON	590.1	541.8
02	REGION 2, NEW YORK	783.6	723.8
03	REGION 3, PHILADELPHIA	782.5	724.6
04	REGION 4, ATLANTA	945.6	869.9
05	REGION 5, CHICAGO	1,077.3	995.7
06	REGION 6, DALLAS	755.5	684.3
07	REGION 7, KANSAS CITY	496.6	455.4
08	REGION 8, DENVER	527.5	484.8
09	REGION 9, SAN FRANCISCO	717.8	654.5
10	REGION 10, SEATTLE	531.3	482.8
11	OA	391.4	350.3
13	OITA	80.3	68.1
16	OARM	735.4	667.4
17	OCFO	344.4	319.9
18	OEI	396.3	377.6
20	OCSPP	1,001.8	974.9
26	ORD	1,703.9	1,513.9
27	OAR	1,145.3	1,086.7
30	OW	582.4	547.3
35	OIG	318.1	270.0
39	OGC	229.8	224.9
75	OLEM	502.9	463.3
77	OECA	768.3	690.1
	EPA Total	15,408.1	14,172.0

- b. The number of employees that have left the EPA through attrition during 2017 and 2018, and the numbers from each office.

AAship/ Region	Count of All Attrition
OA	211
OAR	131
OARM	108
OCFO	33
OCSPP	133
OECA	101
OEI	42
OGC	25

OIG	30
OITA	5
OLEM	48
ORD	206
OW	68
R01	57
R02	44
R03	84
R04	79
R05	92
R06	70
R07	71
R08	44
R09	66
R10	69
Grand Total	1817

This is attrition 01/01/2017 to 06/12/2018.

- c. Please provide a list of employees that have been moved to a new position within the agency, including their previous office, title, position description, and their new office, title, and position description.

ANSWER –Due to the personal nature of this question for career staff, the agency believes that QFRs are not the appropriate venue in which to respond to document requests of this nature and will seek to work with your staff on this request.

- d. The predetermined employee headcounts for each office.

ANSWER – The table provided shows onboard employees by office and division as of January 15, 2017 and June 18, 2018. It includes part-time and special government employees, i.e. Federal Advisory Committee Act (FACA) participants.

EPA onboards by office and division				
RPIO	Office	Division	Jan. 15, 2017	June 18, 2018
OA		NEPA COMPLIANCE DIVISION		9
OA		PERMITTING POLICY DIVISION		5
OA	ASSOC ADMR FOR CONGRESS&INTERGOV RLNS		2	6
OA	ASSOC ADMR FOR CONGRESS&INTERGOV RLNS	INFORMATION & MANAGEMENT DIVISION	11	14
OA	ASSOC ADMR FOR CONGRESS&INTERGOV RLNS	OFFICE OF CONGRESSIONAL AFFAIRS	8	13
OA	ASSOC ADMR FOR CONGRESS&INTERGOV RLNS	OFFICE OF INTERGOVERNMENTAL RELATIONS	16	15
OA	ASSOC ADMR FOR OFFICE OF POLICY	Immediate Office	20	26
OA	ASSOC ADMR FOR OFFICE OF POLICY	NATL CENTER FOR ENVIRO ECONOMICS	31	33
OA	ASSOC ADMR FOR OFFICE OF POLICY	OFC OF REGULATORY POLICY & MANAGEMENT	31	35
OA	ASSOC ADMR FOR OFFICE OF POLICY	OFC OF STRATEGIC ENVIRO MANAGEMENT	26	
OA	ASSOC ADMR FOR OFFICE OF POLICY	OFFICE OF SUSTAINABLE COMMUNITIES	27	18
OA	OFC OF CHILDREN'S HEALTH PROTECTION	Immediate Office	3	1
OA	OFC OF CHILDREN'S HEALTH PROTECTION	PROG IMPLEMENTATION&COORDINATI ON DIV	6	7
OA	OFC OF CHILDREN'S HEALTH PROTECTION	REGULATORY SUPPORT&SCIENCE POLICY DIV	6	6
OA	OFC OF PUBLIC ENGAGMNT &ENVRNMNTL EDUC			2
OA	OFFICE OF ADMIN & EXECUTIVE SERVICES	ADMINISTRATIVE/MANAGEMENT STAFF	10	7

EPA onboards by office and division				
RPIO	Office	Division	Jan. 15, 2017	June 18, 2018
OA	OFFICE OF ADMIN & EXECUTIVE SERVICES	Immediate Office	2	2
OA	OFFICE OF ADMIN & EXECUTIVE SERVICES	RESOURCES MANAGEMENT STAFF	7	8
OA	OFFICE OF CIVIL RIGHTS	AFF EMPLOY ANALYS & ACCOUNT STAFF	5	4
OA	OFFICE OF CIVIL RIGHTS	EMPLOYMENT COMPLAINTS RESOLUTION STF	12	9
OA	OFFICE OF CIVIL RIGHTS	EXTERNAL COMPLIANCE STAFF	1	
OA	OFFICE OF CIVIL RIGHTS	Immediate Office	5	4
OA	OFFICE OF ENVIRONMENTAL EDUCATION		8	17
OA	OFFICE OF EXECUTIVE SECRETARIAT		16	15
OA	OFFICE OF HOMELAND SECURITY		10	9
OA	OFFICE OF PUBLIC AFFAIRS	Immediate Office	5	12
OA	OFFICE OF PUBLIC AFFAIRS	OFFICE OF INTERNAL COMMUNICATIONS	3	3
OA	OFFICE OF PUBLIC AFFAIRS	OFFICE OF MEDIA RELATIONS	6	4
OA	OFFICE OF PUBLIC AFFAIRS	OFFICE OF MULTIMEDIA	10	8
OA	OFFICE OF PUBLIC AFFAIRS	OFFICE OF PRESS SECRETARY		1
OA	OFFICE OF PUBLIC AFFAIRS	OFFICE OF WEB COMMUNICATIONS	11	9
OA	OFFICE OF PUBLIC ENGAGEMENT		5	5
OA	OFFICE OF SCIENCE ADVISORY BOARD		396	311
OA	OFFICE OF SMALL BUSINESS PROGRAMS		13	11

EPA onboards by office and division				
RPIO	Office	Division	Jan. 15, 2017	June 18, 2018
OA	OFFICE OF THE ADMINISTRATOR	Immediate Office	15	32
OA	OFFICE OF ENVIRONMENTAL JUSTICE			21
OA Total			727	682
OAR	ASST ADMR FOR AIR & RADIATION	Immediate Office	17	22
OAR	OFC OF AIR POLICY & PROGRAM SUPPORT	Immediate Office	2	2
OAR	OFC OF AIR POLICY & PROGRAM SUPPORT	POLICY GROUP	5	5
OAR	OFC OF AIR POLICY & PROGRAM SUPPORT	PROGRAM SUPPORT	10	10
OAR	OFC OF AIR QUALITY PLANNING&STANDARDS	AIR QUALITY ASSESSMENT DIV	79	76
OAR	OFC OF AIR QUALITY PLANNING&STANDARDS	AIR QUALITY POLICY DIVISION	52	51
OAR	OFC OF AIR QUALITY PLANNING&STANDARDS	CENTRAL OPERATIONS & RESOURCES OFFICE	23	21
OAR	OFC OF AIR QUALITY PLANNING&STANDARDS	HEALTH & ENVIRONMENTAL IMPACTS DIV	54	50
OAR	OFC OF AIR QUALITY PLANNING&STANDARDS	Immediate Office	5	5
OAR	OFC OF AIR QUALITY PLANNING&STANDARDS	OUTREACH & INFORMATION DIV	45	43
OAR	OFC OF AIR QUALITY PLANNING&STANDARDS	POLICY ANALYSIS & COMMUNICATIONS STF	11	11
OAR	OFC OF AIR QUALITY PLANNING&STANDARDS	SECTOR POLICIES & PROGRAMS DIV	90	77
OAR	OFFICE OF ATMOSPHERIC PROGRAMS	CLEAN AIR MARKETS DIVISION	57	49

EPA onboards by office and division				
RPIO	Office	Division	Jan. 15, 2017	June 18, 2018
OAR	OFFICE OF ATMOSPHERIC PROGRAMS	CLIMATE CHANGE DIVISION	60	55
OAR	OFFICE OF ATMOSPHERIC PROGRAMS	CLIMATE PROTECTION PARTNERSHIPS DIV	78	70
OAR	OFFICE OF ATMOSPHERIC PROGRAMS	Immediate Office	5	4
OAR	OFFICE OF ATMOSPHERIC PROGRAMS	PROGRAM MANAGEMENT STAFF	18	13
OAR	OFFICE OF ATMOSPHERIC PROGRAMS	STRATOSPHERIC PROTECTION DIV	18	18
OAR	OFFICE OF PROGRAM MGMT OPERATIONS	ACQUISITION POLICY	5	3
OAR	OFFICE OF PROGRAM MGMT OPERATIONS	BUDGET EXECUTION	3	2
OAR	OFFICE OF PROGRAM MGMT OPERATIONS	BUDGET FORMULATION	5	3
OAR	OFFICE OF PROGRAM MGMT OPERATIONS	Immediate Office	4	3
OAR	OFFICE OF PROGRAM MGMT OPERATIONS	INFORMATION MANAGEMENT	1	4
OAR	OFFICE OF PROGRAM MGMT OPERATIONS	PROGRAM MANAGEMENT	1	
OAR	OFFICE OF RADIATION & INDOOR AIR	Immediate Office	4	5
OAR	OFFICE OF RADIATION & INDOOR AIR	INDOOR ENVIRONMENTS DIV	31	32
OAR	OFFICE OF RADIATION & INDOOR AIR	NATL ANALYTICAL RADIATION ENVIRO LAB	38	39
OAR	OFFICE OF RADIATION & INDOOR AIR	NATL CENTER FOR RADIATION FIELD OPS	23	20

EPA onboards by office and division				
RPIO	Office	Division	Jan. 15, 2017	June 18, 2018
OAR	OFFICE OF RADIATION & INDOOR AIR	PROGRAM MANAGEMENT OFFICE	8	6
OAR	OFFICE OF RADIATION & INDOOR AIR	RADIATION PROTECTION DIV	39	39
OAR	OFFICE OF TRANSPORTATION & AIR QUALITY	ASSESSMENT & STANDARDS DIV	80	73
OAR	OFFICE OF TRANSPORTATION & AIR QUALITY	CENTRALIZED SERVICES CENTER	15	11
OAR	OFFICE OF TRANSPORTATION & AIR QUALITY	CHIEF OF STAFF ANN ARBOR	12	10
OAR	OFFICE OF TRANSPORTATION & AIR QUALITY	CHIEF OF STAFF WASHINGTON	7	9
OAR	OFFICE OF TRANSPORTATION & AIR QUALITY	COMPLIANCE DIVISION	78	74
OAR	OFFICE OF TRANSPORTATION & AIR QUALITY	Immediate Office	7	6
OAR	OFFICE OF TRANSPORTATION & AIR QUALITY	POLICY, PLANNING & BUDGET STAFF	4	3
OAR	OFFICE OF TRANSPORTATION & AIR QUALITY	TESTING AND ADVANCED TECHNOLOGY DIV	93	84
OAR	OFFICE OF TRANSPORTATION & AIR QUALITY	TRANSPORTATION AND CLIMATE DIV	74	69
OAR Total			1,161	1,077
OARM	ASST ADMR FOR ADMIN & RESOURCES MGMT	Immediate Office	6	7
OARM	ENVIRONMENTAL APPEALS BOARD	Immediate Office	14	14
OARM	OFC OF ADMINISTRATIVE LAW JUDGES		12	11
OARM	OFC OF HUMAN RESOURCES	DIVERSITY, RECRUITMENT & EMPL SRVCS DIV	18	14

EPA onboards by office and division				
RPIO	Office	Division	Jan. 15, 2017	June 18, 2018
OARM	OFC OF HUMAN RESOURCES	EXECUTIVE RESOURCES DIV	8	6
OARM	OFC OF HUMAN RESOURCES	Immediate Office	8	5
OARM	OFC OF HUMAN RESOURCES	INFORMATION TECHNOLOGY DIV	12	12
OARM	OFC OF HUMAN RESOURCES	LABOR & EMPLOYEE RELATIONS DIVISION	12	11
OARM	OFC OF HUMAN RESOURCES	POLICY, PLANNING & TRAINING DIVISION	29	25
OARM	OFC OF HUMAN RESOURCES	PROGRAM MANAGEMENT STAFF	4	4
OARM	OFC OF MGMT & ADMINISTRATION-CINC		5	5
OARM	OFC OF MGMT & ADMINISTRATION-CINC	FACILITIES MGMT & SERVICES DIV	12	12
OARM	OFC OF MGMT & ADMINISTRATION-CINC	HUMAN RESOURCES MANAGEMENT DIV	33	27
OARM	OFC OF MGMT & ADMINISTRATION-CINC	HUMAN RESOURCES MANAGEMENT DIV - LV	22	13
OARM	OFC OF MGMT & ADMINISTRATION-CINC	INFORMATION RESOURCES MGMT DIV	14	11
OARM	OFC OF MGMT & ADMINISTRATION-CINC	SAFETY, HEALTH & SECURITY STAFF	3	3
OARM	OFC OF MGMT & ADMINISTRATION-RTP		3	5
OARM	OFC OF MGMT & ADMINISTRATION-RTP	FACILITIES MANAGEMENT & SUPPORT DIV	19	17
OARM	OFC OF MGMT & ADMINISTRATION-RTP	HUMAN RESOURCES MGMT DIV - RTP	63	53
OARM	OFC OF MGMT & ADMINISTRATION-RTP	INFORMATION RESOURCES MANAGEMENT DIV	10	9
OARM	OFC OF RESOURCES, OPERATIONS & MGMT	ADMINISTRATIVE OPER & STEWARDSHIP DIV	9	9

EPA onboards by office and division				
RPIO	Office	Division	Jan. 15, 2017	June 18, 2018
OARM	OFC OF RESOURCES, OPERATIONS & MGMT	FEDERAL ADVISORY COMMITTEE MGMT DIV	11	9
OARM	OFC OF RESOURCES, OPERATIONS & MGMT	Immediate Office	3	4
OARM	OFC OF RESOURCES, OPERATIONS & MGMT	RESOURCES, ANALYSIS AND PLANNING DIV	8	7
OARM	OFC OF THE CHIEF SUSTAINABILITY OFFICER		1	1
OARM	OFFICE OF ACQUISITION MANAGEMENT	CINCINNATI PROCUREMENT OPERATIONS DIV	36	35
OARM	OFFICE OF ACQUISITION MANAGEMENT	HEADQUARTERS PROCUREMENT OPS DIV	46	41
OARM	OFFICE OF ACQUISITION MANAGEMENT	Immediate Office	22	23
OARM	OFFICE OF ACQUISITION MANAGEMENT	POLICY TRAINING & OVERSIGHT DIV	36	31
OARM	OFFICE OF ACQUISITION MANAGEMENT	RTP PROCUREMENT OPERATIONS DIV	33	32
OARM	OFFICE OF ACQUISITION MANAGEMENT	SUPERFUND/RCRA/RGNL PROC OPS DIV	29	18
OARM	OFFICE OF ADMINISTRATION	FACILITIES MANAGEMENT & SERVICES DIV	27	25
OARM	OFFICE OF ADMINISTRATION	Immediate Office	7	6
OARM	OFFICE OF ADMINISTRATION	REAL PROPERTY SERVICES STAFF	13	13
OARM	OFFICE OF ADMINISTRATION	RESOURCE MANAGEMENT STAFF	9	8
OARM	OFFICE OF ADMINISTRATION	SAFETY & SUSTAINABILITY DIVISION	22	22
OARM	OFFICE OF ADMINISTRATION	SECURITY MANAGEMENT DIV	23	19
OARM	OFFICE OF GRANTS & DEBARMENT	GRANTS&INTERAGENCY AGRMNTS MGMT DIV	20	19

EPA onboards by office and division				
RPIO	Office	Division	Jan. 15, 2017	June 18, 2018
OARM	OFFICE OF GRANTS & DEBARMENT	Immediate Office	10	12
OARM	OFFICE OF GRANTS & DEBARMENT	NATL POLICY, TRAINING & COMPLIANCE DIV	11	10
OARM	OFFICE OF GRANTS & DEBARMENT	RESOURCE MANAGEMENT STAFF	11	10
OARM	OFFICE OF GRANTS & DEBARMENT	SUSPENSION & DEBARMENT DIVISION	12	9
OARM Total			706	627
OCFO	OFC OF E-ENTERPRISE FOR THE ENVIRONMENT		6	8
OCFO	OFC OF PLANNING, ANALYSIS & ACCOUNTABILITY	ANALYSIS DIVISION	10	9
OCFO	OFC OF PLANNING, ANALYSIS & ACCOUNTABILITY	Immediate Office	7	5
OCFO	OFC OF PLANNING, ANALYSIS & ACCOUNTABILITY	PLANNING DIVISION	9	8
OCFO	OFC OF RESOURCE & INFORMATION MGMT		13	14
OCFO	OFC OF TECHNOLOGY SOLUTIONS	APPLICATIONS MANAGEMENT DIVISION	12	11
OCFO	OFC OF TECHNOLOGY SOLUTIONS	BUSINESS SUPPORT DIVISION	7	10
OCFO	OFC OF TECHNOLOGY SOLUTIONS	Immediate Office	6	7
OCFO	OFC OF TECHNOLOGY SOLUTIONS	INFORMATION MGMT & SECURITY DIVISION	9	12

EPA onboards by office and division				
RPIO	Office	Division	Jan. 15, 2017	June 18, 2018
OCFO	OFC OF TECHNOLOGY SOLUTIONS	PLANNING AND EVALUATION DIVISION	10	11
OCFO	OFC OF TECHNOLOGY SOLUTIONS	SYSTEMS RESEARCH & DEVELOPMENT DIVISI	11	10
OCFO	OFFICE OF BUDGET	BUDGET FORMULATION AND CONTROL STAFF	8	9
OCFO	OFFICE OF BUDGET	Immediate Office	8	8
OCFO	OFFICE OF BUDGET	MULTI-MEDIA ANALYSIS STAFF	8	6
OCFO	OFFICE OF BUDGET	RESOURCE PLANNING & REGIONAL OPS STF	8	6
OCFO	OFFICE OF BUDGET	TRUST FUNDS & ADMIN ANALYSIS STF	8	5
OCFO	OFFICE OF THE CHIEF FINANCIAL OFFICER	Immediate Office	5	7
OCFO	OFFICE OF THE CONTROLLER	ACCOUNTING & COST ANALYSIS DIVISION	21	20
OCFO	OFFICE OF THE CONTROLLER	BUSINESS PLANNING & OPS DIVISION	18	17
OCFO	OFFICE OF THE CONTROLLER	FINANCIAL SERVICES DIVISION	108	94
OCFO	OFFICE OF THE CONTROLLER	Immediate Office	8	5
OCFO	OFFICE OF THE CONTROLLER	POLICY, TRAINING & ACCOUNTABIL ITY DIV	16	14
OCFO	POLICY & COMMUNICATIONS STAFF		3	1
OCFO Total			319	297
OCSP	ASST ADMR FOR CHEM SAFETY & PLTN PREV	Immediate Office	10	11
OCSP	OFC OF POLLUTION PREVENTION & TOXICS	CHEMICAL CONTROL DIV	45	47

EPA onboards by office and division				
RPIO	Office	Division	Jan. 15, 2017	June 18, 2018
OCSP	OFC OF POLLUTION PREVENTION & TOXICS	CHEMISTRY,ECONOMIC&SUSTNB LE STRG DIV	63	55
OCSP	OFC OF POLLUTION PREVENTION & TOXICS	ENVIRONMENTAL ASSISTANCE DIV	36	37
OCSP	OFC OF POLLUTION PREVENTION & TOXICS	Immediate Office	7	9
OCSP	OFC OF POLLUTION PREVENTION & TOXICS	INFORMATION MANAGEMENT DIV	43	33
OCSP	OFC OF POLLUTION PREVENTION & TOXICS	NATIONAL PROGRAM CHEMICALS DIV	29	24
OCSP	OFC OF POLLUTION PREVENTION & TOXICS	RISK ASSESSMENT DIVISION	76	69
OCSP	OFC OF POLLUTION PREVENTION & TOXICS	TOXIC RELEASE INVENTORY PROGRAM DIV	26	23
OCSP	OFC OF PROGRAM MANAGEMENT OPERATIONS		10	11
OCSP	OFC OF PROGRAM MANAGEMENT OPERATIONS	RESOURCE MANAGEMENT STAFF	6	4
OCSP	OFC OF SCIENCE COORDINATION & POLICY	EXPOSURE ASSMT COORDINATION&POL DIV	8	7
OCSP	OFC OF SCIENCE COORDINATION & POLICY	HAZARD ASSMT COORDINATION&POL DIV	5	5
OCSP	OFC OF SCIENCE COORDINATION & POLICY	Immediate Office	124	148
OCSP	OFFICE OF PESTICIDES PROGRAMS	ANTIMICROBIALS DIVISION	77	71
OCSP	OFFICE OF PESTICIDES PROGRAMS	BIOLOGICAL & ECONOMIC ANALYSIS DIV	58	54
OCSP	OFFICE OF PESTICIDES PROGRAMS	BIOPESTICIDES&POLLUTION PREV DIV	55	55

EPA onboards by office and division				
RPIO	Office	Division	Jan. 15, 2017	June 18, 2018
OCSP	OFFICE OF PESTICIDES PROGRAMS	ENVIRONMENTAL FATE & EFFECTS DIV	94	82
OCSP	OFFICE OF PESTICIDES PROGRAMS	FIELD & EXTERNAL AFFAIRS DIV	39	32
OCSP	OFFICE OF PESTICIDES PROGRAMS	HEALTH EFFECTS DIVISION	100	89
OCSP	OFFICE OF PESTICIDES PROGRAMS	Immediate Office	11	12
OCSP	OFFICE OF PESTICIDES PROGRAMS	IT & RESOURCES MGMT DIV	85	80
OCSP	OFFICE OF PESTICIDES PROGRAMS	PESTICIDE RE-EVALUATION DIV	48	48
OCSP	OFFICE OF PESTICIDES PROGRAMS	REGISTRATION DIVISION	98	81
OCSP	REGULATORY COORDINATION STAFF		7	6
OCSP Total			1,160	1,093
OECA	ASST ADMR FOR ENF&COMPL ASSURANCE	Immediate Office	9	8
OECA	OFC OF CRIMINAL ENF,FORENSICS&TRNG	CRIMINAL INVESTIGATION DIV	184	182
OECA	OFC OF CRIMINAL ENF,FORENSICS&TRNG	Immediate Office	11	5
OECA	OFC OF CRIMINAL ENF,FORENSICS&TRNG	LEGAL COUNSEL DIVISION	13	13
OECA	OFC OF CRIMINAL ENF,FORENSICS&TRNG	OFC OF NATL ENF INVESTIGATIONS CENTER	72	66
OECA	OFC OF CRIMINAL ENF,FORENSICS&TRNG	PLANNING,ANALYSIS&COMMUNICATIONS STF	3	1

EPA onboards by office and division				
RPIO	Office	Division	Jan. 15, 2017	June 18, 2018
OECA	OFC OF CRIMINAL ENF, FORENSICS & TRNG	PROF INTEGRITY & QUALITY ASSURANCE STF	8	5
OECA	OFC OF CRIMINAL ENF, FORENSICS & TRNG	RESOURCE MANAGEMENT STAFF	7	7
OECA	OFC OF FEDERAL FACILITIES ENF OFC	Immediate Office	2	3
OECA	OFC OF FEDERAL FACILITIES ENF OFC	PLANNING, PREVENTION & COMPLIANCE STF	2	
OECA	OFC OF FEDERAL FACILITIES ENF OFC	SITE REMEDIATION & ENFORCEMENT STAFF	11	9
OECA	OFC OF SITE REMEDIATION ENFORCEMENT	Immediate Office	5	5
OECA	OFC OF SITE REMEDIATION ENFORCEMENT	POLICY & PROGRAM EVALUATION DIV	26	24
OECA	OFC OF SITE REMEDIATION ENFORCEMENT	PROGRAM SUPPORT OFFICE	9	9
OECA	OFC OF SITE REMEDIATION ENFORCEMENT	REGIONAL SUPPORT DIVISION	32	27
OECA	OFFICE OF ADMINISTRATION AND POLICY	ADMINISTRATIVE MANAGEMENT DIVISION	9	8
OECA	OFFICE OF ADMINISTRATION AND POLICY	BUDGET AND FINANCIAL MANAGEMENT DIV	5	6
OECA	OFFICE OF ADMINISTRATION AND POLICY	Immediate Office	8	8
OECA	OFFICE OF ADMINISTRATION AND POLICY	INFORMATION TECHNOLOGY DIVISION	8	6
OECA	OFFICE OF ADMINISTRATION AND POLICY	POLICY & LEGISLATIVE COORDINATION DIV	6	6
OECA	OFFICE OF CIVIL ENFORCEMENT	AIR ENFORCEMENT DIVISION	45	40
OECA	OFFICE OF CIVIL ENFORCEMENT	CROSS-CUTTING POLICY STAFF	8	7

EPA onboards by office and division				
RPIO	Office	Division	Jan. 15, 2017	June 18, 2018
OECA	OFFICE OF CIVIL ENFORCEMENT	Immediate Office	5	3
OECA	OFFICE OF CIVIL ENFORCEMENT	RESOURCE MANAGEMENT BRANCH	7	5
OECA	OFFICE OF CIVIL ENFORCEMENT	WASTE & CHEMICAL ENFORCEMENT DIV	33	34
OECA	OFFICE OF CIVIL ENFORCEMENT	WATER ENFORCEMENT DIVISION	36	31
OECA	OFFICE OF COMPLIANCE	ENF PLANNING, TARGETING & DATA DIV	49	43
OECA	OFFICE OF COMPLIANCE	Immediate Office	10	7
OECA	OFFICE OF COMPLIANCE	MONITORING, ASSISTANCE & MEDI A PROGS DIV	45	40
OECA	OFFICE OF COMPLIANCE	NATIONAL ENF TRAINING INSTITUTE	4	4
OECA	OFFICE OF COMPLIANCE	PLANNING, MEASURES & OVERSIGHT DIV	14	14
OECA	OFFICE OF COMPLIANCE	RESOURCE MANAGEMENT STAFF	6	5
OECA	OFFICE OF ENVIRONMENTAL JUSTICE	<i>NOTE: MOVED TO OA IN FY19 PRESIDENT'SL BUDGET</i>	23	
OECA	OFFICE OF FEDERAL ACTIVITIES	Immediate Office	4	
OECA	OFFICE OF FEDERAL ACTIVITIES	INTL COMPLIANCE ASSURANCE DIV	7	
OECA	OFFICE OF FEDERAL ACTIVITIES	NEPA COMPLIANCE DIVISION	13	
OECA Total			739	631
OEI	OFC OF CUST ADVO, POL & PORTFOLIO MGT	CUSTOMER ADVOCACY & COMMUNICATION DIV	15	15
OEI	OFC OF CUST ADVO, POL & PORTFOLIO MGT	Immediate Office	4	5

EPA onboards by office and division				
RPIO	Office	Division	Jan. 15, 2017	June 18, 2018
OEI	OFC OF CUST ADVO, POL & PORTFOLIO MGT	POLICY, PLANNING & EVALUATION DIV	7	5
OEI	OFC OF CUST ADVO, POL & PORTFOLIO MGT	PORTFOLIO MANAGEMENT DIV	6	8
OEI	OFC OF DIGITAL SERVICES & TECH ARCH	DIGITAL SERVICES DIV	10	8
OEI	OFC OF DIGITAL SERVICES & TECH ARCH	Immediate Office	7	6
OEI	OFC OF DIGITAL SERVICES & TECH ARCH	TECHNICAL ARCHITECTURE & PLANNING DIV	9	7
OEI	OFC OF INFORMATION MANAGEMENT	DATA MANAGEMENT SERVICES DIV	15	13
OEI	OFC OF INFORMATION MANAGEMENT	Immediate Office	5	6
OEI	OFC OF INFORMATION MANAGEMENT	INFO ACCESS & ANALYTICAL SERVICES DIV	13	11
OEI	OFC OF INFORMATION MANAGEMENT	INFORMATION EXCHANGE SERVICES DIV	22	20
OEI	OFC OF INFORMATION MANAGEMENT	WEB CONTENT SERVICES DIV	11	9
OEI	OFC OF INFORMATION SECURITY & PRIVACY		21	18
OEI	OFC OF INFORMATION TECHNOLOGY OPS	DESKTOP SUPPORT SERVICES DIV	9	8
OEI	OFC OF INFORMATION TECHNOLOGY OPS	ENDPOINT & COLLAB SOLUTIONS DIV	12	12
OEI	OFC OF INFORMATION TECHNOLOGY OPS	ENTERPRISE HOSTING DIV	19	20
OEI	OFC OF INFORMATION TECHNOLOGY OPS	Immediate Office	8	6

EPA onboards by office and division				
RPIO	Office	Division	Jan. 15, 2017	June 18, 2018
OEI	OFC OF INFORMATION TECHNOLOGY OPS	NETWORK & SECURITY OPERATION DIV	18	21
OEI	OFC OF INFORMATION TECHNOLOGY OPS	SERVICE & BUSINESS MANAGEMENT DIV	25	24
OEI	OFC OF INFORMATION TECHNOLOGY OPS	WASHINGTON D.C. OPERATIONS DIV	10	9
OEI	OFFICE OF BUSINESS OPERATIONS & SERVICES	HR&ADMINISTRATION DIV	9	7
OEI	OFFICE OF BUSINESS OPERATIONS & SERVICES	Immediate Office	7	5
OEI	OFFICE OF BUSINESS OPERATIONS & SERVICES	INFORMATION AND SECURITY PROGRAM DIV	9	10
OEI	OFFICE OF BUSINESS OPERATIONS & SERVICES	RESOURCE & PROGRAM MANAGEMENT DIV	9	9
OEI	OFFICE OF ENTERPRISE INFO PROGRAMS	EDISCOVERY DIV	8	6
OEI	OFFICE OF ENTERPRISE INFO PROGRAMS	ENTERPRISE QUALITY MANAGEMENT DIV	9	7
OEI	OFFICE OF ENTERPRISE INFO PROGRAMS	ENTERPRISE RECORDS MANAGEMENT DIV	7	7
OEI	OFFICE OF ENTERPRISE INFO PROGRAMS	ERULEMAKING & FOIAONLINE DIV	6	7
OEI	OFFICE OF ENTERPRISE INFO PROGRAMS	FOIA, LIBRARIES & ACCESSIBILITY DIV	10	6
OEI	OFFICE OF ENTERPRISE INFO PROGRAMS	Immediate Office	6	4
OEI	OFFICE OF ENTERPRISE INFO PROGRAMS	REGULATORY SUPPORT DIV	3	6
OEI	OFFICE OF ENVIRONMENTAL INFORMATION	Immediate Office	11	8
OEI Total			340	313

EPA onboards by office and division				
RPIO	Office	Division	Jan. 15, 2017	June 18, 2018
OGC	AIR & RADIATION LAW OFFICE		48	45
OGC	ALTERNATIVE DISPUTE RES LAW OFC		7	6
OGC	CIVIL RIGHTS & FINANCE LAW OFFICE		25	22
OGC	CROSS-CUTTING ISSUES LAW OFFICE		21	19
OGC	ETHICS OFFICE		3	4
OGC	FOIA EXPERT ASSISTANCE TEAM		3	12
OGC	GENERAL LAW OFFICE		29	26
OGC	OFFICE OF EXTERNAL COMPLIANCE		9	12
OGC	OFFICE OF GENERAL COUNSEL	Immediate Office	14	10
OGC	PESTICIDES & TOXIC SUBSTANCES LAW OFC		23	22
OGC	RESOURCE MANAGEMENT OFFICE		14	13
OGC	SOLID WASTE & EMER RESPONSE LAW OFC		15	15
OGC	WATER LAW OFFICE		19	19
OGC Total			230	225
OIG	OFC PF CNSL&CONGRESSIONAL&PUB AFFAIRS	CONGRESSIONAL & PUB AFFAIRS DIRECTORATE	8	9
OIG	OFC PF CNSL&CONGRESSIONAL&PUB AFFAIRS	Immediate Office	3	2

EPA onboards by office and division				
RPIO	Office	Division	Jan. 15, 2017	June 18, 2018
OIG	OFC PF CNSL&CONGRESSIONAL&PUB AFFAIRS	LEGAL AFFAIRS DIRECTORATE	8	8
OIG	OFFICE OF AUDITS	CONT&ASTNC AGREEMENT ADTS DIRECTORATE	14	11
OIG	OFFICE OF AUDITS	EFFICIENCY AUDITS DIRECTORATE	13	13
OIG	OFFICE OF AUDITS	FINANCIAL AUDITS DIRECTORATE	25	26
OIG	OFFICE OF AUDITS	FORENSIC AUDITS DIRECTORATE	12	12
OIG	OFFICE OF AUDITS	Immediate Office	3	7
OIG	OFFICE OF AUDITS	INFO RSRCS MGMT AUDITS DIRECTORATE	16	15
OIG	OFFICE OF AUDITS	AIR DIRECTORATE		13
OIG	OFFICE OF AUDITS	LAND CLEANUP & WASTE MGMT DIRECTORATE		14
OIG	OFFICE OF AUDITS	WATER DIRECTORATE		13
OIG	OFFICE OF AUDITS	TOX CHEM MGMT & POL PREVNTN DIRECTORA		14
OIG	OFFICE OF AUDITS	SPECIAL PROGRAMS DIRECTORATE		4
OIG	OFFICE OF AUDITS	ENVIRONMENTAL RESEARCH DIRECTORATE		11
OIG	OFFICE OF INSPECTOR GENERAL	Immediate Office	3	3
OIG	OFFICE OF INVESTIGATIONS	ATLANTA FIELD OFFICE	8	6
OIG	OFFICE OF INVESTIGATIONS	CHICAGO FIELD OFFICE	7	8
OIG	OFFICE OF INVESTIGATIONS	ELECTRONIC CRIMES DIVISION	4	5
OIG	OFFICE OF INVESTIGATIONS	Immediate Office	4	3
OIG	OFFICE OF INVESTIGATIONS	OFFICE OF PROFESSIONAL RESPONSIBILITY	7	7

EPA onboards by office and division				
RPIO	Office	Division	Jan. 15, 2017	June 18, 2018
OIG	OFFICE OF INVESTIGATIONS	OPERATIONS SUPPORT DIVISION	6	6
OIG	OFFICE OF INVESTIGATIONS	SAN FRANCISCO FIELD OFFICE	7	8
OIG	OFFICE OF INVESTIGATIONS	WASHINGTON FIELD OFFICE	11	9
OIG	OFFICE OF MANAGEMENT	BUDGET, ANALYSIS & RESULTS DIRECTORATE	7	10
OIG	OFFICE OF MANAGEMENT	HUMAN CAPITAL & SOLUTIONS DIRECTORATE	4	8
OIG	OFFICE OF MANAGEMENT	Immediate Office		4
OIG	OFFICE OF MANAGEMENT	IT SOLUTIONS AND SERVICES DIRECTORATE	22	20
OIG	OFFICE OF PROGRAM EVALUATION		74	
OIG Total			266	269
OITA	AMERICAN INDIAN ENVIRONMENTAL OFFICE		16	13
OITA	ASST ADMR FOR INTL&TRIBAL AFFAIRS	Immediate Office	5	4
OITA	OFC OF MGMT & INTERNATIONAL SERVICES		13	12
OITA	OFC OF REGIONAL AND BILATERAL AFFAIRS		23	20
OITA	OFFICE OF GLOBAL AFFAIRS AND POLICY		21	18
OITA Total			78	67
OLEM	ASST ADMR OFC OF LAND & EMER MGMT	Immediate Office	7	10
OLEM	CENTER FOR PROGRAM ANALYSIS		15	13

EPA onboards by office and division				
RPIO	Office	Division	Jan. 15, 2017	June 18, 2018
OLEM	FED FACILITIES RESTORATION&REUSE OFC		13	13
OLEM	OFC OF BROWNFIELDS&LAND REV		19	16
OLEM	OFC OF RESOURCE CONSERVATION&RECOVERY	Immediate Office	5	5
OLEM	OFC OF RESOURCE CONSERVATION&RECOVERY	MATERIALS RECOVERY & WASTE MGMT DIV	41	41
OLEM	OFC OF RESOURCE CONSERVATION&RECOVERY	OFC OF PROG MGMT,COMMS&ANALYSIS	31	30
OLEM	OFC OF RESOURCE CONSERVATION&RECOVERY	PROGRAM IMPLEMENTATION & INFO DIV	59	56
OLEM	OFC OF RESOURCE CONSERVATION&RECOVERY	RSRC CONSERVATION&SUSTAINABILITY DIV	32	28
OLEM	OFC OF SUPERFUND REMTION&TECH INNOV	ASSESSMENT & REMEDIATION DIV	48	43
OLEM	OFC OF SUPERFUND REMTION&TECH INNOV	Immediate Office	3	4
OLEM	OFC OF SUPERFUND REMTION&TECH INNOV	OFC OF TECH INNOVATION&FIELD SERVICES	56	57
OLEM	OFC OF SUPERFUND REMTION&TECH INNOV	RESOURCES MANAGEMENT DIV	39	35
OLEM	OFFICE OF EMERGENCY MANAGEMENT	CBRN CONSEQUENCE MGMT ADVISORY DIV	17	17
OLEM	OFFICE OF EMERGENCY MANAGEMENT	Immediate Office	3	3
OLEM	OFFICE OF EMERGENCY MANAGEMENT	PREPAREDNESS &RESPONSE OPERATIONS DIV	19	19
OLEM	OFFICE OF EMERGENCY MANAGEMENT	REGULATIONS IMPLEMENTATION DIVISION	14	15

EPA onboards by office and division				
RPIO	Office	Division	Jan. 15, 2017	June 18, 2018
OLEM	OFFICE OF EMERGENCY MANAGEMENT	RESOURCES MANAGEMENT DIVISION	11	15
OLEM	OFFICE OF PROGRAM MANAGEMENT	ACQUISITION & RESOURCE MANAGEMENT STF	13	10
OLEM	OFFICE OF PROGRAM MANAGEMENT	Immediate Office	4	4
OLEM	OFFICE OF PROGRAM MANAGEMENT	INFORMATION MGMT & DATA QUALITY STF	6	6
OLEM	OFFICE OF PROGRAM MANAGEMENT	POLICY ANALYSIS & REGULATORY MGMT STF	7	7
OLEM	OFFICE OF UNDERGROUND STORAGE TANKS	CLEANUP AND REVITALIZATION DIVISION	6	6
OLEM	OFFICE OF UNDERGROUND STORAGE TANKS	Immediate Office	5	5
OLEM	OFFICE OF UNDERGROUND STORAGE TANKS	MANAGEMENT AND COMMUNICATIONS DIV	8	7
OLEM	OFFICE OF UNDERGROUND STORAGE TANKS	RELEASE PREVENTION DIVISION	6	6
OLEM	ORGANIZATIONAL MGMT & INTEGRITY STF		9	9
OLEM Total			496	480
ORD	ASST ADMR FOR RESEARCH & DEVELOPMENT	Immediate Office	99	75
ORD	NATIONAL CENTER FOR ENVIRO RESEARCH	APPLIED SCIENCE & EDUCATION DIVISION	13	11
ORD	NATIONAL CENTER FOR ENVIRO RESEARCH	Immediate Office	12	7
ORD	NATIONAL CENTER FOR ENVIRO RESEARCH	POLICY, PLANNING, & REVIEW DIVISION	16	13

EPA onboards by office and division				
RPIO	Office	Division	Jan. 15, 2017	June 18, 2018
ORD	NATIONAL CENTER FOR ENVIRO RESEARCH	WATER, HEALTH, & INNOVATION DIVISION	15	10
ORD	NATL CENTER FOR ENVIRO ASSESSMENT	Immediate Office	18	11
ORD	NATL CENTER FOR ENVIRO ASSESSMENT	INTEGRATED RISK INFO SYSTEM DIV	37	30
ORD	NATL CENTER FOR ENVIRO ASSESSMENT	NCEA-CINCINNATI	27	27
ORD	NATL CENTER FOR ENVIRO ASSESSMENT	NCEA-RTP	38	36
ORD	NATL CENTER FOR ENVIRO ASSESSMENT	NCEA-WASHINGTON	44	39
ORD	NATL CENTER FOR ENVIRO ASSESSMENT	PROGRAM SUPPORT STAFF	8	9
ORD	NATL CTR FOR COMPUTATIONAL TOXICOLOGY		31	28
ORD	NATL EXPOSURE RSCH LABORATORY - RTP	COMPUTATIONAL EXPOSURE DIVISION	72	63
ORD	NATL EXPOSURE RSCH LABORATORY - RTP	EXPOSURE METHODS & MEASUREMENTS DIV	132	121
ORD	NATL EXPOSURE RSCH LABORATORY - RTP	Immediate Office	14	11
ORD	NATL EXPOSURE RSCH LABORATORY - RTP	PROGRAM OPERATIONS STAFF	3	7
ORD	NATL EXPOSURE RSCH LABORATORY - RTP	RESEARCH PROG DEVELOP&INTEGRATION STF	8	7
ORD	NATL EXPOSURE RSCH LABORATORY - RTP	SHEM & FACILITIES STAFF	8	9
ORD	NATL EXPOSURE RSCH LABORATORY - RTP	SYSTEMS EXPOSURE DIVISION	86	76

EPA onboards by office and division				
RPIO	Office	Division	Jan. 15, 2017	June 18, 2018
ORD	NATL HLTH&ENVIRO EFFECTS RSCH LAB-RTP	ATLANTIC ECOLOGY DIV - NARRAGANSETT	69	67
ORD	NATL HLTH&ENVIRO EFFECTS RSCH LAB-RTP	ENVIRONMENTAL PUBLIC HEALTH DIV	69	68
ORD	NATL HLTH&ENVIRO EFFECTS RSCH LAB-RTP	GULF ECOLOGY DIV - GULF BREEZE	54	46
ORD	NATL HLTH&ENVIRO EFFECTS RSCH LAB-RTP	Immediate Office	10	8
ORD	NATL HLTH&ENVIRO EFFECTS RSCH LAB-RTP	INTEGRATED SYSTM TOXICOLOGY DIV	58	49
ORD	NATL HLTH&ENVIRO EFFECTS RSCH LAB-RTP	MID-CONTINENT ECOLOGY DIV - DULUTH	63	57
ORD	NATL HLTH&ENVIRO EFFECTS RSCH LAB-RTP	PROGRAM OPERATIONS STAFF	10	12
ORD	NATL HLTH&ENVIRO EFFECTS RSCH LAB-RTP	RESEARCH CORES UNIT	16	16
ORD	NATL HLTH&ENVIRO EFFECTS RSCH LAB-RTP	RESEARCH PLANNING & COORDINATION STF	9	9
ORD	NATL HLTH&ENVIRO EFFECTS RSCH LAB-RTP	TOXICITY ASSESSMENT DIV	52	48
ORD	NATL HLTH&ENVIRO EFFECTS RSCH LAB-RTP	WESTERN ECOLOGY DIV - CORVALLIS	59	53
ORD	NATL HOMELAND SECURITY RESEARCH CTR	DECONTAMINATION&CONSEQUENCE MGMT DIV	14	11
ORD	NATL HOMELAND SECURITY RESEARCH CTR	Immediate Office	13	10
ORD	NATL HOMELAND SECURITY RESEARCH CTR	THREAT & CONSEQUENCE ASSESSMENT DIV	16	10
ORD	NATL HOMELAND SECURITY RESEARCH CTR	WATER INFRASTRUCTURE PROTECTION DIV	11	12

EPA onboards by office and division				
RPIO	Office	Division	Jan. 15, 2017	June 18, 2018
ORD	NATL RISK MGMT RSCH LAB - CINC	AIR AND ENERGY MANAGEMENT DIVISION	65	61
ORD	NATL RISK MGMT RSCH LAB - CINC	ENVIRO TECH ASSMT, VERIFS&OUTCOMES STF	5	
ORD	NATL RISK MGMT RSCH LAB - CINC	GROUNDWATER, WATERSHED & ECO RESTORATION DIV-ADA	42	38
ORD	NATL RISK MGMT RSCH LAB - CINC	Immediate Office	7	7
ORD	NATL RISK MGMT RSCH LAB - CINC	LABORATORY SUPPORT&ACCOUNTABILITY STF	11	9
ORD	NATL RISK MGMT RSCH LAB - CINC	LAND AND MATERIALS MANAGEMENT DIV		61
ORD	NATL RISK MGMT RSCH LAB - CINC	LAND REMEDIATION&PLTN CONTROL DIV	36	
ORD	NATL RISK MGMT RSCH LAB - CINC	PROGRAM OPERATIONS STAFF	6	7
ORD	NATL RISK MGMT RSCH LAB - CINC	RESEARCH PLANNING & COORDINATION STF		9
ORD	NATL RISK MGMT RSCH LAB - CINC	SUSTAINABLE TECHNOLOGY DIV	45	
ORD	NATL RISK MGMT RSCH LAB - CINC	TECHNICAL COMMUNICATION&OUTREACH STF	4	
ORD	NATL RISK MGMT RSCH LAB - CINC	WATER SYSTEMS DIVISION	67	75
ORD	OFC OF ADMINISTRATIVE&RSCH SUPPORT		7	7
ORD	OFC OF ADMINISTRATIVE&RSCH SUPPORT	BUDGET EXECUTION DIVISION	35	33
ORD	OFC OF ADMINISTRATIVE&RSCH SUPPORT	EXTRAMURAL MANAGEMENT DIV	39	34

EPA onboards by office and division				
RPIO	Office	Division	Jan. 15, 2017	June 18, 2018
ORD	OFC OF ADMINISTRATIVE&RSCH SUPPORT	HUMAN RESOURCES DIVISION	25	23
ORD	OFC OF ADMINISTRATIVE&RSCH SUPPORT	TRAVEL MANAGEMENT DIVISION	11	12
ORD	OFC OF PROG ACCOUNTABILITY&RSRCS MGMT	Immediate Office	3	6
ORD	OFC OF PROG ACCOUNTABILITY&RSRCS MGMT	PLANNING,BUDGET&PERFORMA NCE ANLS BR	5	7
ORD	OFC OF PROG ACCOUNTABILITY&RSRCS MGMT	POLICY ADMIN & MGMT INTEGRITY DIV	11	9
ORD	OFC OF PROG ACCOUNTABILITY&RSRCS MGMT	RESOURCE AND SYSTEM ANALYSIS BRANCH	6	5
ORD	OFC OF PROG ACCOUNTABILITY&RSRCS MGMT	RSRCS,PLNG,PERFORMANCE&BU DGET POL DIV	4	3
ORD	OFFICE OF SCIENCE INFORMATION MGMT	APPLICATIONS SUPPORT DIVISION	9	9
ORD	OFFICE OF SCIENCE INFORMATION MGMT	CUSTOMER SUPPORT DIVISION	10	10
ORD	OFFICE OF SCIENCE INFORMATION MGMT	ENTERPRISE OPERATIONS DIVISION	4	4
ORD	OFFICE OF SCIENCE INFORMATION MGMT	Immediate Office	7	7
ORD	OFFICE OF SCIENCE INFORMATION MGMT	INFORMATION MANAGEMENT SUPPORT DIV	6	5
ORD	OFFICE OF SCIENCE INFORMATION MGMT	PROGRAM MANAGEMENT SERVICES DIVISION	6	6
ORD	OFFICE OF SCIENCE POLICY	CROSS PROGRAM STAFF	2	

EPA onboards by office and division				
RPIO	Office	Division	Jan. 15, 2017	June 18, 2018
ORD	OFFICE OF SCIENCE POLICY	Immediate Office	69	89
ORD	OFFICE OF SCIENCE POLICY	PROGRAM SUPPORT STAFF	13	10
ORD	OFFICE OF SCIENCE POLICY	REGIONAL, STATE, TRIBAL SCIENCE STAFF	13	15
ORD	OFFICE OF THE SCIENCE ADVISOR		29	21
ORD	SCIENCE COMMUNICATION STAFF		12	12
ORD Total			1,818	1,660
OW	ASST ADMR FOR WATER	Immediate Office	10	9
OW	COMMUNICATIONS STAFF		4	5
OW	MANAGEMENT & OPERATIONS STAFF	Immediate Office	6	8
OW	MANAGEMENT & OPERATIONS STAFF	ORGANIZATIONAL SUPPORT SERVICES	5	5
OW	MANAGEMENT & OPERATIONS STAFF	PROJECT MANAGEMENT OFFICE	10	8
OW	OFC OF WETLANDS, OCEANS & WATERSHEDS	Immediate Office	5	8
OW	OFC OF WETLANDS, OCEANS & WATERSHEDS	OCEANS & COASTAL PRT DIV	22	
OW	OFC OF WETLANDS, OCEANS & WATERSHEDS	OCEANS, WETLANDS, & COMMUNITIES DIV	28	47
OW	OFC OF WETLANDS, OCEANS & WATERSHEDS	PLANNING, COMMS, & RSRC MGMT STAFF	13	10
OW	OFC OF WETLANDS, OCEANS & WATERSHEDS	URBAN WATERS STAFF	4	
OW	OFC OF WETLANDS, OCEANS & WATERSHEDS	WATERSHED RESTORATION, ASSESS & PROT DIV	41	43

EPA onboards by office and division				
RPIO	Office	Division	Jan. 15, 2017	June 18, 2018
OW	OFFICE OF GROUNDWATER&DRINKING WATER	DRINKING WATER PROTECTION DIV	64	58
OW	OFFICE OF GROUNDWATER&DRINKING WATER	Immediate Office	7	5
OW	OFFICE OF GROUNDWATER&DRINKING WATER	NATL DRINKING WATER ADVISORY COUNCIL	15	10
OW	OFFICE OF GROUNDWATER&DRINKING WATER	RESOURCES MANAGEMENT & EVALUATION STF	5	6
OW	OFFICE OF GROUNDWATER&DRINKING WATER	STANDARDS & RISK MANAGEMENT DIV	76	58
OW	OFFICE OF GROUNDWATER&DRINKING WATER	WATER SECURITY DIVISION	27	26
OW	OFFICE OF SCIENCE & TECHNOLOGY		5	4
OW	OFFICE OF SCIENCE & TECHNOLOGY	ENGINEERING & ANALYSIS DIV	29	26
OW	OFFICE OF SCIENCE & TECHNOLOGY	HEALTH & ECOLOGICAL CRITERIA DIVISION	41	33
OW	OFFICE OF SCIENCE & TECHNOLOGY	RESOURCES MGMT & INFORMATION STF	10	9
OW	OFFICE OF SCIENCE & TECHNOLOGY	STANDARDS & HEALTH PROTECTION DIV	35	34
OW	OFFICE OF WASTEWATER		4	3
OW	OFFICE OF WASTEWATER	PLANNING INFO & RESOURCES MGMT STF	10	9

EPA onboards by office and division				
RPIO	Office	Division	Jan. 15, 2017	June 18, 2018
OW	OFFICE OF WASTEWATER	WATER INFRASTRUCTURE DIVISION	57	61
OW	OFFICE OF WASTEWATER	WATER PERMITS DIVISION	49	43
OW	RESOURCE MANAGEMENT STAFF		15	11
OW	WATER POLICY STAFF		11	9
OW Total			608	548
R01	CIVIL RIGHTS & URBAN AFFAIRS		4	3
R01	OFC OF ADMIN & RESOURCES MGMT	CONTRACTS AND PROCUREMENT	8	7
R01	OFC OF ADMIN & RESOURCES MGMT	CUSTOMER SERVICE AND FACILITIES	11	10
R01	OFC OF ADMIN & RESOURCES MGMT	GRANTS MANAGEMENT	9	7
R01	OFC OF ADMIN & RESOURCES MGMT	HUMAN RESOURCES	7	7
R01	OFC OF ADMIN & RESOURCES MGMT	Immediate Office	8	7
R01	OFC OF ADMIN & RESOURCES MGMT	INFORMATION SERVICES BR	24	21
R01	OFC OF ADMIN & RESOURCES MGMT	OFFICE OF THE COMPTROLLER	18	15
R01	OFC OF ENVIRO MEASUREMENT&EVALUATION	ECOSYSTEM ASSESSMENT	18	16
R01	OFC OF ENVIRO MEASUREMENT&EVALUATION	Immediate Office	9	9
R01	OFC OF ENVIRO MEASUREMENT&EVALUATION	INVESTIGATION & ANALYSIS	19	17

EPA onboards by office and division				
RPIO	Office	Division	Jan. 15, 2017	June 18, 2018
R01	OFC OF ENVIRO MEASUREMENT&EVALUATION	QUALITY ASSURANCE	10	10
R01	OFC OF SITE REMEDIATION & RESTORATION	Immediate Office	4	4
R01	OFC OF SITE REMEDIATION & RESTORATION	OFC OF EMERGENCY PLANNING & RESPONSE	27	27
R01	OFC OF SITE REMEDIATION & RESTORATION	OFFICE OF REMEDIATION & RESTORATION 1	2	1
R01	OFC OF SITE REMEDIATION & RESTORATION	OFFICE OF REMEDIATION & RESTORATION 2	9	9
R01	OFC OF SITE REMEDIATION & RESTORATION	OFFICE OF REMEDIATION & RESTORATION 3	26	26
R01	OFC OF SITE REMEDIATION & RESTORATION	OFFICE OF REMEDIATION & RESTORATION 4	17	17
R01	OFC OF SITE REMEDIATION & RESTORATION	OFFICE OF REMEDIATION & RESTORATION 5	10	9
R01	OFC OF SITE REMEDIATION & RESTORATION	OFFICE OF REMEDIATION & RESTORATION 6	10	7
R01	OFC OF SITE REMEDIATION & RESTORATION	OFFICE OF TECHNICAL & SUPPORT	33	29
R01	OFFICE OF ECOSYSTEM PROTECTION	AIR PROGRAM BRANCH	29	23
R01	OFFICE OF ECOSYSTEM PROTECTION	DRINKING WATER BRANCH	19	30
R01	OFFICE OF ECOSYSTEM PROTECTION	GRANTS,TRIBAL,CMTY&MUNICIP AL ASTNC BR	14	1
R01	OFFICE OF ECOSYSTEM PROTECTION	IMMED OCF, WATER PERMITS BRANCH	30	28
R01	OFFICE OF ECOSYSTEM PROTECTION	Immediate Office	3	3

EPA onboards by office and division				
RPIO	Office	Division	Jan. 15, 2017	June 18, 2018
R01	OFFICE OF ECOSYSTEM PROTECTION	SURFACE WATER BRANCH	23	23
R01	OFFICE OF ECOSYSTEM PROTECTION	WATER QUALITY BRANCH	6	
R01	OFFICE OF ECOSYSTEM PROTECTION	WETLANDS & INFORMATION BR	11	15
R01	OFFICE OF ENVIRONMENTAL STEWARDSHIP		35	32
R01	OFFICE OF ENVIRONMENTAL STEWARDSHIP	Immediate Office	7	6
R01	OFFICE OF ENVIRONMENTAL STEWARDSHIP	OFC OF ASSISTANCE&POLLUTION PREV	16	15
R01	OFFICE OF ENVIRONMENTAL STEWARDSHIP	OFFICE OF LEGAL ENFORCEMENT	5	6
R01	OFFICE OF ENVIRONMENTAL STEWARDSHIP	OFFICE OF TECHNICAL ENFORCEMENT	55	49
R01	OFFICE OF PUBLIC AFFAIRS		17	2
R01	OFFICE OF PUBLIC AFFAIRS	PUBLIC AFFAIRS SECTION		12
R01	OFFICE OF REGIONAL COUNSEL		16	15
R01	Office of the Regional Administrator		5	7
R01 Total			574	525
R02	CARIBBEAN ENVIRO PROTECTION DIV	Immediate Office	6	6
R02	CARIBBEAN ENVIRO PROTECTION DIV	MULTI-MEDIA PERMITS & COMPLIANCE BR	14	12
R02	CARIBBEAN ENVIRO PROTECTION DIV	MUNICIPAL WATER PROGRAM BRANCH	11	12
R02	CARIBBEAN ENVIRO PROTECTION DIV	RESPONSE & REMEDIATION BRANCH	14	14

EPA onboards by office and division				
RPIO	Office	Division	Jan. 15, 2017	June 18, 2018
R02	CLEAN AIR AND SUSTAINABILITY DIV	AIR PROGRAMS BRANCH	27	26
R02	CLEAN AIR AND SUSTAINABILITY DIV	HAZARDOUS WASTE PROGRAMS BR	19	23
R02	CLEAN AIR AND SUSTAINABILITY DIV	Immediate Office	5	5
R02	CLEAN AIR AND SUSTAINABILITY DIV	RADIATION AND INDOOR AIR BR	6	4
R02	CLEAN AIR AND SUSTAINABILITY DIV	SUSTAINABILITY&MULTIMEDIA PROGRAMS BR	24	22
R02	CLEAN WATER DIVISION	CLEAN WATER REGULATORY BR	19	20
R02	CLEAN WATER DIVISION	DRINKING WATER&MUNICIPAL INFRA BR	18	18
R02	CLEAN WATER DIVISION	Immediate Office	6	6
R02	CLEAN WATER DIVISION	WATERSHED MANAGEMENT BR	26	26
R02	DIV OF ENF & COMPLIANCE ASSISTANCE	AIR COMPLIANCE BRANCH	17	17
R02	DIV OF ENF & COMPLIANCE ASSISTANCE	COMPLIANCE ASSISTANCE&PROG SUPPORT BR	20	16
R02	DIV OF ENF & COMPLIANCE ASSISTANCE	Immediate Office	5	5
R02	DIV OF ENF & COMPLIANCE ASSISTANCE	PESTICIDES & TOXIC SUBSTANCES BR	22	19
R02	DIV OF ENF & COMPLIANCE ASSISTANCE	RCRA COMPLIANCE BRANCH	22	20
R02	DIV OF ENF & COMPLIANCE ASSISTANCE	WATER COMPLIANCE BRANCH	28	27
R02	DIVISION OF ENVIRO SCIENCE&ASSESSMENT	HAZARDOUS WASTE SUPPORT BR	18	19
R02	DIVISION OF ENVIRO SCIENCE&ASSESSMENT	Immediate Office	7	6

EPA onboards by office and division				
RPIO	Office	Division	Jan. 15, 2017	June 18, 2018
R02	DIVISION OF ENVIRO SCIENCE&ASSESSMENT	LABORATORY BRANCH	18	16
R02	DIVISION OF ENVIRO SCIENCE&ASSESSMENT	MONITORING & ASSESSMENT BR	21	21
R02	EMERGENCY & REMEDIAL RESPONSE DIV	Immediate Office	10	9
R02	EMERGENCY & REMEDIAL RESPONSE DIV	NEW JERSEY REMEDIATION BR	38	33
R02	EMERGENCY & REMEDIAL RESPONSE DIV	NEW YORK REMEDIATION BRANCH	30	28
R02	EMERGENCY & REMEDIAL RESPONSE DIV	PASSAIC/HACKENSACK/NEWARK BAY REM BR	6	6
R02	EMERGENCY & REMEDIAL RESPONSE DIV	PROGRAM SUPPORT BRANCH	37	36
R02	EMERGENCY & REMEDIAL RESPONSE DIV	REMOVAL ACTION BRANCH	27	28
R02	EMERGENCY & REMEDIAL RESPONSE DIV	RESPONSE & PREVENTION BR	26	26
R02	EMERGENCY & REMEDIAL RESPONSE DIV	SPECIAL PROJECTS BRANCH	27	23
R02	OFFICE OF POLICY AND MANAGEMENT	CONTRACTS MANAGEMENT BR	9	7
R02	OFFICE OF POLICY AND MANAGEMENT	FACILITIES & ADMINISTRATIVE MGMT BR	11	10
R02	OFFICE OF POLICY AND MANAGEMENT	FINANCIAL MANAGEMENT BRANCH	23	23
R02	OFFICE OF POLICY AND MANAGEMENT	GRANTS AND AUDIT MANAGEMENT BR	13	13
R02	OFFICE OF POLICY AND MANAGEMENT	HUMAN RESOURCES BRANCH	7	7

EPA onboards by office and division				
RPIO	Office	Division	Jan. 15, 2017	June 18, 2018
R02	OFFICE OF POLICY AND MANAGEMENT	Immediate Office	6	6
R02	OFFICE OF POLICY AND MANAGEMENT	INFORMATION RESOURCES MANAGEMENT BR	21	22
R02	OFFICE OF REGIONAL COUNSEL	AIR BRANCH	9	7
R02	OFFICE OF REGIONAL COUNSEL	Immediate Office	14	14
R02	OFFICE OF REGIONAL COUNSEL	NEW JERSEY SUPERFUND BRANCH	23	22
R02	OFFICE OF REGIONAL COUNSEL	NEW YORK/CARIBBEAN SUPERFUND BR	22	19
R02	OFFICE OF REGIONAL COUNSEL	WASTE & TOXIC SUBSTANCES BRANCH	13	13
R02	OFFICE OF REGIONAL COUNSEL	WATER, GRANTS & GENERAL LAW BRANCH	13	13
R02	OFFICE OF STRATEGIC PROGRAMS	Immediate Office	4	5
R02	Office of the Regional Administrator		4	6
R02	PUBLIC AFFAIRS DIVISION	Immediate Office	2	2
R02	PUBLIC AFFAIRS DIVISION	INTERGOV&COMMUNITY AFFAIRS BR	10	10
R02	PUBLIC AFFAIRS DIVISION	PUBLIC OUTREACH BRANCH	9	8
R02 Total			787	756
R03	AIR PROTECTION DIVISION	Immediate Office	9	8
R03	AIR PROTECTION DIVISION	OFFICE OF AIR PROGRAM PLANNING	39	38
R03	AIR PROTECTION DIVISION	OFFICE OF PERMITS & STATE PROGRAMS	29	27

EPA onboards by office and division				
RPIO	Office	Division	Jan. 15, 2017	June 18, 2018
R03	ENVIRO ASSESSMENT & INNOVATION DIV	Immediate Office	9	6
R03	ENVIRO ASSESSMENT & INNOVATION DIV	OFC OF ANALYTICAL SVCS&QLTY ASSURANCE	25	20
R03	ENVIRO ASSESSMENT & INNOVATION DIV	OFC OF ENVIRO INFORMATION & ANALYSIS	12	11
R03	ENVIRO ASSESSMENT & INNOVATION DIV	OFFICE OF ENVIRONMENTAL INNOVATION	5	4
R03	ENVIRO ASSESSMENT & INNOVATION DIV	OFFICE OF ENVIRONMENTAL PROGRAMS	19	19
R03	ENVIRO ASSESSMENT & INNOVATION DIV	OFFICE OF MONITORING AND ASSESSMENT	13	13
R03	HAZARDOUS SITE CLEANUP DIV	Immediate Office	7	6
R03	HAZARDOUS SITE CLEANUP DIV	OFC OF FED FAC REMTION&SITE ASSMT	23	21
R03	HAZARDOUS SITE CLEANUP DIV	OFC OF TECHNICAL&ADMINISTRATIVE SUPT	31	30
R03	HAZARDOUS SITE CLEANUP DIV	OFFICE OF BROWNFIELDS & OUTREACH	26	24
R03	HAZARDOUS SITE CLEANUP DIV	OFFICE OF ENFORCEMENT	30	29
R03	HAZARDOUS SITE CLEANUP DIV	OFFICE OF PREPAREDNESS & RESPONSE	39	36
R03	HAZARDOUS SITE CLEANUP DIV	OFFICE OF SUPERFUND SITE REMEDIATION	45	41
R03	LAND AND CHEMICALS DIVISION	Immediate Office	10	10
R03	LAND AND CHEMICALS DIVISION	OFC OF PENNSYLVANIA REMEDIATION	12	12

EPA onboards by office and division				
RPIO	Office	Division	Jan. 15, 2017	June 18, 2018
R03	LAND AND CHEMICALS DIVISION	OFFICE OF OFC TOXICS & PESTICIDES	22	20
R03	LAND AND CHEMICALS DIVISION	OFFICE OF RCRA PROGRAMS	28	26
R03	LAND AND CHEMICALS DIVISION	OFFICE OF REMEDIATION	13	10
R03	OFC OF ASST REGL ADMR FOR POL & MGMT	COMPUTER SERVICES BRANCH	15	15
R03	OFC OF ASST REGL ADMR FOR POL & MGMT	CONTRACTS BRANCH	10	12
R03	OFC OF ASST REGL ADMR FOR POL & MGMT	FACILITIES MANAGEMENT & SERVICES BR	12	10
R03	OFC OF ASST REGL ADMR FOR POL & MGMT	GRANTS & AUDIT MANAGEMENT BRANCH	12	11
R03	OFC OF ASST REGL ADMR FOR POL & MGMT	HUMAN RESOURCES MANAGEMENT BRANCH	13	12
R03	OFC OF ASST REGL ADMR FOR POL & MGMT	Immediate Office	5	5
R03	OFC OF ASST REGL ADMR FOR POL & MGMT	INFORMATION SYSTEMS BRANCH	13	11
R03	OFC OF ASST REGL ADMR FOR POL & MGMT	OFFICE OF THE REGIONAL COMPTROLLER	14	11
R03	OFC OF ASST REGL ADMR FOR POL & MGMT	PLANNING & ANALYSIS BRANCH	5	6
R03	OFC OF CHESAPEAKE BAY PROGRAM OFC	Immediate Office	4	1
R03	OFC OF CHESAPEAKE BAY PROGRAM OFC	OFC OF PARTNERSHIP AND ACCOUNTABILITY	9	9
R03	OFC OF CHESAPEAKE BAY PROGRAM OFC	OFC OF SCIENCE,ANLS&IMPLEMENTATIO N	8	8

EPA onboards by office and division				
RPIO	Office	Division	Jan. 15, 2017	June 18, 2018
R03	OFC OF COMMUNICATIONS&GOV'T RELATIONS		18	17
R03	OFC OF ENF,COMPL & ENVIRO JUSTICE	ENF & COMPLIANCE ASSISTANCE BR	11	11
R03	OFC OF ENF,COMPL & ENVIRO JUSTICE	Immediate Office	12	11
R03	OFFICE OF CIVIL RIGHTS		2	2
R03	OFFICE OF REGIONAL COUNSEL	AIR BRANCH	9	9
R03	OFFICE OF REGIONAL COUNSEL	Immediate Office	15	11
R03	OFFICE OF REGIONAL COUNSEL	MULTI-MEDIA & LEGAL SUPPORT BRANCH	6	6
R03	OFFICE OF REGIONAL COUNSEL	OFFICE OF SITE REMEDIATION	29	26
R03	OFFICE OF REGIONAL COUNSEL	UST ASBESTOS, LEAD & PESTICIDES BR	6	8
R03	OFFICE OF REGIONAL COUNSEL	WASTE & CHEMICAL BRANCH	6	5
R03	OFFICE OF REGIONAL COUNSEL	WATER BRANCH	13	11
R03	Office of the Regional Administrator		4	6
R03	WATER PROTECTION DIVISION	Immediate Office	6	6
R03	WATER PROTECTION DIVISION	OFC OF DRINKING WATER&SRC WATER PRT	30	30
R03	WATER PROTECTION DIVISION	OFC OF STANDARDS, ASSESSMENT & TMDLS	14	12
R03	WATER PROTECTION DIVISION	OFC OF STATE & WATERSHED PARTNERSHIPS	18	16
R03	WATER PROTECTION DIVISION	OFFICE OF INFRASTRUCTURE & ASSISTANCE	16	13

EPA onboards by office and division				
RPIO	Office	Division	Jan. 15, 2017	June 18, 2018
R03	WATER PROTECTION DIVISION	OFFICE OF NPDES PERMITS & ENFORCEMENT	35	33
R03	WATER PROTECTION DIVISION	OFFICE OF PROGRAM SUPPORT	10	4
R03 Total			826	759
R04	AIR, PESTICIDES & TOXICS MGMT DIV	AIR ANALYSIS AND SUPPORT BRANCH	32	25
R04	AIR, PESTICIDES & TOXICS MGMT DIV	AIR ENFORCEMENT AND TOXICS BR	30	27
R04	AIR, PESTICIDES & TOXICS MGMT DIV	AIR PLANNING & IMPLEMENTATION BR	32	32
R04	AIR, PESTICIDES & TOXICS MGMT DIV	CHEMICAL SAFETY & ENFORCEMENT BR	34	33
R04	AIR, PESTICIDES & TOXICS MGMT DIV	Immediate Office	16	7
R04	AIR, PESTICIDES & TOXICS MGMT DIV	GRANTS MGMT & STRATEGIC PLANNING OFC		7
R04	GULF OF MEXICO PROGRAM		15	12
R04	OFC OF ENVIRO JUSTICE&SUSTAINABILITY		13	12
R04	OFFICE OF ARA FOR POLICY & MANAGEMENT	BUSINESS OPS & FINANCIAL MGMT BRANCH	27	29
R04	OFFICE OF ARA FOR POLICY & MANAGEMENT	FACILITIES, GRANTS & ACQUISTN MGMT BR	33	33
R04	OFFICE OF ARA FOR POLICY & MANAGEMENT	Immediate Office	9	10
R04	OFFICE OF ARA FOR POLICY & MANAGEMENT	INFORMATION SYSTEMS AND MGMT BRANCH	33	29
R04	OFFICE OF ARA FOR POLICY & MANAGEMENT	OFFICE OF CIVIL RIGHTS	3	2

EPA onboards by office and division				
RPIO	Office	Division	Jan. 15, 2017	June 18, 2018
R04	OFFICE OF ARA FOR POLICY & MANAGEMENT	OFFICE OF HUMAN CAPITAL MANAGEMENT	11	8
R04	OFFICE OF ENFORCEMENT COORDINATION		11	10
R04	OFFICE OF EXTERNAL AFFAIRS		8	6
R04	OFFICE OF GOVERNMENT RELATIONS		4	3
R04	Office of Regional Administrator		14	9
R04	OFFICE OF REGIONAL COUNSEL	Immediate Office	6	5
R04	OFFICE OF REGIONAL COUNSEL	OFC OF AIR, PESTIC&TOXICS LEGAL SUPT	13	13
R04	OFFICE OF REGIONAL COUNSEL	OFC OF CERCLA LEGAL SUPPORT	10	9
R04	OFFICE OF REGIONAL COUNSEL	OFC OF CERCLA/FED FAC LEGAL SUPPORT	12	11
R04	OFFICE OF REGIONAL COUNSEL	OFC OF GEN/CRIM LAW & CROSS-OFC SUPT	9	8
R04	OFFICE OF REGIONAL COUNSEL	OFC OF RCRA/CERCLA LEGAL SUPPORT	11	11
R04	OFFICE OF REGIONAL COUNSEL	OFC OF WATER LEGAL SUPPORT	13	12
R04	RESOURCE CONSERVATION&RESTORATION DIV	ENFORCEMENT & COMPLIANCE BR	27	28
R04	RESOURCE CONSERVATION&RESTORATION DIV	Immediate Office	9	8
R04	RESOURCE CONSERVATION&RESTORATION DIV	MATERIALS AND WASTE MANAGEMENT BR	21	20

EPA onboards by office and division				
RPIO	Office	Division	Jan. 15, 2017	June 18, 2018
R04	RESOURCE CONSERVATION&RESTORATION DIV	NATL ENVIRONMENTAL POLICY ACT (NEPA)	15	14
R04	RESOURCE CONSERVATION&RESTORATION DIV	RCRA CLEANUP AND BROWNFIELDS BR	31	26
R04	SCIENCE & ECOSYSTEM SUPPORT DIV	ANALYTICAL SERVICES BRANCH	24	23
R04	SCIENCE & ECOSYSTEM SUPPORT DIV	FIELD SERVICES BRANCH	40	39
R04	SCIENCE & ECOSYSTEM SUPPORT DIV	Immediate Office	3	2
R04	SCIENCE & ECOSYSTEM SUPPORT DIV	QUALITY ASSURANCE& TECHNICAL SERV BR	19	20
R04	SUPERFUND DIVISION	EMERGENCY RESP., REMVL. & PREV. BR	37	35
R04	SUPERFUND DIVISION	ENFORCEMENT & COMM ENGMT BRANCH	32	32
R04	SUPERFUND DIVISION	Immediate Office	5	5
R04	SUPERFUND DIVISION	RESOURCE & SCIENTIFIC INTEGRITY BR	30	28
R04	SUPERFUND DIVISION	RESTORATION & SITE EVALUATION BR	32	30
R04	SUPERFUND DIVISION	RESTORATION & SUSTAINABILITY BR	29	28
R04	WATER PROTECTION DIV	GRANTS & DRINKING WATER PROT. BRANCH	40	37
R04	WATER PROTECTION DIV	Immediate Office	9	9
R04	WATER PROTECTION DIV	NPDES PERMITTING & ENFORCEMENT BRANCH	37	31
R04	WATER PROTECTION DIV	OWS PROTECTION BRANCH	22	24

EPA onboards by office and division				
RPIO	Office	Division	Jan. 15, 2017	June 18, 2018
R04	WATER PROTECTION DIV	SUSTAINABLE COMM. & WATERSHEDS BRANCH	26	23
R04	WATER PROTECTION DIV	WATER QUALITY PLANNING BR	38	33
R04 Total			925	858
R05	AIR & RADIATION DIVISION	AIR ENF & COMPLIANCE ASSURANCE BR	46	40
R05	AIR & RADIATION DIVISION	AIR PROGRAMS BRANCH	50	46
R05	AIR & RADIATION DIVISION	AIR TOXICS & ASSESSMENT BR	32	27
R05	AIR & RADIATION DIVISION	Immediate Office	5	4
R05	LAND & CHEMICALS DIVISION	CHEMICALS MANAGEMENT BRANCH	33	29
R05	LAND & CHEMICALS DIVISION	Immediate Office	5	5
R05	LAND & CHEMICALS DIVISION	MATERIALS MANAGEMENT BRANCH	13	11
R05	LAND & CHEMICALS DIVISION	PROGRAM SERVICES BRANCH	23	21
R05	LAND & CHEMICALS DIVISION	RCRA BRANCH	40	39
R05	LAND & CHEMICALS DIVISION	REMEDIATION AND REUSE BR	29	30
R05	OFC OF ENF & COMPLIANCE ASSURANCE	CLEVELAND SECTION	8	8
R05	OFC OF ENF & COMPLIANCE ASSURANCE	Immediate Office	12	12
R05	OFC OF ENF & COMPLIANCE ASSURANCE	NEPA IMPLEMENTATION SECTION	7	7
R05	OFC OF GREAT LAKES NATIONAL PROGRAM	FINANCIAL ASSIST, OVERSIGHT & MGMT BR	20	19
R05	OFC OF GREAT LAKES NATIONAL PROGRAM	GREAT LAKES REMED & RESTORATION BR	26	24
R05	OFC OF GREAT LAKES NATIONAL PROGRAM	Immediate Office	12	11

EPA onboards by office and division				
RPIO	Office	Division	Jan. 15, 2017	June 18, 2018
R05	OFFICE OF CIVIL RIGHTS		3	2
R05	OFFICE OF EXTERNAL COMMUNICATIONS	Immediate Office	1	1
R05	OFFICE OF EXTERNAL COMMUNICATIONS	MULTIMEDIA COMMUNICATIONS SECTION	8	8
R05	OFFICE OF EXTERNAL COMMUNICATIONS	NEWS MEDIA & INTERGVTMNTL RELATNS SCTN	9	9
R05	OFFICE OF REGIONAL COUNSEL	Immediate Office	10	8
R05	OFFICE OF REGIONAL COUNSEL	MULTI-MEDIA BRANCH I	51	46
R05	OFFICE OF REGIONAL COUNSEL	MULTI-MEDIA BRANCH II	54	47
R05	Office of the Regional Administrator		5	6
R05	PLANNING & QUALITY ASSURANCE GROUP		5	4
R05	RESOURCES MANAGEMENT DIV	ACQUISITION & ASSISTANCE BR	35	34
R05	RESOURCES MANAGEMENT DIV	COMPTROLLER BRANCH	27	24
R05	RESOURCES MANAGEMENT DIV	EMPLOYEE SERVICES BRANCH	19	19
R05	RESOURCES MANAGEMENT DIV	HUMAN CAPITAL BRANCH	15	13
R05	RESOURCES MANAGEMENT DIV	Immediate Office	4	4
R05	RESOURCES MANAGEMENT DIV	INFORMATION MANAGEMENT BRANCH	30	32
R05	RESOURCES MANAGEMENT DIV	LAB QA CORE	23	21
R05	SUPERFUND DIVISION	EMERGENCY RESPONSE BR #1	41	36
R05	SUPERFUND DIVISION	EMERGENCY RESPONSE BR #2	37	31
R05	SUPERFUND DIVISION	Immediate Office	6	5

EPA onboards by office and division				
RPIO	Office	Division	Jan. 15, 2017	June 18, 2018
R05	SUPERFUND DIVISION	LAND REVITALIZATION BR	28	28
R05	SUPERFUND DIVISION	OPERATIONS MANAGEMENT BRANCH	44	41
R05	SUPERFUND DIVISION	REMEDIAL RESPONSE BRANCH #1	44	42
R05	SUPERFUND DIVISION	REMEDIAL RESPONSE BRANCH #2	45	41
R05	TRIBAL AND INTERNATIONAL AFFAIRS OFC		7	8
R05	WATER DIVISION	GROUND WATER AND DRINKING WATER BR	28	26
R05	WATER DIVISION	Immediate Office	7	5
R05	WATER DIVISION	NPDES PROGRAMS BRANCH	22	21
R05	WATER DIVISION	STATE AND TRIBAL PROGRAMS BRANCH	19	18
R05	WATER DIVISION	UNDERGROUND INJECTION CONTROL BRANCH	18	15
R05	WATER DIVISION	WATER ENF & COMPLIANCE ASSURANCE BR	31	30
R05	WATER DIVISION	WATER QUALITY BRANCH	24	20
R05	WATER DIVISION	WATERSHEDS AND WETLANDS BRANCH	28	25
R05 Total			1,089	1,003
R06	COMPLIANCE ASSURANCE & ENFRC DIV	AIR ENFORCEMENT BRANCH	35	34
R06	COMPLIANCE ASSURANCE & ENFRC DIV	Immediate Office	6	6
R06	COMPLIANCE ASSURANCE & ENFRC DIV	WASTE ENFORCEMENT BRANCH	32	28
R06	COMPLIANCE ASSURANCE & ENFRC DIV	WATER ENFORCEMENT BRANCH	59	52

EPA onboards by office and division				
RPIO	Office	Division	Jan. 15, 2017	June 18, 2018
R06	MANAGEMENT DIVISION	ENTERPRISE OPERATIONS & SUPPORT BR	21	24
R06	MANAGEMENT DIVISION	ENVIRONMENTAL SERVICES BR	32	29
R06	MANAGEMENT DIVISION	HUMAN RESOURCES BRANCH	8	7
R06	MANAGEMENT DIVISION	Immediate Office	10	7
R06	MANAGEMENT DIVISION	OFFICE OF THE REGIONAL COMPTROLLER	32	33
R06	MULTIMEDIA DIVISION	AIR BRANCH	53	49
R06	MULTIMEDIA DIVISION	HAZARDOUS WASTE BRANCH	39	33
R06	MULTIMEDIA DIVISION	Immediate Office	6	6
R06	MULTIMEDIA DIVISION	PEST/TOXICS/UNDER STORAGE TANKS BR	38	34
R06	OFC ENVIRO JUSTICE,TRIBAL&INTL AFFAIR		21	20
R06	OFFICE OF EXTERNAL AFFAIRS	COMMUNICATION AND EDUCATION SECTION	13	11
R06	OFFICE OF EXTERNAL AFFAIRS	Immediate Office	5	3
R06	OFFICE OF REGIONAL COUNSEL	DEP RGNL CNSL/GEN LAW CNSLING BR	11	12
R06	OFFICE OF REGIONAL COUNSEL	DEPUTY REGIONAL COUNSEL FOR ENF	33	29
R06	OFFICE OF REGIONAL COUNSEL	Immediate Office	2	3
R06	OFFICE OF REGIONAL COUNSEL	MULTIMEDIA COUNSELING BRANCH	13	11
R06	OFFICE OF REGIONAL COUNSEL	SUPERFUND BRANCH	13	13
R06	Office of the Regional Administrator		4	6
R06	SUPERFUND DIVISION	EMERGENCY MANAGEMENT BRANCH	31	29

EPA onboards by office and division				
RPIO	Office	Division	Jan. 15, 2017	June 18, 2018
R06	SUPERFUND DIVISION	Immediate Office	5	5
R06	SUPERFUND DIVISION	REMEDIAL BRANCH	29	26
R06	SUPERFUND DIVISION	REVITALIZATION & RESOURCES BRANCH	36	28
R06	SUPERFUND DIVISION	TECHNICAL & ENFORCEMENT BR	25	25
R06	WATER DIVISION	ASSISTANCE PROGRAMS BRANCH	31	29
R06	WATER DIVISION	ECOSYSTEMS PROTECTION BR	35	31
R06	WATER DIVISION	Immediate Office	13	10
R06	WATER DIVISION	NPDES PERMITS & TMDLS BR	34	32
R06	WATER DIVISION	SAFE DRINKING WATER BRANCH	29	26
R06 Total			754	691
R07	AIR & WASTE MANAGEMENT DIV	AIR PERMITTING & COMPLIANCE BR	22	18
R07	AIR & WASTE MANAGEMENT DIV	AIR PLANNING & DEVELOPMENT BR	19	19
R07	AIR & WASTE MANAGEMENT DIV	CHEMICAL & OIL RELEASE PREVENTION BR	17	15
R07	AIR & WASTE MANAGEMENT DIV	Immediate Office	5	6
R07	AIR & WASTE MANAGEMENT DIV	WASTE ENF & MATERIALS MGMT BR	23	16
R07	AIR & WASTE MANAGEMENT DIV	WASTE REMEDIATION AND PERMITTING BR	15	13
R07	ENFORCEMENT COORDINATION OFFICE		14	12
R07	ENVIRO SCIENCES & TECHNOLOGY DIV	ENVIRO DATA & ASSESSMENT BRANCH	13	11
R07	ENVIRO SCIENCES & TECHNOLOGY DIV	ENVIRONMENTAL FIELD COMPLIANCE BRANCH	15	14

EPA onboards by office and division				
RPIO	Office	Division	Jan. 15, 2017	June 18, 2018
R07	ENVIRO SCIENCES & TECHNOLOGY DIV	Immediate Office	14	12
R07	ENVIRO SCIENCES & TECHNOLOGY DIV	LABORATORY TECHNOLOGY & ANALYSIS BR	21	21
R07	ENVIRO SCIENCES & TECHNOLOGY DIV	MONITORING & ENVIRO SAMPLING BRANCH	16	13
R07	OFFICE OF POLICY & MANAGEMENT	ACQUISITION MANAGEMENT BR	13	11
R07	OFFICE OF POLICY & MANAGEMENT	HUMAN CAPITAL MANAGEMENT BR	6	5
R07	OFFICE OF POLICY & MANAGEMENT	Immediate Office	7	5
R07	OFFICE OF POLICY & MANAGEMENT	INFORMATION TECHNOLOGY BR	6	7
R07	OFFICE OF POLICY & MANAGEMENT	PROGRAM OPERATIONS & INTEGRATION BR	12	9
R07	OFFICE OF POLICY & MANAGEMENT	RESOURCES & FINANCIAL MANAGEMENT BR	20	20
R07	OFFICE OF POLICY & MANAGEMENT	SECURITY, SAFETY, & FACILITIES MGMT BR	11	11
R07	OFFICE OF PUBLIC AFFAIRS		18	14
R07	OFFICE OF REGIONAL COUNSEL	AIR BRANCH	7	7
R07	OFFICE OF REGIONAL COUNSEL	CHEMICAL MANAGEMENT BRANCH	8	6
R07	OFFICE OF REGIONAL COUNSEL	Immediate Office	9	9
R07	OFFICE OF REGIONAL COUNSEL	SUPERFUND BRANCH	14	9
R07	OFFICE OF REGIONAL COUNSEL	WATER BRANCH	10	8
R07	Office of the Regional Administrator		4	3

EPA onboards by office and division				
RPIO	Office	Division	Jan. 15, 2017	June 18, 2018
R07	OFFICE OF TRIBAL AFFAIRS		4	3
R07	SUPERFUND DIVISION	ASSESSMENT, EMERGENCY RESP & REMOVAL	28	27
R07	SUPERFUND DIVISION	BROWNFIELDS & LAND REVITALIZATION BR	10	8
R07	SUPERFUND DIVISION	Immediate Office	9	9
R07	SUPERFUND DIVISION	LEAD, MINING AND SPECIAL EMPHASIS BR	13	13
R07	SUPERFUND DIVISION	PROGRAM SUPPORT AND MANAGEMENT SCTN	7	6
R07	SUPERFUND DIVISION	SITE REMEDIATION BRANCH	19	20
R07	WATER, WETLANDS & PESTICIDES DIV	DRINKING WATER MANAGEMENT BRANCH	15	14
R07	WATER, WETLANDS & PESTICIDES DIV	Immediate Office	9	7
R07	WATER, WETLANDS & PESTICIDES DIV	TOXICS AND PESTICIDES BR	15	13
R07	WATER, WETLANDS & PESTICIDES DIV	WASTE WATER & INFRASTRUCTURE MGMT BR	15	14
R07	WATER, WETLANDS & PESTICIDES DIV	WATER ENFORCEMENT BRANCH	15	13
R07	WATER, WETLANDS & PESTICIDES DIV	WATER QUALITY MANAGEMENT BRANCH	8	5
R07	WATER, WETLANDS & PESTICIDES DIV	WATERSHED PLANNING&IMPLEMENTATION BR	20	11
R07 Total			526	457
R08	OFC OF COMMS&PUBLIC INVOLVEMENT	Immediate Office	10	8
R08	OFC OF COMMS&PUBLIC INVOLVEMENT	PUBLIC AFFAIRS AND INVOLVEMENT	8	8

EPA onboards by office and division				
RPIO	Office	Division	Jan. 15, 2017	June 18, 2018
R08	OFC OF ECO PROTECTION&REMEDIATION	ASSESSMENT AND REVITALIZATION PROGRAM	15	13
R08	OFC OF ECO PROTECTION&REMEDIATION	EMER RESPONSE & PREPAREDNESS PROGRAM	26	27
R08	OFC OF ECO PROTECTION&REMEDIATION	Immediate Office	6	5
R08	OFC OF ECO PROTECTION&REMEDIATION	NEPA COMPLIANCE AND REVIEW PROGRAM	12	11
R08	OFC OF ECO PROTECTION&REMEDIATION	SUPERFUND REM&FED FACILITIES PROG	43	41
R08	OFC OF ECO PROTECTION&REMEDIATION	SUPPORT PROGRAM	20	20
R08	OFC OF ENF,COMPLIANCE&ENVIRO JUSTICE	AIR & TOXICS TECHNICAL ENF PROGRAM	17	16
R08	OFC OF ENF,COMPLIANCE&ENVIRO JUSTICE	Immediate Office	4	4
R08	OFC OF ENF,COMPLIANCE&ENVIRO JUSTICE	LEGAL ENFORCEMENT PROGRAM	29	25
R08	OFC OF ENF,COMPLIANCE&ENVIRO JUSTICE	POLICY,INFO MGMT&ENVIRO JUSTICE PROG	10	9
R08	OFC OF ENF,COMPLIANCE&ENVIRO JUSTICE	RCRA/CERCLA TECHNICAL ENF PROGRAM	11	10
R08	OFC OF ENF,COMPLIANCE&ENVIRO JUSTICE	WATER TECHNICAL PROGRAM	23	22
R08	OFC OF PARTNERSHIPS®ULATORY ASTNC	AIR PROGRAM	36	33

EPA onboards by office and division				
RPIO	Office	Division	Jan. 15, 2017	June 18, 2018
R08	OFC OF PARTNERSHIPS®ULATORY ASTNC	Immediate Office	4	4
R08	OFC OF PARTNERSHIPS®ULATORY ASTNC	PARTNERSHIPS & ENVIRO STEWARD PROG	13	13
R08	OFC OF PARTNERSHIPS®ULATORY ASTNC	RESOURCE CONSERVATION&RECOVERY PROG	16	16
R08	OFC OF PARTNERSHIPS®ULATORY ASTNC	TRIBAL ASSISTANCE PROGRAM	8	6
R08	OFC OF TECHNICAL & MGMT SERVICES	FISCAL MANAGEMENT & PLANNING PROGRAM	21	22
R08	OFC OF TECHNICAL & MGMT SERVICES	GRANTS, AUDITS, PROCUREMENT PROGRAM	15	7
R08	OFC OF TECHNICAL & MGMT SERVICES	HUMAN RESOURCES PROGRAM	3	4
R08	OFC OF TECHNICAL & MGMT SERVICES	Immediate Office	8	7
R08	OFC OF TECHNICAL & MGMT SERVICES	INFORMATION MANAGEMENT PROGRAM	20	17
R08	OFC OF TECHNICAL & MGMT SERVICES	INFRASTRUCTURE PROGRAM	8	8
R08	OFC OF TECHNICAL & MGMT SERVICES	LABORATORY SERVICES PROGRAM	15	14
R08	OFC OF TECHNICAL & MGMT SERVICES	MONTANA OPERATIONS UNIT	4	3
R08	OFC OF TECHNICAL & MGMT SERVICES	QUALITY ASSURANCE PROGRAM	7	6
R08	OFFICE OF REGIONAL COUNSEL		19	19

EPA onboards by office and division				
RPIO	Office	Division	Jan. 15, 2017	June 18, 2018
R08	Office of the Regional Administrator		8	7
R08	OFFICE OF WATER PROTECTION	AQUIFER & AQUATIC RESOURCES PROT UNIT	11	10
R08	OFFICE OF WATER PROTECTION	CLEAN WATER PROGRAM	29	30
R08	OFFICE OF WATER PROTECTION	Immediate Office	2	4
R08	OFFICE OF WATER PROTECTION	SAFE DRINKING WATER PROGRAM	27	30
R08	OFFICE OF WATER PROTECTION	TECHNICAL AND FINANCIAL SERVICES UNIT	11	11
R08 Total			519	490
R09	AIR DIVISION	AIR QUALITY ANALYSIS OFFICE	12	12
R09	AIR DIVISION	AIR TOXICS,RADIATION&COMPL ASSUR OFC	7	7
R09	AIR DIVISION	CLEAN ENERGY & CLIMATE CHANGE OFFICE	7	8
R09	AIR DIVISION	GRANTS & PROGRAM INTEGRATION OFFICE	9	7
R09	AIR DIVISION	Immediate Office	13	11
R09	AIR DIVISION	PERMITS OFFICE	10	10
R09	AIR DIVISION	PLANNING OFFICE	16	12
R09	AIR DIVISION	RULES OFFICE	8	9
R09	ENFORCEMENT DIVISION	AIR, WASTE, AND TOXICS BR	25	24
R09	ENFORCEMENT DIVISION	ENVIRONMENTAL REVIEW SECTION	18	16
R09	ENFORCEMENT DIVISION	Immediate Office	8	8
R09	ENFORCEMENT DIVISION	INFORMATION MANAGEMENT SECTION	9	9

EPA onboards by office and division				
RPIO	Office	Division	Jan. 15, 2017	June 18, 2018
R09	ENFORCEMENT DIVISION	STRATEGIC PLANNING BRANCH	4	3
R09	ENFORCEMENT DIVISION	WATER AND PESTICIDES BRANCH	32	30
R09	ENVIRONMENTAL MANAGEMENT DIVISION	FINANCIAL MANAGEMENT BRANCH	12	12
R09	ENVIRONMENTAL MANAGEMENT DIVISION	GRANTS & CONTRACTS BRANCH	25	24
R09	ENVIRONMENTAL MANAGEMENT DIVISION	HUMAN CAPITAL & PLANNING OFFICE	5	7
R09	ENVIRONMENTAL MANAGEMENT DIVISION	Immediate Office	8	5
R09	ENVIRONMENTAL MANAGEMENT DIVISION	INFRASTRUCTURE SERVICES BRANCH	29	28
R09	ENVIRONMENTAL MANAGEMENT DIVISION	SCIENCE SERVICES BRANCH	22	21
R09	LAND DIVISION	COMMUNITIES BRANCH	31	27
R09	LAND DIVISION	Immediate Office	5	5
R09	LAND DIVISION	PLANNING & STATE DEVELOPMENT SECTION	9	8
R09	LAND DIVISION	POLLUTION PREVENTION BRANCH	27	26
R09	LAND DIVISION	RCRA BRANCH	26	23
R09	OFFICE OF REGIONAL COUNSEL	AIR,TOXICS,WATER & GENERAL LAW BR	33	33
R09	OFFICE OF REGIONAL COUNSEL	HAZARDOUS WASTE BRANCH	30	26
R09	OFFICE OF REGIONAL COUNSEL	Immediate Office	15	11
R09	Office of the Regional Administrator		5	5
R09	PUBLIC AFFAIRS OFFICE	Immediate Office	1	1

EPA onboards by office and division				
RPIO	Office	Division	Jan. 15, 2017	June 18, 2018
R09	PUBLIC AFFAIRS OFFICE	PRESS & CONGRESSIONAL AFFAIRS OFFICE	7	7
R09	PUBLIC AFFAIRS OFFICE	WEB & INTERNAL COMMUNICATION OFFICE	9	8
R09	SUPERFUND DIVISION	CA SITE CLEANUP & ENFORCEMENT BRANCH	42	37
R09	SUPERFUND DIVISION	EMER RESP, PREPAREDNESS & PREVENTION BR	38	34
R09	SUPERFUND DIVISION	FED FACILITIES & SITE CLEANUP BR	25	24
R09	SUPERFUND DIVISION	Immediate Office	4	4
R09	SUPERFUND DIVISION	PARTNERSHIPS, LAND REV & CLEANUP BR	40	36
R09	SUPERFUND DIVISION	PROGRAM MANAGEMENT OFFICE	8	9
R09	WATER DIVISION	ECOSYSTEMS BRANCH	57	50
R09	WATER DIVISION	Immediate Office	10	8
R09	WATER DIVISION	TRIBAL & STATE ASSISTANCE BRANCH	48	46
R09 Total			749	691
R10	ALASKA OPERATIONS OFFICE		9	7
R10	IDAHO OPERATIONS OFFICE		5	4
R10	OFC OF ECO PROTECTION & REMEDIATION	D ECOSYSTEMS PROTECTION PROGRAM	1	1
R10	OFC OF TECHNICAL & MGMT SERVICES	GRANTS, AUDITS, PROCUREMENT PROGRAM		6
R10	OFFICE OF AIR & WASTE	AIR PLANNING UNIT	14	14
R10	OFFICE OF AIR & WASTE	Immediate Office	7	6
R10	OFFICE OF AIR & WASTE	RCRA CORRECTIVE ACTN, PERM & PCB UNIT	11	10

EPA onboards by office and division				
RPIO	Office	Division	Jan. 15, 2017	June 18, 2018
R10	OFFICE OF AIR & WASTE	RCRA PRGM, MATERIALS & POLL PREV UNIT	14	11
R10	OFFICE OF AIR & WASTE	STATIONARY SOURCE UNIT	10	9
R10	OFFICE OF AIR & WASTE	TRIBAL PRGMS, DIESEL & INDOOR AIR UNIT	9	8
R10	OFFICE OF COMPLIANCE & ENFORCEMENT	AIR ENFORCEMENT & DATA MGMT UNIT	9	7
R10	OFFICE OF COMPLIANCE & ENFORCEMENT	GROUND WATER UNIT	14	11
R10	OFFICE OF COMPLIANCE & ENFORCEMENT	Immediate Office	8	7
R10	OFFICE OF COMPLIANCE & ENFORCEMENT	MULTIMEDIA INSPEC & RCRA ENFORC UNIT	14	13
R10	OFFICE OF COMPLIANCE & ENFORCEMENT	PESTICIDES & TOXICS UNIT	15	12
R10	OFFICE OF COMPLIANCE & ENFORCEMENT	WATER & WETLANDS ENFORCEMENT UNIT	17	16
R10	OFFICE OF ENVIRON REVIEW & ASSESSMENT	AQUATIC RESOURCES UNIT	11	8
R10	OFFICE OF ENVIRON REVIEW & ASSESSMENT	ENVIRONMENTAL CHARACTERIZATION UNIT	12	11
R10	OFFICE OF ENVIRON REVIEW & ASSESSMENT	ENVIRONMENTAL REV & SEDIMENT MGMT UNIT	11	9
R10	OFFICE OF ENVIRON REVIEW & ASSESSMENT	ENVIRONMENTAL SERVICES UNIT	10	8
R10	OFFICE OF ENVIRON REVIEW & ASSESSMENT	Immediate Office	8	8
R10	OFFICE OF ENVIRON REVIEW & ASSESSMENT	MANCHESTER ENVIRONMENTAL LABORATORY	18	18
R10	OFFICE OF ENVIRON REVIEW & ASSESSMENT	RISK EVALUATION UNIT	14	15

EPA onboards by office and division				
RPIO	Office	Division	Jan. 15, 2017	June 18, 2018
R10	OFFICE OF ENVIRONMENTAL CLEANUP	ASSESSMENT & BROWNFIELDS UNIT	10	6
R10	OFFICE OF ENVIRONMENTAL CLEANUP	HANFORD PROJECT OFFICE	11	10
R10	OFFICE OF ENVIRONMENTAL CLEANUP	Immediate Office	6	6
R10	OFFICE OF ENVIRONMENTAL CLEANUP	OFC OF EMERGENCY MANAGEMENT PROGRAM	25	25
R10	OFFICE OF ENVIRONMENTAL CLEANUP	REMEDIAL CLEANUP PROGRAM	35	33
R10	OFFICE OF MANAGEMENT PROGRAMS	FISCAL MANAGEMENT & PLANNING UNIT	10	8
R10	OFFICE OF MANAGEMENT PROGRAMS	GRANTS UNIT	9	9
R10	OFFICE OF MANAGEMENT PROGRAMS	HUMAN RESOURCES & FACILITIES UNIT	10	9
R10	OFFICE OF MANAGEMENT PROGRAMS	Immediate Office	5	5
R10	OFFICE OF MANAGEMENT PROGRAMS	INFORMATION SERVICES UNIT	17	17
R10	OFFICE OF MANAGEMENT PROGRAMS	INTERAGENCY AGREEMENT UNIT	6	7
R10	OFFICE OF REGIONAL COUNSEL	Immediate Office	8	7
R10	OFFICE OF REGIONAL COUNSEL	MULTI-MEDIA UNIT 1	10	10
R10	OFFICE OF REGIONAL COUNSEL	MULTI-MEDIA UNIT 2	10	10
R10	OFFICE OF REGIONAL COUNSEL	MULTI-MEDIA UNIT 3	11	9
R10	Office of the Regional Administrator		5	4

EPA onboards by office and division				
RPIO	Office	Division	Jan. 15, 2017	June 18, 2018
R10	OFFICE OF WATER & WATERSHEDS	DRINKING WATER UNIT	14	13
R10	OFFICE OF WATER & WATERSHEDS	Immediate Office	9	8
R10	OFFICE OF WATER & WATERSHEDS	NPDES PERMITS UNIT	19	18
R10	OFFICE OF WATER & WATERSHEDS	PUGET SOUND PROGRAM	11	7
R10	OFFICE OF WATER & WATERSHEDS	WATER QUALITY STANDARDS UNIT	7	8
R10	OFFICE OF WATER & WATERSHEDS	WATERSHED UNIT	12	10
R10	OREGON OPERATIONS OFFICE		4	4
R10	REGIONAL ADMINISTRATOR'S DIVISION	Immediate Office	8	6
R10	REGIONAL ADMINISTRATOR'S DIVISION	PUBLIC AFFAIRS & COMM ENGAGEMENT UNIT	15	14
R10	REGIONAL ADMINISTRATOR'S DIVISION	TRIBAL TRUST & ASSISTANCE UNIT	18	17
R10	WASHINGTON OPERATIONS OFFICE		3	4
R10 Total			549	503
Grand Total			15,946	14,702

The Honorable Bobby L. Rush

During the question period I spoke to you about the widespread levels of lead that have been detected throughout homes in Chicago and I referenced a recent Tribune article entitled “Brain-damaging lead found in tap water in hundreds of homes tested across Chicago, results show” (April 12, 2018).

You agreed with me that this was a severe problem, nationally, and it would cost approximately \$45 billion to resolve. You mentioned that there was a program at the agency consisting of \$4 billion in grants, annually, for ten years that states could apply for to address this issue.

1. Can you provide more information regarding this program, including eligibility requirements, deadlines, and the dollar amounts available?

ANSWER - The program is the Water Infrastructure Finance and Innovation Act. The WIFIA program is authorized to provide and service direct federal loans to cover 49 percent of eligible costs for drinking water and wastewater infrastructure projects. Eligible assistance recipients include corporations and partnerships, municipal entities, and State Revolving Fund (SRF) programs. The WIFIA program received \$63 million in funding in the Consolidated Appropriations Act, 2018, that could potentially provide as much as \$5.5 billion in loans, leveraging over \$11 billion in water infrastructure projects when combined with other funding sources.

On May 5, 2018, EPA announced that the deadline for prospective borrowers to submit letters of interest for WIFIA loans has been extended to July 31, 2018. Administrator Pruitt also sent a letter highlighting the deadline extension to the governors of 56 states and territories as well as tribal leadership. This year's WIFIA Notice of Funding Availability highlights the importance of protecting public health, including reducing exposure to lead and other contaminants in drinking water systems and updating the nation's aging infrastructure.

For more information about the WIFIA program and the application process please visit www.epa.gov/wifia

2. Will you commit to work with my office to have staff from EPA Region 5 come into my district to discuss this program with state and local leaders, as well as other stakeholders concerned with this issue?

ANSWER - EPA's WIFIA team is available to meet with your staff and leaders and constituents in your district to discuss the program and to answer any questions.

The Honorable Diana DeGette

1. I questioned you about your legally dubious real estate transactions, but further information is needed in light of your incomplete answers and troubling new developments.²

In your testimony before the Subcommittee, you failed to disclose significant details concerning your 2003 purchase of a luxury home in Oklahoma City. According to a recent report in the *New York Times*, you purchased the home with Justin Whitefield, a registered lobbyist who, at the time, was pursuing business-friendly changes to Oklahoma's workers' compensation rules,

² House Committee on Energy and Commerce, *Hearing on the Fiscal Year 2019 Environmental Protection Agency Budget*, 115th Cong. (Apr. 26, 2017).

which you allegedly helped negotiate.³ Mr. Whitefield, yourself, and four other owners reportedly used a limited liability company, Capitol House L.L.C. (Capitol House), to purchase the home.⁴ The seller, Marsha Lindsey, was a telecommunications lobbyist for SBC Oklahoma, and sold the property at a significant discount of approximately \$100,000.⁵ SBC Oklahoma reportedly offset this amount in Ms. Lindsey's retirement package.⁶

Your incomplete testimony leaves key questions unanswered concerning this transaction. You allegedly paid for one-sixth of the purchase price, and according to reports, you purchased the home with Kenneth Wagner, who now serves as a political appointee at EPA and previously served as treasurer of your political action committee,⁷ as well as health care executive Jon Jiles.⁸ However, the identity of two additional owners remains unknown.

You also apparently failed to disclose your interest in Capitol House in your financial disclosure filings, and in your testimony could not confirm whether you paid taxes on rental income received for a room on the property rented to another Republican lawmaker.⁹

Given your history of real estate transactions with lobbyists both in Oklahoma during your tenure as a state legislator and in Washington, D.C. while serving as EPA Administrator, and in light of these troubling developments, I ask that you respond to the following requests:

- a. Please provide the names and corresponding ownership share of all owners of Capitol House.

ANSWER - Effective July 6, 2018, former Administrator Pruitt resigned from his position as Administrator of the EPA and is no longer an employee of the Agency. Therefore, EPA is not able to discuss your question with Mr. Pruitt to provide you with an answer.

³ *Pruitt's Coziness with Lobbyists Includes Secretly Buying a House with One*, New York Times (May 3, 2018).

⁴ *Pruitt's Coziness with Lobbyists Includes Secretly Buying a House with One*, New York Times (May 3, 2018).

⁵ *Pruitt's Coziness with Lobbyists Includes Secretly Buying a House with One*, New York Times (May 3, 2018).

⁶ *Pruitt's Coziness with Lobbyists Includes Secretly Buying a House with One*, New York Times (May 3, 2018).

⁷ *Pruitt's Friend Joins Agency as Senior Adviser*, E&E News (Apr. 13, 2017).

⁸ *Pruitt's Coziness with Lobbyists Includes Secretly Buying a House with One*, New York Times (May 3, 2018).

⁹ *Scott Pruitt Before the EPA: Fancy Homes, a Shell Company and Friends with Money*, New York Times (Apr. 21, 2018).

- b. Please provide documentation of your payment for and purchase of an ownership share in Capitol House, including the terms of the payment and the individual or entity who received the payment.

ANSWER - Effective July 6, 2018, former Administrator Pruitt resigned from his position as Administrator of the EPA and is no longer an employee of the Agency. Therefore, EPA is not able to discuss your question with Mr. Pruitt to provide you with an answer.

- c. Please provide copies of your financial disclosures disclosing your ownership interest in Capitol House.

ANSWER - Effective July 6, 2018, former Administrator Pruitt resigned from his position as Administrator of the EPA and is no longer an employee of the Agency. Therefore, EPA is not able to discuss your question with Mr. Pruitt to provide you with an answer.

- d. Please provide the name of the individual(s) who arranged for cash purchase of the Oklahoma City property and subsequent transfer of ownership to Capitol House.

ANSWER - Effective July 6, 2018, former Administrator Pruitt resigned from his position as Administrator of the EPA and is no longer an employee of the Agency. Therefore, EPA is not able to discuss your question with Mr. Pruitt to provide you with an answer.

- e. Please provide the name of the individual(s) who requested or arranged for Spirit Bank, where former EPA appointee Albert Kelly was chief executive, to approve a mortgage in the name of Capitol House.

ANSWER - Effective July 6, 2018, former Administrator Pruitt resigned from his position as Administrator of the EPA and is no longer an employee of the Agency. Therefore, EPA is not able to discuss your question with Mr. Pruitt to provide you with an answer.

- f. Please provide documentation demonstrating you paid taxes on all rental income received from Jim Dunlap or any other tenant who rented space on the property, including, but not limited to, Schedule K-1 tax forms.

ANSWER - Effective July 6, 2018, former Administrator Pruitt resigned from his position as Administrator of the EPA and is no longer an employee of the Agency. Therefore, EPA is not able to discuss your question with Mr. Pruitt to provide you with an answer.

- g. Please provide documentation of any proceeds you received for the 2005 sale of the property, including the amount and date received.

ANSWER - Effective July 6, 2018, former Administrator Pruitt resigned from his position as Administrator of the EPA and is no longer an employee of the Agency. Therefore, EPA is not able to discuss your question with Mr. Pruitt to provide you with an answer.

The Honorable Janice D. Schakowsky

1. **Speeches:** Please provide the date, location, name of event, and text for all speeches you have given to industry associations (e.g. Louisiana Chemical Association) in your capacity as EPA Administrator.

ANSWER –The agency believes that QFRs are not the appropriate venue in which to respond to broad document requests of this nature and will seek to work with your staff on this request.

2. **Official vehicle:** During the hearing, you stated that EPA staff “just asked for consultation” on the selection of your official vehicle. During this consultation, did you or people responding on your behalf express a preference for a larger vehicle, leather interior, bucket seats, Wifi, GPS navigation, or any other luxury features that were ultimately included in the vehicle selected?

ANSWER - Effective July 6, 2018, former Administrator Pruitt resigned from his position as Administrator of the EPA and is no longer an employee of the Agency. Therefore, EPA is not able to discuss your question with Mr. Pruitt to provide you with an answer.

3. **Samantha Dravis:**

- a. At any time during Samantha Dravis’s employment at EPA, was she employed or compensated using authority under the Safe Drinking Water Act?

ANSWER - No

- b. How much was Samantha Dravis compensated during the three months from November 2017 to January 2018?

ANSWER - Effective April 20, 2018, Samantha Dravis resigned from her position at the EPA and is no longer employed by the Agency. Due to an ongoing review by EPA OIG, it would be inappropriate to provide this information in QFR responses. EPA will seek to work with committee staff on this information request.

- c. According to the EPA’s own spokesperson, Ms. Dravis was a “senior leader at the EPA.” Do you have record of meetings attended in person or substantial projects completed by Samantha Dravis during the three months from November 2017 to January 2018? If so, please summarize. Please provide all records of meetings attended in person or substantial projects completed, as well as any emails between

Administrator Pruitt and Ms. Dravis concerning her attendance or departure from the EPA.

ANSWER - Effective April 20, 2018, Samantha Dravis resigned from her position at the EPA and is no longer employed by the Agency. The agency believes that QFRs are not the appropriate venue in which to respond to broad document requests of this nature and will seek to work with your staff on this request.

- d. Was Samantha Dravis approved for first class travel to or from Morocco in December 2017? If so, who at EPA approved first class travel and on what date?

ANSWER - No

The Honorable Paul Tonko

1. Strengthening Transparency in Regulatory Science Proposed Rule

- a. Please cite specific provisions in statute that require EPA to make the changes proposed in the Strengthening Transparency in Regulatory Science rule?

ANSWER – EPA’s authority for this rulemaking can be found in Section I.C. of the proposed rule, including its ability to promulgate rules under the Administrative Procedure Act.

- b. Do any of the statutory authorities identified by the proposed rule include the ability to grant exemptions to the treatment of science at the Administrator’s discretion to address issues on a case-by-case basis?

ANSWER – In developing the proposed rule, EPA drew from various authorities that generally speak to the need for transparency in scientific rulemaking. EPA specifically cited these sources in the proposed rulemaking to allow the public to review and better understand the basis for the proposed rule.

- c. What science organizations or stakeholder groups were involved in the development of this proposed rule? Please provide a list of all meetings, including teleconferences, with these organizations, including the date, and the name, title, and organizational affiliation of participants.

ANSWER – EPA has received numerous comments from various groups on the development of the rule. The proposed rule was open for public comment until August 16, 2018. Comments are available for viewing at <https://www.regulations.gov/docket?D=EPA-HQ-OA-2018-0259>. EPA also held a public hearing seeking feedback on the proposed rule on July 17, 2018.

- d. Previously, EPA analyzed legislation (The HONEST Act) that would have similar goals and estimated it would cost \$250 million annually to implement. Did EPA develop any cost estimates to implement the proposed rule?

ANSWER – The Notice of Proposed Rulemaking is much narrower in the scope than the HONEST Act in terms of the scope of data covered, the scope of decisions covered, and its proposed intent to take advantage of existing approaches and infrastructure being developed in conjunction with other government-wide open data initiatives. Moreover, as stated in the proposed rule, EPA believes the benefits of this proposed rule justify the costs. The benefits of EPA ensuring that dose response data and models underlying pivotal regulatory science are publicly available in a manner sufficient for independent validation are that it will improve the data and scientific quality of the Agency's actions and facilitate expanded data sharing and exploration of key data sets; this is consistent with the conclusions of the National Academies.

- e. If so, please provide any cost analysis completed regarding the proposed rule.

ANSWER – See response to (d) above.

- f. Why did EPA conclude this is not an economically significant rulemaking? Please explain EPA's analysis associated with this conclusion.

ANSWER – The proposed rule focuses on strengthening transparency of EPA's regulatory science. The rule is not expected to have an "economically significant" impact on the economy as defined by E.O. 12866 and guidance from OMB.

- g. Please provide a list of all key meetings and determinations made for this rulemaking during the Action Development Process, including the rulemakings tier, meeting dates and participants in any intra-agency work group meetings, and a list of EPA offices which participated in the development of the rulemaking. For each office, please provide the name, title, and office of each work group participant.

ANSWER – The proposed rule is being overseen by EPA's Office of Research and Development. The proposed rule continues to develop, including with the comments received, and the input from the public hearing held on July 17, 2018.

- h. Did EPA examine lost benefits or costs associated with EPA's inability to consider certain scientific studies as a result of this proposal?

ANSWER – As stated above and in the proposed rule, EPA believes the benefits of this proposed rule justify the costs. One recent analysis found that: "Improvements in reproducibility can be thought of as increasing the net benefits of regulation because they would avoid situations in which costs or benefits are wrongly estimated to occur or in which regulatory costs are

imposed without corresponding benefits....” They concluded that “an increase in existing net benefits from greater reproducibility, which, if it occurred, would cover the costs of obtaining the data and making the data available.”

<https://www.mercatus.org/system/files/Mercatus-Lutter-Public-Access-Data-v3.pdf>. With regard to concerns over lost benefits, EPA believes that concerns about access to confidential or private information can, in many cases, be addressed through the application of solutions commonly in use across some parts of the Federal government. EPA also seeks comments on potential exceptions to any requirements in the rule.

- i. If so, what analysis was done on costs or lost benefits, and what were the results?

ANSWER – See response to (h) above.

- j. Many older studies may rely on data that are no longer available. Does EPA have any estimates or analysis of how many studies would be disqualified to be used for major rulemakings under this proposal?

ANSWER – Since the rule is still under development, EPA cannot comment on the substance or effect of the rule until it is final. EPA is currently accepting public comment on the potential impact of the proposal.

- k. How long did the Office of Information and Regulatory Affairs (OIRA) take to complete its review of the proposed rule? Please provide the date OIRA accepted and began review, and the date OIRA completed review.

ANSWER – OMB received the proposed rule on April 19, 2018, and concluded its review on April 23, 2018.

- l. Did EPA or other executive officials have any communication with the Office of Information and Regulatory Affairs to accelerate this review? If so, please provide the name and title of these individuals.

ANSWER – OMB reviewed a draft of the proposed rule and indicated to EPA that it had completed its review of the draft on April 23, 2018. OMB and federal agencies routinely discuss the timing of interagency review.

- m. Was the Office of Information and Regulatory informed by any EPA official that Administrator Pruitt would be testifying before Congress one week after submitting this proposed rule?

ANSWER – Yes, Federal agencies routinely inform OMB of upcoming hearings and EPA did so in this case.

- n. Office of Information and Regulatory Affairs reviews of similarly complex rules often take months to complete. What specific factors allowed this review to be completed so quickly?

ANSWER – See response to (m) above.

- o. The proposed rule solicits comments in numerous areas, indicating it hopes to develop answers during the regulatory process. Proposals with so many outstanding questions are often released as Advanced Notice of Proposed Rule Makings. Why did EPA propose this as a Notice of Proposed Rulemaking with so many outstanding questions included?

ANSWER – EPA solicited comments from the public on various areas to better inform the development of the rule. Extending the comment period by roughly two and a half months and also holding a public hearing will provide an opportunity to receive additional useful information for the agency to consider.

- p. Did the Office of Information and Regulatory Affairs ask EPA to issue an Advanced Notice of Proposed Rulemaking instead? If so, when was this request made and who at OIRA made this request?

ANSWER – Various options for how to proceed with the rule were considered during EPA’s development of the draft NPRM.

2. Science Advisory Boards (SAB)

- a. How many current members of EPA Science Advisory Boards are expected to cycle off before the end of this year?

ANSWER – For the Science Advisory Board (SAB): Seven members are completing their second and final 3-year term, and eight members are completing their first 3-year term. For the Clean Air Scientific Advisory Committee (CASAC): One member is completing their second and final 3-year term, and three members are completing their first 3-year term.

- b. Since joining the agency, has Administrator Pruitt requested EPA career staff in the SAB Staff Office to provide recommendations for board appointments?

ANSWER – The career staff in the SAB Staff Office provided senior management with information and various options for the Administrator to consider for both SAB and CASAC appointments

- c. If so, how many of those recommendations have been accepted of the total amount of new appointees.

ANSWER – The senior management of the Agency considered the information and options.

- d. How many EPA Science Advisory Board members have been appointed without input by the SAB Staff Office?

ANSWER – The SAB Staff Office provided information on all nominated candidates for the Administrator to consider when making appointments.

- e. How many issues went before EPA Science Advisory Boards or the Clean Air Scientific Advisory Committee (CASAC) for review in each year for the past five years?

ANSWER – Number of advisory reports per year from the SAB and CASAC:

Year	SAB	CASAC
2013	7	6
2014	7	7
2015	14	2
2016	6	3
2017	8	4

- f. Does the Administrator plan to seek SAB or CASAC review of the recently proposed Strengthening Transparency in Regulatory Science rule?

ANSWER –Effective July 6, 2018, former Administrator Pruitt resigned from his position as Administrator of the EPA and is no longer an employee of the Agency. In general practice, the SAB and CASAC are regularly consulted for feedback on these issues and EPA intends to continue to use them in that capacity moving forward.

- g. Does the Administrator plan to seek SAB or CASAC review on any climate change issues?

ANSWER –Effective July 6, 2018, former Administrator Pruitt resigned from his position as Administrator of the EPA and is no longer an employee of the Agency. In general practice, the SAB and CASAC are regularly consulted for feedback on these issues and EPA intends to continue to use them in that capacity moving forward.

- h. Does the Administrator plan to seek SAB or CASAC review on any aspect of the long-term economic costs and benefits of any changes that have been made or are being proposed under his tenure at EPA?

ANSWER –Effective July 6, 2018, former Administrator Pruitt resigned from his position as Administrator of the EPA and is no longer an employee of the Agency. In general practice, the SAB and CASAC are regularly consulted for feedback on these issues and EPA intends to continue to use them in that capacity moving forward.

3. The Frank R. Lautenberg Chemical Safety for the 21st Century Act Implementation

- a. What steps has EPA taken to ensure new and existing chemical reviews include explicit considerations to protect vulnerable populations, as required by statute?

ANSWER – As required under TSCA, EPA continues to identify and give explicit consideration to “potentially exposed and susceptible subpopulations” for both new and existing chemical reviews. Although the explicit requirement in TSCA is new, the Agency has long given consideration to vulnerable subpopulations. See, for example, EPA's Policy on Evaluating Health Risks to Children (1995). The Agency has evaluated the risk of chemical substances to all sectors of the population, with particular attention to workers, indigenous peoples, pregnant women, children, infants, the elderly, environmental justice communities, and fence-line communities, among others. The Agency utilizes a number of existing guidance documents to evaluate risk at various life stages, and will continue to use and refine these processes to protect the most vulnerable.

EPA confirmed its commitment to meet this statutory requirement in the final Risk Evaluation framework rule, and in the scoping and problem formulation documents for the first ten chemical risk evaluations. The problem formulation documents refine the conditions of use and exposures presented in the scope of the risk evaluation and presents refinements to the conceptual models and analysis plan that describe how EPA expects to evaluate risks. EPA welcomes information from communities to further inform our risk evaluations.

EPA has sought input from specific populations and public health experts in implementing TSCA and will continue to do so. For example, EPA has had discussions on several occasions with the National Tribal Toxics Council (NTTC) to receive input on tribal lifeways and exposures. OPPT and the NTTC continue to collaborate on ways to consider tribes in conducting potentially exposed or susceptible subpopulations analyses for Draft Risk Evaluations. OPPT has also had several meetings with AFL-CIO about workers as potentially exposed or susceptible subpopulations and ways in which worker exposure information could be identified and provided for use in the risk evaluation process. OPPT has also sought advice and input regarding children as a susceptible subpopulation from the Children's Health Protection Advisory Committee (CHPAC) through a meeting and recommendations addressing the formal request from EPA for guidance on how risk evaluation should address children.

- b. In November, Administrator Pruitt and EPA staff attended an American Chemistry Council board meeting on South Carolina's Kiawah Island. The Administrator's schedule contains no details of that weekend. Please provide a list of all companies or lobbyists that met with the Administrator in South Carolina.

ANSWER –The agency believes that QFRs are not the appropriate venue in which to respond to broad document requests of this nature and will seek to work with your staff on this request.

- c. Please provide a list of all chemicals specifically discussed at meetings attended by the Administrator at this event.

ANSWER –The agency believes that QFRs are not the appropriate venue in which to respond to broad document requests of this nature and will seek to work with your staff on this request.

4. Formaldehyde Assessment

- a. Earlier this year, Administrator Pruitt was asked by Senator Ed Markey at the Senate Committee on Environment and Public Works hearing on 1/30/18 about the delayed formaldehyde assessment. At that hearing, Administrator Pruitt said, “Senator, I commit to you that I will look into that and make sure your office is aware of what we have and when we can release it.” Please provide an update on the status of the formaldehyde assessment.

ANSWER – We continue to discuss this assessment with our Agency partners and have no further updates to provide at this time.

- b. Has EPA concluded its intra-agency review process?

ANSWER – We continue to discuss this assessment with our Agency partners and have no further updates to provide at this time.

- c. What additional reviews are needed before it can be finalized?

ANSWER – We continue to discuss this assessment with our Agency partners and have no further updates to provide at this time.

- d. When does EPA expect the final report to be released?

ANSWER – We continue to discuss this assessment with our Agency partners and have no further updates to provide at this time.

5. EPA Year in Review 2017-2018 Report

- a. The “EPA Year in Review 2017-2018” report states, “In year one, EPA finalized 22 deregulatory actions, saving Americans more than \$1 billion in regulatory costs.” Please provide a list of each of these actions along with EPA’s analysis of the regulatory cost estimate for each action.

ANSWER – See attached spreadsheet. Note, costs in column D are in millions of dollars.

6. Lead and Copper Rule

- a. EPA undertook efforts to revise the Lead and Copper Rule more than 13 years ago. In October 2016, the EPA published a white paper on the revisions that included a pledge to issue a proposed rule by the end of 2017. That deadline has passed. When does EPA expect to issue a proposed rule?

ANSWER - EPA expects to publish proposed revisions to the Lead and Copper Rule by February 2019.

- b. Has EPA conducted any analysis on how the proposed “Strengthening Transparency in Regulatory Science” rule may impact its ability to regulate lead in drinking water?

ANSWER - EPA has not conducted an analysis of how this proposed regulation might impact regulations of lead in drinking water. However, consistent with Section 1412b(3)(A), EPA is committed to using the best available peer reviewed science and data collected in accordance with accepted practices to inform decision making under the Safe Drinking Water Act.

7. PFAS

- a. EPA announced a National Leadership Summit on Per- and Polyfluoroalkyl Substances (PFAS). What options has EPA discussed internally to regulate or reduce PFAS contamination in drinking water?

ANSWER - EPA is evaluating the need for a maximum contaminant level for PFOA and PFOS as noted at the National Leadership Summit on Per- and Polyfluoroalkyl Substances (PFAS).

- b. What options have been discussed by staff of EPA and the Department of Defense?

ANSWER - EPA staff regularly interacts with Department of Defense (DOD) officials and those of other interested Agencies as part of our coordination of clean-up of contamination at Federal Facilities. EPA has briefed DOD staff on the regulatory processes under the Safe Drinking Water Act including the Contaminant Candidate List, the Regulatory Determinations process and the process for developing National Primary Drinking Water Regulations.

- c. Has EPA conducted any analysis on how the proposed “Strengthening Transparency in Regulatory Science” rule may impact its ability to regulate PFAS in drinking water?

ANSWER - EPA has not conducted an analysis of how this proposed regulation might impact regulations of PFAS in drinking water. However, consistent with Section 1412.b.(3)(A), EPA is committed to using the best available peer

reviewed science and data collected in accordance with accepted practices to inform decision making under the Safe Drinking Water Act.

8. Funding for the Office of Inspector General

- a. The Fiscal Year 2019 budget request includes a significant proposed cut to the EPA Office of Inspector General (OIG). In November 2017, in OIG's Semiannual Report to Congress, it was reported that "OIG submitted an FY 2019 request for \$62 million to the agency for inclusion in the President's budget. Without seeking input from the OIG, the agency provided us with a request of \$42 million." In February, the White House requested only \$37.5 million for the OIG. What was the justification for reducing appropriations and FTEs in the FY 2019 budget request for EPA OIG?

ANSWER - The FY 2019 budget request for EPA OIG is \$46.2 million (\$37.5 million within the Inspector General appropriation and \$8.7 million with the Superfund transfer to the Office of Inspector General appropriation). The FY 2019 President's Budget meets the Budget Control Act's overall federal budget level and with few exceptions, EPA and Chemical Safety Board programs that the OIG reviews also saw reductions. The overall funding change for OIG was a result of an increase in base workforce costs for existing FTE and a corresponding non-pay reduction.

- b. Did the EPA defend its \$42 million request to the Office of Management and Budget?

ANSWER - Per Office of Management and Budget (OMB) Circular A-11, the President's Budget deliberation process is confidential.

9. Freedom of Information Act

- a. It has been reported that political appointees' role in reviewing documents requested under the Freedom of Information Act has increased significantly during Administrator Pruitt's tenure. Please describe the process for "awareness reviews" or "senior management reviews" conducted by political appointees before EPA releases documents involving Administrator Pruitt, including the names and titles of all EPA political appointees who participate.

ANSWER - In a July 15, 2018 letter to House Oversight and Government Reform Committee Ranking Member Elijah E Cummings, which has been shared with the staff of the Energy and Commerce Committee, Principal Deputy General Counsel & Designated Agency Ethics Official Kevin Minoli explains in great detail EPA's Freedom of Information Act (FOIA) response policy.

In his letter, Minoli explains that... "In addition to work on specific FOIA requests, the (FOIA Expert Assistance Team) also helped keep senior leaders informed of new requests that the agency received each week, coordinated

inter-agency review with the Executive Office of the President (EOP) where the EOP had equities in the responsive documents, and made senior leaders aware of impending FOIA productions. There are multiple benefits to making senior leaders – political and career – aware of productions before they are actually produced: the Office of Congressional and Intergovernmental Affairs can determine if the documents are also responsive to a Congressional request for information and, if so, ensure Congress receives the documents at the same time or slightly before the requestor; the Office of Public Affairs can prepare any communications materials deemed necessary based on the documents to be produced; when the documents are from or about a particular employee, keeping that employee informed throughout the process when appropriate, including at the response stage, can significantly increase their confidence in and respect for the FOIA Program into the future; and, while not meant as a quality control tool, to the extent a mistake is identified, it can be corrected. This ‘awareness review’ process does not itself violate FOIA and can be completed without causing undue delay.”

Please find the letter attached for additional information regarding the FOIA response process, and the FOIA Expert Assistance Team’s role within the agency.

- b. Please explain EPA Chief of Staff Ryan Jackson’s role in conducting awareness reviews. How many FOIA awareness reviews has Mr. Jackson completed, and in how many instances did Mr. Jackson instruct that information be withheld, redacted, or altered prior to public release?

ANSWER – See response to 9(a)

- c. Have any other political appointees ever sought to alter, redact, or withhold portions of a FOIA disclosure following an awareness review?

ANSWER – See response to 9(a)

- d. Please provide the start date, end date, and length of review for all awareness reviews conducted during Administrator Pruitt’s tenure at EPA.

ANSWER – See response to 9(a)

- e. Have any of these reviews resulted in a missed FOIA deadline to release documents? If so, please provide details for each instance.

ANSWER – See response to 9(a)

- f. Please explain the rationale for moving the National FOIA office into the Office of General Counsel.

ANSWER – See response to 9(a)

- g. Please explain the role of EPA political appointees Matthew Leopold, Eric Baptist, Marcella Burke, David Fatouhi, and Justin Schwab in the FOIA review process, including any instance where any of these individuals withheld, delayed, redacted, or altered prior to public release?

ANSWER – See response to 9(a)

10. International Travel

- a. According to EPA emails released under a Freedom of Information Act request, on July 10, 2017, Mr. Matthew Freedman was involved in the planning of the Administrator's potential trip to Australia. Mr. Freedman wrote to EPA staff, "[Richard Smotkin] and I will attend and will be present but will not be listed as members of the delegation." It has been reported that Mr. Richard Smotkin was also involved in the planning of the Administrator's December trip to Morocco. Did Mr. Smotkin meet with Administrator Pruitt or any EPA staff, in official meetings or otherwise, during the Administrator's trip to Morocco?

ANSWER - Former Administrator Pruitt traveled to Morocco on December 11-13, 2017 to promote U.S. energy and environmental technology exports. During that trip, he discussed U.S. priorities for updating the environmental cooperation workplan under the U.S.-Morocco Free Trade Agreement and promoted U.S. exports and business solutions, particularly for liquefied natural gas (LNG), biofuels, and waste management in meetings with Moroccan ministers and senior officials.

The Agency has received multiple Freedom of Information Act and Congressional oversight requests that relate to your specific questions. The Agency is in the process of responding to those requests and will provide this information to you once available.

- b. If so, please provide a full list of meetings between Mr. Smotkin and any EPA officials in Morocco, including any meetings with EPA officials and Moroccan government officials, during official business or otherwise.

ANSWER - See response to 10a.

- c. Please provide a list of all attendees for any meeting identified in (b).

ANSWER - See response to 10a.

- d. Recent press accounts indicated Administrator Pruitt and EPA staff missed their connecting flight to Morocco because his security detail's equipment and other gear could not be transferred to the connecting flight in time. This differs from earlier explanations from EPA that the connecting flight was missed due to weather. Please explain why Administrator Pruitt and EPA staff missed their connecting flight.

ANSWER - See response to 10a.

11. Security

- a. In March, Administrator Pruitt told CBS News, "The quantity and the type of threats I've faced are unprecedented." These threats have been used to justify costly security measures, including first-class travel and full-time protection by a 20-member security detail. How does EPA catalogue threats against officials, including the Administrator?

ANSWER - EPA collects information on potential threats against employees, including the Administrator, in several ways. EPA's Office of Inspector General (OIG) investigates instances of threats against EPA employees, including the Administrator. The Protective Service Detail (PSD) uses information from multiple sources, including open-source information and potential security threats from our federal/state/local law enforcement partners.

- b. What office is primarily responsible for identifying these threats?

ANSWER - EPA's Office of Criminal Enforcement and Forensics Training (OCEFT) in the Office of Enforcement and Compliance Assurance collects threat information from multiple sources as described below.

- c. What office is primarily responsible for investigating these threats and determining their legitimacy?

ANSWER - The OIG's Office of Investigations has authority to investigate threats against EPA employees. As you know, the OIG is an independent organization. We defer to the OIG to address any questions about their roles and responsibilities.

- d. Please describe the role in EPA security assessment, investigation, and response of each of the following offices: the Protective Security Detail, the Office of Homeland Security Intelligence Team, the Office of Inspector General, and any other EPA entity that has responsibilities related to the Administrator's security?

ANSWER - EPA's Office of Homeland Security (OHS) provides information on any potential national security threats – domestic or international – and shares this information with PSD. The OIG tracks instances of threats against EPA employees, reviews and investigates. The PSD uses information from multiple sources, including open-source information and potential security threats from our federal/state/local law enforcement partners to assesses the current security climate. OCEFT develops the operational security plan to provide protection for the Administrator.

- e. If threats are deemed to be serious, are they referred to the FBI or another law enforcement agency outside of EPA?

ANSWER - EPA's OIG investigates threats made against EPA employees. As you know, the OIG is an independent organization. We defer to the OIG to address any questions about their roles and responsibilities.

- f. Which EPA office determines whether or not to refer threats?

ANSWER - EPA's OIG makes these determinations. As you know, the OIG is an independent organization. We defer to the OIG to address any questions about their roles and responsibilities.

- g. On how many occasions did such a referral occur in 2017 and 2018?

ANSWER – We defer to the OIG to address questions about their roles and responsibilities.

- h. What spending decisions related to security require sign-off by the head of the Administrator's security detail?

ANSWER - The Special Agent in Charge (SAC) of the PSD manages the resources associated with the PSD's operational mission of protecting the Administrator. The SAC/PSD would be responsible for approving travel authorizations for PSD agents and routine expenses associated with managing the PSD including purchases of equipment, training and other associated expenses in accordance with Agency and OCEFT Delegations.

- i. When did Mr. Nino Perrotta take over the role referenced in (h)?

ANSWER - Mr. Perrotta became the Acting SAC/PSD in March 2017.

- j. Before Mr. Perrotta took over this role, who was responsible for those duties?

ANSWER - Eric Weese was the SAC/PSD prior to SAC Perrotta.

- k. Why and when was the previous head of the Administrator's security detail removed from that position?

ANSWER - SAC Weese was reassigned to a new position as the Senior Law Enforcement Intelligence Advisor within the Criminal Investigation Division in March 2017.

- l. If that employee continued to work at EPA, to where was he reassigned and what is his current employment status?

ANSWER - SAC Weese was reassigned to a new position as the Senior Law Enforcement Intelligence Advisor within the Criminal Investigation Division in March 2017 and continues in that role today.

- m. How many EPA security officials hit the \$160,000 annual salary cap due to overtime last year?

ANSWER – In FY 2017, ten EPA security officials earned more than the \$161,900 cap. The average (mean) of that overtime pay for all of FY 2017 was \$3,166.

- n. How does that compare to each of the previous 5 years?

ANSWER – In FY 2017, ten EPA security officials earned more than the \$161,900 cap. The average (mean) of that overtime pay for all of FY 2017 was \$3,166. In FY 2016, three EPA security officials earned more than the annual limit of \$161,300. In FY 2015, three EPA security officials earned more than the annual limit of \$158,700. In FY 2014, five EPA security officials earned more than the annual limit of \$157,100. In FY 2013, no one exceeded the annual pay limit. In FY 2012, two EPA security officials earned more than the annual limit of \$155,500.

- o. On May 1, 2017, Mr. Perrotta sent a memorandum requesting Administrator Pruitt be seated in first or business class on official travel. On how many instances before this memorandum did the Administrator travel in first or business class on official travel?

ANSWER – The Federal Travel Regulation states that “[w]hen exception security circumstances require other than coach-class airline accommodations,” an agency “may authorize/approve first class accommodations.” 41 C.F.R. section 301-10.123(a)(3). Due to security concerns, EPA approved former Administrator Pruitt’s use of other than coach-travel accommodations. For all trips prior to May 1, 2017, former Administrator Pruitt’s official travel authorizations were ticketed in the economy class.

- p. On how many instances after this memorandum did the Administrator travel in first or business class on official travel?

ANSWER – Between May 1, 2017 and February 14, 2018, former Administrator Pruitt conducted official business travel on thirty instances in which he was ticketed in other than coach-class accommodations.

- q. How many times and on what dates did EPA security officials travel with the Administrator for nonofficial business, where the Administrator paid for his own travel expenses?

ANSWER – Due to security protocol sensitivities, the agency believes that QFRs are not the appropriate venue in which to respond to information requests of this nature and will seek to work with your staff on this request.

- r. What was the total cost for security officials' airfare, hotel, and per diem for each of these instances?

ANSWER – The agency believes that QFRs are not the appropriate venue in which to respond to information requests of this nature and will seek to work with your staff on this request.

- s. Which EPA employee(s) approved the EPA payment to Mrs. Vicki Hart to compensate for a broken door at her condo?

ANSWER – The payment to reimburse Mrs. Hart for damages to her property was done in compliance with all applicable federal and agency policies and laws.

- t. Was Administrator Pruitt involved with or notified about that payment?

ANSWER – Effective July 6, 2018, former Administrator Pruitt resigned from his position as Administrator of the EPA and is no longer an employee of the Agency. Therefore, EPA is not able to discuss your question with Mr. Pruitt to provide you with an answer.

- u. It has been reported that EPA entered into a new vehicle lease for a Chevrolet Suburban at \$10,200 annually. This lease was reportedly for a more upscale LT model, instead of the LS model typically leased and included monthly charges of \$300 for luxury upgrades. What were the terms and rate of the previous vehicle used by the Administrator, and what was the rationale for these upgrades?

ANSWER – The contract for the 2018 Chevrolet Suburban was terminated and the Agency does not currently lease the vehicle referenced.

12. The Administrator's Housing Arrangement

- a. It has been reported that the Administrator's original lease with Mrs. Vicki Hart ended at the end of April 2017, but he did not move out of that condo until later in the year. What were the terms of extending the lease?

ANSWER - Effective July 6, 2018, former Administrator Pruitt resigned from his position as Administrator of the EPA and is no longer an employee of the Agency. Therefore, EPA is not able to discuss your question with Mr. Pruitt to provide you with an answer.

- b. On what date did Administrator Pruitt move out of the condo owned by Mrs. Hart?

ANSWER - Effective July 6, 2018, former Administrator Pruitt resigned from his position as Administrator of the EPA and is no longer an employee of the Agency. Therefore, EPA is not able to discuss your question with Mr. Pruitt to provide you with an answer.

The Honorable David Loeb sack

Administrator Pruitt, as I indicated to you at the hearing, I have a lot of concerns about the way in which the small refinery exemptions within the Renewable Fuel Standard (RFS) program have been handled by the Environmental Protection Agency (EPA). There needs to be much more transparency and public accountability in the with respect to the small refinery waiver exemptions. Please provide responses to the following questions regarding small refinery exemptions within the RFS.

1. What is the total number of refinery waiver applications that EPA received in each year from 2013 through 2017?

ANSWER - For the 2013 compliance year, EPA received 17 petitions for the RFS small refinery hardship exemption. For the 2014 compliance year, EPA received 15 petitions; 2015 compliance year, 15 petitions; 2016 compliance year, 20 petitions; 2017 compliance year, 33 petitions.

2. For each year from 2013 through 2017, how many waivers did the EPA grant?

ANSWER - For the 2013 compliance year, EPA granted RFS exemptions to 8 small refineries. For the 2014 compliance year, EPA granted 8 exemptions; 2015 compliance year, 7 exemptions; 2016 compliance year, 19 exemptions; 2017 compliance year, 29 exemptions. EPA is still evaluating 4 petitions for the 2017 compliance year.

3. What companies have received waivers for each year from 2013 through 2017?

ANSWER - Small refineries have claimed confidential business information protection for their hardship exemption petitions to EPA. For that reason, EPA does not disclose the names of the refineries or their parent companies.

4. What is the total volume of biofuel obligation represented by the waivers granted for each year 2013 through 2017?

ANSWER - In 2013, the total Renewable Volume Obligation (RVO) exempted through the small refinery hardship exemptions was approximately 190 million RINs. In 2014, approximately 210 million RINs; 2015, approximately 290 million RINs; 2016, approximately 790 million RINs; 2017, approximately 1.46 billion RINs.

5. What is the EPA process for confirming that each applicant falls beneath the 75,000-barrell throughput capacity?

ANSWER - EPA verifies that each applicant processed less than 75,000 barrels per day of crude oil by using annual refinery data from EIA.

6. Please confirm how the gallons waived under the small refinery exemption process are handled. Are the gallons reassigned to remaining obligated parties for blending? Are they reassigned within the same compliance year? If they are not reassigned to the remaining obligated parties, what is the disposition of those gallons relative to the overall renewable volume obligation set in the annual rule?

ANSWER - Small refinery exemptions that are granted before EPA establishes the RFS standards for a given compliance year are redistributed to the remaining obligated parties in that compliance year, consistent with EPA's formulas for calculating the percentage standards that apply to all obligated parties. Small refinery exemptions that are issued after the annual standards are established do not affect the standards for that particular year.

7. Did you inform President Trump or White House staff of the unusually large number of small refinery exemptions EPA was granting and of the potential effects on the renewable fuel market of exempting additional gallons and facilities and the fact that these actions would not be well received by the agricultural community?

ANSWER - Meetings with the White House regarding the RFS have included a range of stakeholders impacted by the program including representatives from USDA, EPA, Members of Congress, the agricultural community, and the refining community. A number of topics have been discussed, including the small refinery exemption program established by Congress under the Clean Air Act 211(o)(9)(B) and 40 CFR 80. 1441 (e)(2) . We strive to make decisions based on the full breadth and scope of impacted stakeholders and will continue to do so under the RFS.

8. EPA claimed recently that the Agency did not change the criteria for granting exemptions from those used in past years. Yet, numerous press reports indicate the Agency has granted almost double the amount of waivers than have been granted in past years. What is your explanation for the Agency's granting of an unusually high number of waivers under this program as compared to past years? If the Agency is applying different criteria, please provide an explanation of the changes and the justification for initiating the new criteria.

ANSWER - This question is the subject of ongoing litigation filed in the Court of Appeals for the DC Circuit. See Petition for Review, Advanced Biofuels Association v. EPA, filed in Court of Appeals for the DC Circuit on May 1, 2018. EPA does not comment on topics that are the subject of ongoing litigation.

9. Did EPA consult with the Department of Energy on each of the applications for a small refinery exemption for 2016 and 2017? For how many of the applications reviewed by DOE for these two compliance years did EPA disagree with DOE's recommendation to grant or deny the exemption?

ANSWER - Consistent with Clean Air Act requirements, EPA consulted with, and received a recommendation from DOE on every small refinery hardship petition that was submitted for 2016 and 2017. EPA's decision differed from DOE's recommendation in one case. In addition, EPA granted 100% exemptions in cases where DOE recommended 50% relief.

The Honorable Joseph Kennedy, III

1. What precipitated the need for a secure phone booth inside of your office? You repeatedly have placed blame at the feet of your staff for the exorbitant \$43,000 cost of the phone booth, but it was you yourself who instructed your staff to find a way to create a secure communications line in your office in the first place. Why do you need that secure line? What is the nature of the phone calls you are making that require an additional "secure" phone line while already in the privacy of your own office? If your office does not provide sufficient privacy, why is one of the two Secure Compartmented Information Facilities (SCIFs) inside the EPA headquarters not sufficient?

ANSWER - Effective July 6, 2018, former Administrator Pruitt resigned from his position as Administrator of the EPA and is no longer an employee of the Agency. Therefore, EPA is not able to discuss your question with Mr. Pruitt to provide you with an answer.

Attachment 2—Member Requests for the Record

During the hearing, Members asked you to provide additional information for the record, and you indicated that you would provide that information. For your convenience, descriptions of the requested information are provided below.

The Honorable Bill Johnson

1. I know that the EPA has expressed interest in finding a resolution to some of the concerns regarding EPA's current brick MACT rule which was issued in 2015. Would you commit to working with me and this committee in providing further information on this work and any potential possibilities?

ANSWER - We are currently working on a plan to assist facilities that are covered by the brick rule and need more time to comply to obtain a one-year extension of the rule's compliance deadline. Under the Clean Air Act, state permitting authorities can grant an additional year for compliance with a section 112 standard (providing a total of four years to comply with the rule). We continue to review the issues raised by the brick industry and anticipate reaching out to the industry for further discussions soon. We will be glad to provide further information as this process moves forward.

The Honorable Bill Flores

As the American people are well aware, the EPA under the Obama administration abused environmental regulatory process by ignoring congressional statutes any by circumventing the U.S. Constitution. Fortunately, the federal court system stepped in to protect American families from this abuse of the law. In this regard I have the following questions:

1. Can you provide this committee with a list of those overreaching and overturned regulations that were overturned by the court systems?

ANSWER – In response to this question, EPA provides the following four examples of EPA actions that were reversed or stayed by the courts:

- The 2015 Waters of the United States (WOTUS) rule has been preliminarily enjoined by two district courts in a total of 24 states. The rule was also stayed nationwide by the 6th Circuit (now dissolved because the Supreme Court thereafter held that the court lacked jurisdiction).
- In 2016, the U.S. Supreme Court issued a stay of the 2015 "Clean Power Plan" (CPP).
- The 2012 RFS cellulosic mandate was overturned by the DC Circuit in *API v. EPA* (D.C. Cir. 2013).
- The Tailoring Rule (one of the "four Ts" that followed the 2009 endangerment finding), which would have phased new and modified sources of GHGs into the Prevention of Significant Deterioration permitting regime under Clean Air Act Title I, Part C, was reversed in part by the Supreme Court in *UARG v. EPA*

(June 2014). The Court held that GHG emissions alone do not trigger application of PSD permitting requirements, and overturned EPA’s revisions to statutory emissions thresholds.

2. Can you provide this committee with the economic cost of those overturned regulations?

ANSWER – Please see the response to question 1 regarding the status of each of the following rules. In the Regulatory Impact Analysis (RIA) for the 2015 WOTUS rule, EPA estimated that the cost of the rule could have been as high as \$306.6 million. The RIA for the 2015 Clean Power Plan estimated the rules’ cost as falling between \$5.1 and \$8.4 billion by 2030. For the 2012 RFS cellulosic mandate, the DC Circuit found that EPA had set the mandate for cellulosic fuel at an excessively high level. If EPA had waived the cellulosic requirement and offered waiver credits as required by the Energy Independence and Security Act (EISA) of 2007, the compliance costs of that regulation could have amounted to approximately \$22.15 million. EPA did not quantify the costs of the Tailoring Rule.

3. Can you also inform the committee about EPA’s actions, if any, to modify those regulations so those overreaching regulations to conform with the rule of law?

ANSWER - EPA and the U.S. Army Corps of Engineers are taking a multi-step approach to reconsider the jurisdictional scope of the Clean Water Act. The agencies issued a final rule in January 2018 to change the applicability date of the 2015 rule to February 2020. The agencies proposed to rescind the 2015 rule and re-codify the status quo. The agencies issued this proposal in June 2017 and issued a supplemental notice seeking additional public comment in July 2018. Lastly, the agencies are developing a revised definition of WOTUS. On June 15, the agencies sent a proposed rule to the Office of Management and Budget for interagency review.

In October 2017, EPA issued a proposed rule to repeal the CPP. On December 18, 2017, EPA issued an Advanced Notice of Proposed Rulemaking (ANPRM) on a potential rule that would establish emission guidelines for states to establish performance standards for GHG emissions from existing Electric Generating Units (EGUs). EPA has recently sent a proposed new rule to OMB for interagency review.

In response to the DC Circuit’s decision, EPA rescinded the 2012 cellulosic mandate as well as the 2011 standard based on the same methodology. Additionally, EPA refunded money to obligated parties that had purchased cellulosic waiver credits from the Agency.

As noted in the Spring 2018 Unified Agenda of Regulatory and Deregulatory Actions, EPA intends to take additional action regarding revisions to the Prevention of Significant Deterioration and Title V greenhouse gas permitting regulations, including related to the establishment of a greenhouse gas “Significant Emissions Rate,” in order to address the court rulings on the tailoring rule.

The Honorable Richard Hudson

1. Was GenX used in a manner that was incompatible with the consent agreement under the Toxic Substances Control Act?

ANSWER - EPA is investigating the facility to determine whether terms of the 2009 Consent Order were complied with. EPA has not made any final determinations as to whether the use of GenX at the plant was incompatible with the TSCA consent order. EPA is continuing to assess the use of GenX at the plant under the consent order.

The Honorable Doris O. Matsui

1. You said the EPA has data supporting your decision to revise emission standards for light duty vehicles. Will you commit to providing that data to both side of the committee?

ANSWER - On April 2, 2018, I announced my determination that the standards for greenhouse gas emissions for model year 2022-2025 light-duty vehicles are not appropriate and therefore should be revised. The data and information supporting this determination is included in the docket at <https://www.regulations.gov/docket?D=EPA-HQ-OAR-2015-0827>. EPA is working in partnership with the Department of Transportation to initiate a notice and comment rulemaking to revise the standards, as appropriate. The data and information supporting this forthcoming proposal will be made available in docket EPA-HQ-OAR-2018-0283 upon publication of the proposed rule.

The Honorable John P. Sarbanes

1. Did Carl Ichan's company apply for a waiver from ethanol blending requirements for any of its refining facilities?

ANSWER - Small refineries have claimed confidential business information protection for their hardship exemption petitions to EPA. For that reason, EPA does not disclose the names of the refineries or their parent companies.

2. Did Carl Ichan's company receive a waiver for any of its refining facilities?

ANSWER - Small refineries have claimed confidential business information protection for their hardship exemption petitions to EPA. For that reason, EPA does not disclose the names of the refineries or their parent companies.

The Honorable Tony Cardenas

1. In regard to your lease, can you provide the written statement from the attorneys after reviewing it?

ANSWER - Effective July 6, 2018, former Administrator Pruitt resigned from his position as Administrator of the EPA and is no longer an employee of the Agency. Please forward your question to his personal counsel.

The Honorable Debbie Dingell

1. In regard to the January 25, 2018 guidance to reverse the longstanding once in, always in policy for major sources of hazardous air pollutants, did EPA determine the location of these sources?

ANSWER - The January 25, 2018 guidance memorandum discusses the definitions of “major source” in CAA section 112 (a)(1) and of “area source” in CAA section 112 (a)(2) and explains how those definitions provide that a major source becomes an area source at such time that the source takes an enforceable limit on its potential to emit (PTE) HAP below the major source thresholds (10 tpy of a single hazardous air pollutant or 25 tpy of any combination of HAP). Pursuant to those definitions, sources of HAP previously classified as “major sources” may be reclassified as “area” sources when the facility limits its PTE below major source thresholds using an enforceable mechanism.

2. Yes or no, did EPA conduct an analysis of the health effects including the potential increased risk of cancer of this decision before releasing the January 25th guidance memo?

ANSWER - As discussed in the 2018 Wehrum guidance memorandum, EPA will follow the January 25th issuance of the memorandum with a proposal to take comment on adding regulatory text to implement EPA’s plain language reading of the statute. We anticipate issuing a proposal for public review and comment in early 2019. As we proceed through the rulemaking process, we will prepare appropriate analyses and provide ample opportunity for interested parties to provide comment.

3. Yes or no, did EPA conduct an analysis of the potential health effects of this policy on children, babies, or pregnant women before releasing the January 25th?

ANSWER - As discussed in the 2018 Wehrum guidance memorandum, EPA will follow the January 25th issuance of the memorandum with a proposal to take comment on adding regulatory text to implement EPA’s plain language reading of the statute. We anticipate issuing a proposal for public review and comment in early 2019. As we proceed through the rulemaking process, we will prepare appropriate analyses and provide ample opportunity for interested parties to provide comment.

4. Yes or no, did EPA conduct an analysis of the potential health effects of this policy on older Americans or those with chronic health problems before releasing the January 25th guidance?

ANSWER - As discussed in the 2018 Wehrum guidance memorandum, EPA will follow the January 25th issuance of the memorandum with a proposal to take comment on adding regulatory text to implement EPA’s plain language reading of the statute. We anticipate issuing a proposal for public review and comment in early 2019. As we proceed through the rulemaking process, we will prepare appropriate analyses and provide ample opportunity for interested parties to provide comment.

5. Yes or no, did EPA conduct an analysis of the potential health effects of this policy on minority and low-income communities before releasing the January 25th?

ANSWER - As discussed in the 2018 Wehrum guidance memorandum, EPA will follow the January 25th issuance of the memorandum with a proposal to take comment on adding regulatory text to implement EPA's plain language reading of the statute. We anticipate issuing a proposal for public review and comment in early 2019. As we proceed through the rulemaking process, we will prepare appropriate analyses and provide ample opportunity for interested parties to provide comment.

Message

From: Moody, Christina [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=813EB7F985C845EAA91EDC10C6E9A914-CMOODY]
Sent: 6/18/2018 5:24:35 PM
To: Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]
CC: Rodrick, Christian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6515dbe46dae466da53c8a3aa3be8cc2-Rodrick, Ch]
Subject: RE: 4/26 E&C Hearing QFRs
Attachments: Cleared HAC QFR responses as of 6.18.18.docx

Flag: Follow up

Aaron,

Attached are the final cleared QFRs from the HAC hearing. A few are still undergoing clearance through OMB, such as Morocco trip QFR. I will send those when I have them.

Christina J. Moody
US Environmental Protection Agency
Office of Congressional Affairs & Intergovernmental Relations
Moody.Christina@epa.gov

From: Ringel, Aaron
Sent: Tuesday, June 5, 2018 11:00 AM
To: Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>; Levine, Carolyn <Levine.Carolyn@epa.gov>; Moody, Christina <Moody.Christina@epa.gov>; Haman, Patricia <Haman.Patricia@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>; Aarons, Kyle <Aarons.Kyle@epa.gov>
Cc: Rodrick, Christian <rodrick.christian@epa.gov>; Frye, Tony (Robert) <frye.robert@epa.gov>; Palich, Christian <palich.christian@epa.gov>; Shimmin, Kaitlyn <shimmin.kaitlyn@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>
Subject: 4/26 E&C Hearing QFRs
Importance: High

All,

We received the QFR's for the Administrator from the 4/26 Energy and Commerce hearing (attached). Not as many as last time thankfully, only about 25 pages worth (roughly 114 questions). We did an initial run through noting in front of each question which program office we believe would be best suited to fielding a draft response and inserting answers where we already had a cleared response from his previous SEPW QFRs. Considering the HAC-IE QFRs are already being worked on I think we will additional responses we can include and help reduce the amount of new work needed.

They've asked that we respond by Wednesday, June 13th. To that end, please disseminate to your respective programs and ask for them to expedite getting us back draft responses by this Friday so we can review, edit and have cleared both internally and by OMB next week if possible. I am under no illusion that we'll meet the next Wednesday deadline but would like to have these over to OMB next week so we can turn them around the week after.

Please let me know if you have any questions.

Thanks!

-Aaron

Aaron E. Ringel

Deputy Associate Administrator

Office of Congressional & Intergovernmental Relations

U.S. Environmental Protection Agency

Personal Matters / Ex. 6

Ringel.Aaron@epa.gov

Message

From: Rodrick, Christian [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6515DBE46DAE466DA53C8A3AA3BE8CC2-RODRICK, CH]
Sent: 8/27/2018 5:12:31 PM
To: Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]
Subject: RE: 4/26 QFRs for Final Look
Attachments: 08-27-2018 - EPA_HEC_4.26_QFR_Pruitt_Responses_FINAL.docx

Attached with some very minor formatting changes.

(Shimkus Q7c – answer tabbed right.)
(Shimkus Q9 – deleted extra period at end.)
(Shimkus Q13 – answer tabbed left.)
(Degette Q1 d,e,f – paragraph break added after answer.)
(Degette Q7 b – paragraph break added after answer.)

Obviously I didn't thoroughly read each question for substance, but for formatting, everything else looks good to me.

Christian Rodrick
Special Assistant
Congressional Affairs U.S. EPA
Personal Matters / Ex. 6

From: Ringel, Aaron
Sent: Monday, August 27, 2018 12:25 PM
To: Rodrick, Christian <rodrick.christian@epa.gov>
Subject: 4/26 QFRs for Final Look

Please take a look for any formatting I might have missed.

Aaron E. Ringel
Deputy Associate Administrator
Office of Congressional & Intergovernmental Relations
U.S. Environmental Protection Agency
Personal Matters / Ex. 6
Ringel.Aaron@epa.gov

From: Rodrick, Christian [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6515DBE46DAE466DA53C8A3AA3BE8CC2-RODRICK, CH]
Sent: 7/17/2018 3:59:30 PM
To: Aarons, Kyle [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ef85c3c00a2244779c4b26ff6bc6ccc9-Aarons, Kyl]; Knapp, Kristien [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8d4ab10c47264bca8b12174cdb981942-KKnapp]
CC: Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]
Subject: FW: E&C QFRs Outstanding
Attachments: Letter to Ranking Member Elijah E. Cummings Regarding EPA's FOIA Expert Assistance Team.Final.pdf; 07-16-2018 - QFR_Pruitt_Responses_OCIR V2.docx

Hey Kyle and Kristien,

Deliberative Process / Ex. 5

10 International Travel

- a. According to EPA emails released under a Freedom of Information Act request, on July 10, 2017, Mr. Matthew Freedman was involved in the planning of the Administrator's potential trip to Australia. Mr. Freedman wrote to EPA staff, "[Richard Smotkin] and I will attend and will be present but will not be listed as members of the delegation." It has been reported that Mr. Richard Smotkin was also involved in the planning of the Administrator's December trip to Morocco. Did Mr. Smotkin meet with Administrator Pruitt or any EPA staff, in official meetings or otherwise, during the Administrator's trip to Morocco?

ANSWER -

- b. If so, please provide a full list of meetings between Mr. Smotkin and any EPA officials in Morocco, including any meetings with EPA officials and Moroccan government officials, during official business or otherwise.

ANSWER -

- c. Please provide a list of all attendees for any meeting identified in (b).

ANSWER -

- d. Recent press accounts indicated Administrator Pruitt and EPA staff missed their connecting flight to Morocco because his security detail's equipment and other gear could not be transferred to the connecting flight in time. This differs from earlier explanations from EPA that the connecting flight was missed due to weather. Please explain why Administrator Pruitt and EPA staff missed their connecting flight.

ANSWER -

- e. On May 1, 2017, Mr. Perrotta sent a memorandum requesting Administrator Pruitt be seated in first or business class on official travel. On how many instances before this memorandum did the Administrator travel in first or business class on official travel?

ANSWER – Deliberative Process / Ex. 5

- f. On how many instances after this memorandum did the Administrator travel in first or business class on official travel?

ANSWER – Deliberative Process / Ex. 5

As always, many thanks,

*Christian Rodrick
Special Assistant
Congressional Affairs U.S. EPA
O: (202) 564-4828*

From: Ringel, Aaron
Sent: Tuesday, July 17, 2018 9:28 AM
To: Moody, Christina <Moody.Christina@epa.gov>; Williams, Thea <Williams.Thea@epa.gov>
Cc: Rodrick, Christian <rodrick.christian@epa.gov>
Subject: RE: E&C QFRs Outstanding

Christina/Thea,

Deliberative Process / Ex. 5

-Aaron

From: Ringel, Aaron
Sent: Friday, July 13, 2018 4:42 PM
To: Moody, Christina <Moody.Christina@epa.gov>; Williams, Thea <Williams.Thea@epa.gov>
Cc: 'Christian Rodrick (Rodrick.Christian@epa.gov)' <Rodrick.Christian@epa.gov>
Subject: E&C QFRs Outstanding

Deliberative Process / Ex. 5

Need by end of day Monday.

Thanks,
Aaron

Aaron E. Ringel

Deputy Associate Administrator

Office of Congressional & Intergovernmental Relations

U.S. Environmental Protection Agency

W: Personal Matters / Ex. 6

Ringel.Aaron@epa.gov

Message

From: Rodrick, Christian [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6515DBE46DAE466DA53C8A3AA3BE8CC2-RODRICK, CH]
Sent: 2/1/2018 9:55:42 PM
To: Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]
Subject: RE: QFRs
Attachments: 12.7.17 hearing QFRs_Pruitt - CR_Master_V3.2.docx

*Christian Rodrick
Special Assistant
Congressional Affairs U.S. EPA
O: (202) 564-4828*

From: Ringel, Aaron
Sent: Thursday, February 1, 2018 4:51 PM
To: Rodrick, Christian <rodrick.christian@epa.gov>
Subject: RE: QFRs

Attached for removing program offices in red.

-Aaron

From: Rodrick, Christian
Sent: Thursday, February 1, 2018 4:10 PM
To: Ringel, Aaron <ringel.aaron@epa.gov>
Subject: QFRs

Here we go!

Christian Rodrick
*Special Assistant
Congressional and Intergovernmental Relations
U.S. Environmental Protection Agency
O: (202) 564-4828
C: (202) 578-2755
E: Rodrick.Christian@epa.gov*

Message

From: Kaiser, Sven-Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC78D3704BA94EDBBD0DA970921271FF-SKAISER]
Sent: 6/22/2018 12:37:34 PM
To: Moody, Christina [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=813eb7f985c845eaa91edc10c6e9a914-CMoody]; Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]
Subject: Fwd: 4/26 E&C Hearing QFRs
Attachments: 05-07-2018 - QFR_Pruitt_Responses_OCSP 6-13 OCSPPeditsv2.docx; ATT00001.htm

Christina- attached are the cleared OCSP responses. Please let me know if any questions. Thanks,
Sven

Message

From: Moody, Christina [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=813EB7F985C845EAA91EDC10C6E9A914-CMOODY]
Sent: 6/22/2018 4:00:53 AM
To: Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]
CC: Moody, Christina [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=813eb7f985c845eaa91edc10c6e9a914-CMoody]
Subject: QFRs
Attachments: 2018-06-14 HEC OW QFRs - Corps edits.docx; HEC budget QFRs -OLEM+ OECA responses.docx; OARM Shimkus QFR 11 Response_06.11.18_rev.docx; OP 22 Cost-Savings NPV.XLSX; OP EPA.docx; QFRs Tonko 11 - OCEFT 6-18-18 v3.docx; Tonko 2.SAB.docx; Tonko 4.ORD.docx

Importance: High
Flag: Follow up

Aaron,

Attached are the responses to QFRs that I've received so far. There are still a number outstanding, as listed below. Although programs are working on them, there are some that have been reassigned and some that still need to be drafted at the AO senior leadership level. I'm sending follow up emails to programs on my team and will reach out to Nancy and Helena to inquire about the QFRs they are assisting with as well. No need to make calls to elevate at this time please😊.

OUTSTANDING AS OF TO DATE:

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Christina J. Moody
US Environmental Protection Agency
Office of Congressional Affairs & Intergovernmental Relations
Moody.Christina@epa.gov

Message

From: Rodrick, Christian [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6515DBE46DAE466DA53C8A3AA3BE8CC2-RODRICK, CH]
Sent: 8/16/2018 8:29:03 PM
To: Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]
Subject: RE: PASSBACK on LRM [EHF-115-242] EPA Qs and As from Pruitt Budget Hearing
Attachments: QFRs Passback from OMB Pruitt Budget hearing_CR.docx

Flag: Follow up

Updated with Holly's additional edits.

*Christian Rodrick
Special Assistant
Congressional Affairs U.S. EPA
O: (202) 564-4828*

From: Rodrick, Christian
Sent: Tuesday, August 14, 2018 3:30 PM
To: Ringel, Aaron <ringel.aaron@epa.gov>
Subject: RE: PASSBACK on LRM [EHF-115-242] EPA Qs and As from Pruitt Budget Hearing

Attached is my document pulling out all questions and assigning to an office. As you note I imagine we will be able to complete many of them. We can talk Thursday.

*Christian Rodrick
Special Assistant
Congressional Affairs U.S. EPA
O: (202) 564-4828*

From: Ringel, Aaron
Sent: Tuesday, August 14, 2018 11:39 AM
To: Rodrick, Christian <rodrick.christian@epa.gov>
Subject: RE: PASSBACK on LRM [EHF-115-242] EPA Qs and As from Pruitt Budget Hearing

Deliberative Process / Ex. 5

-Aaron

From: Rodrick, Christian
Sent: Tuesday, August 14, 2018 11:38 AM
To: Ringel, Aaron <ringel.aaron@epa.gov>
Subject: RE: PASSBACK on LRM [EHF-115-242] EPA Qs and As from Pruitt Budget Hearing

Oh. Duh. Great.

*Christian Rodrick
Special Assistant
Congressional Affairs U.S. EPA*

O: (202) 564-4828

From: Ringel, Aaron
Sent: Tuesday, August 14, 2018 11:28 AM
To: Rodrick, Christian <rodrick.christian@epa.gov>
Subject: RE: PASSBACK on LRM [EHF-115-242] EPA Qs and As from Pruitt Budget Hearing

She did on the original email, I got them, thanks.

-Aaron

From: Rodrick, Christian
Sent: Tuesday, August 14, 2018 11:27 AM
To: Ringel, Aaron <ringel.aaron@epa.gov>
Subject: FW: PASSBACK on LRM [EHF-115-242] EPA Qs and As from Pruitt Budget Hearing

FYI, not sure why she did not include you

*Christian Rodrick
Special Assistant
Congressional Affairs U.S. EPA
O: (202) 564-4828*

From: Fitter, E. Holly H. EOP/OMB [mailto:E. Holly Fitter@omb.eop.gov]
Sent: Tuesday, August 14, 2018 11:17 AM
To: Rodrick, Christian <rodrick.christian@epa.gov>; Moody, Christina <Moody.Christina@epa.gov>
Subject: FW: PASSBACK on LRM [EHF-115-242] EPA Qs and As from Pruitt Budget Hearing

FYI

From: Fitter, E. Holly H. EOP/OMB
Sent: Tuesday, August 14, 2018 11:16 AM
To: 'Ringel, Aaron' <ringel.aaron@epa.gov>; 'EPA' <epalrm@epamail.epa.gov>
Subject: PASSBACK on LRM [EHF-115-242] EPA Qs and As from Pruitt Budget Hearing

See OMB and DOJ edits and provide your response for final clearance. Thanks.

Message

From: Rodrick, Christian [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6515DBE46DAE466DA53C8A3AA3BE8CC2-RODRICK, CH]
Sent: 5/31/2018 8:09:01 PM
To: Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]
Subject: RE: Questions for the Record: 4.26.18 Environment Hearing
Attachments: 4.26.18 QFR_Pruitt_V1.docx

Flag: Follow up

Here they are— **Deliberative Process / Ex. 5** and for everything I have highlighted which obvious I think the question fits for.

*Christian Rodrick
Special Assistant
Congressional Affairs U.S. EPA
O: (202) 564-4828*

From: Ringel, Aaron
Sent: Thursday, May 31, 2018 12:18 PM
To: Lyons, Troy <lyons.troy@epa.gov>; Greaves, Holly <greaves.holly@epa.gov>
Cc: Rodrick, Christian <rodrick.christian@epa.gov>; Moody, Christina <Moody.Christina@epa.gov>; Hanson, Paige (Catherine) <hanson.catherine@epa.gov>
Subject: RE: Questions for the Record: 4.26.18 Environment Hearing

Here are the QFR's in word doc forma as well, should make this a little easier.

-Aaron

From: Ringel, Aaron
Sent: Wednesday, May 30, 2018 3:43 PM
To: Lyons, Troy <lyons.troy@epa.gov>; Greaves, Holly <greaves.holly@epa.gov>
Cc: Rodrick, Christian <rodrick.christian@epa.gov>; Moody, Christina <Moody.Christina@epa.gov>; Hanson, Paige (Catherine) <hanson.catherine@epa.gov>
Subject: Fwd: Questions for the Record: 4.26.18 Environment Hearing

Deliberative Process / Ex. 5

Aaron

Sent from my iPhone

Begin forwarded message:

From: "Collins, Kelly" <Kelly.Collins@mail.house.gov>
Date: May 30, 2018 at 3:36:12 PM EDT

To: "Ringel, Aaron" <ringel.aaron@epa.gov>

Cc: "Couri, Jerry" <JerryCouri@mail.house.gov>, "Richards, Tina" <Tina.Richards@mail.house.gov>

Subject: Questions for the Record: 4.26.18 Environment Hearing

Good Afternoon,

Copies of The Honorable Scott Pruitt's additional questions for the record from the April 26, 2018, Subcommittee on Environment's hearing entitled "The Fiscal Year 2019 Environmental Protection Agency Budget," are attached to this email. You will also receive them in hard copy form by mail. Please contact me with any questions or concerns and thank you in advance for your help.

Thanks,

Kelly Collins | Legislative Clerk

U.S. House Committee on Energy and Commerce

(202) 225-2927 (main)

Message

From: Rodrick, Christian [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=6515DBE46DAE466DA53C8A3AA3BE8CC2-RODRICK, CH]
Sent: 8/14/2018 7:30:24 PM
To: Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]
Subject: RE: PASSBACK on LRM [EHF-115-242] EPA Qs and As from Pruitt Budget Hearing
Attachments: QFRs Passback from OMB Pruitt Budget hearing_CR.docx

Flag: Flag for follow up

Attached is my document pulling out all questions and assigning to an office. As you note I imagine we will be able to complete many of them. We can talk Thursday.

*Christian Rodrick
Special Assistant
Congressional Affairs U.S. EPA
O: (202) 564-4828*

From: Ringel, Aaron
Sent: Tuesday, August 14, 2018 11:39 AM
To: Rodrick, Christian <rodrick.christian@epa.gov>
Subject: RE: PASSBACK on LRM [EHF-115-242] EPA Qs and As from Pruitt Budget Hearing

Deliberative Process / Ex. 5

From: Rodrick, Christian
Sent: Tuesday, August 14, 2018 11:38 AM
To: Ringel, Aaron <ringel.aaron@epa.gov>
Subject: RE: PASSBACK on LRM [EHF-115-242] EPA Qs and As from Pruitt Budget Hearing

Oh. Duh. Great.

*Christian Rodrick
Special Assistant
Congressional Affairs U.S. EPA
O: (202) 564-4828*

From: Ringel, Aaron
Sent: Tuesday, August 14, 2018 11:28 AM
To: Rodrick, Christian <rodrick.christian@epa.gov>
Subject: RE: PASSBACK on LRM [EHF-115-242] EPA Qs and As from Pruitt Budget Hearing

She did on the original email, I got them, thanks.

-Aaron

From: Rodrick, Christian
Sent: Tuesday, August 14, 2018 11:27 AM
To: Ringel, Aaron <ringel.aaron@epa.gov>
Subject: FW: PASSBACK on LRM [EHF-115-242] EPA Qs and As from Pruitt Budget Hearing

FYI, not sure why she did not include you

*Christian Rodrick
Special Assistant
Congressional Affairs U.S. EPA
O: (202) 564-4828*

From: Fitter, E. Holly H. EOP/OMB [[mailto:E. Holly Fitter@omb.eop.gov](mailto:E.Holly.Fitter@omb.eop.gov)]
Sent: Tuesday, August 14, 2018 11:17 AM
To: Rodrick, Christian <rodrick.christian@epa.gov>; Moody, Christina <Moody.Christina@epa.gov>
Subject: FW: PASSBACK on LRM [EHF-115-242] EPA Qs and As from Pruitt Budget Hearing

FYI

From: Fitter, E. Holly H. EOP/OMB
Sent: Tuesday, August 14, 2018 11:16 AM
To: 'Ringel, Aaron' <ringel.aaron@epa.gov>; 'EPA' <epalrm@epamail.epa.gov>
Subject: PASSBACK on LRM [EHF-115-242] EPA Qs and As from Pruitt Budget Hearing

See OMB and DOJ edits and provide your response for final clearance. Thanks.

Message

From: Aarons, Kyle [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EF85C3C00A2244779C4B26FF6BC6CCC9-AARONS, KYL]
Sent: 8/14/2018 6:01:09 PM
To: Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]; Rodrick, Christian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6515dbe46dae466da53c8a3aa3be8cc2-Rodrick, Ch]; Morgan, Ashley [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4acef44653d440e3baab09958ffc24ea-Morgan, Ash]
CC: Moody, Christina [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=813eb7f985c845eaa91edc10c6e9a914-CMoody]; Williams, Thea [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=32cca14ddb6940e4b04683ace9e899a5-TWilli01]; Knapp, Kristien [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8d4ab10c47264bca8b12174cdb981942-KKnapp]; Richardson, RobinH [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2fa5c9eb65dc497c81a8dc9ccdb1ffa7-Richardson, RobinH]
Subject: FW: PASSBACK on LRM [EHF-115-242] EPA Qs and As from Pruitt Budget Hearing
Attachments: 07-25-2018 - EPA_HEC_4.26_QFR_Pruitt_Responses_OMB V1.docx

Just making sure folks see this. Thanks

Kyle Aarons
Congressional Affairs
U.S. Environmental Protection Agency
202-564-7351

From: Fitter, E. Holly H. EOP/OMB [mailto:E._Holly_Fitter@omb.eop.gov]
Sent: Tuesday, August 14, 2018 11:16 AM
To: Ringel, Aaron <ringel.aaron@epa.gov>; Group Epalrm <Epalrm@epamail.epa.gov>
Subject: PASSBACK on LRM [EHF-115-242] EPA Qs and As from Pruitt Budget Hearing

See OMB and DOJ edits and provide your response for final clearance. Thanks.

Message

From: Moody, Christina [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=813EB7F985C845EAA91EDC10C6E9A914-CMOODY]
Sent: 1/29/2018 1:49:06 PM
To: Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]
CC: Gomez, Laura [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=575ba24fc19d429c8302a05102353238-lgomez]; Williams, Thea [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=32cca14ddb6940e4b04683ace9e899a5-TWilli01]
Subject: FW: QFR Responses
Attachments: 12.7.17 HEC QFRs_Pruitt -ACC Draft Responses.docx; 12.7.17 HEC QFRs_Pruitt -ACC V2 Draft Responses.docx
Flag: Follow up

Aaron,

Deliberative Process / Ex. 5

Thanks,

Christina J. Moody
US Environmental Protection Agency
Office of Congressional Affairs & Intergovernmental Relations
Moody.Christina@epa.gov

From: Moody, Christina
Sent: Sunday, January 28, 2018 3:27 PM
To: Ringel, Aaron <ringel.aaron@epa.gov>
Subject: QFR Responses

Aaron,

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Hopefully we'll have an update tomorrow.

Christina J. Moody
US Environmental Protection Agency
Office of Congressional Affairs & Intergovernmental Relations
Moody.Christina@epa.gov

Message

From: Collins, Kelly [Kelly.Collins@mail.house.gov]
Sent: 5/31/2018 4:16:39 PM
To: Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]
CC: Couri, Jerry [JerryCouri@mail.house.gov]; Richards, Tina [Tina.Richards@mail.house.gov]
Subject: RE: Questions for the Record: 4.26.18 Environment Hearing
Attachments: 4.26.18 QFR_Pruitt_Pt. 1.docx; 4.26.18 QFR_Pruitt_Pt. 2.docx

Aaron –

Please find Mr. Pruitt's QFRs in a Word doc attached here.

Thanks,

Kelly Collins | Legislative Clerk

U.S. House Committee on Energy and Commerce
(202) 225-2927 (main)



From: Ringel, Aaron <ringel.aaron@epa.gov>
Sent: Thursday, May 31, 2018 12:11 PM
To: Collins, Kelly <Kelly.Collins@mail.house.gov>
Cc: Couri, Jerry <JerryCouri@mail.house.gov>; Richards, Tina <Tina.Richards@mail.house.gov>
Subject: RE: Questions for the Record: 4.26.18 Environment Hearing

Kelly, is it possible for you send the QFR's to us in a word doc?

Thanks,

-Aaron

From: Collins, Kelly [mailto:Kelly.Collins@mail.house.gov]
Sent: Wednesday, May 30, 2018 3:36 PM
To: Ringel, Aaron <ringel.aaron@epa.gov>
Cc: Couri, Jerry <JerryCouri@mail.house.gov>; Richards, Tina <Tina.Richards@mail.house.gov>
Subject: Questions for the Record: 4.26.18 Environment Hearing

Good Afternoon,

Copies of The Honorable Scott Pruitt's additional questions for the record from the April 26, 2018, Subcommittee on Environment's hearing entitled "The Fiscal Year 2019 Environmental Protection Agency Budget," are attached to this email. You will also receive them in hard copy form by mail. Please contact me with any questions or concerns and thank you in advance for your help.

Thanks,

Kelly Collins | Legislative Clerk

U.S. House Committee on Energy and Commerce
(202) 225-2927 (main)



May 30, 2018

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Pruitt:

Thank you for appearing before the Subcommittee on Environment on April 26, 2018, to testify at the hearing entitled "The Fiscal Year 2019 Environmental Protection Agency Budget."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. Also attached are Member requests made during the hearing. To facilitate the printing of the hearing record, please respond to these questions and requests with a transmittal letter by the close of business on Wednesday, June 13, 2018. Your responses should be mailed to Kelly Collins, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed in Word format to kelly.collins@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

John Shimkus
Chairman
Subcommittee on Environment

cc: The Honorable Paul Tonko, Ranking Member, Subcommittee on Environment

Attachments

Attachment 1—Additional Questions for the Record

The Honorable John Shimkus

1. While some are interested in ensuring EPA actions to limit one or more FIFRA-regulated substances, I am more interested in all FIFRA related activities, particularly in view of the uncertainty about the future deployment of user fees now made available under the Pesticide Registration Improvement Act.
 - a. If PRIA fees were to expire:
 - i. Would this mean the reinstatement of tolerance fees?
 - ii. If yes, would the reinstatement of tolerance fees produce enough revenue to ensure the robustness reviews mandated by FIFRA?
 - b. What percentage of staffing expenses are covered by PRIA fees?
 - c. If PRIA fees expire:
 - i. How many EPA employees – both FTE and contract workers – would be impacted, including through the loss of employment?
 - ii. How much in budget resources would EPA need to transfer to OCSPP to make up for lost PRIA revenues for FIFRA activities?
 - iii. What is the impact on the pace of pesticide applications reviews? How much longer will they take?
2. Legislation pending in Congress would provide PRIA fees for another 3 years, but also address other matters as well.
 - a. Please explain the need for and characterize the significance of having, including in practical terms:
 - i. \$500,000 in funding for efficacy guidelines for public health pesticides;
 - ii. \$500,000 for good laboratory practices funding;
 - iii. An increase in maintenance fees from \$27.8 to \$31 million for review and registration;
 - iv. Additional categories and deadlines for products reviewed; and
 - v. Removal of FIFRA section 4(k)(2).

3. Beginning in 2023, the agency will have more flexibility to set targets under the Renewable Fuel Standard (RFS). Given EIA projections of a 31 percent decrease in motor gasoline consumption between 2017 and 2050, based upon increases in fuel economy standards and electric vehicles market penetration:
 - a. Will EPA have authority in 2023 and subsequent years to reduce biofuel volume requirements below the existing statutory guidelines? Could this result in fewer gallons of biofuel in the market in the future than exist today?
 - b. Will EPA have authority in 2023 and subsequent years to allow a RIN to be generated by recharging an electric vehicle with electricity generated from a biogas power plant or other renewable energy source?
 - c. Will EPA have authority in 2023 and subsequent years to reorganize the program's four existing nested categories?
4. Is EPA engaged in planning for 2023 and subsequent years with regard to the agency's reset authority and the RFS? If so, please describe the range of options that EPA is considering.
5. The Folcroft Landfill (Operable Unit 2 of the Lower Darby Creek Superfund Site in Pennsylvania) was placed on the NPL in 2001, and the Remedial Investigation has not been finalized. The July 2017 Superfund Taskforce report recommends inquiry and additional resources for sites on the NPL for five years or more without a significant movement. What inquiries and additional resources have been directed to the Folcroft Landfill which has been on the NPL since 2001 without completion of the Remedial Investigation?
6. The EPA Taskforce Report recommends the establishment of a clarification to the principles for groundwater restoration. What is the goal for groundwater remediation at the Folcroft Landfill (Operable Unit 2 of the Lower Darby Creek Superfund Site in Pennsylvania)?
7. This Operable Unit, which is owned by the Department of the Interior, is within the John Heinz Wildlife Refuge.
 - a. Do EPA's goals for groundwater restoration take into account the Department of Interior's long range plan for the Refuge?
 - b. Is the Folcroft Landfill eligible for a Technical impracticability waiver for groundwater?
 - c. What is the process and standard to receive a TI waiver?
 - d. How would changes to the process and standards for awarding a TI waiver, as recommended by the July 2017 EPA Taskforce Report, impact the Superfund process at the Folcroft Landfill?

8. EPA's recently released proposed rule on increasing transparency in regulatory science states that the proposal is consistent with the requirements for major scientific journals like Science, Nature, and the Proceedings of the National Academy of Sciences.
 - a. Why are more journals and scientific institutions implementing these transparency policies?
 - b. Isn't replication and verification a key step in the scientific process?
9. Despite the many claims made prior to the release of this proposal, would this proposed rule violate any existing federal laws on privacy?
10. What is this proposed rule's impact on confidential business information (CBI)? Please state how you plan to ensure that in any final rule EPA will neither: be (1) prevented from using science that cannot be published (because it has CBI in it) nor forced into the default position that EPA should endeavor to publicly release all scientific data – including legally colorable CBI – so that this science can be used by the Agency?
11. I understand the Agency is looking at its work force to see how it can better function.
 - a. How many people does EPA have working full-time for the Agency in headquarters?
 - b. How many people does EPA have working full-time for it in its regional offices?
 - c. How many contractors currently work for EPA? [if he doesn't know what number ask him for a percentage. If that fails, ask him why not]?
12. One of the priorities for the proposed budget includes an "EPA Reform Plan." Projects under this plan include streamlining the permit review process, developing a Lean Management System, and reducing the reporting burden on the regulated community.
 - a. Why were these areas made priorities?
 - b. What progress has been made so far on these efforts?
 - c. Do you have benchmarks and timelines for the Reform Plan?
13. What are the biggest obstacles to meaningfully reforming EPA to engage the 21st Century?
14. The proposed budget has four Agency Priority Goals, including that EPA intends to meet statutory deadlines for chemical reviews under the Toxic Substances Control Act. In particular, EPA plans 100 percent compliance with "existing" chemicals and only 80 percent compliance certain "new" chemicals.

Under the law, EPA is the gatekeeper to innovation because these chemicals cannot go to onto the market until EPA decides they can and companies cannot work to improve these chemicals unless EPA says there is a problem.

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As of April 17, 2018, EPA's website was reporting that EPA had 449 pending applications for new chemicals. In addition, the EPA website claims the typical caseload for new chemicals under review is approximately 300 cases.

- a. Is the increase in pending applications – at one-third of EPA's historical output, due to a higher number of new chemicals applications coming into the Agency at the same time or EPA falling behind again on getting them processed?
 - b. What do you intend to do to eliminate the backlog and keep it at bay?
 - c. One thing the EPA website does not give data on is just how long some of those applications have been sitting at EPA. The law is very clear 90 days and no more than 180 days to review and regulate.
 - i. How many of the 449 new chemicals applications sitting at EPA are less than 90 days old?
 - ii. How many of the 449 new chemical applications sitting at EPA are more than 90 days old, but less than 180 days?
 - iii. How many of the 449 new chemical applications have been filed with EPA for more than 180 days and what is the range of time on them?
15. Under TSCA section 26, the Agency has authority to set fees to defray the costs of chemical testing, new and existing chemical review and regulation and to offset related costs for processing confidential business information. For new chemicals, EPA moved the fee from \$2,500 to \$16,000 – a more than 6-fold increase – and for small manufacturing entities – EPA raised the fee for new chemicals from \$100 to \$2,800 – or a 28-fold increase.
- a. How much impact with these dramatic fee increases have on improving the speed at which the Agency is reviewing new chemicals?
 - b. If not much, then what is the problem?
16. The proposed fee rule suggests EPA will see 10 percent fewer new chemical applications based on legal changes to how EPA is supposed to review new chemicals. What kind of new chemical applicant attrition is expected due to the combined fee increase and lack of generated revenue from the chemical?
17. Portland Harbor is complex site at which almost 100 potentially responsible parties (PRPs) have been identified. It is my understanding that on March 16, 2018, EPA sent all of the PRPs a letter indicating that EPA will be issuing Special Notice Letters for full performance of the remedial design/remedial action (RD/RA) at the Portland Harbor Site by the end of 2019. However, several of the PRPs have indicated that the allocation process will not be complete by that time, and that the issuance of Special Notice Letters will actually slow the clean-up, because companies will choose to litigate rather than potentially bear the full cost

of the clean-up at that point. How will EPA balance the allocation process timeline and issuing the Special Notice Letters?

The Honorable David B. McKinley

1. I appreciate your commitment to supporting cooperative federalism under the Coal Combustion Residuals (CCR) permitting program by working with states to develop, submit, and implement state CCR permit programs. How is EPA working with states as they develop and submit these plans, particularly those that are seeking to incorporate WIIN Act authorities rather than just adopting the current, self-implementing federal rule?
2. As states develop these programs, guidance from EPA will be important. With that in mind, Congress appropriated \$6 million to EPA for FY18 to develop its own federal permitting program for “non-participating states”. Please provide an update on and timeline for the development of that federal permit program.

The National Association of Scholars recently published a report titled, “THE IRREPRODUCIBILITY CRISIS OF MODERN SCIENCE, Causes, Consequences, and the Road to Reform”. They state, “The Federal government should also consider instituting review commissions for each regulatory agency to investigate whether existing regulations are based on well-grounded, reproducible research. These should establish the scope of the problem by identifying those regulations that rely on unreplicated or irreproducible research, and recommending which regulations should be revoked.”

3. Will you commit the EPA to investigate whether existing regulations are based on well-grounded, reproducible research?
4. Will you commit the EPA to identify those regulations that rely on un-replicated or irreproducible research?
5. Will you provide a report to our committee and my office with the results of your investigation?
6. Will you provide a report to our committee and my office regarding if the endangerment finding for CO2 was based upon well-grounded, reproducible research?

Administrator Pruitt, I know that the ethanol industry has recently attacked the EPA for granting small refinery hardship relief.

7. Does the Clean Air Act establish small refinery hardship relief?
8. Has the Congress affirmed this on several occasions by directing the DOE to study this issue and, more recently, reminding the EPA that it did not intend for small refineries to bear a disproportionate regulatory burden?
9. Did the DOE’s 2011 report for Congress predict that harm to small refineries would increase over time, not diminish?

10. Did the 10th circuit decision last year instruct the EPA to grant small refinery hardship relief?

Some have made the argument that hardship relief results in “demand destruction” for ethanol by resulting in less blending. Regardless of if small refineries receive hardship relief, they are incentivized to blend ethanol for many economic reasons: 1) it is cheaper than gasoline, 2) they must meet their RVO, and 3) they can sell RINS not needed for compliance.

11. Was ethanol consumption up in the first quarter of 2018?

12. Was it, in fact, higher than projected in November of 2017 when RINS were 80-90 cents a gallon?

13. Did ethanol consumption increase throughout 2017 despite hardship relief?

President Obama used an EPA “veto” twice in unprecedented fashion. The Spruce Coal Mine located in West Virginia, had the required permits and approvals in hand, when the EPA “vetoed” the project. The project went through the entire regulatory process and was approved by ALL parties. Then the Obama Administration’s “War on Coal” went into high gear. The EPA vetoed the project. The second instance was the Pebble Mine in Alaska, where they vetoed the project prior to the approval process starting. Both instances of using the EPA veto are very dangerous if they are allowed to stay in place. A future administration can use the veto to shut down the entire coal mining industry if both precedents are not reversed by the EPA. I can think of no greater threat to the industry.

14. Will you consider revoking both the Spruce Mine and Pebble Mine vetoes?

15. Do you believe that the EPA should have the authority to preemptively veto development projects under Section 404 of the Clean Water Act before any permit applications have been submitted to the Army Corps of Engineers?

16. President Trump, in his Infrastructure Initiative, has proposed legislation that eliminates entirely EPA’s authority to veto projects under the Clean Water Act. Why have you taken a position, by leaving in place the Pebble veto, that is different than the President’s policy?

17. Isn’t it correct that under the applicable regulations the Army Corps of Engineers cannot issue a permit to a project developer if the EPA has even begun the process of issuing a veto?

18. Is there any environmental harm that occurs whatsoever by allowing a permit application to be considered by the Army Corps of Engineers without a veto pending?

19. Isn’t it better to wait until the Army Corps of Engineers has decided whether to grant a permit before EPA issues a veto, if one is to be issued at all?

20. Has EPA ever before issued a preemptive veto of the sort you have left in place with your decision not to withdraw the veto of the Pebble mine?

21. In the Agency's decision not to withdraw the preemptive Pebble veto, you cited the risk created by the project. In doing so, you are relying on the Bristol Bay Watershed Assessment, which many of the Agency's own peer reviewers said was insufficient to support a regulatory decision. Why are you relying on science that has been discredited?

The Honorable Gregg Harper

1. Does the Clean Air Act establish small refinery hardship relief?
2. Has the Congress affirmed this on several occasions by directing the DOE to study this issue and, more recently, reminding the EPA that it did not intend for small refineries to bear a disproportionate regulatory burden?
3. Did the DOE's 2011 report for Congress predict that harm to small refineries would increase over time, not diminish?
4. Do small refineries typically produce more diesel than gasoline?
5. Blending gasoline with ethanol to current standards will separate more RINs than blending the same volume of diesel. EPA's RVO calculation, however, imposes the same proportional ethanol RIN obligation on all refiners even though some produce significantly less gasoline and more diesel than others. Even if they blend all their production, these diesel rich refiners cannot separate enough RINs to meet their total obligation while their gasoline rich competition will separate more than required. These refiners who produce more diesel are then forced to buy RINS.

Does the hardship process give EPA a tool to mitigate this structural discrimination against these small refineries?

6. RFA has made the argument that hardship relief results in "demand destruction" for ethanol by resulting in less blending. Regardless of whether or not small refineries receive hardship relief, they are incentivized to blend ethanol for a number of economic reasons: 1) it is cheaper than gasoline, 2) they must meet their RVO, and 3) they can sell RINS not needed for compliance.
 - a. Was ethanol consumption up in the first quarter of 2018?
 - b. Was it, in fact, higher than projected in November of 2017 when RINS were 80-90 cents a gallon?
 - c. Did ethanol consumption increase throughout 2017 despite the EPA granting small refinery hardship relief?
7. Some of my constituents have raised an issue regarding oil spill response training. I am told that the funding for certain training courses for federal and local responders involved in

inland oil spill prevention and cleanup has been eliminated and that the EPA Environmental Response Team is no longer able to consistently make these courses available.

- a. With an increase in oil production across the country, there remains a need for oil spill response training for local, state, and federal responders. Would you commit to looking into whether funding can and will be made available for this important training?
8. I want to applaud the work EPA is doing to streamline or eliminate unnecessarily costly regulations. And while most of the attention is focused on major rules like the Clean Power Plan or Waters of the United States, I am particularly pleased that under your leadership EPA is taking a second look at other regulations that may not be major but nonetheless have a serious impact on small businesses. In particular, I hear that EPA is reviewing the Obama era rule targeting wood heater manufacturers such as Hardy Manufacturing back in my district. But time is of the essence, as the regulatory deadlines are coming soon. Can you assure us that you will do all you can to provide timely regulatory relief for wood heater manufacturers?

The Honorable Tim Walberg

1. This is a very technical issue but an extremely important one to manufacturers in Michigan. In 2011, EPA approved the use of Isobutane as a refrigerant and limited the amount of refrigerant that could be used in a refrigerator to 57 grams. This amount was based on a well-recognized safety standard limit at the time. However, the safety standard has since been updated to increase the allowable amount of refrigerant to 150 grams. These refrigerants are more environmentally friendly and supported by both industry and environmental advocates yet manufacturers are still in limbo as they await EPA's rulemaking.
 - a. Can you commit to working on this issue to recognize the updated safety standard so manufacturers can begin retooling and redesigning refrigeration products? Delay will only add cost to American workers and our manufacturing shop floors.
 - b. I know you have a lot of issues to deal with at the EPA, but I urge you to publish the technical correction without delay. It's my understanding refrigerator manufacturers have been working with your staff at the EPA for over a year now on this and would welcome the update.
2. ENERGY STAR is an important program and one that consumers in my district value. Over the past year, manufacturers in my state have stressed the need for the program to be reformed. In the FY18 Omnibus Appropriations package, EPA and DOE were directed to revisit the Obama era Memorandum of Understanding (MOU) that changed the way the program was managed and report back to Congress within 90 days.
 - a. The 2009 MOU for example moved home appliances out of DOE and over to EPA, where the products had never been managed before. DOE has the expertise in these

products because they regulate them through the appliance standards program required by EPCA. It doesn't make sense to me to have duplicative programs built up within two agencies. From a good governance perspective and in the era of streamlining programs under the EPA's purview, I would like to hear from you on this specific topic.

- b. Would you support moving the ENERGY STAR program for home appliances back to DOE while still maintaining a majority of the management within EPA? It's my understanding a broad set of industries are eager to work with your agency on these issues and I look forward to working with you to revisit the MOU.

The Honorable Earl L. "Buddy" Carter

EPA Marine Engine Waivers

In a recent Energy & Commerce Committee hearing, you mentioned that you would now be personally involved in the marine engine waiver issue for pilot boats, after giving the commitment to look into in your December testimony from the committee. This is a pressing issue that could have a wide-ranging impact on our port operations and growth.

1. Mr. Administrator, can you please provide a breakdown of the actions the EPA has taken to address the Tier 4 concerns?
2. Please provide a timeline of what the EPA has done and any upcoming actions that will be taken by the EPA to address this concern.
3. After you send technical experts to California, what will need to be done?
4. Does the EPA have the authority to move forward with a waiver system? If not, what are your legal restrictions?

Tier 4 Restrictions for Generators

1. Administrator Pruitt, I have a similar concern for the Tier 4 restrictions placed on large, 1-megawatt generators. It's my understanding that the Tier 4 restrictions are preventing Tier-4 generators from being sold in the market due to that and the portability restrictions. It's forecasted that there won't be a viable solution in the market until the early 2020s. Is this something you are working on?
2. What would need to be done by the EPA to remedy this situation and allow for the sale of currently developed generators?
3. Is the EPA currently reviewing this concern or working on any changes that would remedy it?

Biomass

I commend you for your policy statement clarifying biomass carbon neutrality on Monday, April 23 in my home state of Georgia. As you know, the Consolidated Appropriations Act of 2018 included language in Section 431 Policies Relating to Biomass Energy directing the Secretaries of Energy and Agriculture and the Administrator of the Environmental Protection Agency to establish clear and simple policies that reflect the carbon-neutrality of forest bioenergy and recognize biomass as a renewable energy source provided the use of forest biomass does not cause the conversion of forests to non-forest use.

1. What is the EPA's progress in implementing a regulation on carbon neutrality of biomass? What are the next steps?

The Honorable Jeff Duncan

Some of my corporate constituents are subject to complex and, at times, inconsistent regulation by the Environmental Protection Agency. Inconsistent actions or interpretations by EPA are particularly burdensome to my constituents when the Agency's Policy and Enforcement Offices take positions that are at odds with each other. To that end, please explain whether, and to what extent, EPA's Office of Enforcement and Compliance Assurance ("OECA") consults with EPA's Office of Transportation and Air Quality ("OTAQ") prior to initiating any enforcement action involving a certification issued by OTAQ (for example, an enforcement action alleging uncertified engine parameters).

1. In addition, what steps can be taken by EPA to improve and streamline consultation between OTAQ and OECA to avoid unnecessary hardship on the regulated community?

During the last Administration, many Energy Star program operations were shifted from the Department of Energy, where they had been since 1996, to EPA. I understand from home appliance manufacturers that they would like Energy Star efforts related to home appliances transferred back to the DOE. One of these is Electrolux, a home appliance manufacturer that has a large presence in my district in Anderson, SC. This is an important issue for South Carolina as we have recently seen a great deal of investment in the home appliance industry. In Newberry, SC Samsung recently opened its first U.S. based home appliance manufacturing facility and is on track to create over 1,000 jobs by 2020.

1. With the Appliance Standard program at DOE and Energy Star at EPA, companies currently have two federal agencies attempting to coordinate changes in product specifications and test procedures on the same products. This creates unnecessary cost, confusion and uncertainty for manufacturers and does not appear to bring any benefit to consumers. **Administrator Pruitt**-are there any efforts to make such a change?
2. Wouldn't this change fit in with your desire to get EPA back to its core functions?

The Honorable Frank Pallone, Jr.

During your appearance on April 26th, you stated that purchasing real estate through a Limited Liability Corporation, or LLC, is “normally how you buy real estate in Oklahoma.” Your ownership stake in that LLC was not included in your financial disclosures at the time.

1. How often have you purchased real estate through an LLC?
2. Do you currently own property through an LLC or have a stake in an LLC that owns property?
3. Please list all property you have purchased and/or owned a stake in through an LLC.
4. Please explain why your ownership stake in Capital House, LLC was not listed in your financial disclosures at the time.

Also at the April 26th hearing, you disavowed knowledge of whether you had paid taxes on the income from your ownership stake in Capital House LLC. You said “you provide information to your accountant, they determine what you pay.”

5. Did you sign your tax filings for the years in question? Do you take responsibility for the accuracy of the information contained therein?

Extensive questions have been raised about your tax liability for the expenses of your security detail when they accompanied you on personal travel, including to Disney World and the Rose Bowl.

6. Did you pay taxes on that benefit?

It has been revealed that the EPA reimbursed your former landlord, Vicki Hart, for the repair of a door at your residence.

7. Did you reimburse the EPA for that expense?
8. If not, did you pay taxes on that income?

During the Administrator’s April appearance before the Subcommittee, Chairman Walden underscored the importance of staffing and internal management issues at EPA, stating “it is essential that EPA have the staff with proper expertise, implementing and enforcing programs that correlate with their experience.”

9. Please provide the Committee a copy of the EPA’s reorganization plan submitted to OMB pursuant to Executive Order 13781, including any interim and final drafts submitted to OMB.
10. Please provide the Committee a copy of the EPA reform plan.
11. Explain the similarities and differences between the reform plan and the reorganization plan.

12. Please provide the Committee a copy of the EPA's operating plan for new hires and indicate how many new employees EPA plans to hire in each program office.
13. Please provide the Committee with the names of political and career members of the hiring review panel.
 - a. On what criteria were the panel members chosen?
 - b. What procedures do the offices need to do to make a hiring request of the panel?
14. When filling a position from within the agency, how is it determined a staff member possesses the technological skills appropriate for the office of which they are being transferred?
15. Please provide the following information:
 - a. FTE on EPA payroll in regional offices and in HQ.
 - b. The number of employees that have left the EPA through attrition during 2017 and 2018, and the numbers from each office.
 - c. Please provide a list of employees that have been moved to a new position within the agency, including their previous office, title, position description, and their new office, title, and position description.
 - d. The predetermined employee headcounts for each office.

The Honorable Bobby L. Rush

During the question period I spoke to you about the widespread levels of lead that have been detected throughout homes in Chicago and I referenced a recent Tribune article entitled "Brain-damaging lead found in tap water in hundreds of homes tested across Chicago, results show" (April 12, 2018).

You agreed with me that this was a severe problem, nationally, and it would cost approximately \$45 billion to resolve. You mentioned that there was a program at the agency consisting of \$4 billion in grants, annually, for ten years that states could apply for to address this issue.

1. Can you provide more information regarding this program, including eligibility requirements, deadlines, and the dollar amounts available?
2. Will you commit to work with my office to have staff from EPA Region 5 come into my district to discuss this program with state and local leaders, as well as other stakeholders concerned with this issue?

The Honorable Diana DeGette

1. I questioned you about your legally dubious real estate transactions, but further information is needed in light of your incomplete answers and troubling new developments.¹

In your testimony before the Subcommittee, you failed to disclose significant details concerning your 2003 purchase of a luxury home in Oklahoma City. According to a recent report in the *New York Times*, you purchased the home with Justin Whitefield, a registered lobbyist who, at the time, was pursuing business-friendly changes to Oklahoma's workers' compensation rules, which you allegedly helped negotiate.² Mr. Whitefield, yourself, and four other owners reportedly used a limited liability company, Capitol House L.L.C. (Capitol House), to purchase the home.³ The seller, Marsha Lindsey, was a telecommunications lobbyist for SBC Oklahoma, and sold the property at a significant discount of approximately \$100,000.⁴ SBC Oklahoma reportedly offset this amount in Ms. Lindsey's retirement package.⁵

Your incomplete testimony leaves key questions unanswered concerning this transaction. You allegedly paid for one-sixth of the purchase price, and according to reports, you purchased the home with Kenneth Wagner, who now serves as a political appointee at EPA and previously served as treasurer of your political action committee,⁶ as well as health care executive Jon Jiles.⁷ However, the identity of two additional owners remains unknown.

You also apparently failed to disclose your interest in Capitol House in your financial disclosure filings, and in your testimony could not confirm whether you paid taxes on rental income received for a room on the property rented to another Republican lawmaker.⁸

Given your history of real estate transactions with lobbyists both in Oklahoma during your tenure as a state legislator and in Washington, D.C. while serving as EPA Administrator, and in light of these troubling developments, I ask that you respond to the following requests:

¹ House Committee on Energy and Commerce, *Hearing on the Fiscal Year 2019 Environmental Protection Agency Budget*, 115th Cong. (Apr. 26, 2017).

² *Pruitt's Coziness with Lobbyists Includes Secretly Buying a House with One*, New York Times (May 3, 2018).

³ *Pruitt's Coziness with Lobbyists Includes Secretly Buying a House with One*, New York Times (May 3, 2018).

⁴ *Pruitt's Coziness with Lobbyists Includes Secretly Buying a House with One*, New York Times (May 3, 2018).

⁵ *Pruitt's Coziness with Lobbyists Includes Secretly Buying a House with One*, New York Times (May 3, 2018).

⁶ *Pruitt's Friend Joins Agency as Senior Adviser*, E&E News (Apr. 13, 2017).

⁷ *Pruitt's Coziness with Lobbyists Includes Secretly Buying a House with One*, New York Times (May 3, 2018).

⁸ *Scott Pruitt Before the EPA: Fancy Homes, a Shell Company and Friends with Money*, New York Times (Apr. 21, 2018).

- a. Please provide the names and corresponding ownership share of all owners of Capitol House.
- b. Please provide documentation of your payment for and purchase of an ownership share in Capitol House, including the terms of the payment and the individual or entity who received the payment.
- c. Please provide copies of your financial disclosures disclosing your ownership interest in Capitol House.
- d. Please provide the name of the individual(s) who arranged for cash purchase of the Oklahoma City property and subsequent transfer of ownership to Capitol House.
- e. Please provide the name of the individual(s) who requested or arranged for Spirit Bank, where former EPA appointee Albert Kelly was chief executive, to approve a mortgage in the name of Capitol House.
- f. Please provide documentation demonstrating you paid taxes on all rental income received from Jim Dunlap or any other tenant who rented space on the property, including, but not limited to, Schedule K-1 tax forms.
- g. Please provide documentation of any proceeds you received for the 2005 sale of the property, including the amount and date received.

The Honorable Janice D. Schakowsky

1. **Speeches:** Please provide the date, location, name of event, and text for all speeches you have given to industry associations (e.g. Louisiana Chemical Association) in your capacity as EPA Administrator.
2. **Official vehicle:** During the hearing, you stated that EPA staff “just asked for consultation” on the selection of your official vehicle. During this consultation, did you or people responding on your behalf express a preference for a larger vehicle, leather interior, bucket seats, Wifi, GPS navigation, or any other luxury features that were ultimately included in the vehicle selected?
3. **Samantha Dravis:**
 - a. At any time during Samantha Dravis’s employment at EPA, was she employed or compensated using authority under the Safe Drinking Water Act?
 - b. How much was Samantha Dravis compensated during the three months from November 2017 to January 2018?

- c. According to the EPA's own spokesperson, Ms. Dravis was a "senior leader at the EPA." Do you have record of meetings attended in person or substantial projects completed by Samantha Dravis during the three months from November 2017 to January 2018? If so, please summarize. Please provide all records of meetings attended in person or substantial projects completed, as well as any emails between Administrator Pruitt and Ms. Dravis concerning her attendance or departure from the EPA.
- d. Was Samantha Dravis approved for first class travel to or from Morocco in December 2017? If so, who at EPA approved first class travel and on what date?

The Honorable Paul Tonko

1. Strengthening Transparency in Regulatory Science Proposed Rule

- a. Please cite specific provisions in statute that require EPA to make the changes proposed in the Strengthening Transparency in Regulatory Science rule?
- b. Do any of the statutory authorities identified by the proposed rule include the ability to grant exemptions to the treatment of science at the Administrator's discretion to address issues on a case-by-case basis?
- c. What science organizations or stakeholder groups were involved in the development of this proposed rule? Please provide a list of all meetings, including teleconferences, with these organizations, including the date, and the name, title, and organizational affiliation of participants.
- d. Previously, EPA analyzed legislation (The HONEST Act) that would have similar goals and estimated it would cost \$250 million annually to implement. Did EPA develop any cost estimates to implement the proposed rule?
- e. If so, please provide any cost analysis completed regarding the proposed rule.
- f. Why did EPA conclude this is not an economically significant rulemaking? Please explain EPA's analysis associated with this conclusion.
- g. Please provide a list of all key meetings and determinations made for this rulemaking during the Action Development Process, including the rulemakings tier, meeting dates and participants in any intra-agency work group meetings, and a list of EPA offices which participated in the development of the rulemaking. For each office, please provide the name, title, and office of each work group participant.
- h. Did EPA examine lost benefits or costs associated with EPA's inability to consider certain scientific studies as a result of this proposal?
- i. If so, what analysis was done on costs or lost benefits, and what were the results?

- j. Many older studies may rely on data that are no longer available. Does EPA have any estimates or analysis of how many studies would be disqualified to be used for major rulemakings under this proposal?
- k. How long did the Office of Information and Regulatory Affairs (OIRA) take to complete its review of the proposed rule? Please provide the date OIRA accepted and began review, and the date OIRA completed review.
- l. Did EPA or other executive officials have any communication with the Office of Information and Regulatory Affairs to accelerate this review? If so, please provide the name and title of these individuals.
- m. Was the Office of Information and Regulatory informed by any EPA official that Administrator Pruitt would be testifying before Congress one week after submitting this proposed rule?
- n. Office of Information and Regulatory Affairs reviews of similarly complex rules often take months to complete. What specific factors allowed this review to be completed so quickly?
- o. The proposed rule solicits comments in numerous areas, indicating it hopes to develop answers during the regulatory process. Proposals with so many outstanding questions are often released as Advanced Notice of Proposed Rule Makings. Why did EPA propose this as a Notice of Proposed Rulemaking with so many outstanding questions included?
- p. Did the Office of Information and Regulatory Affairs ask EPA to issue an Advanced Notice of Proposed Rulemaking instead? If so, when was this request made and who at OIRA made this request?

2. Science Advisory Boards (SAB)

- a. How many current members of EPA Science Advisory Boards are expected to cycle off before the end of this year?
- b. Since joining the agency, has Administrator Pruitt requested EPA career staff in the SAB Staff Office to provide recommendations for board appointments?
- c. If so, how many of those recommendations have been accepted of the total amount of new appointees.
- d. How many EPA Science Advisory Board members have been appointed without input by the SAB Staff Office?
- e. How many issues went before EPA Science Advisory Boards or the Clean Air Scientific Advisory Committee (CASAC) for review in each year for the past five years?

- f. Does the Administrator plan to seek SAB or CASAC review of the recently proposed Strengthening Transparency in Regulatory Science rule?
- g. Does the Administrator plan to seek SAB or CASAC review on any climate change issues?
- h. Does the Administrator plan to seek SAB or CASAC review on any aspect of the long-term economic costs and benefits of any changes that have been made or are being proposed under his tenure at EPA?

3. The Frank R. Lautenberg Chemical Safety for the 21st Century Act Implementation

- a. What steps has EPA taken to ensure new and existing chemical reviews include explicit considerations to protect vulnerable populations, as required by statute?
- b. In November, Administrator Pruitt and EPA staff attended an American Chemistry Council board meeting on South Carolina's Kiawah Island. The Administrator's schedule contains no details of that weekend. Please provide a list of all companies or lobbyists that met with the Administrator in South Carolina.
- c. Please provide a list of all chemicals specifically discussed at meetings attended by the Administrator at this event.

4. Formaldehyde Assessment

- a. Earlier this year, Administrator Pruitt was asked by Senator Ed Markey at the Senate Committee on Environment and Public Works hearing on 1/30/18 about the delayed formaldehyde assessment. At that hearing, Administrator Pruitt said, "Senator, I commit to you that I will look into that and make sure your office is aware of what we have and when we can release it." Please provide an update on the status of the formaldehyde assessment.
- b. Has EPA concluded its intra-agency review process?
- c. What additional reviews are needed before it can be finalized?
- d. When does EPA expect the final report to be released?

5. EPA Year in Review 2017-2018 Report

- a. The "EPA Year in Review 2017-2018" report states, "In year one, EPA finalized 22 deregulatory actions, saving Americans more than \$1 billion in regulatory costs." Please provide a list of each of these actions along with EPA's analysis of the regulatory cost estimate for each action.

6. Lead and Copper Rule

- a. EPA undertook efforts to revise the Lead and Copper Rule more than 13 years ago. In October 2016, the EPA published a white paper on the revisions that included a pledge to issue a proposed rule by the end of 2017. That deadline has passed. When does EPA expect to issue a proposed rule?
- b. Has EPA conducted any analysis on how the proposed “Strengthening Transparency in Regulatory Science” rule may impact its ability to regulate lead in drinking water?

7. PFAS

- a. EPA announced a National Leadership Summit on Per- and Polyfluoroalkyl Substances (PFAS). What options has EPA discussed internally to regulate or reduce PFAS contamination in drinking water?
- b. What options have been discussed by staff of EPA and the Department of Defense?
- c. Has EPA conducted any analysis on how the proposed “Strengthening Transparency in Regulatory Science” rule may impact its ability to regulate PFAS in drinking water?

8. Funding for the Office of Inspector General

- a. The Fiscal Year 2019 budget request includes a significant proposed cut to the EPA Office of Inspector General (OIG). In November 2017, in OIG’s Semiannual Report to Congress, it was reported that “OIG submitted an FY 2019 request for \$62 million to the agency for inclusion in the President’s budget. Without seeking input from the OIG, the agency provided us with a request of \$42 million.” In February, the White House requested only \$37.5 million for the OIG. What was the justification for reducing appropriations and FTEs in the FY 2019 budget request for EPA OIG?
- b. Did the EPA defend its \$42 million request to the Office of Management and Budget?

9. Freedom of Information Act

- a. It has been reported that political appointees’ role in reviewing documents requested under the Freedom of Information Act has increased significantly during Administrator Pruitt’s tenure. Please describe the process for “awareness reviews” or “senior management reviews” conducted by political appointees before EPA releases documents involving Administrator Pruitt, including the names and titles of all EPA political appointees who participate.
- b. Please explain EPA Chief of Staff Ryan Jackson’s role in conducting awareness reviews. How many FOIA awareness reviews has Mr. Jackson completed, and in

how many instances did Mr. Jackson instruct that information be withheld, redacted, or altered prior to public release?

- c. Have any other political appointees ever sought to alter, redact, or withhold portions of a FOIA disclosure following an awareness review?
- d. Please provide the start date, end date, and length of review for all awareness reviews conducted during Administrator Pruitt's tenure at EPA.
- e. Have any of these reviews resulted in a missed FOIA deadline to release documents? If so, please provide details for each instance.
- f. Please explain the rationale for moving the National FOIA office into the Office of General Counsel.
- g. Please explain the role of EPA political appointees Matthew Leopold, Eric Baptist, Marcella Burke, David Fatouhi, and Justin Schwab in the FOIA review process, including any instance where any of these individuals withheld, delayed, redacted, or altered prior to public release?

10. International Travel

- a. According to EPA emails released under a Freedom of Information Act request, on July 10, 2017, Mr. Matthew Freedman was involved in the planning of the Administrator's potential trip to Australia. Mr. Freedman wrote to EPA staff, "[Richard Smotkin] and I will attend and will be present but will not be listed as members of the delegation." It has been reported that Mr. Richard Smotkin was also involved in the planning of the Administrator's December trip to Morocco. Did Mr. Smotkin meet with Administrator Pruitt or any EPA staff, in official meetings or otherwise, during the Administrator's trip to Morocco?
- b. If so, please provide a full list of meetings between Mr. Smotkin and any EPA officials in Morocco, including any meetings with EPA officials and Moroccan government officials, during official business or otherwise.
- c. Please provide a list of all attendees for any meeting identified in (b).
- d. Recent press accounts indicated Administrator Pruitt and EPA staff missed their connecting flight to Morocco because his security detail's equipment and other gear could not be transferred to the connecting flight in time. This differs from earlier explanations from EPA that the connecting flight was missed due to weather. Please explain why Administrator Pruitt and EPA staff missed their connecting flight.

11. Security

- a. In March, Administrator Pruitt told CBS News, "The quantity and the type of threats I've faced are unprecedented." These threats have been used to justify costly security

measures, including first-class travel and full-time protection by a 20-member security detail. How does EPA catalogue threats against officials, including the Administrator?

- b. What office is primarily responsible for identifying these threats?
- c. What office is primarily responsible for investigating these threats and determining their legitimacy?
- d. Please describe the role in EPA security assessment, investigation, and response of each of the following offices: the Protective Security Detail, the Office of Homeland Security Intelligence Team, the Office of Inspector General, and any other EPA entity that has responsibilities related to the Administrator's security?
- e. If threats are deemed to be serious, are they referred to the FBI or another law enforcement agency outside of EPA?
- f. Which EPA office determines whether or not to refer threats?
- g. On how many occasions did such a referral occur in 2017 and 2018?
- h. What spending decisions related to security require sign-off by the head of the Administrator's security detail?
- i. When did Mr. Nino Perrotta take over the role referenced in (h)?
- j. Before Mr. Perrotta took over this role, who was responsible for those duties?
- k. Why and when was the previous head of the Administrator's security detail removed from that position?
- l. If that employee continued to work at EPA, to where was he reassigned and what is his current employment status?
- m. How many EPA security officials hit the \$160,000 annual salary cap due to overtime last year?
- n. How does that compare to each of the previous 5 years?
- o. On May 1, 2017, Mr. Perrotta sent a memorandum requesting Administrator Pruitt be seated in first or business class on official travel. On how many instances before this memorandum did the Administrator travel in first or business class on official travel?
- p. On how many instances after this memorandum did the Administrator travel in first or business class on official travel?

- q. How many times and on what dates did EPA security officials travel with the Administrator for nonofficial business, where the Administrator paid for his own travel expenses?
- r. What was the total cost for security officials' airfare, hotel, and per diem for each of these instances?
- s. Which EPA employee(s) approved the EPA payment to Mrs. Vicki Hart to compensate for a broken door at her condo?
- t. Was Administrator Pruitt involved with or notified about that payment?
- u. It has been reported that EPA entered into a new vehicle lease for a Chevrolet Suburban at \$10,200 annually. This lease was reportedly for a more upscale LT model, instead of the LS model typically leased and included monthly charges of \$300 for luxury upgrades. What were the terms and rate of the previous vehicle used by the Administrator, and what was the rationale for these upgrades?

12. The Administrator's Housing Arrangement

- a. It has been reported that the Administrator's original lease with Mrs. Vicki Hart ended at the end of April 2017, but he did not move out of that condo until later in the year. What were the terms of extending the lease?
- b. On what date did Administrator Pruitt move out of the condo owned by Mrs. Hart?

The Honorable David Loeb sack

Administrator Pruitt, as I indicated to you at the hearing, I have a lot of concerns about the way in which the small refinery exemptions within the Renewable Fuel Standard (RFS) program have been handled by the Environmental Protection Agency (EPA). There needs to be much more transparency and public accountability in the with respect to the small refinery waiver exemptions. Please provide responses to the following questions regarding small refinery exemptions within the RFS.

- 1. What is the total number of refinery waiver applications that EPA received in each year from 2013 through 2017?
- 2. For each year from 2013 through 2017, how many waivers did the EPA grant?
- 3. What companies have received waivers for each year from 2013 through 2017?
- 4. What is the total volume of biofuel obligation represented by the waivers granted for each year 2013 through 2017?

5. What is the EPA process for confirming that each applicant falls beneath the 75,000-barrell throughput capacity?
6. Please confirm how the gallons waived under the small refinery exemption process are handled. Are the gallons reassigned to remaining obligated parties for blending? Are they reassigned within the same compliance year? If they are not reassigned to the remaining obligated parties, what is the disposition of those gallons relative to the overall renewable volume obligation set in the annual rule?
7. Did you inform President Trump or White House staff of the unusually large number of small refinery exemptions EPA was granting and of the potential effects on the renewable fuel market of exempting additional gallons and facilities and the fact that these actions would not be well received by the agricultural community?
8. EPA claimed recently that the Agency did not change the criteria for granting exemptions from those used in past years. Yet, numerous press reports indicate the Agency has granted almost double the amount of waivers than have been granted in past years. What is your explanation for the Agency's granting of an unusually high number of waivers under this program as compared to past years? If the Agency is applying different criteria, please provide an explanation of the changes and the justification for initiating the new criteria.
9. Did EPA consult with the Department of Energy on each of the applications for a small refinery exemption for 2016 and 2017? For how many of the applications reviewed by DOE for these two compliance years did EPA disagree with DOE's recommendation to grant or deny the exemption?

The Honorable Joseph Kennedy, III

1. What precipitated the need for a secure phone booth inside of your office? You repeatedly have placed blame at the feet of your staff for the exorbitant \$43,000 cost of the phone booth, but it was you yourself who instructed your staff to find a way to create a secure communications line in your office in the first place. Why do you need that secure line? What is the nature of the phone calls you are making that require an additional "secure" phone line while already in the privacy of your own office? If your office does not provide sufficient privacy, why is one of the two Secure Compartmented Information Facilities (SCIFs) inside the EPA headquarters not sufficient?

Attachment 2—Member Requests for the Record

During the hearing, Members asked you to provide additional information for the record, and you indicated that you would provide that information. For your convenience, descriptions of the requested information are provided below.

The Honorable Bill Johnson

1. I know that the EPA has expressed interest in finding a resolution to some of the concerns regarding EPA's current brick MCT rule which was issued in 2015. Would you commit to working with me and this committee in providing further information on this work and any potential possibilities?

The Honorable Bill Flores

As the American people are well aware, the EPA under the Obama administration abused environmental regulatory process by ignoring congressional statutes any by circumventing the U.S. Constitution. Fortunately, the federal court system stepped in to protect American families from this abuse of the law. In this regard I have the following questions:

1. Can you provide this committee with a list of those overreaching and overturned regulations that were overturned by the court systems?
2. Can you provide this committee with the economic cost of those overturned regulations?
3. Can you also inform the committee about EPA's actions, if any, to modify those regulations so those overreaching regulations to conform with the rule of law?

The Honorable Richard Hudson

1. Was GenX used in a manner that was incompatible with the consent agreement under the Toxic Substances Control Act?

The Honorable Doris O. Matsui

1. You said the EPA has data supporting your decision to revise emission standards for light duty vehicles. Will you commit to providing that data to both side of the committee?

The Honorable John P. Sarbanes

1. Did Carl Ichan's company apply for a waiver from ethanol blending requirements for any of its refining facilities?
2. Did Carl Ichan's company receive a waiver for any of its refining facilities?

The Honorable Tony Cardenas

1. In regard to your lease, can you provide the written statement from the attorneys after reviewing it?

The Honorable Debbie Dingell

1. In regard to the January 25, 2018 guidance to reverse the longstanding once in, always in policy for major sources of hazardous air pollutants, did EPA determine the location of these sources?
2. Yes or no, did EPA conduct an analysis of the health effects including the potential increased risk of cancer of this decision before releasing the January 25th guidance memo?
3. Yes or no, did EPA conduct an analysis of the potential health effects of this policy on children, babies, or pregnant women before releasing the January 25th?
4. Yes or no, did EPA conduct an analysis of the potential health effects of this policy on older Americans or those with chronic health problems before releasing the January 25th guidance?
5. Yes or no, did EPA conduct an analysis of the potential health effects of this policy on minority and low-income communities before releasing the January 25th?

Message

From: Moody, Christina [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=813EB7F985C845EAA91EDC10C6E9A914-CMOODY]
Sent: 1/17/2018 6:37:07 PM
To: Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]
Subject: RE: Circling Back on Administrator Meeting
Flag: Follow up

Of course.

Christina J. Moody
Office of Congressional Affairs
US Environmental Protection Agency
Moody.Christina@epa.gov

From: Ringel, Aaron
Sent: Wednesday, January 17, 2018 1:21 PM
To: Moody, Christina
Subject: FW: Circling Back on Administrator Meeting

Christina, since this meeting request from House Science falls across multiple program offices could your team take lead on helping set up?

-Aaron

From: Yamada, Richard (Yujiro)
Sent: Tuesday, January 16, 2018 6:10 PM
To: Ringel, Aaron <ringel.aaron@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: RE: Circling Back on Administrator Meeting

Deliberative Process / Ex. 5

From: Ringel, Aaron
Sent: Tuesday, January 16, 2018 2:28 PM
To: Lyons, Troy <lyons.troy@epa.gov<mailto:lyons.troy@epa.gov>>; Fotouhi, David <Fotouhi.David@epa.gov<mailto:Fotouhi.David@epa.gov>>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov<mailto:Gunasekara.Mandy@epa.gov>>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov<mailto:yamada.richard@epa.gov>>
Subject: FW: Circling Back on Administrator Meeting

Deliberative Process / Ex. 5

From: Brazauskas, Joseph [mailto:Joseph.Brazauskas@mail.house.gov]
Sent: Tuesday, January 16, 2018 1:35 PM
To: Ringel, Aaron <ringel.aaron@epa.gov<mailto:ringel.aaron@epa.gov>>
Subject: Circling Back on Administrator Meeting

Aaron,

It was great to see you last week and appreciate the Administrator's time. Chairman Smith is very keen for our staff to get together to discuss further transparent science-based regulations at the EPA. We can meet at your earliest convenience with the appropriate EPA staff to discuss this matter further. When you have identified who is best to handle this matter moving forward please let me know and we can schedule some time to discuss. Hope to hear from you soon. Next week we are not in session so we should have a number of days and times available.

Thank you,
Joe

Joseph A. Brazauskas
Staff Director and Senior Counsel
Subcommittee on Environment
Committee on Science, Space and Technology
Lamar Smith, Chairman
P: (202) 225-6371

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 1/16/2018 10:16:05 PM
To: Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]
CC: Lyons, Troy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=15e4881c95044ab49c6c35a0f5eef67e-Lyons, Troy]; Fotouhi, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=febaf0d56aab43f8a9174b18218c1182-Fotouhi, Da]; Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]
Subject: Re: Circling Back on Administrator Meeting

Deliberative Process / Ex. 5

Sent from my iPhone

On Jan 16, 2018, at 2:27 PM, Ringel, Aaron <ringel.aaron@epa.gov> wrote:

Deliberative Process / Ex. 5

-Aaron

From: Brazauskas, Joseph [<mailto:Joseph.Brazauskas@mail.house.gov>]
Sent: Tuesday, January 16, 2018 1:35 PM
To: Ringel, Aaron <ringel.aaron@epa.gov>
Subject: Circling Back on Administrator Meeting

Aaron,

It was great to see you last week and appreciate the Administrator's time. Chairman Smith is very keen for our staff to get together to discuss further transparent science-based regulations at the EPA. We can meet at your earliest convenience with the appropriate EPA staff to discuss this matter further. When you have identified who is best to handle this matter moving forward please let me know and we can schedule some time to discuss. Hope to hear from you soon. Next week we are not in session so we should have a number of days and times available.

Thank you,
Joe

Joseph A. Brazauskas
Staff Director and Senior Counsel
Subcommittee on Environment
Committee on Science, Space and Technology

Lamar Smith, Chairman
P: (202) 225-6371

Message

From: Williams, Thea [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=32CCA14DDB6940E4B04683ACE9E899A5-TWILLI01]
Sent: 8/9/2018 3:30:13 PM
To: Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]
CC: Moody, Christina [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=813eb7f985c845eaa91edc10c6e9a914-CMoody]; Rodrick, Christian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6515dbe46dae466da53c8a3aa3be8cc2-Rodrick, Ch]; Richardson, RobinH [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2fa5c9eb65dc497c81a8dc9ccdb1ffa7-Richardson, RobinH]; Klasen, Matthew [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9d5ba7959ebd4929ab5ab57fba80b21d-MKlasen]
Subject: For Review: McNerney-Pallone-Tonko on proposed science rule & PFAS (AL-18-000-8464)
Attachments: 18-000-8464.pdf; McNerney-Tonko ORD - OW + mk+tw.docx

Hi Aaron:

Attached for your review and clearance is the draft response to Congressmen McNerney, Tonko, and Pallone on PFAS and the science-transparency rulemaking.

Deliberative Process / Ex. 5

Thanks,
Thea

Thea Williams
U.S Environmental Protection Agency
Office of Congressional Affairs
202-564-2064

Message

From: Moody, Christina [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=813EB7F985C845EAA91EDC10C6E9A914-CMOODY]
Sent: 7/12/2018 3:07:15 PM
To: Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]
CC: Williams, Thea [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=32cca14ddb6940e4b04683ace9e899a5-TWilli01]; Klasen, Matthew [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9d5ba7959ebd4929ab5ab57fba80b21d-MKlasen]; Aarons, Kyle [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ef85c3c00a2244779c4b26ff6bc6ccc9-Aarons, Kyl]; Knapp, Kristien [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8d4ab10c47264bca8b12174cdb981942-KKnapp]; Kaiser, Sven-Erik [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ac78d3704ba94edbbd0da970921271ff-SKAISER]
Subject: Fwd: Recommended item for 10:15: McNerney-Tonko-Pallone letter re: PFAS & sci rulemaking
Attachments: 18-000-8464.pdf; ATT00001.htm; 2018-07-11 Draft McNerney Tonko Pallone PFAS-Science rulemaking Response.docx; ATT00002.htm

Aaron,

Here are the draft letters mentioned in my previous email.

Thanks,

Christina J. Moody
Environmental Protection Agency
Office of Congressional Relations
Moody.Christina@epa.gov

Begin forwarded message:

From: "Klasen, Matthew" <Klasen.Matthew@epa.gov>
Date: July 11, 2018 at 9:50:57 AM EDT
To: "Aarons, Kyle" <Aarons.Kyle@epa.gov>, "Knapp, Kristien" <Knapp.Kristien@epa.gov>, "Williams, Thea" <Williams.Thea@epa.gov>, "Kaiser, Sven-Erik" <Kaiser.Sven-Erik@epa.gov>
Cc: "Moody, Christina" <Moody.Christina@epa.gov>
Subject: Recommended item for 10:15: McNerney-Tonko-Pallone letter re: PFAS & sci rulemaking

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Let me know if you have any questions.

Thanks,
Matt

Matt Klasen
U.S Environmental Protection Agency
Office of Congressional Affairs
WJC North 3443P

Personal Matters / Ex. 6

Message

From: Williams, Thea [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=32CCA14DDB6940E4B04683ACE9E899A5-TWILLI01]
Sent: 6/15/2018 3:49:13 PM
To: Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]
CC: Moody, Christina [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=813eb7f985c845eaa91edc10c6e9a914-CMoody]; Richardson, RobinH [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2fa5c9eb65dc497c81a8dc9ccdb1ffa7-Richardson, RobinH]; Rodrick, Christian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6515dbe46dae466da53c8a3aa3be8cc2-Rodrick, Ch]
Subject: Request for Review: Comment on EPA-HQ-OA-2018-0259
Attachments: 18-000-8190.pdf; Transparency Rule Docket Comments House AL-18-000-8190 6-13-18.doc

Flag: Flag for follow up

Hi Aaron:

Attached is the response to the incoming letter from Congresswoman DeGette, et al on proposed rule *Strengthening Transparency in Regulatory Science* for your review.

Thanks, Thea (202-564-2064)

From: Linkins, Samantha
Sent: Wednesday, June 13, 2018 4:19 PM
To: Moody, Christina <Moody.Christina@epa.gov>
Cc: Williams, Thea <Williams.Thea@epa.gov>
Subject: RE: Comment on EPA-HQ-OA-2018-0259

Here is our draft response for this one.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Samantha Linkins
Science Communication
Office of Research and Development, US EPA
Washington, DC
Office: 202-564-1834
Cell: 202-604-5742

From: Moody, Christina
Sent: Thursday, June 07, 2018 10:38 AM
To: Linkins, Samantha <Linkins.Samantha@epa.gov>
Cc: Williams, Thea <Williams.Thea@epa.gov>
Subject: RE: Comment on EPA-HQ-OA-2018-0259

Thanks for confirming. I'm sending the letter your way.

Christina J. Moody
US Environmental Protection Agency
Office of Congressional Affairs & Intergovernmental Relations
Moody.Christina@epa.gov

From: Linkins, Samantha
Sent: Thursday, June 7, 2018 10:36 AM
To: Moody, Christina <Moody.Christina@epa.gov>
Subject: Re: Comment on EPA-HQ-OA-2018-0259

ORD has been handling and we have been doing as you say

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Sent from my iPhone

On Jun 7, 2018, at 9:48 AM, Moody, Christina <Moody.Christina@epa.gov> wrote:

Sam,

How are you guys handling these types of letters?

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks,

Christina J. Moody
US Environmental Protection Agency
Office of Congressional Affairs & Intergovernmental Relations
Moody.Christina@epa.gov

From: Hartwig, William [mailto:William.Hartwig@mail.house.gov]
Sent: Thursday, June 7, 2018 9:41 AM
To: Ringel, Aaron <ringel.aaron@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>
Cc: Walker, Tommy <Tommy.Walker@mail.house.gov>; Moody, Christina <Moody.Christina@epa.gov>
Subject: RE: Comment on EPA-HQ-OA-2018-0259

Hi Aaron,
Sorry about that. The letter is attached.

From: Ringel, Aaron [mailto:ringel.aaron@epa.gov]
Sent: Thursday, June 7, 2018 9:37 AM
To: Hartwig, William <William.Hartwig@mail.house.gov>; Lyons, Troy <lyons.troy@epa.gov>
Cc: Walker, Tommy <Tommy.Walker@mail.house.gov>; Moody, Christina <Moody.Christina@epa.gov>
Subject: RE: Comment on EPA-HQ-OA-2018-0259

Hi Will, there wasn't a letter attached to your email. Could you please resend with the attachment?

Thanks,
Aaron

Aaron E. Ringel

*Deputy Associate Administrator
Office of Congressional & Intergovernmental Relations
U.S. Environmental Protection Agency*



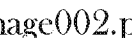

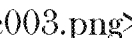
Personal Matters / Ex. 6

Ringel.Aaron@epa.gov

From: Hartwig, William [<mailto:William.Hartwig@mail.house.gov>]
Sent: Thursday, June 7, 2018 9:08 AM
To: Lyons, Troy <lyons.troy@epa.gov>; Ringel, Aaron <ringel.aaron@epa.gov>
Cc: Walker, Tommy <Tommy.Walker@mail.house.gov>
Subject: Comment on EPA-HQ-OA-2018-0259

Good morning,
I have attached a letter led by Congresswoman DeGette and signed by an additional 102 members of Congress concerning 'Strengthening Transparency in Regulatory Science' (Docket No. EPA-HQ-OA-2018-0259).

Regards,
Will Hartwig
Congressional Fellow
Congresswoman Diana DeGette (CO-01)
2111 Rayburn House Office Building
Washington, DC 20515
202-225-4431

< < < < < >
[Sign up for Congresswoman DeGette's e-newsletters](#)

<20180607 EPA science transparency.pdf>

Congress of the United States

Washington, DC 20515

June 7, 2018

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20004

Dear Administrator Pruitt:

We write to express grave concerns about the Environmental Protection Agency's (EPA) proposed rule, published on April 30, 2018, titled Strengthening Transparency in Regulatory Science (Docket No. EPA-HQ-OA-2018-0259). Contrary to its name, the proposed rule would implement an opaque process allowing EPA to selectively suppress scientific evidence without accountability and in the process undermine bedrock environmental laws. We join nearly a thousand scientists^[1] and many leading scientific organizations^[2] in opposing this policy and urge you to withdraw the proposed rule.

The proposed rule suffers from significant procedural flaws including lack of supporting evidence, insufficient detail in the proposal itself, and conflicts with EPA's statutory obligations. The substance of the rule is also concerning. It appears to be targeted at excluding important public health studies while privileging industry-sponsored research. It also fails to adequately consider the costs of implementation and the potential privacy implications. Finally, the discretion it grants the Administrator to grant case-by-case exemptions completely undermines the stated goal of transparency.

Without any significant evidence supporting it, the proposed rule is a solution in search of a problem. The proposed rule fails to identify specific weaknesses in EPA's current scientific approach, which is grounded in peer review. Wendy Wagner, author of two of the studies EPA cites to rationalize the rule, said in response to the proposed rule: "They don't adopt any of our recommendations, and they go in a direction that's completely opposite, completely different."^[3] The proposed rule also invokes policies from *Nature*, *Science*, and the *Proceedings of the National Academies of Science*, but each of these organizations has argued against the rule.^[4] Additionally, EPA fails to cite any specific language providing authority for the rule and asks commenters where the authority may be found. Key issues including how data would be made available to the public and how private information would be protected are not addressed. This is a serious deficiency in a rule meant to increase access to data for the public.

^[1] <https://s3.amazonaws.com/ucs-documents/science-and-democracy/secret-science-letter-4-23-2018.pdf>

^[2] <https://blog.ucsusa.org/michael-halpern/a-list-of-scientific-organizations-that-have-supported-and-opposed-limiting-what-research-epa-can-use-to-make-decisions>

^[3] <https://www.theatlantic.com/science/archive/2018/04/how-the-epas-new-secret-science-rule/558878/>

^[4] <https://www.aaas.org/news/scientific-leaders-speak-out-epa-s-proposed-transparency-rule>

The proposed rule is inconsistent with EPA's statutory obligations to ground its actions on scientific evidence. The Toxic Substances Control Act (TSCA) and the Safe Drinking Water Act (SDWA) require that EPA use the "best available science." Courts have found this language to require that agencies "seek out and consider all existing scientific evidence" and not ignore existing data.^[5] This standard would be impossible to meet under the proposed rule.

The proposed rule requires that data underlying EPA's regulatory actions be made publicly available to allow for independent validation. Such a standard could exclude studies that utilize confidential industry and health data that are vital to understanding the nature of chemical pollutants, the impacts of pollution, and the most effective ways to protect the environment and public health. One such piece of health research is the "Six Cities" study,^[6] which followed more than 8,000 participants for nearly twenty years and was key in establishing a link between chronic air pollution exposure and increased mortality. The results of this study have stood up to extensive subsequent analysis, highlighting the strength of such research.^[7] This is just one example of an entire class of studies that the rule would remove from consideration. Excluding such health studies would hobble EPA's ability to implement laws like the Clean Air Act, SDWA, and TSCA and to fulfill its mission to protect public health and the environment.

Attempting to comply with the publication requirement and health privacy laws would place enormous burdens on EPA and researchers. According to an internal EPA analysis of the HONEST Act, which had a similar data-publishing requirement, the EPA would have to spend more than \$250 million annually to redact private health information before releasing study data to the public.^[8] EPA failed to provide a cost-benefit analysis of the proposed rule, only stating that EPA shall implement the provisions "in a manner that minimizes cost." Even with careful redaction, there is still a possibility of study participants being identified due to the amount of information that would have to be revealed under the proposed rule for the purposes of reproducibility. The rule is costly and a threat to the privacy of Americans.

Concerns with the proposed rule are not limited to the public health community. Dr. Nancy Beck, Deputy Assistant Administrator of the Office of Chemical Safety and Pollution Prevention, has expressed reservations about the publishing requirements of the proposed rule for industry as well.^[9] Industry representatives have expressed concerns about requiring public disclosure of data, such as Confidential Business Information, citing the potential for improper use of such data by competitors.^[10]

In addition, the proposal to allow the EPA Administrator to grant exemptions on a case-by-case basis would enable the Administrator to interfere in the rulemaking process in an arbitrary and capricious manner. The Administrator is not required to present the reasoning behind such

^[5] *Ecology Ctr., Inc. v U.S. Forest Serv.*, 451 F.3d 1183, 1194 n.4 (10th Cir. 2006)

^[6] *Dockery et al.* 1993. *An association between and mortality in six U.S. cities.* *New England J. Med.* 329:1753-1759. doi: 10.1056/NEJM199312093292401.

^[7] <https://www.healtheffects.org/system/files/Reanalysis-ExecSumm.pdf>

^[8] <https://www.ucsusa.org/center-science-and-democracy/attacks-on-science/administrator-pruitt-ignores-epa-staff-analysis#.WujH-KQvxaR>

^[9] <http://www.sciencemag.org/news/2018/04/trump-s-epa-wants-stamp-out-secret-science-internal-emails-show-it-harder-expected>

^[10] <https://www.bna.com/pesticide-makers-back-n57982091585/>

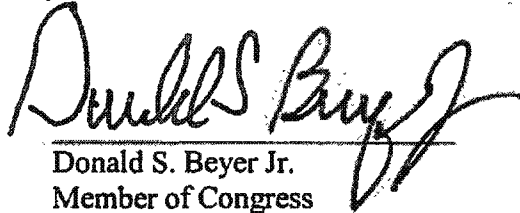
decisions. This waiver provision establishes an opaque process, completely at odds with the stated purpose of the rule, that would bring additional uncertainty to the regulatory process.

We support transparency and scientific integrity. However, the proposed rule will limit transparency and undermine the scientific integrity of EPA's rulemaking process. Given its numerous flaws and the lack of an underlying rationale, we urge you to withdraw the proposed rule.

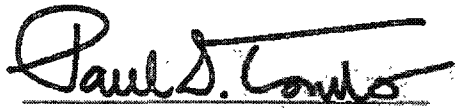
Sincerely,



Diana DeGette
Member of Congress



Donald S. Beyer Jr.
Member of Congress



Paul Tonko
Member of Congress



Daniel W. Lipinski
Member of Congress



Mark DeSaulnier
Member of Congress



Debbie Dingell
Member of Congress



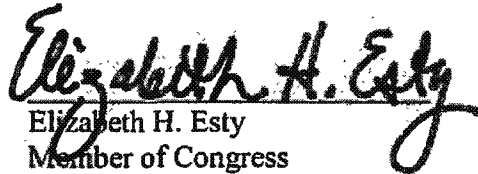
Alan Lowenthal
Member of Congress



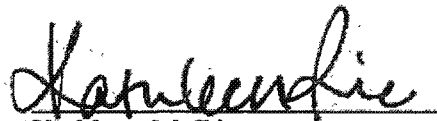
Donald M. Payne, Jr.
Member of Congress



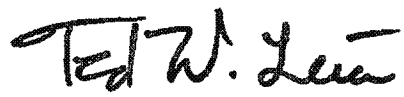
Salud O. Carbajal
Member of Congress



Elizabeth H. Esty
Member of Congress



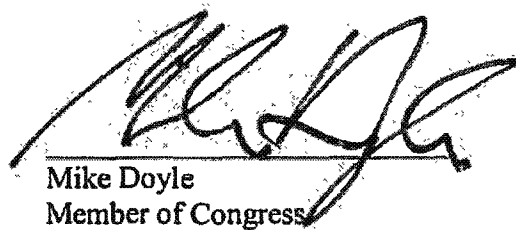
Kathleen M. Rice
Member of Congress



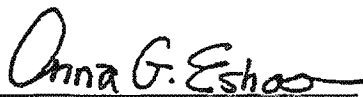
Ted W. Lieu
Member of Congress



Colleen Hanabusa
Member of Congress



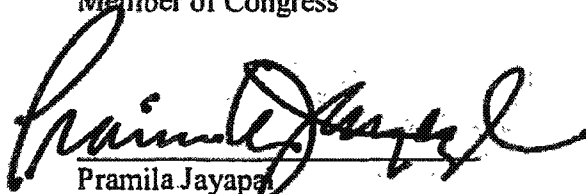
Mike Doyle
Member of Congress



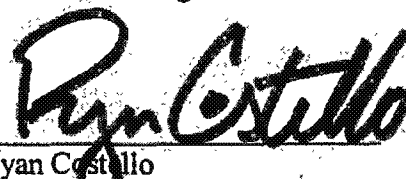
Anna G. Eshoo
Member of Congress



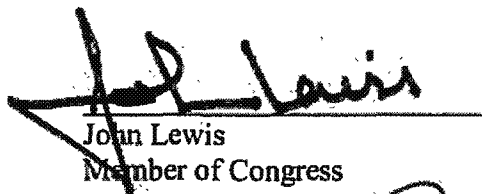
A. Donald McEachin
Member of Congress



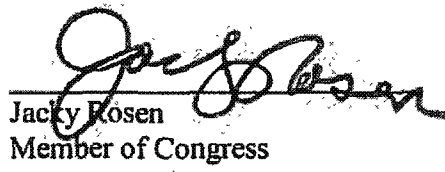
Pramila Jayapal
Member of Congress



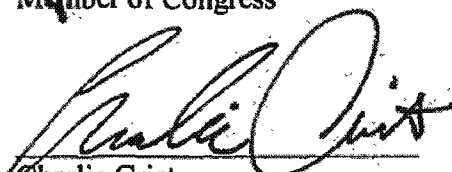
Ryan Costello
Member of Congress



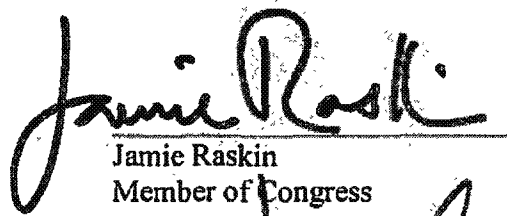
John Lewis
Member of Congress



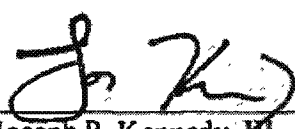
Jacky Rosen
Member of Congress



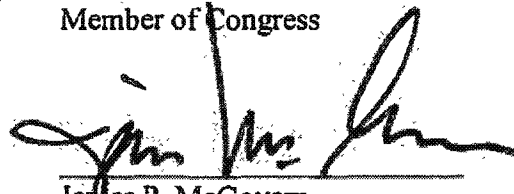
Charlie Crist
Member of Congress



Jamie Raskin
Member of Congress



Joseph P. Kennedy, III
Member of Congress



James P. McGovern
Member of Congress



Suzanne Bonamici
Member of Congress



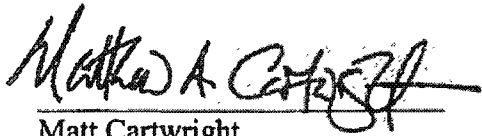
Ro Khanna
Member of Congress



Brian Fitzpatrick
Member of Congress



Raja Krishnamoorthi
Member of Congress



Matt Cartwright
Member of Congress



Earl Blumenauer
Member of Congress



Debbie Wasserman Schultz
Member of Congress



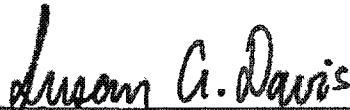
Scott H. Peters
Member of Congress



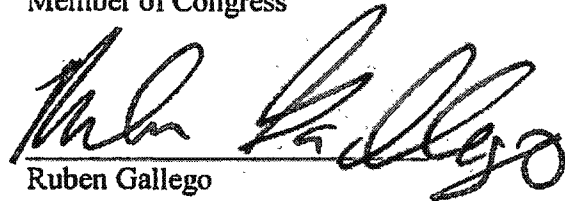
Tim Ryan
Member of Congress



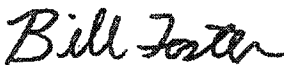
Brendan F. Boyle
Member of Congress



Susan A. Davis
Member of Congress



Ruben Gallego
Member of Congress



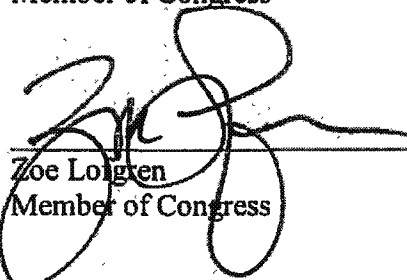
Bill Foster
Member of Congress



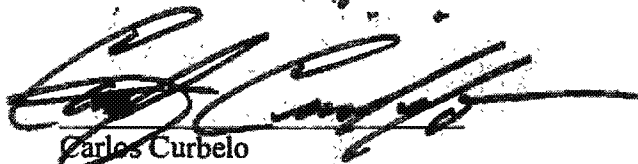
Raul Ruiz
Member of Congress



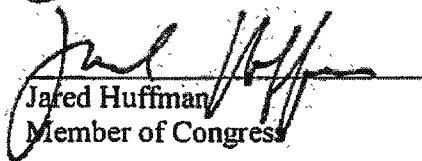
Nanette Diaz Barragán
Member of Congress



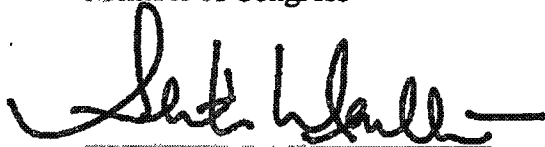
Zoe Lofgren
Member of Congress



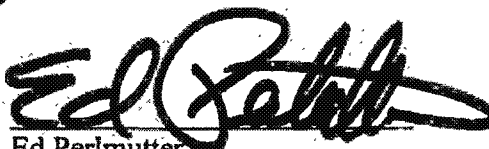
Carlos Curbelo
Member of Congress



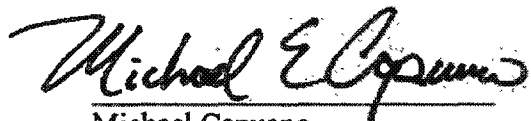
Jared Huffman
Member of Congress



Seth Moulton
Member of Congress



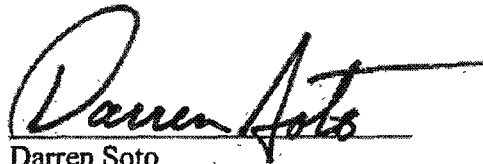
Ed Perlmutter
Member of Congress



Michael Capuano
Member of Congress



Mark Pocan
Member of Congress



Darren Soto
Member of Congress



Tulsi Gabbard
Member of Congress



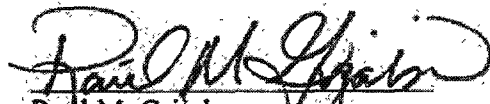
Anthony Brown
Member of Congress



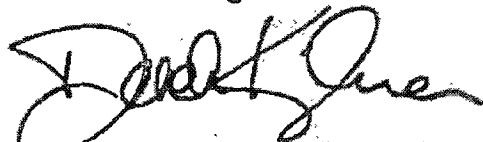
Mark Takano
Member of Congress



Tony Cárdenas
Member of Congress



Raul M. Grijalva
Member of Congress



Derek Kilmer
Member of Congress




Carol Shea-Porter
Member of Congress



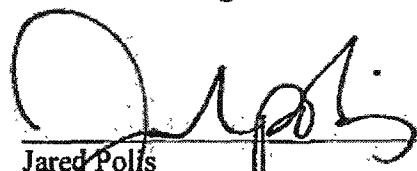
Niki Tsongas
Member of Congress



Adriano Espaillat
Member of Congress



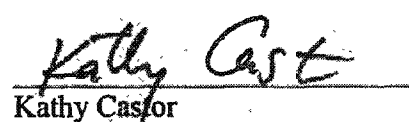
John K. Delaney
Member of Congress




Jared Polis
Member of Congress




Robert A. Brady
Member of Congress





Kathy Castor
Member of Congress



Yvette D. Clarke
Member of Congress



G. Butterfield
Member of Congress



Lucille Roybal-Allard
Member of Congress

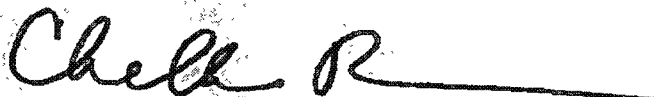

David E. Price
Member of Congress



Ferrol Nadler
Member of Congress



Rick Larsen
Member of Congress



Peter A. DeFazio
Member of Congress


Eleanor Holmes Norton
Member of Congress

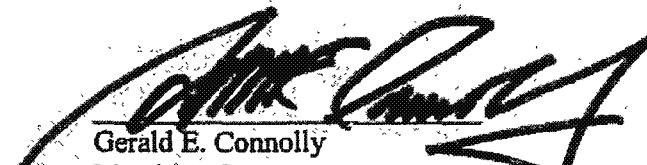

Chellie Pingree
Member of Congress



Marcy Kaptur
Member of Congress



Sheila Jackson Lee
Member of Congress



Bobby L. Rush
Member of Congress



Ilana Ros-Lehtinen
Member of Congress

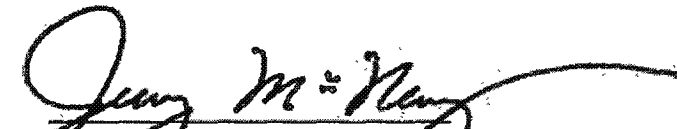

Gerald E. Connolly
Member of Congress

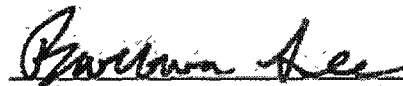

Henry C. "Hank" Johnson, Jr.
Member of Congress

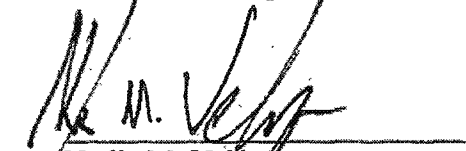

Karen Bass
Member of Congress

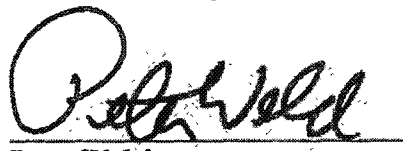

Keith Ellison
Member of Congress



Betty McCollum
Member of Congress

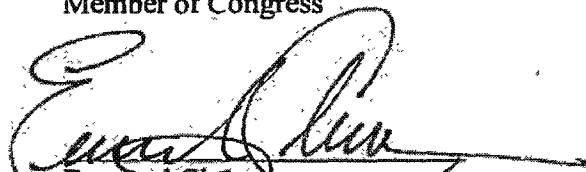

Jerry McNerney
Member of Congress

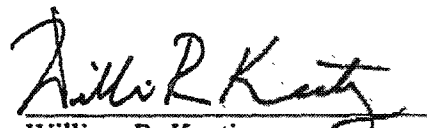

Barbara Lee
Member of Congress



Nydia M. Velázquez
Member of Congress



Peter Welch
Member of Congress



Doris Matsui
Member of Congress


Emanuel Cleaver
Member of Congress



William R. Keating
Member of Congress

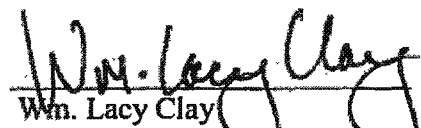

José E. Serrano
Member of Congress



Jan Schakowsky
Member of Congress


Steve Cohen
Member of Congress



Adam B. Schiff
Member of Congress

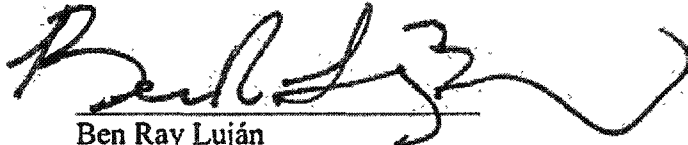

Rosa DeLauro
Member of Congress



Wm. Lacy Clay
Member of Congress

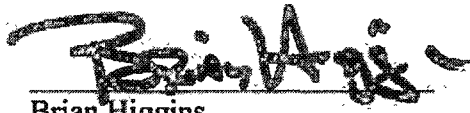

John Garamendi
Member of Congress

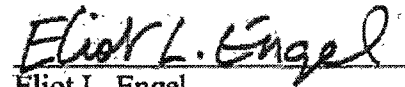

John Sarbanes
Member of Congress

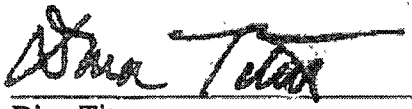

Frederica S. Wilson
Member of Congress



Ben Ray Luján
Member of Congress



Mike Quigley
Member of Congress



Brian Higgins
Member of Congress

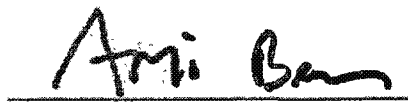

Eliot L. Engel
Member of Congress


Dina Titus
Member of Congress


Jackie Speier
Member of Congress


Gene Green
Member of Congress


Conor Lamb
Member of Congress


Ami Bera, M.D.
Member of Congress

Message

From: Lyons, Troy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=15E4881C95044AB49C6C35A0F5EEF67E-LYONS, TROY]
Sent: 1/8/2018 8:52:44 PM
To: Ferguson, Lincoln [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=08cd7f82606244de96b61b96681c46de-Ferguson, L]; Cory, Preston (Katherine) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bfd80b15f6d04a3ba11fc8ca3c85bc50-Cory, Kathe]; Palich, Christian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=330ad62e158d43af93fcbbece930d21a-Palich, Chr]; Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]
Subject: RE: Tomorrow's briefings
Attachments: 01-08-2018 - Chairman Lamar Smith Meeting Memo.docx; 1.9.18 Meeting w Senators Sullivan Whitehouse .docx; 1.9.18 Corker Call Memo.docx

Briefings for:

Lamar Smith
Whitehouse/Sullivan
Corker

Working on Walker

From: Ferguson, Lincoln
Sent: Monday, January 8, 2018 3:19 PM
To: Lyons, Troy <lyons.troy@epa.gov>; Cory, Preston (Katherine) <Cory.Preston@epa.gov>; Palich, Christian <palich.christian@epa.gov>; Ringel, Aaron <ringel.aaron@epa.gov>
Subject: Tomorrow's briefings

Will you all have any briefings for the meetings/calls tomorrow?

Lincoln Ferguson
Senior Advisor to the Administrator
U.S. EPA

Personal Matters / Ex. 6

**Meeting with
Chairman Lamar Smith (R-TX-21)
Tuesday, January 9th 2018
11:00AM, EPA HQ, Administrator's Office**

Main Topics of Discussion:

- HONEST Act, number one priority he wants to discuss
- Thanks you for SAB Reform and kind word in National Journal article

NOTE: Rep. Smith is the Chairman of the House Science, Space, and Technology Committee which has a limited jurisdiction over some of EPA science programs. Chairman Smith has announced he will not run for re-election.

Background: The HONEST Act, which would prohibit the Environmental Protection Agency from proposing, finalizing, or disseminating regulations or assessments based upon science that is not transparent or reproducible. This legislation has been a priority for Chairman Smith. It passed the House but is not likely to move in the Senate. The Congressman would like to discuss potential ways EPA could implement the principals of the bill without legislative action along the lines of the SAB reform effort recently undertaken.

Taking Points:

- **HONEST Act:** Happy to have our staff at EPA work with committee staff on identifying potential areas you think we might be able to implement the transparency initiatives outlined in the HONEST Act using our regulatory/guidance authority.

Decision Points/Objectives: This meeting is occurring at the request of Chairman Lamar Smith. His main objective for the meeting is to find a way to have the EPA implement the HONEST Act objectives outside of the legislative process since it is unlikely to pass in the Senate

Attendees:

Troy Lyons, AA OCIR
Aaron Ringel, DAA OCIR

Message

From: Palich, Christian [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=330AD62E158D43AF93FCBBECE930D21A-PALICH, CHR]
Sent: 4/23/2018 2:36:37 PM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]
CC: Gordon, Stephen [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7c8fb4d82bff4eec98f5c5d00a47f554-Gordon, Ste]; Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]; Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]
Subject: Re: Science Event Info

This is great Clint. Thank you!

Christian R. Palich
Deputy Associate Administrator
Office of Congressional Affairs

Personal Matters / Ex. 6

Sent from my iPhone

On Apr 23, 2018, at 10:30 AM, Woods, Clint <woods.clint@epa.gov> wrote:

Deliberative Process / Ex. 5

From: Gordon, Stephen
Sent: Monday, April 23, 2018 10:11 AM
To: Woods, Clint <woods.clint@epa.gov>
Cc: Ringel, Aaron <ringel.aaron@epa.gov>; Palich, Christian <palich.christian@epa.gov>
Subject: Re: Science Event Info

Clint,

Aaron and Christian are looking to provide the members of Congress they have invited with more information about the event tomorrow.

Can you help the info requested below?

Thanks so much.

On Apr 23, 2018, at 10:00 AM, Palich, Christian <palich.christian@epa.gov> wrote:

The specific announcement would be great. Like 3-5 bullet points on the policy we can share with invitees.

Christian R. Palich
Deputy Associate Administrator
Office of Congressional Affairs
C: 202.306.4656

Sent from my iPhone

On Apr 23, 2018, at 9:58 AM, Gordon, Stephen <gordon.stephen@epa.gov> wrote:

We should have a run of show done soon, and I will email it to you.

What other info do you need?

On Apr 23, 2018, at 9:48 AM, Ringel, Aaron <ringel.aaron@epa.gov> wrote:

You have any more info we can share with people on the event tomorrow?

Aaron E. Ringel

*Deputy Associate Administrator
Office of Congressional & Intergovernmental
Relations
U.S. Environmental Protection Agency*

Personal Matters / Ex. 6

Ringel.Aaron@epa.gov

Message

From: Moody, Christina [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=813EB7F985C845EAA91EDC10C6E9A914-CMOODY]
Sent: 1/24/2018 7:30:15 PM
To: Gomez, Laura [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=575ba24fc19d429c8302a05102353238-lgomez]
CC: Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]; Rodrick, Christian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6515dbe46dae466da53c8a3aa3be8cc2-Rodrick, Ch]
Subject: Re: SET FOR 2 PM FRIDAY: EPA PRE-INTERNAL CALL : HONEST ACT IMPLEMENTATION

Ok. Aaron. Please lead this call as I won't be able to participate at that time.

Thanks

> On Jan 24, 2018, at 2:24 PM, Gomez, Laura <Gomez.Laura@epa.gov> wrote:
>
> Aaron,
>
> We've confirmed with offices that our call will be scheduled for Friday at 2 pm rather than 11:30am.
>
> Best,
>
> Laura
>
>

Message

From: Gomez, Laura [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=575BA24FC19D429C8302A05102353238-LGOMEZ]
Sent: 1/24/2018 2:51:29 PM
To: Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]
Subject: Re: Declined: EPA PRE-INTERNAL CALL : HONEST ACT IMPLEMENTATION

Sure- I'm checking everyone's schedules right now.

Laura Gomez Rodriguez
Office of Congressional Relations
US EPA
gomez.laura@epa.gov

On Jan 24, 2018, at 8:46 AM, Ringel, Aaron <ringel.aaron@epa.gov> wrote:

Can we move this to 2pm? Also, lets invite Drew from OP so they are looped in.

Thanks,

-Aaron

-----Original Message-----

From: Schwab, Justin
Sent: Tuesday, January 23, 2018 5:58 PM
To: Ringel, Aaron <ringel.aaron@epa.gov>
Cc: Gomez, Laura <Gomez.Laura@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>
Subject: Re: Declined: EPA PRE-INTERNAL CALL : HONEST ACT IMPLEMENTATION

Right now I'm free 1-3 or after 4. The GC or the Administrator may always pull me out though. I'll do my best to keep it open if we move to one of those 2 slots.

Sent from my iPhone

On Jan 23, 2018, at 5:28 PM, Ringel, Aaron <ringel.aaron@epa.gov> wrote:

Can we move this to the afternoon?

Sent from my iPhone

On Jan 23, 2018, at 4:26 PM, Schwab, Justin
<Schwab.Justin@epa.gov> wrote:

I'm booked for 2 air briefings with OAR during this time.

<meeting.ics>

Appointment

From: Schwab, Justin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EED0F609C0944CC2BBDB05DF3A10AADB-SCHWAB, JUS]
Sent: 1/23/2018 9:26:44 PM
To: Gomez, Laura [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=575ba24fc19d429c8302a05102353238-lgomez]
CC: Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]; Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]; Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]

Subject: Declined: EPA PRE-INTERNAL CALL : HONEST ACT IMPLEMENTATION

Location: DIAL IN: **Personal Matters / Ex. 6**

Start: 1/26/2018 4:30:00 PM

End: 1/26/2018 6:00:00 PM

Show Time As: Busy

I'm booked for 2 air briefings with OAR during this time.

Message

From: Gomez, Laura [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=575BA24FC19D429C8302A05102353238-LGOMEZ]
Sent: 1/19/2018 6:39:10 PM
To: Rodrick, Christian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6515dbe46dae466da53c8a3aa3be8cc2-Rodrick, Ch]
CC: Moody, Christina [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=813eb7f985c845eaa91edc10c6e9a914-CMoody]; Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]
Subject: RE: RE: HONEST ACT -Tuesday 1/23

Wonderful, thank you. His office please. We'll both be in.

From: Rodrick, Christian
Sent: Friday, January 19, 2018 1:32 PM
To: Gomez, Laura <Gomez.Laura@epa.gov>
Cc: Moody, Christina <Moody.Christina@epa.gov>; Ringel, Aaron <ringel.aaron@epa.gov>
Subject: RE: RE: HONEST ACT -Tuesday 1/23

Excellent. I'll create the event now. Are you able to do this in Aaron's office or would you like a call-in line again?

Christian Rodrick
Special Assistant
Congressional Affairs U.S. EPA
Personal Matters / Ex. 6

From: Gomez, Laura
Sent: Friday, January 19, 2018 1:30 PM
To: Rodrick, Christian <rodrick.christian@epa.gov>
Cc: Moody, Christina <Moody.Christina@epa.gov>; Ringel, Aaron <ringel.aaron@epa.gov>
Subject: RE: RE: HONEST ACT -Tuesday 1/23

Thanks Christian. 3-4 pm works for Christina and I.

Best,

Laura

From: Rodrick, Christian
Sent: Friday, January 19, 2018 1:27 PM
To: Gomez, Laura <Gomez.Laura@epa.gov>
Cc: Moody, Christina <Moody.Christina@epa.gov>; Ringel, Aaron <ringel.aaron@epa.gov>
Subject: RE: RE: HONEST ACT -Tuesday 1/23

Hi Larua, It looks like he is available from 10:30AM to about 1:00PM and then again from 3:00PM-4:00PM. Let me know if either of these times work for you both.

Thanks,

Christian Rodrick
Special Assistant
Congressional Affairs U.S. EPA

Personal Matters / Ex. 6

From: Gomez, Laura
Sent: Friday, January 19, 2018 12:27 PM
To: Rodrick, Christian <rodrick.christian@epa.gov>
Cc: Moody, Christina <Moody.Christina@epa.gov>; Ringel, Aaron <ringel.aaron@epa.gov>
Subject: RE: HONEST ACT -Tuesday 1/23

Christian,

Thank you for your assistance on today's call. Per that discussion, Christina and I would to re-group with Aaron next Tuesday for only 30 min. Let us know what's available on his schedule.

Best,

Laura

Laura E. Gómez Rodríguez
Congressional Liaison Specialist
US Environmental Protection Agency (EPA)
Office of Congressional and Intergovernmental Relations (OCIR)
1200 Pennsylvania Ave., N.W. MC-2650R
Washington DC, 20004
gomez.laura@epa.gov

Message

From: Small, Jeff [Jeff.Small@mail.house.gov]
Sent: 5/21/2018 5:17:39 PM
To: Rodrick, Christian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6515dbe46dae466da53c8a3aa3be8cc2-Rodrick, Ch]; Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]
CC: Shimmin, Kaitlyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=becb3f33f9a14acd8112d898cc7853c6-Shimmin, Ka]; Hanson, Tanner [Tanner.Hanson@mail.house.gov]
Subject: RE: Western Caucus Lunch w/Admin. Pruitt
Attachments: EPA Memo_for_5.22.18_WC_Lunch_Meeting.docx; RSVPS for Pruitt Lunch 5.22.18.xlsx

Christian, Aaron and Kaitlyn,

Apologies for the delay in sending this over.

We were slammed with Farm Bill stuff last week and a few other things.

Attached is a short memo as well as the current RSVP list. We have had a few RSVP's still trickling in today so will pass along any others we get later this afternoon.

Meeting with your advance guy here in a few minutes.

Please let me know if you all have any questions or need anything else from us. Our members are looking forward to tomorrow.

Personal Matters / Ex. 6 is my cell.

Sincerely,

Jeff Small

*Executive Director | Congressional Western Caucus
Senior Advisor | Congressman Paul A. Gosar, D.D.S.*

From: Rodrick, Christian [mailto:rodrick.christian@epa.gov]
Sent: Monday, May 21, 2018 10:52 AM
To: Ringel, Aaron; Small, Jeff
Cc: Shimmin, Kaitlyn
Subject: RE: Western Caucus Lunch w/Admin. Pruitt

Hey Jeff,

Wanted to follow up on Aaron's email below. Do we know which members have RSVP'd for this? Additionally are you expecting any specific questions or concerns to come up during the conversation?

Thanks,

*Christian Rodrick
Special Assistant
Congressional Affairs U.S. EPA*

Personal Matters / Ex. 6

From: Ringel, Aaron

Sent: Thursday, May 17, 2018 10:39 AM

To: Jeff Small (jeff.small@mail.house.gov) <jeff.small@mail.house.gov>

Cc: Rodrick, Christian <rodrick.christian@epa.gov>; Shimmin, Kaitlyn <shimmin.kaitlyn@epa.gov>

Subject: Western Caucus Lunch w/Admin. Pruitt

Hey Jeff, just wanted to touch base in advance of next week and see if there are any potential topics your members would like the Administrator to discuss or questions he might receive. Additionally, if you could shoot us a list of members that are planning on attending when you start taking RSVP's that would be much appreciated!

Best,
Aaron

Aaron E. Ringel

Deputy Associate Administrator

Office of Congressional & Intergovernmental Relations

U.S. Environmental Protection Agency

Personal Matters / Ex. 6

Ringel.Aaron@epa.gov

MEMORANDUM

To: EPA Administrator Pruitt and Staff
Subject: 5.22.18 Western Caucus Members Only Lunch Meeting and Speaker Series

What:

Western Caucus Monthly Member-Only Meeting with EPA Administrator Scott Pruitt | Tuesday, May 22nd | 12:00-1:00 p.m. | 2247 RHOB | Catered lunch provided
EPA Administrator Pruitt will present, take questions and engage in discussion with our members on their priorities for the entirety of this lunch.

Background:

For the format, Congressional Western Caucus Chairman Paul Gosar kicks off with an update, then we go around the room and members introduce themselves. Then the Administrator will have 10-15 minutes to present. Then we open it up to questions or comments from members, generally limiting to one per member. Usually turns into more of a roundtable discussion. Always try and get a group picture for social media if we can. Our folks are pretty laid back and don't usually take any shots at these lunches.

The Congressional Western Caucus is a congressionally sanctioned organization that has existed since 1993 and currently comprised of 78 bipartisan members of the House. Kurt Schrader is currently the one Democrat. He is planning to attend the first 30 minutes of the meeting.

Western Caucus members are dedicated to:

- protecting private property rights
- strengthening local control
- fostering economic growth
- preserving multiple-use of public lands
- increasing energy independence
- managing healthy forests
- and ensuring safe domestic food production for American families

The Caucus was founded out West to fight federal overreach, promote rural values and preserve our uniquely American way of life. Over time, the Caucus has grown beyond the West, allying with Members of Congress from all across the country who share its values and vision of a stronger America. More info about the Caucus can be found on it's website at <https://westerncaucus.house.gov>.

Important Issues to the Members:

- **The Obama Administration's Waters of the United States (WOTUS) rule**
 - Western Caucus recently passed an amendment to the Farm Bill to repeal WOTUS. More [HERE](#). 13 Democrats voted in favor of the amendment.
- **Scrapping the Obama Administration's Preemptive Veto of the Pebble Project**
 - Members of the Western Caucus support cancelling the proposed preemptive veto for the Pebble Project and recently called on Administrator Pruitt to honor that pledge. More [HERE](#).
- **The Clean Power Plan**
 - Members of the Western Caucus support repeal of the Clean Power Plan. More [HERE](#).

MEMORANDUM

- **Ending Secret Science at the EPA**
 - Members of the Western Caucus support the proposed rule, “Strengthening Transparency in Regulatory Science”. Would be good to discuss in detail.
- **The Endangerment Finding**
 - Western Caucus Members support repealing the Obama Administration’s endangerment finding.
- **Obama Administration’s 2015 Ozone Rule**
 - Western Caucus Members support repeal and efforts to minimize harm from the Obama Administration’s 2015 Ozone Rule. More [HERE](#).
- **Members will also likely have district specific priorities that they pitch.**

Other Statements from the Western Caucus on EPA Matters:

- [Members of the Western Caucus Support Administrator Pruitt](#)
- [EPA Administrator Pruitt Takes Action to End ‘Sue and Settle’](#)
- [EPA Determines No Additional CERCLA Action Needed](#)
- [Western Caucus Members Support Proposed Rule Rolling Back WOTUS](#)
- [Western Caucus Members Praise Confirmation of Scott Pruitt as EPA Administrator](#)
- [Western Caucus Calls on Congress to Kill WOTUS Rule](#)

Member	Attending
Abraham, Ralph	
Amodei, Mark (NV-02)	0
Babin, Brian (TX-36)	
Bacon, Don (NE-02)	
Banks, Jim (IN-3)	1
Biggs, Andy (AZ-05)	1
Bishop, Rob (UT - 01)	0
Brady, Kevin (TX-8)	0
Buck, Ken (CO - 04)	
Calvert, Ken (CA-42)	0
Cheney, Liz (WY-AL)	1
Coffman, Mike (CO - 06)	
Collins, Doug (GA - 09)	0
Conaway, Mike (TX - 11)	
Cook, Paul (CA-08)	
Cramer, Kevin (ND)	1
Crawford, Rick (AR-01)	0
Curtis, John (UT-03)	1
Duncan, Jeff (SC - 03)	0
Emmer, Tom (MN-06)	1
Estes, Ron (KS-4)	
Flores, Bill (TX-17)	0
Gianforte, Greg (MT-AL)	1
Gohmert, Louie (TX-01)	1
Jenniffer Gonzalez-Colon (PR-AL)	
Gibbs, Bob (OH-07)	1
Gosar, Paul (AZ - 01)	1
Graves, Garret (LA -06)	1
Griffith, Morgan (VA-9)	
Herrera-Beutler, Jaime (WA - 03)	0
Hice, Jody (GA-10)	1
Holding, George (NC-2)	0
Hunter, Duncan (CA-50)	
Jenkins, Lynn (KS-02)	0
Johnson, Bill (OH-6)	
Johnson, Mike (LA-04)	1
Jordan, Jim (OH-4)	0
Kelly, Mike (PA-03)	
King, Steve (IA-04)	1
Labrador, Raul (ID - 01)	1
LaMalfa, Doug(CA-01)	1
Lamborn, Doug (CO - 05)	1
Love, Mia (UT - 04)	
Lucas, Frank (OK-3)	1
Luetkemeyer, Blaine (MO-03)	0
Marshall, Roger (KS-01)	1

McCarthy, Kevin (CA - 23)	
McClintock, Tom (CA - 24)	1
McMorris Rodgers, Cathy (WA - 05)	0
McSally, Martha (AZ-02)	0
Meadows, Mark (NC-11)	0
Mooney, Alexander X. (WV-02)	
Mullin, Markwayne (OK-02)	0
Newhouse, Dan (WA-04)	0
Noem, Kristi (SD At-Large)	0
Norman, Ralph (SC-5)	
Olson, Pete (TX-22)	1
Pearce, Steve (NM - 02)	
Radewagen, Amua Amata (AS-AL)	0
Reed, Tom (NY-23)	0
Ross, Dennis (FL-15)	
Ryan, Paul (WI-01)	
Scalise, Steve (LA-01)	0
Schrader, Kurt (OR-05)	1
Schweikert, David (AZ - 06)	
Sessions, Pete (TX-32)	
Simpson, Mike (ID - 02)	0
Smith, Jason (MO-08)	
Smith, Lamar (TX-21)	1
Stewart, Chris (UT-02)	
Thompson, Glenn (PA - 05)	0
Tipton, Scott (CO - 03)	1
Valadao, David (CA-21)	
Walden, Greg (OR - 02)	0
Walters, Mimi (CA-45)	0
Westerman, Bruce (AR-04)	
Yoho, Ted (FL-3)	1
Young, Don (AK-AL)	1
 Total Members Attending	 26
 Others attending	 7

Notes

approps markup, going to try and stop by though

attending

attending

can't attend, conflict

can't attend, conflict

approps markup, unlikely to attend

Planning to attend

can't attend

attending

can't attend, conflict

attending

can't attend, conflict

can't make it

Planning to attend

on calendar, will do best to make it.

will attend, has to leave a few minutes early

attending

will attend, first 20 minutes

approps markup, may catch the end

attending

conflict, can't attend

conflict, can't attend

Going to attend

conflict, can't attend

on calendar, but not 100% sure he'll make it

attending

Going to drop in but does have another meeting same time

Going to try and come by after 11:30a.m. meeting

Planning to attend

can't attend, conflict

possible but can't confirm 100% yet
conflict, can't attend
can't attend
can't attend, conflict

can't attend, offsite lunch
approps markup, going to try and stop by though
can't attend

attending

in American Samoa
can't attend, conflict

conflict, can't attend
Will attend first thirty minutes

approps markup, can't attend

attending

can't attend, conflict

maybe, staff checking
can't attend, hosting a lunch
Can't attend, CA delegation lunch

trying to attend

Tim Pataki and Jeff Freeland from White House, Kiel Weaver from Speaker, Jennifer Lorraine from Majority Leader, Jeff a

Message

From: Gomez, Laura [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=575BA24FC19D429C8302A05102353238-LGOMEZ]
Sent: 1/18/2018 10:29:36 PM
To: Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]
CC: Lyons, Troy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=15e4881c95044ab49c6c35a0f5eef67e-Lyons, Troy]; Moody, Christina [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=813eb7f985c845eaa91edc10c6e9a914-CMoody]
Subject: Re: POSSIBLE MEETING: HONEST ACT -BREIFING REQUEST FOR HSST-TOMORROW

Sure -understandable.

I'll send a scheduler with a call in number.

Thanks you for your flexibility.

Best,
Laura

On Jan 18, 2018, at 5:21 PM, Ringel, Aaron <ringel.aaron@epa.gov> wrote:

I'm happy to field but Troy has a conflict.

Sent from my iPhone

On Jan 18, 2018, at 4:23 PM, Gomez, Laura <Gomez.Laura@epa.gov> wrote:

Troy and Aaron,

Christina and I would like to schedule a brief call with you both tomorrow morning (11 am) to discuss the recent briefing request for the HSST committee regarding the HONEST ACT.

As this involves many offices and there is historical background behind the subject matter we would like your perspective before we execute confirmations.

Please let me know whom to coordinate with regarding your availability.

Best,

Laura

Laura E. Gómez Rodríguez
Congressional Liaison Specialist
US Environmental Protection Agency (EPA)
Office of Congressional and Intergovernmental Relations (OCIR)
1200 Pennsylvania Ave., N.W. MC-2650R
Washington DC, 20004
gomez.laura@epa.gov

Message

From: Daguillard, Robert [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BBE9682B940C4F2C90732E4D37355DD4-DAGUILLARD,]
Sent: 5/24/2018 12:55:43 PM
To: Press [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b293283291dc44e0b5d1c36be9281d8a-Press]; AO OPA Internal Communications [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8a16bad164c94c5db79c284e59ae421f-AO OPA Inte]; AO-OCIR Everyone [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=500c49cd19484dcfa10ecbd43df8b57f-AO-OCIR Everyone]; Regional Public Affairs Directors [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=df2f9cc7475345c9897ecec6e434647d-PADs]; Comm Directors and Alternates [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=94c7f0d65c1746f48b2d313ef19514ab-Comm Directors and Alternates]
Subject: FW: EPA Announces Extended Comment Period and Public Hearing on Proposed Rule to Strengthen Science Transparency in EPA Regulations

Newsroom: <https://www.epa.gov/newsreleases/epa-announces-extended-comment-period-and-public-hearing-proposed-rule-strengthen>

Cheers, R.

Robert Daguillard
Office of Media Relations
U.S. Environmental Protection Agency
Washington, DC

Personal Matters / Ex. 6

From: EPA Press Office [mailto:press=epa.gov@cmail20.com] **On Behalf Of** EPA Press Office
Sent: Thursday, May 24, 2018 8:00 AM
To: Daguillard, Robert <Daguillard.Robert@epa.gov>
Subject: EPA Announces Extended Comment Period and Public Hearing on Proposed Rule to Strengthen Science Transparency in EPA Regulations

EPA Announces Extended Comment Period and Public Hearing on Proposed Rule to Strengthen Science Transparency in EPA Regulations

WASHINGTON (May 24, 2018) - Today, the U.S. Environmental Protection Agency (EPA) announced an extension of the comment period on the proposed rule, "Strengthening Transparency in Regulatory Science." EPA is also announcing a public hearing for the proposed rule, which will be held on July 17, 2018, in Washington, D.C.

“EPA is committed to public participation and transparency in the rulemaking process,” said EPA Administrator Scott Pruitt. **“By extending the comment period for this rule and holding a public hearing, we are giving stakeholders the opportunity to provide valuable input about how EPA can improve the science underlying its rules.”**

On April 30, 2018, EPA announced the proposed rule with a 30-day comment period that was scheduled to close on May 30. With today’s extension, the comment period will now close on August 17. EPA is soliciting comments on all aspects of the proposal and specifically on the issues identified in Section III. The public hearing will provide a forum for interested parties to present data, views, and arguments regarding EPA’s proposed rule.

The proposed rule will strengthen the science used in regulations issued by EPA. It will require that underlying scientific information be publicly available. Also, this rule is consistent with data access requirements for major scientific journals and builds upon Executive Orders 13777 and 13783.

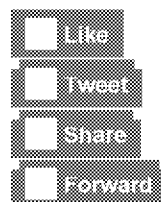
Comments should be identified by Docket ID No. is EPA-HQ-OA-2018-0259 and submitted through the Federal eRulemaking Portal: <http://www.regulations.gov>.

The public hearing will be held at the U.S. Environmental Protection Agency Headquarters, William Jefferson Clinton East Building, Main Floor Room 1153, 1201 Constitution Avenue NW, in Washington, D.C. 20460. The public hearing will convene at 8:00 a.m. EST and continue until 8:00 p.m. EST. Parties interested in presenting oral testimony at the public hearing should register online by July 15, 2018, at <https://www.epa.gov/osa/strengthening-transparency-regulatory-science>.

While we have taken steps to ensure the accuracy of this [Internet version of the rule](#), it is not the official version of the rule for purposes of public comment. Please refer to the official version in a forthcoming *Federal Register* publication.

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Message

From: EPA Press Office [press=epa.gov@cmail19.com]
on behalf of EPA Press Office [press@epa.gov]
Sent: 4/24/2018 6:30:03 PM
To: Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]
Subject: EPA Administrator Pruitt Proposes Rule To Strengthen Science Used In EPA Regulations



U.S. ENVIRONMENTAL PROTECTION AGENCY
NEWS RELEASE
WWW.EPA.GOV/NEWSROOM

EPA Administrator Pruitt Proposes Rule To Strengthen Science Used In EPA Regulations

WASHINGTON (April 24, 2018) - Today, U.S. Environmental Protection Agency (EPA) Administrator Scott Pruitt signed a proposed rule to strengthen the science used in regulations issued by EPA. The rule will ensure that the regulatory science underlying Agency actions is fully transparent, and that underlying scientific information is publicly available in a manner sufficient for independent validation.

“The era of secret science at EPA is coming to an end,” **said EPA Administrator Scott Pruitt.** “The ability to test, authenticate, and reproduce scientific findings is vital for the integrity of rulemaking process. Americans deserve to assess the legitimacy of the science underpinning EPA decisions that may impact their lives.”

This proposed rule is in line with the scientific community’s moves toward increased data sharing to address the “replication crisis”—a growing recognition that a significant proportion of published research may not be reproducible. The proposal is consistent with data access requirements for major scientific journals like *Science*, *Nature*, and *Proceedings of the National Academy of Sciences* as well as recommendations from the Bipartisan Policy Center’s *Science for Policy Project* and the Administrative Conference of the United States’ *Science in the Administrative Process Project*.

The proposed rule builds upon President Trump’s executive orders on regulatory reform and energy independence:

- ⌘ **Executive Order 13777**, issued in March 2017, provides that regulatory reform efforts shall attempt to identify “those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard of reproducibility.”
- ⌘ **Executive Order 13783**, also issued in March 2017, provides that “It is the policy of the United States that necessary and appropriate environmental regulations comply with the law, are of greater benefit than cost, when permissible, achieve environmental improvements for the American people, and are developed through transparent processes that employ the best available peer-reviewed science and economics.”

Chairman Lamar Smith (R-TX): “Administrator Pruitt’s announcement ensures that data will be secret no more. For too long, the EPA has issued rules and regulations based on data that has been withheld from the American people. It’s likely that in the past, the data did not justify all regulations. Today, Administrator Pruitt rightfully is changing business as usual and putting a stop to hidden agendas.”

Senator Mike Rounds (R-SD): “Sound, reliable science is vital to helping us make important policy decisions that impact the health of American families and their livelihoods. Inserting new levels of transparency in the EPA rulemaking process will help make the agency more accountable to the American people and help everyone understand the impact of EPA’s decisions. Today’s directive is a significant step toward making sure these decisions are not made behind closed doors with information accessible only to those writing the regulations, but rather in the full view of those who will be affected.”

Dr. Edward J. Calabrese, Professor, Environmental Health Sciences, University of Massachusetts: “The proposal represents a major scientific step forward by recognizing the widespread occurrence of non-linear dose responses in toxicology and epidemiology for chemicals and radiation and the need to incorporate such data in the risk assessment process.”

Dr. Louis Anthony (Tony) Cox, President, Cox Associates; Member, National Academy of Engineering; and Editor-in-Chief of the Journal *Risk Analysis*: “I believe that transparency and independent reproducibility of analyses and conclusions are bedrock principles of sound science. Some commentators have expressed concerns that making the data behind policy conclusions and recommendations accessible and transparent might threaten the privacy of individuals. But this concern can be fully met by applying current privacy-protection techniques for data analysis. These techniques have been developed and used successfully for years at the Census Bureau and elsewhere. Thus, we can have the scientific benefits of accessible data while protecting individual privacy.”

Dr. Jason Scott Johnston, Director, Olin Law and Economics Program, University of Virginia School of Law: “EPA’s proposed rule, Strengthening Transparency in Regulatory

Science, is badly needed “Best practice among peer-edited scientific journals is to require that data and statistical routines used in published papers be posted online and/or made publicly available. To apply the same standards to research that EPA says justify regulations affecting billions of dollars in economic activity and millions of human lives is essential for those regulations to truly be scientifically based.”

Bruno Pigott, Commissioner of the Indiana Department of Environmental Management (IDEM): “IDEM supports transparency in rulemaking. Good, sound science leads to better regulations.”

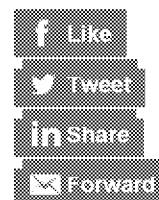
Dr. George Wolff, Principal Scientist, Air Improvement Resource, Inc., and former Chairman of EPA's Clean Air Scientific Advisory Committee (1992 - 1996): “In the development of regulations based on environmental studies, numerous subjective assumptions and choices must be made regarding the selection of data and models that have a profound impact on the strength of any statistical associations and even whether the associations are positive or negative. The appropriateness of the assumptions and choices are not adequately evaluated in the standard peer review process. That is why it is essential that the data and models be placed in the public domain for a more rigorous evaluation by qualified experts. The proposed regulation, Strengthening Transparency in Regulatory Science, will provide an opportunity for such evaluations.”

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Subject: RE: Scott Pruitt Will End EPA's Use Of 'Secret Science' To Justify Regulations

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Sent: Tuesday, March 20, 2018 9:03 AM
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Subject: Scott Pruitt Will End EPA's Use Of 'Secret Science' To Justify Regulations
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The Daily Caller

Scott Pruitt Will End EPA's Use Of 'Secret Science' To Justify Regulations

Michael Bastasch

March 19, 2018

<http://dailycaller.com/2018/03/19/epa-scott-pruitt-secret-science/>

Environmental Protection Agency (EPA) Administrator Scott Pruitt will soon end his agency's use of "secret science" to craft regulations.

"We need to make sure their data and methodology are published as part of the record," Pruitt said in an exclusive interview with The Daily Caller News Foundation. "Otherwise, it's not transparent. It's not objectively measured, and that's important."

Pruitt will reverse long-standing EPA policy allowing regulators to rely on non-public scientific data in crafting rules. Such studies have been used to justify tens of billions of dollars worth of regulations.

EPA regulators would only be allowed to consider scientific studies that make their data available for public scrutiny under Pruitt's new policy. Also, EPA-funded studies would need to make all their data public.

"When we do contract that science out, sometimes the findings are published; we make that part of our rule-making processes, but then we don't publish the methodology and data that went into those findings because the third party who did the study won't give it to us," Pruitt added.

"And we've said that's fine — we're changing that as well," Pruitt told TheDCNF.

Conservatives have long criticized EPA for relying on scientific studies that published their findings but not the underlying data. However, Democrats and environmental activists have challenged past attempts to bring transparency to studies used in rule making.

Texas Republican Rep. Lamar Smith pushed legislation to end the use of what he calls "secret science" at EPA. Pruitt instituted another policy in 2017 backed by Smith against EPA-funded scientists serving on agency advisory boards.

"If we use a third party to engage in scientific review or inquiry, and that's the basis of rulemaking, you and every American citizen across the country deserve to know what's the data, what's the methodology that was used to reach that conclusion that was the underpinning of what — rules that were adopted by this agency," Pruitt explained.

Pruitt's pending science transparency policy mirrors Smith's HONEST Act, which passed the House in March 2017. Smith's office was pleased to hear Pruitt was adopting another policy the House Committee on Science, Space and Technology chairman championed.

"The chairman has long worked toward a more open and transparent rule-making process at EPA, and he looks forward to any announcement from Administrator Pruitt that would achieve that goal," committee spokeswoman Thea McDonald told TheDCNF.

Junk science crusader Steve Milloy also called on EPA to end its use of "secret science" in rule making, especially when it comes to studies on the toxicity of fine particulates in the air.

EPA has primarily relied on two 1990s studies linking fine particulate pollution to premature death. Neither studies have made their data public, but EPA used their findings to justify sweeping air quality regulations.

Reported benefits from EPA rules are “mostly attributable to the reduction in public exposure to fine particulate matter,” according to the White House Office of Management and Budget report. That’s equivalent to billions of dollars.

In fact, one of EPA’s most expensive regulation on the books, called MATS, derived most of its estimated benefits from reducing particulates not from reducing mercury, which the rule was ostensibly crafted to address.

EPA estimated MATS would cost \$8.2 billion but yield between \$28 billion to \$77 billion in public health benefits. It’s a similar story for the Clean Power Plan, which EPA estimated would cost \$8.4 billion and yield from \$14 billion to \$34 billion in health and climate benefits.

Democrats and environmentalists have largely opposed attempts to require EPA rely on transparent scientific data. Said data would restrict the amount of studies EPA can use, but a major objection is making data public would reveal confidential patient data, opponents argue.

“A lot of the data that EPA uses to protect public health and ensure that we have clean air and clean water relies on data that cannot be publicly released,” Union of Concerned Scientists representative Yogin Kothari told E&E News.

“It really hamstrings the ability of the EPA to do anything, to fulfill its mission,” Kothari said.

Milloy, however, countered and argued it’s a “red herring” to claim that forcing regulators to use public science data would harm patient privacy.

“The availability of such data sets is nothing new,” said Milloy, publisher of JunkScience.com and senior fellow at the Energy and Environmental Legal Institute.

“The state of California, for example, makes such data available under the moniker, ‘Public Use Death Files,’” Milloy said. “We used such data in the form of over two million anonymized death certificates in our recent California study on particulates and death.”

“Opponents of data transparency are just trying to hide the data from independent scrutiny,” Milloy added. “But the studies that use this data are taxpayer-financed, and they are used to regulate the public.”

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Subject: Morning Energy: Spotlight on FERC at Pro summit — Hitching a ride on the 'minibus' — 'Secret science' out in the open

By Kelsey Tamborrino | 07/17/2018 05:43 AM EDT

With help from Emily Holden, Anthony Adragna, Colin Wilhelm and Darius Dixon

SEE YOU THERE: Today's the day — POLITICO Pro is hosting its second annual Pro summit, featuring one-on-one conversations with newsmakers across the policy landscape, including two sessions on energy.

FERC Commissioner Cheryl LaFleur will sit down this afternoon with our own Darius Dixon, before the regulatory body is deadlocked next month following the exit of GOP Commissioner Rob Powelson. LaFleur, a Democrat, has served under presidents from both parties and experienced the agency in almost every configuration — whether it has all five commissioners in place, or just one. There's no shortage of topics to chew over: the potential impact of an Energy Department coal and nuclear rescue plan, the heated rhetoric against states that stand in the way of pipelines, and whether FERC is "on the wrong side of history" when it comes to climate change. Darius' interview with LaFleur starts around 2 p.m.

Also on tap: California Air Resources Board Chairwoman Mary Nichols, Murray Energy CEO Bob Murray and the Council on Foreign Relations' Amy Myers Jaffe will participate in a panel this morning on America's "energy future." Nichols, for one, has been heavily involved in discussions with the Trump administration over car rules that the White House is considering rolling back. Expect questions related to the administration's efforts to pare back regulations and increase oil, gas and coal production — and an in-depth conversation on what that means for free market forces and renewables.

See the full agenda [here](#) and watch the livestream [here](#).

WELCOME TO TUESDAY! I'm your host, Kelsey Tamborrino. Citizens' Climate Lobby's Brett Cease was first to correctly identify the two presidents who threw out the first pitch at an All-Star game in D.C.: Franklin D. Roosevelt in 1937 and John F. Kennedy in 1962. For today: Which state or states have just one consonant in its spelling? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](#), [@Morning_Energy](#) and [@POLITICOPro](#).

JUST RELEASED: [View the latest POLITICO/AARP poll](#) to better understand Arizona voters over 50, a voting bloc poised to shape the midterm election outcome. Get up to speed on priority issues for Hispanic voters age 50+, who will help determine whether Arizona turns blue or stays red.

HITCHING A RIDE ON THE 'MINIBUS': The House Rules Committee late Monday made 70 amendments to the EPA and Interior title of the spending minibuss, [H.R. 6147 \(115\)](#). The amendments focus on blocking a host of Obama-era environmental regulations even as the Trump administration is in the process of rolling back many of those. Some of the amendments that caught ME's eye:

— **Diesel emissions grants:** Rep. [Gary Palmer's amendment](#) would eliminate the popular bipartisan Diesel Emissions Reduction Grant program used to retrofit diesel engines like those in school buses,

— **WOTUS:** Rep. Don Beyer's amendment would remove language blocking the Obama administration's Waters of the U.S. regulation,

— **Obama-era methane rule:** Rep. Markwayne Mullin's amendment would block enforcement of the Obama-era regulation aimed at curbing methane emissions from new oil and gas sources, which the Trump administration is already reconsidering,

— **Social cost of carbon:** Another amendment from conservatives would bar the use of the social cost of carbon in rulemakings,

— **Trailer efficiency:** Reps. Barry Loudermilk and Morgan Griffith's amendment would bar EPA from applying stricter fuel efficiency and greenhouse gas emissions standards to certain truck trailers,

— **Chesapeake Bay:** Rep. Bob Goodlatte's effort would limit EPA's ability to go after states that miss Chesapeake Bay cleanup milestones,

— **Ozone:** Rep. Glenn Grothman's amendment would block implementation of EPA's 2015 tightened ozone standard,

— **Coal ash:** A Democratic amendment would block the Trump EPA from revisiting an Obama-era coal ash regulation,

— **Endangered Species Act riders:** Several measures would bar the administration from issuing or enforcing Endangered Species Act rules relating to species like the lesser prairie chicken and Preble's meadow jumping mouse,

— **Attorney fees:** An amendment from Reps. Jason Smith and Greg Gianforte would block attorney fees from being awarded in any Clean Air Act, Clean Water Act or Endangered Species Act settlement, and,

— **Inspectors general:** Nothing related to former Administrator Scott Pruitt was made in order, but the House will consider an amendment from Rep. Raúl Grijalva that would increase the budget of the Interior Department's inspector general by \$2.5 million.

Read the full list of amendments made in order to the measure here.

'SECRET SCIENCE' OUT IN THE OPEN: EPA's controversial proposal to consider only research with publicly available data gets a public hearing at agency headquarters today starting at 8 a.m. Nearly 70 health, medical, academic and science groups — including the American Lung Association, American Heart Association, American Medical Association and American Academy of Pediatrics — oppose the plan, which they say could hamstring public health and environment protections.

EPA's Science Advisory Board voted unanimously to review the proposal, which Pruitt said was meant to bolster transparency. Paul Billings, national senior vice president of advocacy at the American Lung Association, called the rule a "coordinated effort to ignore the science that is inconvenient to the EPA's agenda," and compared it to lobbying efforts by the tobacco industry in the 1990s to exclude studies that showed secondhand smoke could kill.

What's at stake? The proposal could move forward quickly enough to allow EPA to roll back certain air quality standards currently under review. According to the Natural Resources Defense Council, the plan could undercut computer models meant to test chemicals under the new Toxic Substances Control Act and could toss

out landmark studies that relied on personal health records following extraordinary events, including when Hiroshima and Nagasaki victims were tested over time to find out the effects of radiation on humans.

The meeting will run until 8 p.m. or an hour after the last of more than 100 registered speakers has commented. Speakers, aside from many environment and public health groups, include the American Petroleum Institute, the U.S. Chamber of Commerce, the American Chemistry Council, FreedomWorks Foundation and climate science critic Steve Milloy. Dan Byers of the Chamber of Commerce's Global Energy Institute is expected to applaud the agency's efforts and commend EPA for going through the formal public comment and rulemaking process. "It is one thing to be cavalier about transparency principles when their application has little or no import to public policy, but federal rules that impact millions of people and billions of dollars should be held to a higher standard," he is expected to say. Also registered are Reps. Paul Tonko, Suzanne Bonamici and Dan Lipinski. Comments can be submitted until Aug. 16.

Related reading: Competitive Enterprise Institute senior fellow Angela Logomasini looks at the science transparency rule in analysis published today. "The rule is actually far more modest and flexible than depicted by its critics, and its goals are in fact achievable," Logomasini writes. Read it here.

FOR THE RECORD: The House Rules Committee meets at 3 p.m. this afternoon to formulate a rule on an anti-carbon tax resolution, H. Con. Res. 119 (115), that calls a tax on carbon released from fossil fuels "detrimental to the United States economy." The Rules panel will tee up a vote later this week on the resolution, which is led by Majority Whip Steve Scalise and would put a range of lawmakers — most notably the Climate Solutions Caucus — on the record on the issue.

WHERE'S ZINKE? Interior Secretary Ryan Zinke will deliver remarks this morning at the first meeting of the "Made in America" Outdoor Recreation Advisory Committee. The committee is tasked with advising the secretary on "public-private partnerships across all public lands, with the goal of expanding access to and improving infrastructure on public lands and waterways." See the meeting agenda.

AMERICA'S PLEDGE STILL WORKING ON PLEDGES: Michael Bloomberg and California Gov. Jerry Brown, the co-chairs of climate organization "America's Pledge," have unveiled a preview of the report they will release at the Global Climate Action Summit in San Francisco in September, detailing "bottom-up" opportunities for climate action sans federal leadership. The list is familiar: boosting renewables, accelerating coal retirements, retrofitting buildings for energy efficiency, electrifying building energy use, accelerating electric vehicle adoption, phasing out HFCs, preventing methane leaks at the wellhead, reducing methane leaks in cities, reducing emissions from land and starting carbon markets.

Vice Chairman Carl Pope said the group still plans to debut a quantitative analysis outlining what state and local governments are already doing, what they have committed to and what they are keying up. "We have every reason to believe the rest of the world is watching this very closely," Pope said, noting that the U.N.'s top climate official, Patricia Espinosa, mentioned the group and summit by name at the Vatican earlier this month. Read it here.

ESA GETS ITS DAY: Proposed tweaks to the Endangered Species Act will be front and center at a Senate Environment and Public Works hearing this morning. The hearing will feature testimony from Wyoming Gov. Matt Mead, Colorado Parks and Wildlife's Bob Broscheid and Virginia's Secretary of Natural Resources Matthew J. Strickler, and will focus on a discussion draft released by Chairman John Barrasso earlier this month aimed at changing the statute. **If you go:** The hearing kicks off at 9:45 a.m. in 406 Dirksen. Livestream here.

TAKEN BY STORMWATER: The House on Monday passed by voice vote H.R. 3906 (115), the Innovative Stormwater Infrastructure Act of 2017, which would "establish centers of excellence" for stormwater control infrastructure. The legislation, introduced last year by Democratic Rep. Denny Heck, directs EPA to create a

stormwater infrastructure funding task force to make recommendations on the availability of public and private funding for stormwater infrastructure.

DOE ISSUES FIRST TRIBAL LOAN GUARANTEE: The Energy Department will issue its first solicitation for the Tribal Energy Loan Guarantee Program today. The program provides up to \$2 billion in partial loan guarantees to support energy development in Native American and Alaska Native communities. According to DOE, today's solicitation marks more than \$40 billion in energy infrastructure loans and loan guarantees from DOE's Loan Programs Office in five areas.

HOUSE PANEL TO HOLD GRID HEARING: House Natural Resources will hold a hearing on July 25 on Puerto Rico's electric grid recovery and possible improvements to make it more efficient and resilient to future hurricanes. On top of the devastation caused by Hurricane Maria last year, Puerto Rico's electric utility owes bondholders \$9 billion, and most of its leadership departed last week after clashes with Gov. Ricardo Rosselló over executive compensation and political control of the utility, which is quasi-governmental.

MAKING THE GRADE: The Environment America Research & Policy Center is out today with its state-by-state report card, "Renewables on the Rise," which details increases in solar, wind, energy efficiency, electric vehicles and battery storage. The report says the U.S. now produces almost six times as much renewable electricity from wind and solar than it did in 2008. It also found that in March of last year, wind and solar produced 10 percent of the United States' electricity — marking a first. On the state level, the report said California, Arizona, North Carolina, Nevada and Texas saw the greatest total increases from 2008 until 2017 in solar energy generation. See the report [here](#) and a state-by-state interactive map [here](#).

YOU DOWN WITH TIP? A bipartisan group of four senators wrote to Energy Secretary Rick Perry on Monday in support of the Western Area Power Administration's Transmission Infrastructure Program, which was axed under the Trump administration's fiscal 2019 budget proposal. "TIP is one of the few federal programs that directly supports new and upgraded electric transmission," according to the letter, signed by Sens. Catherine Cortez Masto, Martin Heinrich, Dean Heller and Cory Gardner.

HOUSE PLANS FLOOD INSURANCE VOTE: The House is planning to vote next week to extend the National Flood Insurance Program, ahead of its July 31 expiration, sources familiar with the matter tell Pro Financial Services' Zachary Warmbrodt. There are already a few options on the table for the program: one from Financial Services Chairman Jeb Hensarling, who has been trying to put together an extension bill that includes reforms, and a new bill introduced by Scalise and Rep. Tom MacArthur that would reauthorize the program through Nov. 30. Read [more](#).

FOR YOUR RADAR: Republican Sen. Chuck Grassley introduced bipartisan legislation on Monday targeting price fixing by OPEC. The bill would amend the Sherman Act to make oil-producing and exporting cartels illegal, and was co-sponsored by Sens. Amy Klobuchar, Mike Lee and Patrick Leahy. "It's long past time to put an end to illegal price fixing by OPEC," Grassley said in a statement. Read the legislation [here](#).

MAIL CALL! National Rural Electric Cooperative Association CEO Jim Matheson sent a letter to the leadership of the Energy and Commerce Environment Subcommittee on Monday in support of legislation to reform the New Source Review permitting program.

— **More than 100 Democrats** signed onto a letter to members of both House and Senate Armed Services committees today to urge them to oppose any provisions to the National Defense Authorization Act that would "have widespread, negative consequences for the conservation of our imperiled wildlife and public lands." Read the letter [here](#).

— **Iowa's congressional delegation** invited acting EPA Administrator Andrew Wheeler to their state to discuss the Renewable Fuel Standard. Read it [here](#).

What role will Hispanic voters over 50 play in Arizona this Fall? Read POLITICO Magazine's new series "The Deciders" which focuses on this powerful voting bloc that could be the determining factor in turning Arizona blue.

QUICK HITS

- "Puerto Ricans return to power grid, but fear for long term," The Associated Press.
- "Oil boom in Southern New Mexico ignites groundwater feud with Texas," Water Deeply.
- "In N.Y., farmers think about what might have been," E&E News.
- "Same agenda, different style, acting EPA head pledges," Bloomberg Environment.

HAPPENING TODAY

8:30 a.m. — POLITICO's Pro Summit, 999 Ninth St. NW.

8:45 a.m. — The United States Institute of Peace discussion on "Wildlife Poaching and Trafficking: Combating a Vital Source of Terrorism," 2301 Constitution Avenue NW.

9 a.m. — The Resilient Puerto Rico Advisory Commission discussion with the authors of the newly released "ReImagina Puerto Rico" report, 14th and F St. NW.

9 a.m. — The National Academy of Sciences' Board on Atmospheric Sciences and Climate meeting to discuss a research agenda for adaptation science, 2101 Constitution Ave. NW.

9:45 a.m. — Senate Environment and Public Works Committee hearing on "The Endangered Species Act Amendments of 2018," 406 Dirksen.

10 a.m. — House Natural Resources Federal Lands Subcommittee hearing on federal land bills, 1324 Longworth.

10 a.m. — The Atlantic Council discussion on "Ready and Resilient," focusing on disaster preparedness, 1030 15th St. NW.

10 a.m. — House Oversight Interior, Energy and Environment Subcommittee hearing on "Tribal Energy Resources: Reducing Barriers to Opportunity," 2247 Rayburn.

10 a.m. — House Science Energy and Environment Subcommittees joint hearing on "The Future of Fossil: Energy Technologies Leading the Way," 2318 Rayburn.

10 a.m. — Senate Energy and Natural Resources Committee hearing on the Interior Department's final list of critical minerals, 366 Dirksen.

12:30 p.m. — The Washington Institute for Near East Policy discussion on "Reimplementing Iran Sanctions: Where, How and How Much?" 1111 19th St. NW.

12:30 p.m. — Sens. Ed Markey and Tom Carper press conference on Supreme Court nominee Brett Kavanaugh, S-115.

1 p.m. — EPA meeting on pesticide health and safety, Rosslyn, Va.

1 p.m. — House Energy and Commerce Environment Subcommittee markup of H.R. 3128 (115), 2322 Rayburn.

3 p.m. — House Rules Committee meets to formulate a rule on H. Con. Res. 119 (115), H-313.

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<https://subscriber.politicopro.com/newsletters/morning-energy/2018/07/spotlight-on-ferc-280874>

Stories from POLITICO Pro

House plans vote to keep flood insurance program going Back

By Zachary Warmbrodt | 07/16/2018 06:49 PM EDT

The House is planning to vote next week to extend the National Flood Insurance Program before leaving town ahead of the program's July 31 expiration, sources familiar with the matter said.

House Financial Services Chairman Jeb Hensarling (R-Texas) has been trying to put together an extension bill that includes reforms, sources said. Another option is a new bill introduced by House Majority Whip Steve Scalise (R-La.) and Rep. Tom MacArthur (R-N.J.) that would reauthorize the program through Nov. 30.

In a statement, Scalise said it was important to keep working on a long-term flood insurance reauthorization but that his bill would take concerns about a lapse off the table for the remainder of hurricane season.

While the House has passed a five-year reauthorization and overhaul, the Senate hasn't reached agreement on its own bill amid disputes over how to retool the program. It's unclear if the Senate would be able to pass anything other than a clean, short-term reauthorization at this stage. Sources said Sen. John Kennedy (R-La.) was planning to try to hotline an extension through January.

To view online click here.

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Subject: RE: For Review: Science Transparency News Release

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Date: April 23, 2018 at 5:37:19 PM EDT
To: "Woods, Clint" <woods.clint@epa.gov>, "Bolen, Brittany" <bolen.brittany@epa.gov>, "Yamada, Richard (Yujiro)" <yamada.richard@epa.gov>, "Baptist, Erik" <Baptist.Erik@epa.gov>, "Beck, Nancy" <Beck.Nancy@epa.gov>
Cc: "Gordon, Stephen" <gordon.stephen@epa.gov>, "Letendre, Daisy" <letendre.daisy@epa.gov>, "Konkus, John" <konkus.john@epa.gov>, "Beach, Christopher" <beach.christopher@epa.gov>, "Ringel, Aaron" <ringel.aaron@epa.gov>, "Palich, Christian" <palich.christian@epa.gov>, "Jackson, Ryan" <jackson.ryan@epa.gov>
Subject: For Review: Science Transparency News Release

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

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Message

From: Daguillard, Robert [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BBE9682B940C4F2C90732E4D37355DD4-DAGUILLARD,]
Sent: 3/28/2018 2:27:11 PM
To: AO-OCIR Everyone [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=500c49cd19484dcfa10ecbd43df8b57f-AO-OCIR Everyone]; AO OPA Internal Communications [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8a16bad164c94c5db79c284e59ae421f-AO OPA Inte]; Comm Directors and Alternates [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=94c7f0d65c1746f48b2d313ef19514ab-Comm Directors and Alternates]; Regional Public Affairs Directors [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=df2f9cc7475345c9897ecec6e434647d-PADs]
Subject: FW: Ban On "Secret Science" In EPA Regulation Makes Sense

And in the newsroom:

<https://www.epa.gov/newsreleases/oklahoman-ban-secret-science-epa-regulation-makes-sense>

Cheers, R.

Robert Daguillard
Office of Media Relations
U.S. Environmental Protection Agency
Washington, DC
+1 (202) 564-6618 (O)
+1 (202) 360-0476 (M)

From: EPA Press Office [mailto:press=epa.gov@cmail19.com] **On Behalf Of** EPA Press Office
Sent: Monday, March 26, 2018 10:50 AM
To: Daguillard, Robert <Daguillard.Robert@epa.gov>
Subject: Ban On "Secret Science" In EPA Regulation Makes Sense

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U.S. ENVIRONMENTAL PROTECTION AGENCY
NEWS RELEASE
WWW.EPA.GOV/NEWSROOM

THE OKLAHOMAN

Ban On "Secret Science" In EPA Regulation Makes Sense

Editorial
March 26, 2018

ED_002389_00020777-00001

The Environmental Protection Agency has announced it will now base new regulations only on the findings of scientific studies whose data and methodology are made public so they can be subjected to independent review. That's a sound move in line with basic scientific transparency and professionalism.

Yet it's being treated as a sign of impending apocalypse by some on the left, which says much about the questionable validity of that group's policy prescriptions.

In an interview with The Daily Caller News Foundation, Administrator Scott Pruitt said the EPA will end its use of studies that do not publish underlying data, only conclusions. "Otherwise, it's not transparent. It's not objectively measured, and that's important," Pruitt said.

In the past, the EPA has advanced air-quality regulations that imposed massive costs based primarily on the findings of two studies done in the 1990s that linked fine particulate pollution to premature death. Neither study made associated data public.

U.S. Rep. Lamar Smith, R-Texas and chairman of the House Committee on Science, Space and Technology, has long criticized the use of "secret science" and authored legislation to curtail its use by regulators. Last year, Smith said the EPA had "routinely relied on questionable science based on nonpublic information that could not be reproduced, a basic requirement of the scientific method."

"Americans deserve to see the science for themselves," Smith said. "If the EPA has nothing to hide, why not make the scientific data it uses for its regulations publicly available? What was the EPA hiding?"

That will strike most people as a fair question. But to some activists, the idea that science should involve review and scrutiny is apparently anathema. In response to a prior effort to ban "secret science" at the EPA, Andrew Rosenberg, director of the Union of Concerned Scientists' Center for Science and Democracy, said transparency would "gut the EPA at the expense of public health and safety."

That same group has claimed release of data would require publicizing the confidential patient data of individuals. But Steve Milloy, publisher of JunkScience.com and a senior fellow at the Energy and Environmental Legal Institute, notes that California already makes similar data available in its "Public Use Death Files," and that has been accomplished without violating patient privacy.

Other critics object that there are costs involved in scrubbing data sets so patient privacy is protected. Perhaps, but that doesn't mean the public should be kept in the dark about the data and methods used to justify literally billions in new regulatory

burden.

Scientific studies are as susceptible to human error and even outright fraud as any other endeavor — particularly when such studies are used in the political realm. Facilitating transparency and independent review will reduce the chances of bad science harming Americans with half-baked regulations, and should enhance the case for regulations when the underlying science has withstood independent scrutiny.

Given the stakes for public health and the national economy, Americans must be assured government regulations are based on sound science, not someone's "trust me" assurances.

Visit The EPA's
Newsroom



U.S. Environmental Protection Agency
1200 Pennsylvania Avenue Northwest
Washington, D.C. 20004

[Unsubscribe](#)

Message

From: Jones, Enesta [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=65B8E6C6E5CA4A7A9AE85D98A4C8EEDB-EJONES02]
Sent: 3/28/2018 11:21:37 AM
To: Press [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b293283291dc44e0b5d1c36be9281d8a-Press]; Regional Public Affairs Directors [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=df2f9cc7475345c9897ecec6e434647d-PADs]; AO OPA Internal Communications [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8a16bad164c94c5db79c284e59ae421f-AO OPA Inte]; AO-OCIR Everyone [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=500c49cd19484dcfa10ecbd43df8b57f-AO-OCIR Everyone]; Owens, Denise [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cb0fe2d4fa6e4a98884de40922a3aa92-Dowens03]; Comm Directors and Alternates [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=94c7f0d65c1746f48b2d313ef19514ab-Comm Directors and Alternates]
Subject: Fwd: The EPA Cleans Up Its Science

And in the newsroom.

<!--[if !supportLineBreakNewLine]-->
<!--[endif]-->

From: "EPA Press Office" <press@epa.gov>
Date: March 27, 2018 at 7:05:01 AM EDT
To: "Jones.Enesta@epa.gov" <Jones.Enesta@epa.gov>
Subject: The EPA Cleans Up Its Science
Reply-To: press@epa.gov

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THE WALL STREET JOURNAL

The EPA Cleans Up Its Science

Now Congress Should Act To Lock In Place Data Transparency
Steve Milloy
March 26, 2018

The Environmental Protection Agency will no longer rely on “secret” scientific data to justify regulations, Administrator Scott Pruitt announced last week. EPA regulators and agency-funded researchers have become accustomed to producing unaccountable, dodgy science to advance a political agenda.

The saga began in the early 1990s, when the EPA sought to regulate fine particulate matter known as PM2.5—dust and soot smaller than 2.5 microns in diameter. PM2.5 was not known to cause death, but by 1994 EPA-supported scientists had developed two lines of research purporting to show that it did. When the studies were run past the EPA’s Clean Air Science Advisory Committee, it balked. It believed the studies relied on dubious statistical analysis and asked for the underlying data. The EPA ignored the request.

As the EPA prepared to issue its proposal for PM2.5 regulation in 1996, Congress stepped in. Rep. Thomas Bliley, chairman of the House Commerce Committee, sent a sharply written letter to Administrator Carol Browner asking for the data underlying studies. Ms. Browner delegated the response to a subordinate, who told Mr. Bliley the EPA saw “no useful purpose” in obtaining the data. Congress responded by inserting a provision in a 1998 bill requiring that data used to support federal regulation must be made available to the public via the Freedom of Information Act. But it was hastily written, and a federal appellate court held the law unenforceable in 2003.

The controversy went dormant until 2011, when a newly Republican Congress took exception to the Obama EPA’s antioil rules, which relied on the same PM2.5 studies. Again the EPA was defiant. Administrator Gina McCarthy refused requests for the data sets and defied a congressional subpoena.

Bills to resolve the problem died in the Senate. Democrats argued that requiring data for study replication is a threat to intellectual property and an invasion of medical privacy. In fact, the legislation would protect property by requiring a confidentiality agreement, and no personal medical data or information would have been released.

This sort of data is already routinely made public for research use. In 2012 I was desperate for a way around the Obama EPA’s secrecy on the PM2.5 issue, I found out in 2012 that I could get California death-certificate data in electronic form. The state’s Health Department calls this sort of data “Death Public Use Files.” They are scrubbed of all personal identifying and private medical information. Some of my colleagues used this data to prepare a 2017 study, which found PM2.5 was not associated with death.

The best part is that if you don’t believe the result, you can get the same data for yourself from California and run your own analysis. Then we’ll compare, contrast and debate. That’s how science is supposed to work.

It would be better if Congress would pass a law requiring data transparency. A future administrator may backslide on the steps Mr. Pruitt is taking. In the meantime, we have science in the sunshine.

[To Read The Full Article Click Here](#)

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<!--[if !vml]-->

<!--[endif]-->

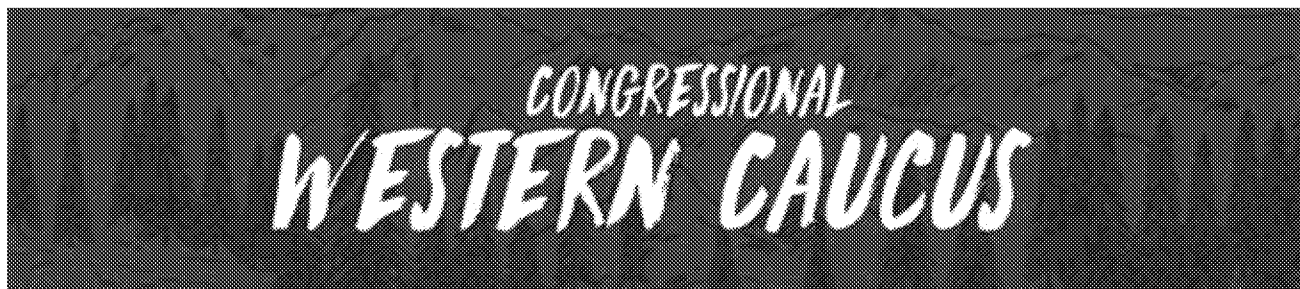
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue Northwest
Washington, D.C. 20004

[Unsubscribe](#)

Message

From: Konkus, John [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=555471B2BAA6419E8E141696F4577062-KONKUS, JOH]
Sent: 4/6/2018 9:41:08 PM
To: Daniell, Kelsi [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cd867173479344b3bda202b3004ff830-Daniell, Ke]; Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]; Bowman, Liz [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c3d4d94d3e4b4b1f80904056703ebc80-Bowman, Eli]; Bowman, Liz [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c3d4d94d3e4b4b1f80904056703ebc80-Bowman, Eli]; Ferguson, Lincoln [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=08cd7f82606244de96b61b96681c46de-Ferguson, L]; Bennett, Tate [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1fa92542f7ca4d01973b18b2f11b9141-Bennett, El]; Gordon, Stephen [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7c8fb4d82bff4eec98f5c5d00a47f554-Gordon, Ste]; Abboud, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6f5af791a1842f1adcc088cbf9ed3ce-Abboud, Mic]; Hewitt, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=41b19dd598d340bb8032923d902d4bd1-Hewitt, Jam]; Wilcox, Jahan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=88fd588e97d3405d869bcae98d391984-Wilcox, Jah]; Cory, Preston (Katherine) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bfd80b15f6d04a3ba11fc8ca3c85bc50-Cory, Kathe]; Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]; Palich, Christian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=330ad62e158d43af93fcbbece930d21a-Palich, Chr]; Block, Molly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=60d0c681a16441a0b4fa16aa2dd4b9c5-Block, Moll]
Subject: RE: DRAFT - recent media coverage

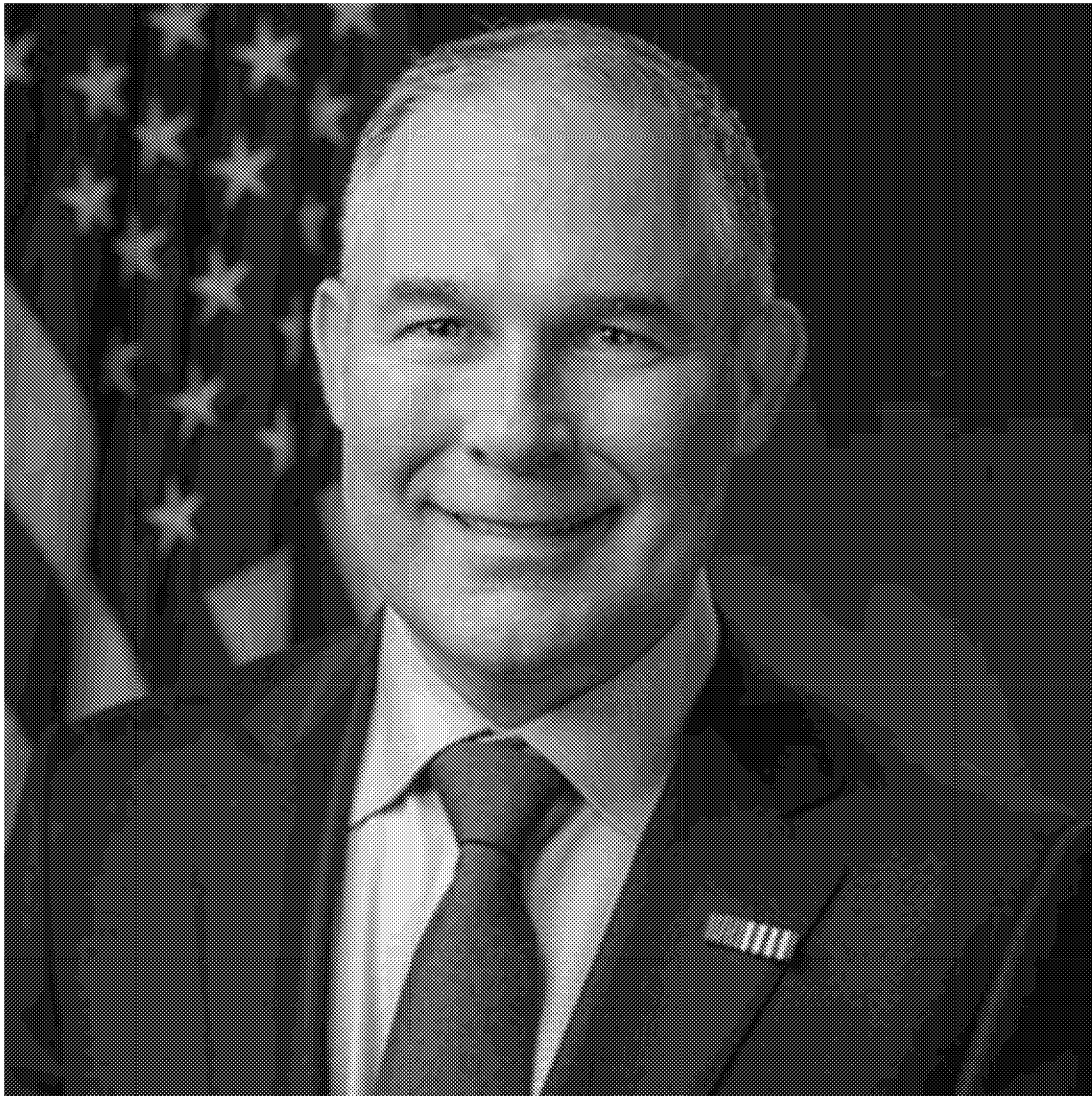
Ka Boom!



For Immediate Release
Contact: Tanner Hanson

Date: April 6, 2018
Tanner.Hanson@mail.house.gov

Members of the Western Caucus Support Administrator Pruitt



WASHINGTON, D.C. – Today, Congressional Western Caucus Chairman **Paul A. Gosar D.D.S. (AZ-04)**, House Science, Space, and Technology Committee Chairman **Lamar Smith (TX-21)**, House Committee on Appropriations Subcommittee on Interior, Environment, and Related Agencies Chairman **Ken Calvert (CA-42)**, and Western Caucus Members **Doug LaMalfa (CA-01)**, **Louie Gohmert (TX-01)**, and **Markwayne Mullin (OK-02)** issued the following statements in support of Environmental Protection Agency (EPA) Administrator Scott Pruitt:

Congressman Gosar stated, “EPA Administrator Pruitt has proven himself one of the most effective Cabinet Members in the Trump Administration. His track record on energy, the environment, deregulation, the rule of law and science-based decision-making is exceptional. Because he is an important part of the ‘Make America Great Again’ agenda, it should come as no surprise that a lynch mob of opportunistic politicians and certain members of the media are doing everything they can to attempt to remove him from office. The job of a successful agency head should not be called into question due solely to allegations from political opponents when important underlying facts remain unknown. I stand with EPA Administrator Pruitt and am grateful for everything he has done for the American people to get our economy going again.”

“Administrator Pruitt has served America exceptionally well during his first year in office. He has implemented President Trump’s America First policies, rolled back burdensome and unnecessary regulations, increased the independence of agency advisory boards, and is working toward

making the agency's rulemaking process more open to the American people," said **Congressman Smith**. "Scott Pruitt has returned the EPA's focus to its rightful place – on ensuring clean air and water for all Americans through policies that are based on good science, not science fiction. I thank him for his work thus far, and I anticipate many more achievements from the EPA with Administrator Pruitt at the helm."

"Keeping our air and water clean with balanced and careful policies is a challenging task. I know EPA Administrator Pruitt and the Administration are working every day to achieve these important goals," stated **Congressman Calvert**.

"It's no surprise that many Democrats and left-leaning members of the media would like to see EPA Administrator Pruitt gone - that's because he's good at his job. His commitment to slashing unnecessary regulations and cleaning up the agency while simultaneously boasting a strong track record on energy and the environment is impressive, and it has made him one of the most effective members of the President's cabinet. The allegations against Administrator Pruitt leave a lot of questions unanswered, and it should not cost him his job - especially when far more serious allegations against former administrators were largely brushed aside. I stand with many of my colleagues in support of Administrator Pruitt," said **Congressman LaMalfa**.

Congressman Gohmert said, "Scott Pruitt is one of President Trump's most effective cabinet members. He has been uniquely effective in rolling back onerous regulations that are strangling our American economy and dramatically killing jobs. We all want and are getting cleaner air and water, but when red tape kills jobs and puts Americans in poverty for no discernible difference, we need Scott Pruitt. Not only has he blessed our economy and jobs in general, minorities' unemployment is at an all time historical low. It is no wonder the left is attempting to take him out, because he is doing far too much to help Americans in a Republican administration."

"As the head of the EPA, Administrator Pruitt is responsible for rolling back dozens of job-killing regulations put in place over the 8 years of the Obama Administration. By returning the EPA to its rightful role, Administration Pruitt's policies have significantly reduced regulatory costs for taxpayers and given farmers, ranchers, and small business owners a chance to thrive again. I support EPA Administrator Pruitt and the good work he will continue to do to bring regulatory relief to all Americans," concluded **Congressman Mullin**.

Background:

Today, Members of the Western Caucus issued statements in support of Environmental Protection Agency (EPA) Administrator Scott Pruitt, rejecting calls from opportunistic politicians and some members of the media for President Trump to remove the Administrator from office.

Scott Pruitt is the 14th Administrator of the EPA. During his short tenure, EPA Administrator Pruitt has established a strong track record on energy, environment, deregulation, the rule of law and science-based decision-making. He has also taken significant steps to clean up lawlessness and dysfunction within the agency.

The EPA's 2017-2018 Year in Review can be found [HERE](#). Highlights of the report include:

- In his first year, Pruitt finalized 22 deregulatory actions saving job creators and hard-working Americans more than \$1 billion in regulations costs.

- Administrator Pruitt also put an end to “sue and settle” practices within the EPA.
- Under Pruitt's leadership, the EPA also rejected the Obama Administration's new and unnecessary financial responsibility requirements for certain hardrock mining facilities.
- Pruitt also took numerous actions to benefit the environment including: eliminating seven contaminated sites and taking significant actions to clean up contaminated lands, improve water quality and ensure polluters were held accountable.

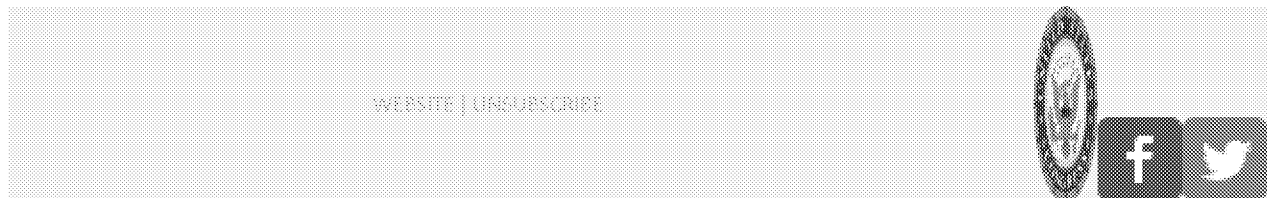
The Western Caucus also reminded those calling for the removal of Pruitt of ten major scandals involving the EPA during the Obama Administration. In the midst of those transgressions - most of which represented far greater malfeasance than any of the accusations levelled against EPA Administrator Pruitt - these same politicians and outlets largely failed to call for Obama EPA Administrators Jackson and McCarthy to be removed.

1. **“Richard Windsor (of course):** “The one, the only—Richard Windsor, a.k.a. Lisa Jackson. I mean, she corresponded exclusively in an alias. The only thing sketchier than that is what Hilary did.” Read more [here](#).
2. **“Text gate:** Here’s what we know: EPA Administrator Gina McCarthy conducted business via text and then destroyed the records of her correspondence, in blatant contravention of federal recordkeeping laws.” Read more [here](#) and [here](#).
3. **John Beale:** “John C. Beale masqueraded as a CIA agent to steal in total \$900,000 in government pay, bonuses and expenses.” “On April 30, 2013, [EPA Administrator Gina] McCarthy had cause to fire Beale, but instead elected to allow him to voluntarily retire with full benefits.” “A U.S. Senate [investigation](#) blasted McCarthy, [Beale’s] boss at the time at OAR, for not taking action for months after learning that Beale committed fraud.” Read more [here](#) and [here](#).
4. **EPA child molester:** “A child-molesting Environmental Protection Agency (EPA) official who was paid \$55,000 to retire is only one of many bad agency employees who skirted termination, according to a congressional committee. The Daily Caller [had more detail](#) on this situation, noting that this ‘convicted child molester — was on EPA’s payroll for years, even after EPA learned of his offense.” Read more [here](#).
5. **Acting Associate Administrator Peter Jutro:** “Mr. Jutro was the acting associate administrator for the EPA Office of Homeland Security, he also happens to be a serial sexual harasser. As a result of an inspector general investigation, we now know that Mr. Jutro sexually harassed at least 16 women while working at the EPA,” explained Chaffetz. “Even worse, EPA senior management was aware of his history of harassing women but continued to promote him.” Read more [here](#).
6. **WOTUS lobbying that broke the law:** “The Environmental Protection Agency engaged in ‘covert propaganda’ and violated federal law when it blitzed social media to urge the public to back an Obama administration rule intended to better protect the nation’s streams and surface waters, congressional auditors have concluded. The [ruling](#) by the Government Accountability Office, which opened its investigation after a [report](#) on the agency’s practices in The New York Times, drew a bright line for federal agencies experimenting with social media about the perils of going too far to push a cause. Federal laws prohibit agencies from engaging in lobbying and propaganda.” Read more [here](#).
7. **WOTUS rule generally:** According to a [182-page Committee Report](#), EPA Administrator Gina McCarthy shoved a terrible rule down the throats of the American people that was “rife with legal shortcuts, predetermined conclusions, and politically-driven timelines.” Amongst other flaws the EPA, “pushed the rule through on an accelerated timeline that appeared to have been

motivated by political considerations... made no effort to ensure the rule was based on sound science...pushed the rule through despite strong objections from senior Corps leadership...did not consider appropriate alternatives to the rule...did not fully consider public comments before finalizing the rule...failed to comply with various rulemaking obligations.” Read more [here](#).

8. **Flights of Obama EPA Administrators:** “Lisa Jackson, EPA director from 2009 to 2013, racked up more than \$332,000 on four overseas trips. Gina McCarthy, the chief in 2013-17, spent nearly \$630,000 on flights and security in her 10 international travels. None of which made headlines, even on the web — though their yearly average bill was a bit above Pruitt’s one-year total. Maybe Pruitt should pass on the junkets and save the taxpayers some money, but he’s not costing them any more than the Democrats who held the same job.” Read more [here](#).
9. **“Ignoring the Flint Water Crisis:** In April 2014, a state-appointed manager switched Flint’s drinking water source [to save money](#). Residents of the impoverished town soon started to complain about the new water’s color and odor: Testing showed it contained high levels of lead and other poisons in violation of the Safe Drinking Water Act. Although McCarthy’s EPA was first notified of the problem in April 2015, she did not declare a [state of emergency](#) until January 2016.” Read more [here](#).
10. **“Causing the Gold King Mine spill:** In 2015, EPA workers destroyed a plug that was holding water at the abandoned Gold King Mine in Colorado. Despite knowing the risk of a blowout (and [subsequently covering up](#) the fact they had that knowledge), the work continued at the abandoned mine until a breach unleashed three million gallons of toxic waste into the Animas River, polluting a waterway serving three Western states. While McCarthy [apologized for the disaster](#)—calling it a “tragic and unfortunate incident”—her agency [declined to accept full responsibility](#) and attempted to deflect any scrutiny from Congress and the media.” Read more [here](#).

###



From: Daniell, Kelsi

Sent: Friday, April 6, 2018 3:03 PM

To: Jackson, Ryan <jackson.ryan@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>; Bennett, Tate <Bennett.Tate@epa.gov>;

Gordon, Stephen <gordon.stephen@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>; Hewitt, James <hewitt.james@epa.gov>; Konkus, John <konkus.john@epa.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>; Cory, Preston (Katherine) <Cory.Preston@epa.gov>; Ringel, Aaron <ringel.aaron@epa.gov>; Palich, Christian <palich.christian@epa.gov>; Block, Molly <block.molly@epa.gov>; Daniell, Kelsi <daniell.kelsi@epa.gov>
Subject: RE: DRAFT - recent media coverage

Updated doc attached.

From: Block, Molly
Sent: Thursday, April 5, 2018 5:13 PM
To: Daniell, Kelsi <daniell.kelsi@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>
Cc: Bowman, Liz <Bowman.Liz@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>; Bennett, Tate <Bennett.Tate@epa.gov>; Gordon, Stephen <gordon.stephen@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>; Hewitt, James <hewitt.james@epa.gov>; Konkus, John <konkus.john@epa.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>; Cory, Preston (Katherine) <Cory.Preston@epa.gov>; Ringel, Aaron <ringel.aaron@epa.gov>; Palich, Christian <palich.christian@epa.gov>
Subject: RE: DRAFT - recent media coverage

Updated doc attached. Will continue to add as we get more.

From: Daniell, Kelsi
Sent: Wednesday, April 4, 2018 7:15 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>
Cc: Bowman, Liz <Bowman.Liz@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>; Bennett, Tate <Bennett.Tate@epa.gov>; Gordon, Stephen <gordon.stephen@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>; Hewitt, James <hewitt.james@epa.gov>; Block, Molly <block.molly@epa.gov>; Konkus, John <konkus.john@epa.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>; Cory, Preston (Katherine) <Cory.Preston@epa.gov>; Ringel, Aaron <ringel.aaron@epa.gov>; Palich, Christian <palich.christian@epa.gov>
Subject: Re: DRAFT - recent media coverage

Yes sir. I have it printed for him.

Sent from my iPhone

On Apr 4, 2018, at 7:10 PM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

Kelsi, are you on SP's flight? If so can you print this off for him?

From: Daniell, Kelsi
Sent: Wednesday, April 4, 2018 6:05 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>; Bennett, Tate <Bennett.Tate@epa.gov>; Gordon, Stephen <gordon.stephen@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>; Hewitt, James <hewitt.james@epa.gov>; Block, Molly <block.molly@epa.gov>; Konkus, John <konkus.john@epa.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>; Cory, Preston (Katherine) <Cory.Preston@epa.gov>; Ringel, Aaron <ringel.aaron@epa.gov>; Palich, Christian <palich.christian@epa.gov>
Subject: DRAFT - recent media coverage

All – below and attached is the *initial* coverage we've captured. Molly will help with this tomorrow, as I'm on the road. Let us know what's missing thus far. Thanks!

NATIONAL ...

The Federalist: Scott Pruitt Is Trump's Biggest Asset. That's Why the Left Wants Him Gone. "After Donald Trump, the individual in DC with the biggest target on his back is Environmental Protection Agency Administrator Scott Pruitt. When he was attorney general of Oklahoma, he sued the EPA more than a dozen times to get the powerful regulatory agency to stay within its legal authority. His nomination was deeply concerning to radical environmentalists inside and outside the media. As a result, he and his team have been under a microscope since even before his confirmation in early 2017. Well-funded environmental groups, many with former EPA staffers, deluge the agency with FOIA requests to catch someone in a scandal. Unlike how they covered Obama-era EPA administrators, media outlets constantly request information about everything Pruitt does, from his schedule to his travel particulars. Whipped-up partisans have made unprecedented numbers of death threats against him and his family. Powerful liberals opine against him."

Red State: Why are people who are supposed to be conservative trying to torpedo Scott Pruitt? "Pruitt is a guy we should all be lining up to defend. Under Pruitt, the EPA accepted responsibility for the disastrous spill it created at the Gold King mine in Colorado. And he committed substantial resources to the clean-up. He's prioritized the clean-up of Super Fund sites that have lingered for decades. He has taken fire and sword to the onerous regulatory strait jacket the Obama administration tried to impose on the US economy. Pruitt had begun the repeal of Obama's Clean Power Plan coal regs and the Obama-era Clean Power Plan. Under Pruitt, an executive order was issued to rescind the EPA's overreaching Waters of the United States (WOTUS) rule that often allowed the EPA to claim jurisdiction over literal mudholes."

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Erick Erickson, Resurgent.

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Freedom Works.

<image010.png>

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<image011.png>

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<image016.png>

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<image020.png>

Message

From: Konkus, John [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=555471B2BAA6419E8E141696F4577062-KONKUS, JOH]
Sent: 4/6/2018 8:31:52 PM
To: Daniell, Kelsi [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cd867173479344b3bda202b3004ff830-Daniell, Ke]; Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]; Bowman, Liz [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c3d4d94d3e4b4b1f80904056703ebc80-Bowman, Eli]; Bowman, Liz [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c3d4d94d3e4b4b1f80904056703ebc80-Bowman, Eli]; Ferguson, Lincoln [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=08cd7f82606244de96b61b96681c46de-Ferguson, L]; Bennett, Tate [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1fa92542f7ca4d01973b18b2f11b9141-Bennett, El]; Gordon, Stephen [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7c8fb4d82bff4eec98f5c5d00a47f554-Gordon, Ste]; Abboud, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6f5af791a1842f1adcc088cbf9ed3ce-Abboud, Mic]; Hewitt, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=41b19dd598d340bb8032923d902d4bd1-Hewitt, Jam]; Wilcox, Jahan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=88fd588e97d3405d869bcae98d391984-Wilcox, Jah]; Cory, Preston (Katherine) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bfd80b15f6d04a3ba11fc8ca3c85bc50-Cory, Kathe]; Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]; Palich, Christian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=330ad62e158d43af93fcbbece930d21a-Palich, Chr]; Block, Molly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=60d0c681a16441a0b4fa16aa2dd4b9c5-Block, Moll]
Subject: RE: DRAFT - recent media coverage

Politico: Conservatives unite to ask Trump to keep Pruitt

From: Daniell, Kelsi
Sent: Friday, April 6, 2018 3:03 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>; Bennett, Tate <Bennett.Tate@epa.gov>; Gordon, Stephen <gordon.stephen@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>; Hewitt, James <hewitt.james@epa.gov>; Konkus, John <konkus.john@epa.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>; Cory, Preston (Katherine) <Cory.Preston@epa.gov>; Ringel, Aaron <ringel.aaron@epa.gov>; Palich, Christian <palich.christian@epa.gov>; Block, Molly <block.molly@epa.gov>; Daniell, Kelsi <daniell.kelsi@epa.gov>
Subject: RE: DRAFT - recent media coverage

Updated doc attached.

From: Block, Molly
Sent: Thursday, April 5, 2018 5:13 PM
To: Daniell, Kelsi <daniell.kelsi@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>
Cc: Bowman, Liz <Bowman.Liz@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>; Bennett, Tate <Bennett.Tate@epa.gov>; Gordon, Stephen <gordon.stephen@epa.gov>; Abboud, Michael

<abboud.michael@epa.gov>; Hewitt, James <hewitt.james@epa.gov>; Konkus, John <konkus.john@epa.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>; Cory, Preston (Katherine) <Cory.Preston@epa.gov>; Ringel, Aaron <ringel.aaron@epa.gov>; Palich, Christian <palich.christian@epa.gov>
Subject: RE: DRAFT - recent media coverage

Updated doc attached. Will continue to add as we get more.

From: Daniell, Kelsi
Sent: Wednesday, April 4, 2018 7:15 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>
Cc: Bowman, Liz <Bowman.Liz@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>; Bennett, Tate <Bennett.Tate@epa.gov>; Gordon, Stephen <gordon.stephen@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>; Hewitt, James <hewitt.james@epa.gov>; Block, Molly <block.molly@epa.gov>; Konkus, John <konkus.john@epa.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>; Cory, Preston (Katherine) <Cory.Preston@epa.gov>; Ringel, Aaron <ringel.aaron@epa.gov>; Palich, Christian <palich.christian@epa.gov>
Subject: Re: DRAFT - recent media coverage

Yes sir. I have it printed for him.

Sent from my iPhone

On Apr 4, 2018, at 7:10 PM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

Kelsi, are you on SP's flight? If so can you print this off for him?

From: Daniell, Kelsi
Sent: Wednesday, April 4, 2018 6:05 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>; Bennett, Tate <Bennett.Tate@epa.gov>; Gordon, Stephen <gordon.stephen@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>; Hewitt, James <hewitt.james@epa.gov>; Block, Molly <block.molly@epa.gov>; Konkus, John <konkus.john@epa.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>; Cory, Preston (Katherine) <Cory.Preston@epa.gov>; Ringel, Aaron <ringel.aaron@epa.gov>; Palich, Christian <palich.christian@epa.gov>
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<image020.png>

Message

From: Konkus, John [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=555471B2BAA6419E8E141696F4577062-KONKUS, JOH]
Sent: 4/6/2018 8:11:39 PM
To: Daniell, Kelsi [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cd867173479344b3bda202b3004ff830-Daniell, Ke]
CC: Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]; Bowman, Liz [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c3d4d94d3e4b4b1f80904056703ebc80-Bowman, Eli]; Ferguson, Lincoln [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=08cd7f82606244de96b61b96681c46de-Ferguson, L]; Bennett, Tate [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1fa92542f7ca4d01973b18b2f11b9141-Bennett, El]; Gordon, Stephen [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7c8fb4d82bff4eec98f5c5d00a47f554-Gordon, Ste]; Abboud, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6f5af791a1842f1adcc088cbf9ed3ce-Abboud, Mic]; Hewitt, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=41b19dd598d340bb8032923d902d4bd1-Hewitt, Jam]; Wilcox, Jahan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=88fd588e97d3405d869bcae98d391984-Wilcox, Jah]; Cory, Preston (Katherine) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bfd80b15f6d04a3ba11fc8ca3c85bc50-Cory, Kathe]; Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]; Palich, Christian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=330ad62e158d43af93fcbbece930d21a-Palich, Chr]; Block, Molly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=60d0c681a16441a0b4fa16aa2dd4b9c5-Block, Moll]
Subject: Re: DRAFT - recent media coverage

Let's add this one, also waiting for the Western Caucus which they say should be coming this afternoon:

<https://twitter.com/americaspower/status/982344761477447680?s=12>

On Apr 6, 2018, at 3:03 PM, Daniell, Kelsi <daniell.kelsi@epa.gov> wrote:

Updated doc attached.

From: Block, Molly
Sent: Thursday, April 5, 2018 5:13 PM
To: Daniell, Kelsi <daniell.kelsi@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>
Cc: Bowman, Liz <[Bowman.Liz@epa.gov](mailto: Bowman.Liz@epa.gov)>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>; Bennett, Tate <Bennett.Tate@epa.gov>; Gordon, Stephen <gordon.stephen@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>; Hewitt, James <hewitt.james@epa.gov>; Konkus, John <konkus.john@epa.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>; Cory, Preston (Katherine) <Cory.Preston@epa.gov>; Ringel, Aaron <ringel.aaron@epa.gov>; Palich, Christian <palich.christian@epa.gov>
Subject: RE: DRAFT - recent media coverage

Updated doc attached. Will continue to add as we get more.

From: Daniell, Kelsi

Sent: Wednesday, April 4, 2018 7:15 PM

To: Jackson, Ryan <jackson.ryan@epa.gov<mailto:jackson.ryan@epa.gov>>

Cc: Bowman, Liz <Bowman.Liz@epa.gov<mailto:Bowman.Liz@epa.gov>>; Ferguson, Lincoln <ferguson.lincoln@epa.gov<mailto:ferguson.lincoln@epa.gov>>; Bennett, Tate <Bennett.Tate@epa.gov<mailto:Bennett.Tate@epa.gov>>; Gordon, Stephen <gordon.stephen@epa.gov<mailto:gordon.stephen@epa.gov>>; Abboud, Michael <abboud.michael@epa.gov<mailto:abboud.michael@epa.gov>>; Hewitt, James <hewitt.james@epa.gov<mailto:hewitt.james@epa.gov>>; Block, Molly <block.molly@epa.gov<mailto:block.molly@epa.gov>>; Konkus, John <konkus.john@epa.gov<mailto:konkus.john@epa.gov>>; Wilcox, Jahan <wilcox.jahan@epa.gov<mailto:wilcox.jahan@epa.gov>>; Cory, Preston (Katherine) <Cory.Preston@epa.gov<mailto:Cory.Preston@epa.gov>>; Ringel, Aaron <ringel.aaron@epa.gov<mailto:ringel.aaron@epa.gov>>; Palich, Christian <palich.christian@epa.gov<mailto:palich.christian@epa.gov>>

Subject: Re: DRAFT - recent media coverage

Yes sir. I have it printed for him.

Sent from my iPhone

On Apr 4, 2018, at 7:10 PM, Jackson, Ryan

<jackson.ryan@epa.gov<mailto:jackson.ryan@epa.gov>> wrote:

Kelsi, are you on SP's flight? If so can you print this off for him?

From: Daniell, Kelsi

Sent: Wednesday, April 4, 2018 6:05 PM

To: Jackson, Ryan <jackson.ryan@epa.gov<mailto:jackson.ryan@epa.gov>>; Bowman, Liz <Bowman.Liz@epa.gov<mailto:Bowman.Liz@epa.gov>>; Ferguson, Lincoln <ferguson.lincoln@epa.gov<mailto:ferguson.lincoln@epa.gov>>; Bennett, Tate <Bennett.Tate@epa.gov<mailto:Bennett.Tate@epa.gov>>; Gordon, Stephen <gordon.stephen@epa.gov<mailto:gordon.stephen@epa.gov>>; Abboud, Michael <abboud.michael@epa.gov<mailto:abboud.michael@epa.gov>>; Hewitt, James <hewitt.james@epa.gov<mailto:hewitt.james@epa.gov>>; Block, Molly <block.molly@epa.gov<mailto:block.molly@epa.gov>>; Konkus, John <konkus.john@epa.gov<mailto:konkus.john@epa.gov>>; Wilcox, Jahan <wilcox.jahan@epa.gov<mailto:wilcox.jahan@epa.gov>>; Cory, Preston (Katherine) <Cory.Preston@epa.gov<mailto:Cory.Preston@epa.gov>>; Ringel, Aaron <ringel.aaron@epa.gov<mailto:ringel.aaron@epa.gov>>; Palich, Christian <palich.christian@epa.gov<mailto:palich.christian@epa.gov>>

Subject: DRAFT - recent media coverage

All – below and attached is the initial coverage we've captured. Molly will help with this tomorrow, as I'm on the road. Let us know what's missing thus far. Thanks!

NATIONAL ...

The Federalist<<http://thefederalist.com/2018/04/04/scott-pruitt-is-trumps-biggest-asset-thats-why-the-left-wants-him-gone/>>: Scott Pruitt Is Trump's Biggest Asset. That's Why the Left Wants Him Gone. "After Donald Trump, the individual in DC with the biggest target on his back is Environmental Protection Agency Administrator Scott Pruitt. When he was attorney general of Oklahoma, he sued the EPA more than a dozen times to get the powerful regulatory agency to stay within its legal authority. His nomination was deeply concerning to radical environmentalists inside and outside the media. As a result, he and his team have been under a microscope since even before his confirmation in early 2017. Well-funded environmental

groups, many with former EPA staffers, deluge the agency with FOIA requests to catch someone in a scandal. Unlike how they covered Obama-era EPA administrators, media outlets constantly request information about everything Pruitt does, from his schedule to his travel particulars. Whipped-up partisans have made unprecedented numbers of death threats against him and his family. Powerful liberals opine against him.”

Red State:<<https://www.redstate.com/streiff/2018/04/04/people-supposed-conservative-trying-torpedo-scott-pruitt/>> Why are people who are supposed to be conservative trying to torpedo Scott Pruitt? “Pruitt is a guy we should all be lining up to defend. Under Pruitt, the EPA accepted responsibility for the disastrous spill it created at the Gold King mine in Colorado. And he committed substantial resources to the clean-up. He’s prioritized the clean-up of Super Fund sites that have lingered for decades. He has taken fire and sword to the onerous regulatory strait jacket the Obama administration tried to impose on the US economy. Pruitt had begun the repeal of Obama’s Clean Power Plan coal regs and the Obama-era Clean Power Plan. Under Pruitt, an executive order was issued to rescind the EPA’s overreaching Waters of the United States (WOTUS) rule that often allowed the EPA to claim jurisdiction over literal mudholes.”

The Hill:<<http://thehill.com/opinion/energy-environment/381508-epa-chief-scott-pruitt-gets-results-thats-why-hes-a-target-of-the>> EPA Chief Scott Pruitt Gets Results — That's Why He's A Target Of The Left. “President Donald Trump is standing by his embattled Environmental Protection Agency (EPA) Administrator Scott Pruitt, according to reports. Let’s be clear, that is good thing for both Trump and the country. Pruitt is one of the shining stars of the Trump administration, and no one who supports the president’s “Make America Great Again” agenda should want him replaced... Yet some hope that by attacking Pruitt on fake ethics charges, the media-created scandal will cause the Trump White House to either foolishly force Pruitt out or cause him to throw up his hands in disgust and resign. This would be a disaster for President Trump and all of us who care about his success.”

The Resurgent:<<https://www.themaven.net/theresurgent/erick-erickson/firing-scott-pruitt-will-only-embolden-the-left-98kPgKgnh06CbfWqAwBc9A/>> Firing Scott Pruitt Will Only Embolden the Left. “Scott Pruitt is being targeted because he is effective. The President needs to stand behind Pruitt. It is an open secret in Washington that a leftwing opposition research firm has hired investigators to dig into Trump Administration officials. It is no coincidence that many of the accusations, like with former Secretary of Health and Human Services Tom Price, involve private air travel and the like. It is what these investigators focus on to give the media easy stories.”

The Daily Signal:<<https://www.dailysignal.com/2018/04/04/3-reasons-left-hates-scott-pruitt/>> 3 Reasons the Left Hates Scott Pruitt. “From the Clean Power Plan, which was all about Obama’s climate agenda and which had nothing to do with creating clean air (we already have laws about that), to the Waters of the United States regulation which could turn a puddle in your front yard into environmentally-protected swamp land—Pruitt has been rolling back many of the regulations put in place by Obama’s overzealous, power-grabbing, and arguably unconstitutional EPA.”

The Washington Times<https://www.washingtontimes.com/news/2018/apr/3/president-trump-should-stand-his-man-epa-scott-pru/?utm_campaign=shareaholic&utm_medium=twitter&utm_source=socialnetwork>: President Trump should stand by his man at EPA; Scott Pruitt deserves no less. “EPA Administrator Scott Pruitt has been the most effective cabinet secretary President Trump has had during his 14-month presidency. He has loyally carried out the president’s aggressive agenda against out-of-control federal regulations that stifle economic growth and kill American jobs. Pruitt has faithfully fulfilled Trump’s campaign promises by rolling back Obama-era environmental overreach and

halting most new regulations that were in the pipeline when he inherited the bloated agency from his predecessor, Gina McCarthy. Pruitt has spearheaded Trump's agenda with impactful moves like pulling out of the Paris climate accords, reforming CAFE standards and rolling back the obtrusive way the EPA administered the Clean Water Act. As the man willing to attack these sacred cows of the Left Pruitt has been rewarded with legitimate and specific death threats against himself and his family."

The Washington Examiner<<https://www.washingtonexaminer.com/opinion/while-media-fixate-on-scott-pruitts-living-arrangements-his-epa-reforms-are-praiseworthy>>: While media fixate on Scott Pruitt's living arrangements, his EPA reforms are praiseworthy. "Pruitt's efforts to alleviate the regulatory burden on average Americans while working to restore sound scientific practices within the EPA arguably rank among the Trump administration's most significant policy achievements. EPA officials quoted in the press have said Pruitt's living arrangements did not violate ethics rules. Even if there is no technical violation, appearances matter in Washington. That's especially true for someone who has been remarkably effective up until now in advancing the Trump administration's efforts to free the economy from centralized planning in Washington."

The Daily Signal<<https://www.dailysignal.com/2018/04/03/ethics-officials-okd-bedroom-rental-epa-chief-says/>>: Exclusive: EPA Chief Scott Pruitt Says Media Reports About Him Don't Tell True Story. "'We had a memo and a statement from career ethics officials here that have actually reviewed the lease, that actually reviewed comps—comparables of similar units,' Pruitt, the former attorney general of Oklahoma, told The Daily Signal. 'And I think what's missed in this: I didn't rent a unit,' Pruitt said. 'I didn't rent an apartment. This was an Airbnb-type situation where I rented literally one room that was used in a temporary status, until I found more permanent residence.'"

USA Today:<<https://www.usatoday.com/story/news/politics/2018/04/04/president-trump-his-corner-scott-pruitts-job-epa-looks-safe-now/485083002/>> With President Trump in his corner, Scott Pruitt's job at EPA looks safe – for now. "'Why go and replace someone who's doing a very good job (carrying out) the president's agenda,' said Jason Miller, a former senior communicators adviser to the Trump campaign and transition team. 'It hasn't gone unnoticed that Administrator Pruitt is accomplishing a lot for the president and in a much quicker time period than anyone thought possible.'"

The Daily Caller<<http://dailycaller.com/2018/04/04/conservative-pundits-rally-to-epas-scott-pruitt-as-dems-call-for-his-head/>>: Conservative Pundits Rally to EPA's Scott Pruitt as Dems Call for His Head. "Conservative allies have come to the aid of Environmental Protection Agency (EPA) Administrator Scott Pruitt as lawmakers, environmental activists and pundits call for his resignation... Wall Street Journal columnist Kimberley Strassel called the wave of anti-Pruitt stories "absurd," pointing out that Obama EPA officials spent more on travel and that agency ethics officials approved of the administrator's temporary living arrangement in the condo."

The Washington Examiner<<https://www.washingtonexaminer.com/washington-secrets/scott-pruitt-washington-toxic-critics-trying-stop-trump-agenda>>: Embattled Scott Pruitt Rips 'Toxic' Washington, Says Critics 'Will Resort To Anything' To Stop Trump Agenda. "EPA Administrator Scott Pruitt on Tuesday forcefully pushed back against criticism that he won a short-term sweetheart rental deal from a lobbyist friend, claiming it's just the latest attempt by his and the president's attackers to 'resort to anything' to stop their agenda. 'There are people that have long in this town done business a different way and this agency has been the poster child of it. And so do I think that because we are leading on this agenda that there are some who want to keep that from happening? Absolutely. And do I think that they will resort to anything to

achieve that? Yes,' he said in an interview with Secrets. 'It's toxic here in that regard,' said Pruitt, one of a handful of President's Trump's agency heads who is scoring wins on his pro-jobs, anti-regulatory campaign. Pruitt, speaking confidently about his future, said that critics who have focused on his \$50 a night room rental in an Airbnb-style townhouse and his air travel are really out to stop the administration's anti-regulatory effort that has saved \$8 billion overall and \$1 billion in reduced Environmental Protection Agency regulations."

CNN:<<https://www.cnn.com/2018/04/03/politics/scott-pruitt-donald-trump-environment-policy/index.html>> EPA's Pruitt Fulfilling Trump's Anti-Regulatory Agenda. "Environmental Protection Agency Administrator Scott Pruitt is drawing scrutiny for his housing situation and travel practices, but in his role as the nation's top environmental official, he's a reliable administration foot soldier, making good on President Donald Trump's campaign promises for fewer environmental regulations and to withdraw from the Paris climate agreement. Since he was confirmed to the job last February, Pruitt has taken an aggressive approach to rolling back Obama-era regulations, most recently this week's announcement that he would revise fuel efficiency rules designed to cut back on emissions of greenhouse gases. "This is another step in the President's regulatory agenda, de-regulatory agenda ... a billion dollars in savings with respect to over 22 significant regulatory actions that we've been involved in here at the agency," Pruitt said at EPA headquarters Tuesday."

E&E News:<<https://www.eenews.net/stories/1060078051>> Conservatives Rally Behind Pruitt. "Conservatives are supporting U.S. EPA Administrator Scott Pruitt as he struggles with reports of premium travel, high-price security and ties to lobbyists. Myron Ebell, who led President Trump's EPA transition team, told E&E News that Pruitt has been consequential in achieving the president's goals. Pruitt has proposed repealing several Obama-era regulations, winning plaudits from free-market and business groups that have long battled with EPA. "We're getting the word out that Administrator Pruitt is doing a good job in implementing the president's agenda and Administrator Pruitt is a key part of that agenda," Ebell said. "We're trying to keep the free-market groups and the conservative groups together in support of the agenda." Ebell, director of the Competitive Enterprise Institute's Center for Energy and Environment, talked to E&E News on his way to EPA headquarters today to attend Pruitt's announcement of the rollback of Obama-era auto fuel efficiency standards. Ebell declined to speculate whether Pruitt's job is in jeopardy."

Hot Air:<<https://hotair.com/archives/2018/04/04/interview-scott-pruitt-talking-regulatory-reform-scandals-rfs-swamp-monsters/>> Pruitt talks streamlining the agency, RFS, and "the swamp." Administrator Pruitt does not admit to being a cryptozoological creature, nor can he confirm that he will be starring as a villain in an upcoming Marvel superhero movie. There's more about the EPA's move to only accept real science rather than secret science in their decision-making process as well as some hints at new regulatory moves on the horizon.

<image001.png>

NPR: Working with Scott Pruitt.<<https://www.npr.org/2018/04/04/599361744/working-with-scott-pruitt>> Lawyer David Rivkin worked with Pruitt and talks with NPR's David Greene.

<image002.png>

WHAT THEY ARE SAYING...

Daily Torch:<<http://dailytorch.com/2018/04/if-environmental-radicals-are-in-full-panic-mode-over-scott-pruitt-at-epa-that-means-he-is-doing-a-good-job/>> If environmental radicals are in full panic mode over Scott Pruitt at EPA, that means he is doing a good job. "The left has spent over a decade trying to expand the influence and oversight of the Environmental Protection Agency (EPA), but the American people voted against this influence when they elected President Trump

to prioritize economic advancement. Trump followed through on this promise by appointing Scott Pruitt as EPA Administrator. The left is now trying everything to destroy his position and defame his record, but Pruitt must power through, his job is far too important... Scott Pruitt has done his job, and he has done it well. All the left's continued attacks prove is that it is willing to dismiss facts in favor of pushing an agenda. Pruitt must continue charting the EPA's path toward a balance between environmental concerns and economic development and security, rather than be distracted by the baseless attacks from political opponents, and President Trump needs to stand behind this stalwart of his administration, who is big part of what is needed to make America great again."

Freedom Works<<http://www.freedomworks.org/content/freedomworks-foundation-praises-scott-pruitt%E2%80%99s-record-epa>>: Continues to support the leadership of Administrator Scott Pruitt. "Adam Brandon: 'Scott Pruitt has worked hard to return the EPA to its core mission: protecting the environment as directed by Congress; instead of the rogue assault on the rule of law, freedom, and the economy that we saw in the prior administration.' Ken Cuccinelli: 'Unlike his predecessors, EPA Administrator Pruitt has core environmental accomplishments to his credit: like actually making progress on the long-dormant superfund sites and attacking the problem of lead in drinking water. These are basic responsibilities for the EPA, yet they were abject failures prior to Pruitt's arrival.'"

Governor Matt Bevin (R-KY)<<https://twitter.com/GovMattBevin/status/981497188042895360>>
<image003.png><image004.png><image005.png><image006.png>

Kim Strassel, Wall Street Journal.<<https://twitter.com/KimStrassel/status/981294442123415552>>
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Mollie Hemingway, The Federalist.<<https://twitter.com/MZHemingway/status/980991146989096962>>
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Erick Erickson, Resurgent.<<https://twitter.com/EWErickson/status/981537157071495170>>
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Freedom Works.<<https://twitter.com/FreedomWorks/status/981533609252327424>>
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Elisha Krauss, Real Daily Wire.<<https://twitter.com/ElishaKrauss/status/981552364359368704>>
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Cindy Bobbitt, National Association of Counties Central Region.<https://twitter.com/bobbitt_cindy/status/981571884075638786>
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David Limbaugh, Columnist.<<https://twitter.com/DavidLimbaugh/status/981541454475489280>>
<image013.png>

Count on Coal.<<https://twitter.com/countoncoal/status/981609530915246080>>
<image014.png>

Kurt Schlichter, Townhall.<<https://twitter.com/KurtSchlichter/status/981611070388191234>>
<image015.png>

Arkansas Farm Bureau.<<https://twitter.com/ArFB/status/981618527084957696>>
<image016.png>

Senator Jim Inhofe (R-OK).<https://www.washingtonpost.com/news/energy-environment/wp/2018/04/03/epas-pruitt-gave-big-raises-to-two-close-aides-after-being-rebuffed-by-the-white-house/?utm_term=.d2335ba3a1ab>
<image017.png>

Rob Bluey, Daily Signal.<<https://twitter.com/RobertBluey/status/981642511503552512>>
<image018.png><image019.png>

<image020.png>

<Pruitt coverage highlights.docx>

From: EPA Press Office [press=epa.gov@cmail20.com]
on behalf of EPA Press Office [press@epa.gov]
Sent: 3/27/2018 11:05:01 AM
To: Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]
Subject: The EPA Cleans Up Its Science

No Images? [Click here](#)

THE WALL STREET JOURNAL

The EPA Cleans Up Its Science

Now Congress Should Act To Lock In Place Data Transparency

Steve Milloy

March 26, 2018

<https://on.wsj.com/2lV9LeH>

The Environmental Protection Agency will no longer rely on “secret” scientific data to justify regulations, Administrator Scott Pruitt announced last week. EPA regulators and agency-funded researchers have become accustomed to producing unaccountable, dodgy science to advance a political agenda.

The saga began in the early 1990s, when the EPA sought to regulate fine particulate matter known as PM2.5—dust and soot smaller than 2.5 microns in diameter. PM2.5 was not known to cause death, but by 1994 EPA-supported scientists had developed two lines of research purporting to show that it did. When the studies were run past the EPA’s Clean Air Science Advisory Committee, it balked. It believed the studies relied on dubious statistical analysis and asked for the underlying data. The EPA ignored the request.

As the EPA prepared to issue its proposal for PM2.5 regulation in 1996, Congress stepped in. Rep. Thomas Bliley, chairman of the House Commerce Committee, sent a sharply written letter to Administrator Carol Browner asking for the data underlying studies. Ms. Browner delegated the response to a subordinate, who told Mr. Bliley the EPA saw “no useful purpose” in obtaining the data. Congress responded by inserting a provision in a 1998 bill requiring that data used to support federal regulation must be made available to the public via the Freedom of Information Act. But it was hastily written, and a federal appellate court held the law unenforceable in 2003.

The controversy went dormant until 2011, when a newly Republican Congress took exception to the Obama EPA's antioil rules, which relied on the same PM2.5 studies. Again the EPA was defiant. Administrator Gina McCarthy refused requests for the data sets and defied a congressional subpoena.

Bills to resolve the problem died in the Senate. Democrats argued that requiring data for study replication is a threat to intellectual property and an invasion of medical privacy. In fact, the legislation would protect property by requiring a confidentiality agreement, and no personal medical data or information would have been released.

This sort of data is already routinely made public for research use. In 2012 I was desperate for a way around the Obama EPA's secrecy on the PM2.5 issue, I found out in 2012 that I could get California death-certificate data in electronic form. The state's Health Department calls this sort of data "Death Public Use Files." They are scrubbed of all personal identifying and private medical information. Some of my colleagues used this data to prepare a 2017 study, which found PM2.5 was not associated with death.

The best part is that if you don't believe the result, you can get the same data for yourself from California and run your own analysis. Then we'll compare, contrast and debate. That's how science is supposed to work.

It would be better if Congress would pass a law requiring data transparency. A future administrator may backslide on the steps Mr. Pruitt is taking. In the meantime, we have science in the sunshine.

[To Read The Full Article Click Here](#)

.....



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From: EPA Press Office [press=epa.gov@cmail19.com]
on behalf of EPA Press Office [press@epa.gov]
Sent: 3/26/2018 2:50:18 PM
To: Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]
Subject: Ban On "Secret Science" In EPA Regulation Makes Sense

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U.S. ENVIRONMENTAL PROTECTION AGENCY
NEWS RELEASE
WWW.EPA.GOV/NEWSROOM

THE OKLAHOMAN

Ban On "Secret Science" In EPA Regulation Makes Sense

Editorial

March 26, 2018

<http://newsok.com/article/5588210/ban-on-secret-science-in-epa-regulation-makes-sense>

The Environmental Protection Agency has announced it will now base new regulations only on the findings of scientific studies whose data and methodology are made public so they can be subjected to independent review. That's a sound move in line with basic scientific transparency and professionalism.

Yet it's being treated as a sign of impending apocalypse by some on the left, which says much about the questionable validity of that group's policy prescriptions.

In an interview with The Daily Caller News Foundation, Administrator Scott Pruitt said the EPA will end its use of studies that do not publish underlying data, only conclusions. "Otherwise, it's not transparent. It's not objectively measured, and that's important," Pruitt said.

In the past, the EPA has advanced air-quality regulations that imposed massive costs based primarily on the findings of two studies done in the 1990s that linked fine particulate pollution to premature death. Neither study made associated data public.

U.S. Rep. Lamar Smith, R-Texas and chairman of the House Committee on Science,

Space and Technology, has long criticized the use of “secret science” and authored legislation to curtail its use by regulators. Last year, Smith said the EPA had “routinely relied on questionable science based on nonpublic information that could not be reproduced, a basic requirement of the scientific method.”

“Americans deserve to see the science for themselves,” Smith said. “If the EPA has nothing to hide, why not make the scientific data it uses for its regulations publicly available? What was the EPA hiding?”

That will strike most people as a fair question. But to some activists, the idea that science should involve review and scrutiny is apparently anathema. In response to a prior effort to ban “secret science” at the EPA, Andrew Rosenberg, director of the Union of Concerned Scientists’ Center for Science and Democracy, said transparency would “gut the EPA at the expense of public health and safety.”

That same group has claimed release of data would require publicizing the confidential patient data of individuals. But Steve Milloy, publisher of JunkScience.com and a senior fellow at the Energy and Environmental Legal Institute, notes that California already makes similar data available in its “Public Use Death Files,” and that has been accomplished without violating patient privacy.

Other critics object that there are costs involved in scrubbing data sets so patient privacy is protected. Perhaps, but that doesn’t mean the public should be kept in the dark about the data and methods used to justify literally billions in new regulatory burden.

Scientific studies are as susceptible to human error and even outright fraud as any other endeavor — particularly when such studies are used in the political realm. Facilitating transparency and independent review will reduce the chances of bad science harming Americans with half-baked regulations, and should enhance the case for regulations when the underlying science has withstood independent scrutiny.

Given the stakes for public health and the national economy, Americans must be assured government regulations are based on sound science, not someone’s “trust me” assurances.

.....



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From: EPA Press Office [press=epa.gov@cmail19.com]
on behalf of EPA Press Office [press@epa.gov]
Sent: 3/23/2018 3:30:02 PM
To: Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]
Subject: EPA's Weekly Report for 3/23/18



U.S. ENVIRONMENTAL PROTECTION AGENCY
NEWS RELEASE
WWW.EPA.GOV/NEWSROOM

EPA'S WEEKLY REPORT

This week Environmental Protection Agency (EPA) Administrator Scott Pruitt sat down with more than a dozen reporters across all mediums to discuss the important work the Agency is doing to ensure regulatory certainty for America's farmers, ranchers, and businesses during National Agriculture Week. Pruitt also advanced the Trump Administration's infrastructure agenda with a push to eradicate lead from drinking water and convene a [national leadership summit](#) on PFAS to update America's crumbling water infrastructure.

NATIONAL NEWS ...

In an exclusive interview with the [Daily Caller](#), EPA Administrator Scott Pruitt laid out his plans to end the use of "secret science" to craft Agency regulations. "Pruitt will reverse long-standing EPA policy allowing regulators to rely on non-public scientific data in crafting rules. Such studies have been used to justify tens of billions of dollars worth of regulations. EPA regulators would only be allowed to consider scientific studies that make their data available for public scrutiny under Pruitt's new policy. Also, EPA-funded studies would need to make all their data public."

EPA Administrator Pruitt sat down with [AgDay](#) to talk about issues impacting farmers and ranchers including EPA's efforts to provide certainty by redefining "Waters of the U.S." According to Pruitt, a substitute or replacement definition will be issued sometime this year, a definition that will recognize private property ownership and the roles of states, and will answer the question of what exactly is a water of the United

States. 'We're going to get that right going forward, and the definition is going to provide clarity, objective measurements by which we know where federal jurisdiction begins and ends,' he said."

OP-ED ...

In the Washington Times, EPA Administrator Pruitt outlined the Agency's efforts to overhaul the permitting process to "rebuild and revitalize our nation's crumbling infrastructure." "The president's ambitious proposal calls for the U.S. Environmental Protection Agency to play a leading role in the administration's efforts ... America's infrastructure was once the envy of the world. The president's proposal will restore our roads, bridges and waterways to greatness and create a safer, stronger America. Through regulatory reforms and targeted investments, EPA will spearhead the much-needed repairs to infrastructure in a way that provides tangible environmental benefits to all Americans."

REGIONAL NEWS ...

The Detroit News reported that eradicating lead from drinking water is one of EPA Administrator Pruitt's top priorities. "I do think that what happened in Flint is something that could happen elsewhere. We just simply need to take steps to do all that we can to address it prospectively and proactively,' Pruitt said. Pruitt said President Donald Trump's \$1.5 trillion plan to bolster the nation's infrastructure over the next decade would include investments in aging water infrastructure."

While speaking with the New York Post, Pruitt called for a local, state, and federal response to the lead crisis in New York City and across the country. "EPA Administrator Scott Pruitt called for a 'coordinated' response between New York State and City officials to address the ongoing lead crisis."

In an interview with Newark Star-Ledger, Pruitt discussed efforts to make cleaning up Superfund sites a priority to advance the Agency's core mission. "The Environmental Protection Agency plans to step up efforts to get companies who dumped toxic waste at New Jersey's Superfund sites to pay to clean them up, Administrator Scott Pruitt said. Pruitt on Monday blamed a lack of urgency... New Jersey has 114 designated Superfund sites, the most in the nation, included three of Pruitt's 21 highest-priority locations."

Pruitt reiterated his commitment to prioritizing the Superfund program to clean up America's most contaminated sites, including Tar Creek, in an interview with the Tulsa World. "Administrator Scott Pruitt of the U.S. Environmental Protection Agency said his new push on the nation's Superfund program finally can provide clarity and accountability to the Tar Creek area, for decades one of the oldest, largest and most complex toxic sites in the nation. 'It is really unacceptable,' Pruitt said as he

recalled the history of the Tar Creek area in far northeastern Oklahoma, whose Superfund legacy dates back to 1983, as well as the amount of money and time deployed there."

At this week's regional roundtable, the [Albuquerque Journal](#) reported on progress the Trump Administration is making on claim stemming from the 2015 Gold King Mine spill. "Environmental Protection Agency Administrator Scott Pruitt said Monday that the federal government is close to finishing its assessment of roughly 400 claims for financial damages stemming from the 2015 Gold King Mine spill, which dumped toxic chemicals into waters in New Mexico, Colorado and Utah, and final recommendations could be ready by the end of the month."

RADIO ...

This week, Administrator Pruitt joined [WZFG 1100 AM The Flag - North Dakota](#) to talk about his first year accomplishments, including repeal and replacement of both "Waters of the U.S." rule and Clean Power Plan.



Administrator Pruitt also joined the [Lars Larson Show](#), based in Portland, Ore., and discussed how he's working to get the EPA back to basics and provide regulatory certainty for all Americans.

On the St. Louis, Missouri's own [Mark Reardon Show](#), Administrator Pruitt talked a little about baseball and a lot about the good work the Agency is doing to improve environmental outcomes across the country.

Scott Voorhees on [1110 KFAF-Omaha](#) had Administrator Pruitt on his show Wednesday to talk about what's to come at the EPA this year, including a continued focused on Superfund clean-up and regulatory transparency.



EPA Administrator Scott Pruitt

March 21, 2018 • 9 min

Interesting insight from the former OK AG on his work this past year, the road ahead, how he sees his responsibilities compared with the past administration, and working with President Trump.

TWEETS ...



Administrator Pruitt • @EPAScottPruitt • Mar 21

What a beautiful surprise. snow on the second day of spring!





Administrator Pruitt @EPAScottPruitt · Mar 21

Spent the morning with friendly folks from @GaFarmBureau. We had a great discussion about ongoing work at the Agency to rewrite the #WOTUS rule and provide regulatory certainty for our farmers and ranchers across #America. #NationalAgWeek



Administrator Pruitt @EPAScottPruitt · Mar 19

Wrapped up our regional roundtable discussing important environmental issues like air, lead, Superfunds & infrastructure.



Albuquerque Journal, Pittsburgh Post-Gazette, New York Post and 2 others



Administrator Pruitt ● @EPAScottPruitt · Mar 20



Had a great visit with hardworking farmers and ranchers from Wisconsin and Kentucky on #NationalAgDay! @EPA will continue to work with our agriculture partners across the country. #AgDay
#EPAInAction



WI Farm Bureau



Administrator Pruitt @EPAScottPruitt · 15h

#ICYMI. @EPA announced \$463K in funding for 31 Phase 1 student teams through the People, Prosperity, and the Planet grants program. Find out more

epa.gov/newsreleases/g...

CONTACT: press@epa.gov

EPA Awards Grants to 31 College Teams for Innovative Technology Projects

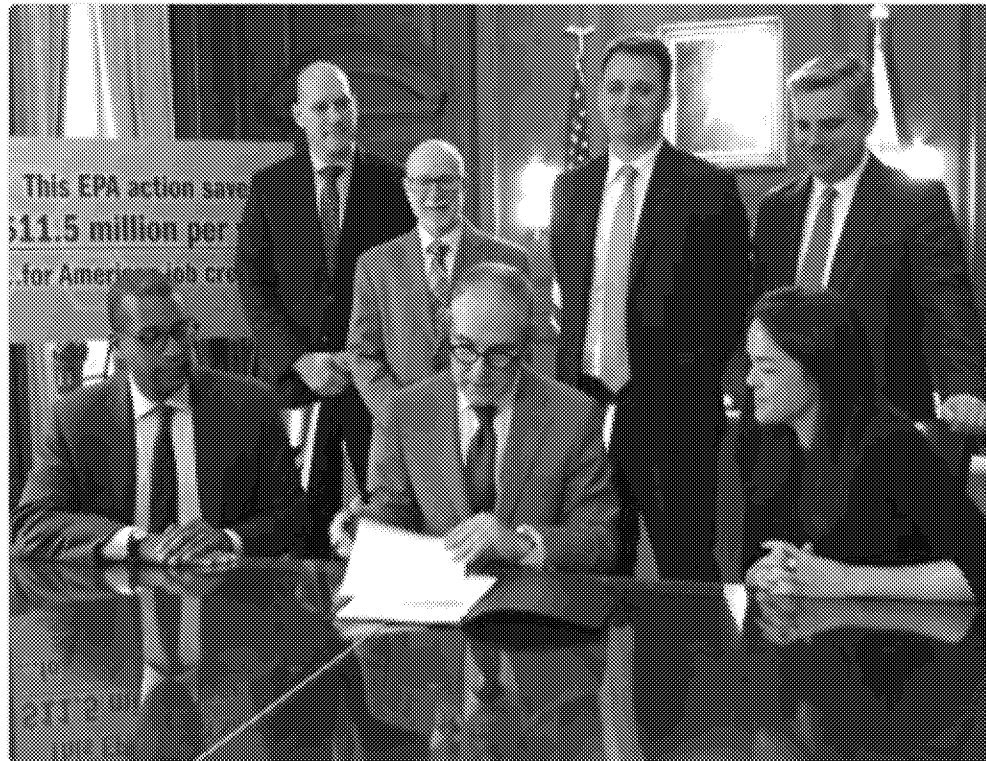
WASHINGTON (March 22, 2018) — Today, the U.S. Environmental Protection Agency (EPA) announced over \$463,000 in funding for 31 Phase I student teams through the People, Prosperity, and the Planet (P3) grants program. These teams, made up of college students from across the country, are developing sustainable technologies to solve current environmental and public health challenges.

“This year’s P3 teams are applying their classroom learning to create innovative and practical technologies,” said **EPA Administrator Scott Pruitt**. “This next generation of scientists has



Administrator Pruitt @EPAScottPruitt · Mar 20

Every bit of certainty matters. I just signed proposed amendments that will simplify compliance with national standards, generate significant cost-savings while protecting human health and the environment. #EPAInAction



FRONT PAGES ...

GLoucester Twp.

Cut down on the way home



Megan Piri holds a wedding photo of her and her husband, Joseph Piri, on Monday. Joe Piri, 32, died approximately a week after suffering injuries in a road-rage assault in Deepford Township on March 7. Lori M. Siskin, for South Jersey Times

Victim of deadly road rage, a devoted father 'came face-to-face with evil' during storm

Max Kury for South Jersey Times

Sitting on a couch in the living room of her Blackwood home, Megan Piri carefully recalled the last conversation she had with her husband.

Joe Piri was preparing to head home from work and wanted his wife to know he might be a little later than usual. It was March 7 and a nor'easter was dumping rain on the region, making for a drive fraught with peril.

"Just take your time and be careful," she told him. They ended their conversation with their traditional "I love you."

Joe Piri never made it home that night. Piri, 32, was killed in the face during a road-rage assault in Deepford Township that afternoon. He died of his injuries a week later.

"He just wanted to come home and he didn't make it home," his wife said, her voice cracking with grief.

Piri was able to speak to emergency responders and gave them his wife's phone number. By the time his family arrived at the hospital, they couldn't speak with him, explained Megan Piri's mother, Betty Jean Hampton.

"He was calm," she said. "He never cussed."

His injury was caused by the time they saw him. "It went from one side of his nose to the other side of his face," Hampton said. "We don't know what happened. No one knew a very good man was taken from all of us."

He remained on life support until Thursday.

Piri was on organ donor and "he saved some lives," she said, praising the doctors and nurses who cared for him at

SEE PIRI, A5

PHOTOGRAPH BY

4 who trafficked dogs for pit fights are sent to prison

Thomas Morley for South Jersey Times

Three South Jersey men were using four sentenced this month to years in federal prison for their roles in a criminal network person who sold trafficked dogs across state lines for bloody pit fights.

In the course of a sprawling multi-state investigation, the U.S. attorney's office said in a statement, federal agents discovered the basement of a defendant's home called in blood, evidence it had been used as a fighting pit. One man admitted his dog died on the way home after losing a fight.

Of the four defendants, Vladimir Vladimirovich "Manny" Gattuso and David Harris received sentences of 42 months and

37 months, respectively, for charges that included conspiracy and possessing a dog with the intent to use it in a dog fight.

Frank Nichols, of Millville, was sentenced to 37 months on charges that included being a felon in possession of a firearm. The fourth defendant, Pedro Carlos of Willow Springs, Illinois, received a year in prison after pleading guilty to a conspiracy charge.

All four of the men previously had pleaded guilty before U.S. District Judge Mary L. Casper in Trenton.

Prosecutors said their agents stumbled upon the operation in Camden Township, a court-ordered report suggesting dog fighting across multiple federal districts.

Court records show agents seized six pit

bulls when they served a search warrant at Gattuso's home in November 2015, and federal authorities have said a total of 44 dogs were recovered in New Jersey as part of the investigation. Investigators said they also seized thousands of dollars' worth of breeding stands — meant to restrain female dogs — as they built their case against the men.

Prosecutors said a fifth defendant, 42-year-old Aubrey Park resident Andre Atkinson, has also pleaded guilty and is scheduled to be sentenced on April 18. Other defendants remain awaiting trial.

Thomas Morley, NJ Attorney Media, tommorley@njattorneymedia.com

STATEHOUSE

AG orders random drug tests for police

S.F. Sullivan for South Jersey Times

All police officers in New Jersey are now subject to random drug testing under a directive from the state's new attorney general.

Police departments are also required to implement "early warning systems" triggered by problem behaviors such as misconduct, excessive use of force, domestic abuse and excessive driving, under a separate directive announced by Attorney General Gurbir Grewal's office.

Grewal, who was appointed by Gov. Phil Murphy in January, said Tuesday that most police departments and county prosecutors already have such policies in place. The two new directives would mandate those standards.

"We support our officers in their difficult jobs, and at times that means intervening with a troubled officer to protect the public, the individual officer, and his or her fellow officers," he said in a statement announcing the move.

HOW IT WORKS

Under the new rules, every state, county and local law enforcement agency is required to conduct random drug screening in 2018 and perform such tests twice a year going forward.

Departments are required to report any failed tests — or officers who refuse a test — as well as any resulting discipline to the county prosecutor or other supervising agency.

The early warning system requirement spells out 15 "performance indicators" that

SEE TESTING, A5

WASHINGTON

EPA to make polluters clean Superfund sites in N.J.

Jonathan D. Salant for South Jersey Times

The Environmental Protection Agency plans to step up efforts to get the companies that dumped toxic waste at New Jersey's Superfund sites to pay to clean them up, administration officials said.

Prior to Monday, Superfund sites were a mess of unregulated, not a lack of funding, for the slow progress to cleaning up the sites, New Jersey has 14 designated Superfund sites, the most in the nation, including three of the nation's highest priority locations.

"I'm going to get accountability with whomever it is on these Superfund sites and we will see every instance of enforcement to do so," Pruitt said. "I don't think we've done it as well as we should have historically and we're going to do better going forward."

While President Donald Trump has proposed cutting the EPA's budget, Pruitt said the agency will have the money it needs by ensuring that the companies responsible for the contamination clean it up.

"Most of our sites across the country have a responsible party," Pruitt said. "We have very few orphan sites."

SEE EPA, A5





A few gun owners brought their AR-15 rifles to the Las Cruces City Council meeting and stood against a resolution to ask the governor and state legislators to restrict semiautomatic weapon sales and ownership in New Mexico.

Cruces council tables gun restriction measure

Resolution intended to urge action against semiautomatic weapons

By ANGELA RODRIGUEZ

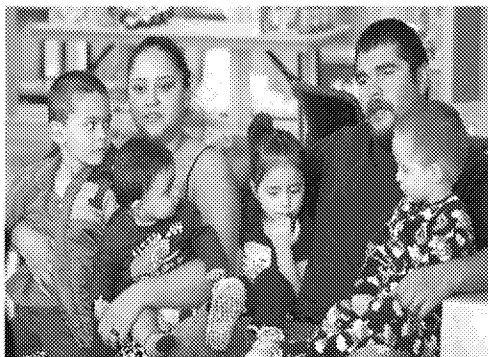
ALBUQUERQUE JOURNAL

LAS CRUCES — A standing-room-only crowd packed the Las Cruces City Council meeting

Monday, where supporters voted to table a resolution asking the governor and state legislators to restrict semiautomatic weapons. Representatives of local gun groups opposed the measure. "We're not members of the public," said one man, "we're not here to vote on this thing as a town," said Councilman Greg Smith, who introduced the resolution. Smith said the "legislation to focus attention on the safety of the

district to Las Cruces Schools" was in response to "parents and grandparents" who were concerned about incidents at local schools. Following threats made to the school, Smith said. "I would not consider to go on school," Roger L. Smith, a student at Las Cruces High School, told the council. The school students had in 2016

See COUNCIL >> B4



Jacqueline Arellano and her fiancé, Daniel Crespo, talk in the Manzana Mesa Multigenerational Center on Monday about their escape from a fire at their apartment building on Sunday. With them are their children, from left, Francisco Arellano Crespo, 5, Daniel Crespo Jr., 6-month-old Ashley Crespo, 4, and Vincente Crespo, 2.

Union urges teachers to skip survey

APF leader calls APF budget questionnaire problematic, divisive and inappropriate

By Doreen Medina

ALBUQUERQUE JOURNAL

Former Albuquerque Public Schools teacher Julia Peralta says she left a 100-page survey questionnaire she felt was too hard to answer in the district.

She often tried to share her input on classroom and curriculum procedures with administrators, saying she was often told that she and her input were not needed. Peralta, now a second-grade teacher, said she was told that she was not needed. She was also told that she was not needed. She was also told that she was not needed.



Albuquerque Teachers Federation President Julia Peralta.

Residents smelled gas before fire

30 stay in shelter after fire destroys, damages SE Albuquerque apartments

By Doreen Medina

ALBUQUERQUE JOURNAL

Residents say a fire that destroyed or damaged a number of units at a Southeast Albuquerque apartment complex Sunday was caused by the same leaky gas meter that they

later to have responsibility reported to the apartment manager for more than a year. The apartment manager Tuesday denied making the report. About 20 people who lived in the apartment building in the 400 block of Georgia St. were temporarily relocated to the Manzanita Mesa Multigenerational Center, where they were housed overnight, and given food by the terms of Albuquerque and the Red Cross, said Anna Sanchez, director of the

city's Office of Senior Affairs. The center was placed in the public for being underfunded, and said the building would be open for several months and services today. In January, the city had been provided vouchers to some displaced families, which include its people under age 18, and it was at a local school, Sanchez said.

See RESIDENTS >> A2

ABQ TIES IN FACEBOOK DATA MINING SCANDAL



A powerful and controversial new law passed by the U.S. House of Representatives Tuesday would help protect people from the 2015-2016 scandal.

METRO & KM >> A6

EPA close to settling claims on mine spill



\$1.2 billion in damages sought after toxic waste polluted rivers

By Doreen Medina

WASHINGTON


Environmental Protection Agency Administrator Scott Pruitt

said Monday that the federal government is close to settling claims for financial damage and claims for financial damage from the 2005 Gold King Mine spill, which caused toxic chemicals to flow into the Animas River, which flows into the Gulf of Mexico. Pruitt said the settlement would be ready by the end of the month.

Former EPA Administrator Gina McCarthy, an Obama-era appointee, intervened based on one of her reports in 2005 that the government would pay any damages to farmers and others harmed by the toxic spill, arguing it was an honor under the Governmental Tort Claims Act. But since President Donald Trump

See EPA >> A6

INSIDE: CLEVELAND >> B2 | GONOR >> B4 | EDITORIALS >> A2 | HEALTH >> B5 | EMPLOYMENT >> A6 | PUZZLES >> B1-B3 | TV >> A9 | WEATHER >> A9



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Sent: 8/15/2018 7:56:17 PM
To: Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]; Moody, Christina [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=813eb7f985c845eaa91edc10c6e9a914-CMoody]; Rodrick, Christian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6515dbe46dae466da53c8a3aa3be8cc2-Rodrick, Ch]
CC: Whiteman, Chad S. EOP/OMB [Personal Matters / Ex. 6]; Grossman, Andrea L. EOP/OMB [Personal Matters / Ex. 6]; Bar-Shalom, Tali EOP/OMB [Personal Matters / Ex. 6]; Gamache, Christopher D. EOP/OMB [Personal Matters / Ex. 6]; [Personal Matters / Ex. 6]; [Personal Matters / Ex. 6]; Hickey, Mike J. EOP/OMB [Personal Matters / Ex. 6]; Winters, Paul A. EOP/OMB [Personal Matters / Ex. 6]
Subject: Updated PASSBACK on LRM [EHF-115-242] EPA Qs and As from Pruitt Budget Hearing
Attachments: 07-25-2018 - EPA_HEC_4.26_QFR_Pruitt_Responses_OMB V1.docx
Flag: Flag for follow up

Please respond to this updated passback. Thanks.

Message

From: Gomez, Laura [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=575BA24FC19D429C8302A05102353238-LGOMEZ]
Sent: 6/1/2018 7:45:30 PM
To: Rodrick, Christian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6515dbe46dae466da53c8a3aa3be8cc2-Rodrick, Ch]
CC: Palich, Christian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=330ad62e158d43af93fcbbece930d21a-Palich, Chr]; Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]; Richardson, RobinH [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2fa5c9eb65dc497c81a8dc9ccdb1ffa7-Richardson, RobinH]; Moody, Christina [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=813eb7f985c845eaa91edc10c6e9a914-CMoody]
Subject: Fwd: LRM [HWM-115-162] OMB Questions for the Record on Examining the Office of Information and Regulatory Affairs' Role in Reviewing Agency Rulemaking
Attachments: LRM.HWM.115.162 - OMB QFRs Rao.EPA Comments.DOCX; ATT00001.htm

Laura Gomez Rodriguez
Office of Congressional Relations
US EPA
gomez.laura@epa.gov

Begin forwarded message:

From: "Gomez, Laura" <Gomez.laura@epa.gov>
Date: June 1, 2018 at 1:01:48 PM EDT
To: "Ringel, Aaron" <ringel.aaron@epa.gov>, "Palich, Christian" <palich.christian@epa.gov>
Cc: "Richardson, RobinH" <Richardson.RobinH@epa.gov>, Christina Moody <Moody.Christina@epa.gov>, "Williams, Thea" <Williams.Thea@epa.gov>
Subject: LRM [HWM-115-162] OMB Questions for the Record on Examining the Office of Information and Regulatory Affairs' Role in Reviewing Agency Rulemaking

Aaron and Christian,

Attached are the Agency responses to LRM [HWM-115-162] OMB Questions for the Record on Examining the Office of Information and Regulatory Affairs' Role in Reviewing Agency Rulemaking.

Please let us know if you have any additional comments or concerns.

Thank You,

Laura E. Gómez Rodríguez
Congressional Liaison Specialist
US Environmental Protection Agency (EPA)
Office of Congressional and Intergovernmental Relations (OCIR)
1200 Pennsylvania Ave., N.W. MC-2650R
Washington DC, 20004
gomez.laura@epa.gov

Message

From: Gomez, Laura [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=575BA24FC19D429C8302A05102353238-LGOMEZ]
Sent: 6/1/2018 5:01:48 PM
To: Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]; Palich, Christian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=330ad62e158d43af93fcbbece930d21a-Palich, Chr]
CC: Richardson, RobinH [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2fa5c9eb65dc497c81a8dc9ccdb1ffa7-Richardson, RobinH]; Moody, Christina [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=813eb7f985c845eaa91edc10c6e9a914-CMoody]; Williams, Thea [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=32cca14ddb6940e4b04683ace9e899a5-TWilli01]
Subject: LRM [HWM-115-162] OMB Questions for the Record on Examining the Office of Information and Regulatory Affairs' Role in Reviewing Agency Rulemaking
Attachments: LRM.HWM.115.162 - OMB QFRs Rao.EPA Comments.DOCX

Aaron and Christian,

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Please let us know if you have any additional comments or concerns.

Thank You,

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Message

From: Gomez, Laura [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=575BA24FC19D429C8302A05102353238-LGOMEZ]
Sent: 2/28/2018 6:27:32 PM
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CC: Moody, Christina [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=813eb7f985c845eaa91edc10c6e9a914-CMoody]; Richardson, RobinH [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2fa5c9eb65dc497c81a8dc9ccdb1ffa7-Richardson, RobinH]; Williams, Thea [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=32cca14ddb6940e4b04683ace9e899a5-TWilli01]
Subject: LRM:115-101 OMB Report on FY 2017 E-Government Act Implementation Report
Attachments: FY17 E-Gov Act Report Draft 2-16-18.docx; FY17 E-Gov Act Report Draft 2-16-18.EPA ed.docx

Aaron and Christian,

After circulation, the Agency has the following comment to submit for the report:

Edit on Appendix E: *deleted the Department of Environment and replaced with the Environmental Protection Agency.*

Please let me know if you have additional views or to proceed in submitting the Agency's edit.

Thank you,

Laura E. Gómez Rodríguez

Congressional Liaison Specialist

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APPROPRIATIONS & CROSSCUTTING WEEKLY NEWS

Office of Congressional and Intergovernmental Relations

Week Ending January 26, 2018

Budget Bottleneck Back in Play

Prospects for unclogging a budget bottleneck by next month went from bad to worse Wednesday, as an immigration fight threatened to delay any resolution until the spring.

It is possible that the government is likely to continue running on stopgap funding into the spring because any potential deal on new spending limits may have to await a deal on immigration. Democrats have made protection for immigrant "Dreamers," who were brought to the U.S. illegally as children, a prerequisite for any final budget deal.

In agreeing to that stopgap, congressional leaders had said they were hoping to get a deal on spending limits and immigration by the time the latest batch of funding expires. But some on the hill have put that timetable in further doubt Wednesday, pointing to the time needed to reach an immigration deal that satisfies Democrats could preclude a spending agreement within the next three weeks. If agreement cannot be reached on DACA, lawmakers run the risk of another shutdown, a yearlong CR through Sept. 30, or some type of hybrid measure with certain agencies' funding ending up in a CR.

Even if an agreement to raise spending limits were reached by early March, the appropriations committees typically need about three weeks from that point to write a catchall spending package for the remainder of the fiscal year. Congress could then take another week to get it passed.

Those time requirements suggest there may not be a final fiscal 2018 spending package, which was due last October, until late March or April.

HQ Staffing Announcements:

Science Advisory Board Staff Office (SABSO)

Tom Brennan was named as the Acting Director of the SAB Staff Office effective February 5, 2018. Tom will return to the SABSO to resume his new role after previously serving as the Deputy Director and more recently as Chief of Staff for the Office of Public Engagement and Environmental Education. The current director Chris Zarba, will retire February 2, 2018, after 38 years of service at EPA. His commitment, dedication and exuberance will be missed.

Office of the Chief Financial Officer (OCFO)

Diane Kelly, Chief of Staff—OCFO, will be attending the Federal Executive Institute's Leadership for a Democratic Society training program Feb 5—Mar 2, 2018. Meshell Jones-Peeler, Director of the Policy, Training and Accountability Division in the Office of the Controller, will serve as Acting OCFO Chief of Staff.

Malena Brookshire has been selected to serve as the Acting Deputy Controller, a position that is currently vacant. Malena currently serves as the Deputy Director for the Office of Planning, Analysis and Accountability. OPAA plans to issue a OCFO-wide Talent Hub announcement to advertise a competitive detail to fill the Deputy Director position while Malena is on detail.

In This Issue

- FY18 Budget Bottleneck
- Staffing Updates
- FY19 PB Request Status
- GAO New Engagement
- OIG Report Update
- Upcoming Hearings
- Press Release

President's FY19 Budget Request Delayed This Year

Without a final budget for fiscal 2018, the Trump administration announced plans Wednesday to proceed with a fiscal 2019 spending plan next month anyway. Under the 1974 budget act that created the modern budget process (PL 93-344), the president is required by statute to submit a budget request for each new fiscal year by the first Monday in February.

The administration plans to miss that deadline by a week, unveiling its request on Feb. 12. The Office of Management and Budget attributed the delay to the recent government shutdown. With no deal yet on spending limits, the Congressional Budget Office is delaying its annual 10-year projection of spending and revenue, normally released in January, until February or March.



The Government Accountability Office (GAO) today released the following:

PRESS RELEASE

GAO Adds Government-wide Personnel Security Clearance Process to "High Risk List"

January 25

Release: https://www.gao.gov/press/high_risk_security_clearance_process.htm

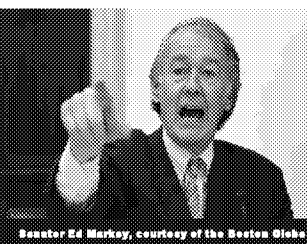


REPORT

Follow-Up Review: EPA Completed OIG Recommendations for Superfund Site in Libby, Montana

January 24, 2018

The EPA took corrective actions that enabled the Libby toxicity assessment to be completed with transparency and that provided stakeholders with important human exposure information. For more information, please click on the link above.



In Other News— On Tuesday, Jan 23, Sen. Edward Markey, D-MA, chairman of the Senate Climate Task Force and a member of the Senate Environment and Public Works Committee, held a discussion with former EPA staff on the "willful neglect of the mission" of the EPA to "provide basic enforcement and investigations of violations". Participants included Jeff Ruch, executive director of Public Employees for Environmental Responsibility, on behalf of Tom Ripp, formerly of the EPA's Compliance Assurance Program; Mike Walker, former director of the EPA's National Enforcement Training Institute; and Mustafa Santiago Ali, senior vice president of climate, environmental justice and community revitalization with the Hip Hop Caucus, former assistant associate administrator for environmental justice and senior adviser for environmental justice and community revitalization at the EPA.

A Budget Engagement in Brief

Announcing EPA's First Annual Budget Symposium

Traditionally, with the announcement of the Annual President's Budget Request each year, OCIR, along with program office staff, goes to the hill to brief Congressional committees on the Agency's budget. Unfortunately, this oftentimes involves multiple trips out of the office, to poorly attended briefings, during the height of preparation for upcoming budget hearings. To increase operational efficiencies and reduce workload redundancies, the Appropriations and CrossCutting Team has offered to lead the effort to host stakeholders by developing a budget symposium to be held onsite at the Agency's Washington, DC facilities during mid February. Additional information will be provided as more specific information becomes available.

WORKFLOW

LRMS:

RD-115-175: Justice talking points on HR 469 Internal deadline: 1/26 @ 10 am.

Budget Symposium: POC: C.Moody

OMB Review(s):

Report to Congress: Small Business Regulatory Enforcement Fairness Act (SBREFA) status of the EPA's provision of small entity compliance guides. *POC: T. Williams*

Report to Congress: IRIS Program. *POC: T. Williams*

Scheduling/Meetings/Congressional Briefing:

SEPW Minority staff requested a briefing on reported potential changes to the IRIS program budget and staffing.

POC: C. Moody

HSST: Majority staff request to talk about HONEST ACT implementation. *POC: L. Gomez*

UPCOMING HEARINGS

Oversight Hearing to Receive Testimony from Environmental Protection Agency -

Administrator Scott Pruitt

January 30, 2018 10:00 AM

The Senate Committee on Environment and Public Works will hold a full committee hearing entitled "*Oversight Hearing to Receive Testimony from Environmental Protection Agency Administrator Scott Pruitt.*"



U.S. ENVIRONMENTAL PROTECTION AGENCY
NEWS RELEASE
WWW.EPA.GOV/NEWSROOM

Appropriations & Crosscutting Team

Christina J. Moody
Team Leader
Moody.Christina@epa.gov;
202.564.0260

Thea Williams
Congressional Liaison
Williams.Thea@epa.gov;
202.564.2064

Laura Gomez,
Congressional Liaison
Gomez.Laura@epa.gov;
202.564.4707

Reducing Regulatory Burdens: EPA withdraws “once-in always-in” policy for major sources under Clean Air Act

WASHINGTON (January 25, 2018) – Today, the U.S. Environmental Protection Agency (EPA) issued a guidance memorandum withdrawing the “once-in always-in” policy for the classification of major sources of hazardous air pollutants under section 112 of the Clean Air Act. With the new guidance, sources of hazardous air pollutants previously classified as “major sources” may be reclassified as “area” sources when the facility limits its

This guidance is based on a plain language reading of the statute that is in line with EPA’s guidance for other provisions of the Clean Air Act,” **said Bill Wehrum, assistant administrator of EPA’s Office of Air and Radiation.** “It will reduce regulatory burden for industries and the states, while continuing to ensure stringent and effective controls on hazardous air pollutants.”

Today’s memo is another step by which EPA is reducing unnecessary regulatory burdens that deterred innovative efforts to improve the environment. The “once in always in” policy has been a longstanding disincentive for sources to implement voluntary pollution abatement and prevention efforts, or to pursue technological innovations that would reduce hazardous air pollution emissions. States, state organizations and industries have frequently requested rescission of this policy, which was one of the most commonly cited requests in response to President Trump’s Executive Order 13777. Today’s EPA action is an important step in furtherance of the president’s regulatory reform agenda while providing a meaningful incentive for investment in HAP reduction activities and technologies.

The Clean Air Act defines a “major source” as a one that emits, or has the potential to emit, 10 tons per year of any hazardous air pollutant, or 25 tons per year or more of any combination of hazardous air pollutants. Sources with emissions below this threshold are classified as “area sources.” Different control standards apply to the source depending on whether or not it is classified as a “major source” or an “area source.”

In a 1995 memo, EPA established a “once-in always-in” policy that determined that any facility subject to major source standards would always remain subject to those standards, even if production processes changed or controls were implemented that eliminated or permanently reduced that facility’s potential to emit hazardous air pollutants.

Today’s memo finds that EPA had no statutory authority under the Clean Air Act to place a time limit on when a facility may be determined to be an area source, and that a plain language reading of the Act must allow facilities to be reclassified as area sources once their potential to emit hazardous air pollutants falls below the levels that define major sources.

EPA anticipates that it will soon publish a Federal Register notice to take comment on adding regulatory text that will reflect EPA’s plain language reading of the statute as discussed in this memorandum.

More information is available online at <https://www.epa.gov/stationary-sources-air-pollution/national-emission-standards-hazardous-air-pollutants-neshap-9>

Message

From: Moody, Christina [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=813EB7F985C845EAA91EDC10C6E9A914-CMOODY]
Sent: 2/7/2018 7:39:02 PM
To: Richardson, RobinH [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2fa5c9eb65dc497c81a8dc9ccdb1ffa7-Richardson, RobinH]; Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]; Lyons, Troy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=15e4881c95044ab49c6c35a0f5eef67e-Lyons, Troy]; Palich, Christian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=330ad62e158d43af93fcbbece930d21a-Palich, Chr]
CC: Williams, Thea [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=32cca14ddb6940e4b04683ace9e899a5-TWilli01]; Gomez, Laura [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=575ba24fc19d429c8302a05102353238-lgomez]
Subject: Management Workflow Report
Attachments: Weekly Report 2.9.18.docx; Weekly 2.9.18.pdf

Hello,

This team report is different from the ACC weekly sent out to the broader audience, in that it only tracks workflow for the team. I'm sending this to you as an quick informational resource for internal management, rather than to the regions, programs, and all of OCIR who probably have a 0% interest in the attached.

The Team Weekly report, however, has been sent out and serves as the broader informational venue for the team. I have attached as well.

Let me know if you have questions.

Thanks,

Christina J. Moody
US Environmental Protection Agency
Office of Congressional Affairs & Intergovernmental Relations
Moody.Christina@epa.gov

Consolidated Report
Office of Congressional and Intergovernmental Relations
Appropriations & Crosscutting Team

For the Week of February 5 – February 9, 2018

LRMS:

SS-115-94: OMB Report on FY 2017 Annual FISMA Report to Congress: Internal Deadline 2/5 @5 pm

OMB Review(s):

Report to Congress: FY 2017 No Fear Act Report to Congress. *POC: T. Williams*

Report to Congress: IRIS Program. *POC: CJM*

Scheduling/Meetings/Congressional Briefing:

HSST: Majority staff request to talk about HONEST ACT implementation. *POC: L. Gomez*

HSGAC: Staff briefing on EPA Rulemaking. *POC: T. Williams*

Internal Discussion, Feb 7

Pre-brief: TBD

Briefing: TBD

Correspondence - Items Requiring Signature/Approval/Concurrence:

CMS #	Member	Subject	Office
AL-18-000-2816	Warner	Final Agency Decision – discrimination complaint	OCR
AL-18-000-2815	Katko	Onondaga: soil & water conservation	OARM
AL-18-000-0664	Carper	DOJ, Environmental & Natural Resources Division	OCFO/OECA
AL-18-000-0062	Tester	Sound proof booth	OCIR
AL-18-000-0473	Udall	Sound proof booth	OCIR
AL-17-001-3125	McCollum	FOIA Request – Associated Press	OCIR
AL-18-000-3639	McCollum	EPA Travel Plans during shutdown	OCFO/OARM

Nominations

OCFO: Holly Greaves, Chief Financial Officer

Technical Assistance:

NONE

Congressional Inquiries:

OMB Status Request: Comments on NETI SORN – OEI. *POC: T. Williams*

Message

From: Ringel, Aaron [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1654BDC951284A6D899A418A89FB0ABF-RINGEL, AAR]
Sent: 1/26/2018 4:04:12 PM
To: Moody, Christina [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=813eb7f985c845eaa91edc10c6e9a914-CMoody]
Subject: Re: Are you participating on the 2pm Honest Act Call today?

Yep!

Sent from my iPhone

On Jan 26, 2018, at 10:45 AM, Moody, Christina <Moody.Christina@epa.gov> wrote:

Christina J. Moody
US Environmental Protection Agency
Office of Congressional Affairs & Intergovernmental Relations
Moody.Christina@epa.gov

Message

From: Ringel, Aaron [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1654BDC951284A6D899A418A89FB0ABF-RINGEL, AAR]
Sent: 5/11/2018 6:30:38 PM
To: Bodine, Susan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8c2cc6086fcc44c3be6b5d32b262d983-Bodine, Sus]
CC: Greaves, Holly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=abcb6428b3df40a9a78b059a8ba59707-Greaves, Ho]
Subject: 4/26 E&C Hearing Transcript
Attachments: 05-11-2018 - Preliminary Transcript w_Updates v2.docx

Hi Susan,

I'm in the process of editing the Admin's hearing transcript from his E&C testimony last month and Holly made me aware you might have some input. I've attached a copy we received from the committee with initial edits from OCIR in redline, our changes are not really substantive and mostly grammatical. They have given us a deadline of May 17th to return this so there is a little bit of time for your review. Let me know if you have any questions.

-Aaron

Aaron E. Ringel
Deputy Associate Administrator
Office of Congressional & Intergovernmental Relations
U.S. Environmental Protection Agency

Personal Matters / Ex. 6

Ringel.Aaron@epa.gov

Appointment

From: Ringel, Aaron [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1654BDC951284A6D899A418A89FB0ABF-RINGEL, AAR]
Sent: 2/9/2018 7:37:03 PM
To: Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]; Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: House Science Committee/HONEST Act Reforms
Location: 3442WJCN
Start: 2/13/2018 3:30:00 PM
End: 2/13/2018 4:00:00 PM
Show Time As: Tentative

Richard to call Aaron's office: 2 Personal Matters / Ex. 6

Message

From: Ringel, Aaron [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1654BDC951284A6D899A418A89FB0ABF-RINGEL, AAR]
Sent: 1/8/2018 5:10:45 PM
To: Troy Lyons (lyons.troy@epa.gov) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=15e4881c95044ab49c6c35a0f5eef67e-Lyons, Troy]
CC: Christian Rodrick (Rodrick.Christian@epa.gov) [Rodrick.Christian@epa.gov]; Shimmin, Kaitlyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=becb3f33f9a14acd8112d898cc7853c6-Shimmin, Ka]
Subject: Chairman Smith Meeting Memo
Attachments: 01-08-2018 - Chairman Lamar Smith Meeting Memo.docx

Troy,

Attached and below is the meeting memo. Let me know if this is good to send for the Admin.

Aaron E. Ringel

Deputy Associate Administrator

Office of Congressional & Intergovernmental Relations

U.S. Environmental Protection Agency

W: Personal Matters / Ex. 6

Ringel.Aaron@epa.gov

**Meeting with
Chairman Lamar Smith (R-TX-21)
Tuesday, January 9th 2018
11:00AM, EPA HQ, Administrator's Office**

Main Topics of Discussion:

- HONEST Act, number one priority he wants to discuss
- Potential invitation to testify before House Science, Space, and Technology Committee
- Thanks you for SAB Reform and kind word in National Journal article

NOTE: Rep. Smith is the Chairman of the House Science, Space, and Technology Committee which has a limited jurisdiction over some of EPA science programs.

Background: The HONEST Act, which would prohibit the Environmental Protection Agency from proposing, finalizing, or disseminating regulations or assessments based upon science that is not transparent or reproducible, has been a priority for Chairman Smith. It passed the House but is not likely to move in the Senate. The Congressman would like to discuss potential ways EPA could implement the principals of the bill without legislative action along the lines of the SAB reform effort recently undertaken.

Taking Points:

- **HONEST Act:** Happy to have our staff at EPA work with committee staff on identifying potential areas you think we might be able to implement the transparency initiatives outlined in the HONEST Act using our regulatory/guidance authority.
- **Invitation to Testify:** We have seen a number of our political appointees confirmed by the Senate recently and are happy to work with your staff on identifying witnesses for Committee Hearings.

Decision Points/Objectives: This meeting is occurring at the request of Chairman Lamar Smith. His main objective for the meeting is to find a way to have the EPA implement the HONEST Act objectives outside of the legislative process since it is unlikely to pass in the Senate.

Attendees:

Troy Lyons, AA OCIR

Aaron Ringel, DAA OCIR

Message

From: Ringel, Aaron [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1654BDC951284A6D899A418A89FB0ABF-RINGEL, AAR]
Sent: 2/9/2018 7:36:47 PM
To: Gentry, Nathan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a8f7a2857a234d06b785cc36c73fdddd-Gentry, Nathan]
Subject: RE: House Science Committee/HONEST Act Reforms

Sure, he can call my office line. Personal Matters / Ex. 6

-Aaron

From: Gentry, Nathan
Sent: Friday, February 9, 2018 2:34 PM
To: Ringel, Aaron <ringel.aaron@epa.gov>
Subject: RE: House Science Committee/HONEST Act Reforms

Aaron,

Richard will be on travel to NC on Tuesday. Can you please add a call-in number?

Nathan Gentry
Scheduler for Jennifer Orme-Zavaleta, Richard Yamada, Chris Robbins and Bruce Rodan
Assistant Deputy Ethics Official
EPA Office of Research and Development
Phone: 202-564-9084
Fax: 202-565-2430

-----Original Appointment-----

From: Ringel, Aaron
Sent: Friday, February 09, 2018 1:59 PM
To: Weber, Luke; Gentry, Nathan
Subject: House Science Committee/HONEST Act Reforms
When: Tuesday, February 13, 2018 10:30 AM-11:00 AM (UTC-05:00) Eastern Time (US & Canada).
Where: 3442WJCN

Appointment

From: Ringel, Aaron [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1654BDC951284A6D899A418A89FB0ABF-RINGEL, AAR]
Sent: 2/9/2018 6:59:04 PM
To: Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]; Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: House Science Committee/HONEST Act Reforms
Location: 3442WJCN
Start: 2/13/2018 3:30:00 PM
End: 2/13/2018 4:00:00 PM
Show Time As: Tentative

Message

From: Ringel, Aaron [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1654BDC951284A6D899A418A89FB0ABF-RINGEL, AAR]
Sent: 2/16/2018 7:41:57 PM
To: Couri, Jerry [JerryCouri@mail.house.gov]; Jackie Cohen [jackie.cohen@mail.house.gov]; Martin, Mary [Mary.Martin@mail.house.gov]; Rick Kessler (rick.kessler@mail.house.gov) [rick.kessler@mail.house.gov]; alexander.ratner@mail.house.gov; Collins, Kelly [Kelly.Collins@mail.house.gov]; Bury, Allie [Allie.Bury@mail.house.gov]
CC: Christian Rodrick (Rodrick.Christian@epa.gov) [Rodrick.Christian@epa.gov]; Troy Lyons (lyons.troy@epa.gov) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=15e4881c95044ab49c6c35a0f5eef67e-Lyons, Troy]; Shimmin, Kaitlyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=becb3f33f9a14acd8112d898cc7853c6-Shimmin, Ka]; Robin H. Richardson (richardson.robinh@epa.gov) [richardson.robinh@epa.gov]
Subject: EPA Questions for the Record: 12.7.17 Environment Subcommittee Hearing
Attachments: 02-16-2018 - Transmittal - HEC 12.7.17 QFR - SHIMKUS.PDF; 02-16-2018 - HEC 12.7.17 Hearing QFRs_Pruitt - FINAL.PDF; 02-16-2018 - Transmittal - HEC 12.7.17 QFR - TONKO.PDF

House Energy & Commerce team,

Please see attached for EPA's responses to Questions for the Record following the Environment Subcommittee's 12/7/17 hearing with Administrator Pruitt. I've also attached PDF copies of transmittal letters that our correspondence folks will put in the mail on Tuesday along with paper copies of our responses.

Please let me know if you have any questions and enjoy the long weekend!

Best,
Aaron

Aaron E. Ringel
Deputy Associate Administrator
Office of Congressional & Intergovernmental Relations
U.S. Environmental Protection Agency

Personal Matters / Ex. 6

Ringel.Aaron@epa.gov



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

February 16, 2018

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable John Shimkus
Chairman
Subcommittee on Environment
Committee on Energy and Commerce
House of Representatives
Washington, D.C. 20515

Dear Chairman Shimkus:

Enclosed please find the U.S. Environmental Protection Agency's responses to the Subcommittee's Questions for the Record following the Subcommittee's December 7, 2017, hearing entitled "The Mission of the Environmental Protection Agency."

If you have further questions, please contact me, or your staff may contact Christian Rodrick in the EPA's Office of Congressional and Intergovernmental Relations at rodrick.christian@epa.gov or (202) 564-4828.

Sincerely,

A handwritten signature in black ink, appearing to read "AR", written over the typed name and title.

Aaron Ringel
Deputy Associate Administrator

cc: The Honorable Paul Tonko
Ranking Member

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

February 16, 2018

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Paul Tonko
Ranking Member
Subcommittee on Environment
Committee on Energy and Commerce
House of Representatives
Washington, D.C. 20515

Dear Ranking Member Tonko:

Enclosed please find the U.S. Environmental Protection Agency's responses to the Subcommittee's Questions for the Record following the Subcommittee's December 7, 2017, hearing entitled "The Mission of the Environmental Protection Agency."

If you have further questions, please contact me, or your staff may contact Christian Rodrick in the EPA's Office of Congressional and Intergovernmental Relations at rodrick.christian@epa.gov or (202) 564-4828.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Ringel", is positioned above the printed name of the Deputy Associate Administrator.

Aaron Ringel
Deputy Associate Administrator

cc: The Honorable John Shimkus
Chairman

Enclosure

Message

From: Ringel, Aaron [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1654BDC951284A6D899A418A89FB0ABF-RINGEL, AAR]
Sent: 4/24/2018 8:21:14 PM
To: Block, Molly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=60d0c681a16441a0b4fa16aa2dd4b9c5-Block, Moll]
Subject: Re: Quoted in WaPo

Personal Matters / Ex. 6

Sent from my iPhone

On Apr 24, 2018, at 3:13 PM, Block, Molly <block.molly@epa.gov> wrote:

Personal Matters / Ex. 6

Washington Post

https://www.washingtonpost.com/news/energy-environment/wp/2018/04/24/pruitt-to-unveil-controversial-transparency-rule-limiting-what-research-epa-can-use/?utm_term=.12eacce54b16

Pruitt unveils controversial 'transparency' rule Tuesday limiting what research EPA can use

By Juliet Eilperin and Brady Dennis, 4/24/18, 2:38 PM

Environmental Protection Agency Administrator Scott Pruitt proposed a rule Tuesday that would establish new standards for what science could be used in writing agency regulations, according to individuals briefed on the plan. The sweeping change, long sought by conservatives, could have significant implications for decisions on everything from the toxicity of household products to the level of soot that power plants can emit.

The rule would only allow EPA to consider studies for which the underlying data are made available publicly. Advocates describe this approach as an advance for transparency, but critics say it would effectively block the agency from relying on long-standing, landmark studies linking air pollution and pesticide exposure to harmful health effects.

"Today is a red-letter day. It's a banner day," Pruitt told a group of supporters at agency headquarters. "The science that we use is going to be transparent. It's going to be reproducible."

The move reflects a broader effort already underway to change how the agency conducts and uses science to guide its work. Pruitt has already changed the standards for who can serve on EPA's advisory committees, barring scientists who received EPA grants for their research while still allowing those funded by industry.

The rule will be subject to a 30-day comment period, EPA officials said. Pruitt, who had described the change during interviews with select media over the past month, said it will "enhance confidence in our decision-making" and prove "durable" because it will be issued as a regulation.

"This is not a policy," he said. "This is not a memo."

Many scientists argue that applying a standard to public health and environmental studies that is not currently required by peer-reviewed journals would limit the information the EPA could take into account.

Some researchers collect personal data from subjects but pledge to keep it confidential — as was the case in a major 1993 study by Harvard University that established the link between fine-particle air pollution and premature deaths, as well as more recent research that tapped a Medicare database available to any scientific group guaranteeing confidentiality of the personal information. That practice would not be allowed under the new rule.

In an interview Tuesday, former EPA Administrator Gina McCarthy said that requiring the kind of disclosure Pruitt envisions would have disqualified the federal government from tapping groundbreaking research, such as studies linking exposure to lead gasoline to neurological damage. Scientists will have trouble recruiting study participants if the rule is enacted, she predicted, even if they pledge to redact private information before handing it over to the government.

“The best studies follow individuals over time, so that you can control all the factors except for the ones you’re measuring,” said McCarthy, who now directs the Center for Climate, Health and the Global Environment at Harvard’s public health school. “But it means following people’s personal history, their medical history. And nobody would want somebody to expose all of their private information.”

House Science Committee Chairman Lamar Smith (R-Tex.) sought to establish a requirement similar to the one Pruitt has proposed, but his legislation, titled the Honest and Open New EPA Science Treatment Act, failed to pass both chambers.

Pruitt and Smith met at EPA headquarters on Jan. 9, according to Pruitt’s public calendar, and an email obtained under the Freedom of Information Act indicates that the lawmaker pressed the administrator to adopt the legislation’s goal as his own.

Smith made “his pitch that EPA internally implement the HONEST Act [so that] no regulation can go into effect unless the scientific data is publicly available for review,” Aaron Ringel, deputy associate administrator for congressional affairs at the EPA, wrote other agency staffers. His email was obtained by the Union of Concerned Scientists, a scientific advocacy organization.

Conservatives, such as Trump EPA transition team member Steve Milloy, have long tried to discredit independent research the agency used to justify limiting air pollution from burning coal and other fossil fuels. A series of studies has shown that fine particulate matter, often referred to as soot, enters the lungs and bloodstream and can cause illnesses such as asthma as well as premature death.

“During the Obama administration, the EPA wantonly destroyed 94 percent of the market value of the coal industry, killed thousands of coal mining jobs and wreaked havoc on coal mining families and communities,” Milloy said in a statement, “all based on data the EPA and its taxpayer-funded university researchers have been hiding from the public and Congress for more than 20 years.”

While the administration presses ahead, legal experts warn that the rule may be vulnerable to a court challenge. In unanimous decisions in 2002 and 2010, the U.S. Court of Appeals for the District of Columbia Circuit said the EPA is not legally obligated to obtain and publicize the data underlying the research it considers in crafting regulations.

In the 2002 case, brought by the American Trucking Associations, Inc., two judges appointed by Ronald Reagan and one named by Bill Clinton wrote that they agreed with the agency that such a requirement “would be impractical and unnecessary.” The government’s defense had noted that “EPA’s reliance on published scientific studies without obtaining and reviewing the underlying data is not only reasonable, it is the only workable approach.”

A range of scientific organizations are already campaigning to block the rule from being finalized. On Monday, 985 scientists signed a letter organized by the Union of Concerned Scientists, urging Pruitt not to forge ahead with the policy change.

“There are ways to improve transparency in the decision-making process, but restricting the use of science would improve neither transparency nor the quality of EPA decision-making,” they wrote. “If fully implemented, this proposal would greatly weaken EPA’s ability to comprehensively consider the scientific evidence across the full array of health studies.”

Under the proposed rule, third parties would be able to test and try to replicate the findings of studies submitted to EPA. But, the scientists wrote, “many public health studies cannot be replicated, as doing so would require intentionally and unethically exposing people and the environment to harmful contaminants or recreating one-time events.”

Gretchen Goldman, an expert on air pollution and research director for the organization’s Center for Science and Democracy, said the rule could put some scientists in a quandary: Keeping personal health data or propriety information private would mean having their work ignored by the EPA.

“We have this incredible science-based process that works, and it has worked, by and large, even in the face of tremendous political pressures to not go with a science-based decision,” Goldman said.

The Environmental Protection Network, a group of former EPA employees, issued a report Tuesday stating that many older studies — in which the original data sets were either not maintained or stored in outdated formats — would be eliminated under the proposed rule.

And while there is no estimate yet for how much it would cost EPA to obtain and disseminate studies’ underlying data, the Congressional Budget Office has projected that Smith’s measure, if enacted, would cost the agency \$250 million for initial compliance and then between \$1 million and \$100 million annually. A 2015 CBO analysis estimated that EPA would cut the number of studies it relies on by half because of the bill’s requirements.

Geophysicist Marcia McNutt, who is president of the National Academy of Sciences, said Tuesday that she is concerned the rule would prevent the EPA from relying on the best available scientific evidence.

“This decision seems hasty,” she wrote in an email. “I would be fearful that the very foundations of clean air and clean water could be undermined.”

Message

From: Ringel, Aaron [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1654BDC951284A6D899A418A89FB0ABF-RINGEL, AAR]
Sent: 8/27/2018 4:24:50 PM
To: 'Christian Rodrick (Rodrick.Christian@epa.gov)' [Rodrick.Christian@epa.gov]
Subject: 4/26 QFRs for Final Look
Attachments: 08-27-2018 - EPA_HEC_4.26_QFR_Pruitt_Responses_FINAL.docx

Please take a look for any formatting I might have missed.

Aaron E. Ringel
Deputy Associate Administrator
Office of Congressional & Intergovernmental Relations
U.S. Environmental Protection Agency

Personal Matters / Ex. 6

Ringel.Aaron@epa.gov

Appointment

From: Ringel, Aaron [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1654BDC951284A6D899A418A89FB0ABF-RINGEL, AAR]
Sent: 1/24/2018 7:31:55 PM
To: Gomez, Laura [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=575BA24FC19D429C8302A05102353238-LGOMEZ]
Subject: Accepted: CONFIRMED: EPA PRE-INTERNAL CALL : HONEST ACT IMPLEMENTATION
Location: DIAL IN: Personal Matters / Ex. 6
Start: 1/26/2018 7:00:00 PM
End: 1/26/2018 8:30:00 PM

Recurrence: (none)

Attachment 1—Additional Questions for the Record

The Honorable John Shimkus

1. **OCSPP** – While some are interested in ensuring EPA actions to limit one or more FIFRA-regulated substances, I am more interested in all FIFRA related activities, particularly in view of the uncertainty about the future deployment of user fees now made available under the Pesticide Registration Improvement Act.

a. If PRIA fees were to expire:

- i. Would this mean the reinstatement of tolerance fees?

ANSWER – Yes. PRIA prohibits EPA from levying these tolerance fees, but with a lapse of PRIA, the prohibition would expire and EPA would be able to start collecting these fees.

- ii. If yes, would the reinstatement of tolerance fees produce enough revenue to ensure the robustness reviews mandated by FIFRA?

ANSWER – According to a Congressional Research Service report titled “Pesticide Registration and Tolerance Fees: An Overview” dated 11/8/12, the average collection of tolerance fees between FY1985 to FY2003 was \$1.8 million. In contrast, EPA’s annual maintenance fee collection target under PRIA is \$27.8 million, and the average PRIA registration service fee collection over the past three years is \$18 million. While it is EPA’s goal that the robustness of EPA review would not change with a reduction in fees, it is likely that the time frames in which EPA conducts its reviews would be impacted. As the majority of maintenance fees collected go to support of pesticide registration review activities, this reduction in fees would severely impact EPA’s ability to meet the statutory deadline of completion of the 725 chemical cases by October 1, 2022. EPA’s performance reviewing other maintenance fee-supported activities such as fast-track amendments to registered products and notifications would also be impacted. In addition, registration service fee actions received after a lapse of PRIA would not receive statutorily-mandated decision review time frames.

- b. What percentage of staffing expenses are covered by PRIA fees?

ANSWER - SEPW 5/11 QFR CLEARED RESPONSE: PRIA provides approximately 33 percent of the funding for EPA’s pesticide program activities. Currently operating under the third iteration of the statute, PRIA provides two funding sources to EPA’s pesticide program:

- **One time registration service fees (i.e., PRIA fees) for the evaluation of new applications submitted to the EPA; and**
- **Annual FIFRA maintenance fees assessed to products currently in the marketplace, a significant portion of which are used to support the re-**

evaluation of pesticides in order to meet the statutory deadline of October 1, 2022, for completing the first round of registration review.

c. If PRIA fees expire:

- i. How many EPA employees – both FTE and contract workers – would be impacted, including through the loss of employment?

ANSWER – Activities reliant on maintenance fee and pesticide registration service fee funds could be supported for a duration of time after a lapse in PRIA relying on carryover registration service and maintenance fee money. Starting on October 1, 2020, EPA would not be able to support approximately 75 FTEs funded by the PRIA fund. Beginning on October 1, 2021, EPA would no longer be able to support an estimated additional 91 FTEs with FIFRA funds, bringing the total FTE count that EPA could no longer support with PRIA and FIFRA funds to approximately 166FTEs. For reference, the current “on-board” OPP count is right around 600 employees, down 42 from the start of FY 2017.

There are 32 contracts supported by PRIA pesticide user fees with 49 on-site contractors administering the functions of those contracts.

- ii. How much in budget resources would EPA need to transfer to OCSPP to make up for lost PRIA revenues for FIFRA activities?

ANSWER – EPA’s pesticide program activities through two fee funds. On average, EPA collects approximately \$46M in fees each year to support pesticide program activities. To continue to complete registration and registration review decision-making in current timeframes, in the absence of fees, funding for OCSPP’s pesticide activities would need to increase by \$46M. In addition, if PRIA were not reauthorized, \$2 million per year for worker protection activities, pesticide safety education programs, and partnership grants, monies that currently come from PRIA funds, would not be available and these programs would not be funded.

- iii. What is the impact on the pace of pesticide applications reviews? How much longer will they take?

ANSWER – Pesticide registration applications received prior to a lapse of PRIA would retain the decision time frames specified in FIFRA section 33. Applications received after the expiration of PRIA would not receive decision time frames. EPA would continue reviewing these applications as expeditiously as possible provided the resources available.

2. **OCSPP** Legislation pending in Congress would provide PRIA fees for another 3 years, but also address other matters as well.

a. Please explain the need for and characterize the significance of having, including in practical terms:

i. \$500,000 in funding for efficacy guidelines for public health pesticides;

ANSWER – This proposed maintenance fee set-aside would provide EPA resources to develop and implement guidance and rulemaking for product performance data requirements to evaluate products claiming efficacy against pests of significant public health or economic importance. This effort, desired by the regulated community and of benefit to those who might be subject to vector-borne illnesses, would give EPA better information on how well a product works against public health pests and organisms, which is part of EPA’s evaluation in determining whether to allow a product onto the market. These products include hospital disinfectants as well as repellants and insecticides that control mosquitoes that are vectors of the Zika virus.

ii. \$500,000 for good laboratory practices funding;

ANSWER – This proposed maintenance fee set-aside would be used to increase the number of laboratory inspections and data audits conducted in support of pesticide product registrations under PRIA, an outcome desired by the registrant community and important to the data integrity of the studies that EPA uses to support its regulatory decisions.

iii. An increase in maintenance fees from \$27.8 to \$31 million for review and registration;

ANSWER – Raising maintenance fees by \$3.2 million annually would provide additional resources for registration review and other specified activities on which maintenance fees can be spent. These additional resources are important to helping EPA meet its statutory obligation to complete the first round of registration review by October 1, 2022.

iv. Additional categories and deadlines for products reviewed; and

ANSWER – PRIA 4 proposes new fee for service categories as well as revisions to existing categories. To name a few examples, PRIA categories for antimicrobial products are revised to be consistent with subpart 158W, there are revisions to time frames and fees for antimicrobial and conventional new products and amendments to existing products that involve the review of product performance data for public health pests, new plant-incorporated protectant (PIP) categories are added, categories for safener inert ingredients are

established, and a new category is created whereby applicants can receive a determination from EPA on whether or not a proposed product would be subject to registration requirements under FIFRA. These new categories better align time frames and fees to the resources it takes EPA to review those types of applications.

v. Removal of FIFRA section 4(k)(2).

ANSWER – Maintenance fees are annual fees assessed to registrants to maintain their product registrations in the marketplace, and are deposited by EPA into the Reregistration and Expedited Processing Fund. These fees are primarily used to support the re-evaluation of pesticides as part of the statutorily-mandated registration review program, the first round of which FIFRA mandates is to be completed by October 1, 2022. These fees also support the agency’s review of inert ingredients, the expedited processing and review of certain applications for products that are substantially similar to registered product and products intended for public health, and the enhancement of information technology systems to improve the review of pesticide registration applications. An unspent balance of over \$40 million has built up in the fund due to decreases in staff levels administering functions that can be charged to the fund (due to attrition, a hiring freeze, and typical time lags involved in recruiting qualified staff to fill key scientific and regulatory positions), and the spending restriction in FIFRA section 4(k)(2)(A), commonly referred to as the “1-to-1” provision.

FIFRA section 4(k)(2)(A) states “moneys derived from fees may not be expended in any fiscal year to the extent such moneys derived from fees would exceed money appropriated for use by the Administrator and expended in such year . . .” This provision effectively limits the amount of fees that can be spent in any given fiscal year relative to the amount of annually appropriated dollars that are spent on the same functions in that fiscal year, and likewise prevents EPA from being able to reduce the unspent balance of the maintenance fee fund unless appropriated spending exceeds maintenance fee collection in a given fiscal year. To the extent fee collections have exceeded appropriation spending on the specified functions, the unspent balance has continued to grow and EPA has not been able to reduce the unspent balance in the maintenance fee fund. The removal of FIFRA section 4(k)(2) is essential to EPA’s ability to access these funds paid by registrants in support of registration review and other specified activities.

3. **OAR Beginning in 2023, the agency will have more flexibility to set targets under the Renewable Fuel Standard (RFS). Given EIA projections of a 31 percent decrease in motor gasoline consumption between 2017 and 2050, based upon increases in fuel economy standards and electric vehicles market penetration:**

- a. Will EPA have authority in 2023 and subsequent years to reduce biofuel volume requirements below the existing statutory guidelines? Could this result in fewer gallons of biofuel in the market in the future than exist today?
 - b. Will EPA have authority in 2023 and subsequent years to allow a RIN to be generated by recharging an electric vehicle with electricity generated from a biogas power plant or other renewable energy source?
 - c. Will EPA have authority in 2023 and subsequent years to reorganize the program's four existing nested categories?
4. **OAR** Is EPA engaged in planning for 2023 and subsequent years with regard to the agency's reset authority and the RFS? If so, please describe the range of options that EPA is considering.
5. **OLEM/Superfund** The Folcroft Landfill (Operable Unit 2 of the Lower Darby Creek Superfund Site in Pennsylvania) was placed on the NPL in 2001, and the Remedial Investigation has not been finalized. The July 2017 Superfund Taskforce report recommends inquiry and additional resources for sites on the NPL for five years or more without a significant movement. What inquiries and additional resources have been directed to the Folcroft Landfill which has been on the NPL since 2001 without completion of the Remedial Investigation?

ANSWER – The schedule and length of time to complete the Remedial Investigation and Feasibility Study (RI/FS) for the Folcroft Landfill, Operable Unit 2 (OU2) of the Lower Darby Creek Area Superfund Site is not attributable to a lack of resources, nor does EPA believe that additional resources are necessary at this time. The duration of the RI is primarily due to lengthy negotiations with a group of potentially responsible parties (PRP Group) to finance and perform the RI/FS, as well as unanticipated findings during the RI/FS and challenging field conditions, as described in detail below.

The RI/FS at Folcroft Landfill is being performed by a PRP Group that consists of 14 companies that historically disposed of waste at the landfill. After listing the Site on the National Priorities List in 2001, EPA began negotiations with the PRP Group, which concluded in November 2006 with the signature of an Administrative Order on Consent (AOC) for the RI/FS. The duration of the negotiations was due to both the number of PRPs and technically complicated enforcement evidence.

Initial RI field activities were completed in 2008 by the PRP Group in accordance with EPA-approved RI/FS Work Plan. However, in May 2010, based on a review of the initial RI data, EPA identified contaminated groundwater outside of the boundary of the Folcroft Landfill that was not anticipated in the RI/FS Work Plan. The RI/FS Work Plan was subsequently amended in December 2011 to investigate groundwater contamination outside the boundary of the Folcroft Landfill. Significant technical challenges were encountered during the supplemental RI field work due to the location

of the landfill in a tidal marsh area within the John Heinz National Wildlife Refuge. The supplemental RI field activities were completed in July 2016.

The PRP Group submitted the draft RI Report in May 2017, and the EPA has worked with the PRP Group for the past year to resolve outstanding issues. The PRP Group submitted the draft final RI Report on May 22, 2018, and EPA is currently reviewing the document to ensure that all remaining issues have been addressed. A scoping meeting for the FS was held on May 8, 2017, and subsequent FS discussions were held throughout 2017 and early 2018. EPA and the PRP Group, as well as other site stakeholders such as the Pennsylvania Department of Environmental Protection (PADEP) and US Fish and Wildlife Service (USFWS), will meet on June 18, 2018, to discuss next steps in the FS process.

6. **OLEM/Superfund** The EPA Taskforce Report recommends the establishment of a clarification to the principles for groundwater restoration. What is the goal for groundwater remediation at the Folcroft Landfill (Operable Unit 2 of the Lower Darby Creek Superfund Site in Pennsylvania)?

ANSWER – The Record of Decision (ROD) for the Folcroft Landfill (Operable Unit 2 of the Lower Darby Creek Superfund Site in Pennsylvania) has not yet been issued; therefore, no groundwater cleanup level has been established. However, in accordance with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), “EPA expects to return usable groundwaters to their beneficial uses wherever practicable, within a timeframe that is reasonable given the particular circumstances of the site.” The NCP further states that federal Maximum Contaminant Levels (MCLs) “shall be attained by remedial actions for ground or surface waters that are current or potential sources of drinking water.”

Contaminated groundwater within the boundary of the Folcroft Landfill is within a waste management area and is not considered a potential source of drinking water. However, the contaminated groundwater that extends outside of boundary of the Folcroft Landfill is considered a potential source of drinking water. Therefore, EPA anticipates that federal MCLs will be evaluated as potential cleanup levels for contaminated groundwater outside of the boundary of the Folcroft Landfill.

7. **OLEM/Superfund** This Operable Unit, which is owned by the Department of the Interior, is within the John Heinz Wildlife Refuge.
- a. Do EPA’s goals for groundwater restoration take into account the Department of Interior’s long range plan for the Refuge?

ANSWER – EPA has coordinated extensively with the Department of Interior (DOI) and the U.S. Fish and Wildlife Service (USFWS) with regard to Operable Unit 2 (OU2), Folcroft Landfill, throughout the Remedial Investigation (RI). Additionally, EPA entered into a Memorandum of Understanding with DOI in 2005 to clearly define the roles of both agencies at this OU. USFWS indicated in a letter dated February 23, 2018, that groundwater extraction for

various uses is routinely permitted in refuges, if the refuge manager determines that it is appropriate to do so. Currently, the John Heinz National Wildlife Refuge (the Refuge) Comprehensive Conservation Plan (CCP) does not prohibit groundwater extraction on the Refuge, and the USFWS cannot eliminate the possibility that groundwater extraction may be necessary in the future. This is consistent with the EPA's position that groundwater at OU2 is considered a potential future source of drinking water.

- b. Is the Folcroft Landfill eligible for a Technical impracticability waiver for groundwater?

ANSWER – Any Superfund site is eligible for a technical impracticability (TI) waiver if it is demonstrated that it is technically impracticable, from an engineering perspective, of achieving applicable or relevant and appropriate requirements (ARARs), such as federal maximum contaminant levels (MCLs), throughout the groundwater contaminant plume. EPA and the Potentially Responsibility Party Group (PRP Group) at OU2 have discussed the possibility of a TI waiver at OU2. The PRP Group is currently evaluating the collection of additional groundwater data that would be required to support a TI waiver application.

- c. What is the process and standard to receive a TI waiver?

ANSWER – The detailed process for requesting a TI waiver is provided in the following the EPA guidance documents:

- **OSWER Directive 9234.2-25, Guidance for Evaluating Technical Impracticability of Groundwater Restoration September, 1993;**
- **OSWER Directive 9200.4-14, Consistent Implementation of the FY 1993 Guidance on Technical Impracticability of Groundwater Restoration at Superfund Sites, January 19, 1995;**
- **OLEM Directive 9200.3-117, Clarification of the Consultation Process for Evaluating the Technical Impracticability of Groundwater Restoration at CERCLA Sites, December 28, 2016.**

In general, in accordance with the guidance, the applicant is required to provide the following information in a TI waiver application:

- **Specific applicable or relevant and appropriate requirements (ARARs) or media cleanup standards for which TI determinations are sought;**
- **Spatial area over which the TI decision will apply;**
- **Conceptual model that describes site geology, hydrology, groundwater contamination sources, transport, and fate;**
- **An evaluation of the restoration potential of the site, including data and analyses that support any assertion that attainment of ARARs or media cleanup standards is technically impracticable from an engineering perspective. At a minimum, this generally should include a demonstration that contamination sources have been identified and have been, or will be, removed and contained to the extent practicable; an analysis of the**

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performance of any ongoing or completed remedial actions; predictive analyses of the timeframes to attain required cleanup levels using available technologies; and a demonstration that no other remedial technologies (conventional or innovative) could reliably, logically, or feasibly attain the cleanup levels at the site within a reasonable timeframe;

- Estimates of the cost of the existing or proposed remedy options, including construction, operation, and maintenance costs;
- Any additional information or analyses that the EPA deems necessary for the TI evaluation.

EPA will then evaluate the TI waiver application and decide if a TI waiver is warranted, and issue a Record of Decision documenting the TI waiver.

- d. How would changes to the process and standards for awarding a TI waiver, as recommended by the July 2017 EPA Taskforce Report, impact the Superfund process at the Folcroft Landfill?

ANSWER – To date, no changes to the groundwater restoration policy have resulted from the Superfund Task Force Recommendations. If changes to the groundwater restoration policy occur in the future, the groundwater cleanup approach at OU2 will be evaluated accordingly.

8. **OP** EPA’s recently released proposed rule on increasing transparency in regulatory science states that the proposal is consistent with the requirements for major scientific journals like Science, Nature, and the Proceedings of the National Academy of Sciences.
- a. Why are more journals and scientific institutions implementing these transparency policies?

ANSWER –The proposed rule is in line with the scientific community’s moves toward increased data sharing to address the “replication crisis,” in which a significant proportion of published research may be false or not reproducible. EPA believes that making regulatory science publicly available in a manner sufficient for independent validation will improve the data and scientific quality underlying EPA’s actions.

- b. Isn’t replication and verification a key step in the scientific process?

ANSWER – Replicating and verifying science and data are important ways to ensure that the science and data are sound.

9. **OP** Despite the many claims made prior to the release of this proposal, would this proposed rule violate any existing federal laws on privacy?

ANSWER – EPA has sought to ensure that this proposed rule is consistent with existing privacy laws.

10. **OP** What is this proposed rule's impact on confidential business information (CBI)? Please state how you plan to ensure that in any final rule EPA will neither: be (1) prevented from using science that cannot be published (because it has CBI in it) nor forced into the default position that EPA should endeavor to publicly release all scientific data – including legally colorable CBI – so that this science can be used by the Agency?

ANSWER – The proposed rule is consistent with existing laws on CBI. EPA will follow all laws relating to CBI in developing the final rulemaking.

11. **OARM** I understand the Agency is looking at its work force to see how it can better function.

- a. How many people does EPA have working full-time for the Agency in headquarters?

ANSWER – As of June 6, 2018, the EPA has a total of 7,266 full-time employees in its headquarters program offices. Of these, 4,444 work in the Washington, D.C.-area offices and 2,822 work in EPA's field offices.

- b. How many people does EPA have working full-time for it in its regional offices?

ANSWER – As of June 6, 2018, the EPA has 6,574 full-time employees at its regional offices.

- c. How many contractors currently work for EPA? [if he doesn't know what number ask him for a percentage. If that fails, ask him why not]?

ANSWER – As of June 6, the number of active EPA contractors with EPA contractor badges is 4,007 including 1,164 contractors in the Washington, D.C.-area offices, and 2,843 contractors in EPA regions and field offices ¹.

12. **OCI** One of the priorities for the proposed budget includes an "EPA Reform Plan." Projects under this plan include streamlining the permit review process, developing a Lean Management System, and reducing the reporting burden on the regulated community.

- a. Why were these areas made priorities?
- b. What progress has been made so far on these efforts?
- c. Do you have benchmarks and timelines for the Reform Plan?

¹The count includes active contractors on active contracts where the individuals have been issued a badge in compliance with the requirements of Homeland Security Presidential Directive (HSPD) 12. HSPD 12 badges are issued when a contractor requires physical or logical access to EPA facilities or network for more than 6 months.

13. **OCI** What are the biggest obstacles to meaningfully reforming EPA to engage the 21st Century?

14. **OCSPP** The proposed budget has four Agency Priority Goals, including that EPA intends to meet statutory deadlines for chemical reviews under the Toxic Substances Control Act. In particular, EPA plans 100 percent compliance with “existing” chemicals and only 80 percent compliance certain “new” chemicals.

Under the law, EPA is the gatekeeper to innovation because these chemicals cannot go to onto the market until EPA decides they can and companies cannot work to improve these chemicals unless EPA says there is a problem.

As of April 17, 2018, EPA’s website was reporting that EPA had 449 pending applications for new chemicals. In addition, the EPA website claims the typical caseload for new chemicals under review is approximately 300 cases.

- a. Is the increase in pending applications – at one-third of EPA’s historical output, due to a higher number of new chemicals applications coming into the Agency at the same time or EPA falling behind again on getting them processed?

ANSWER – Although the Agency has not seen a significant increase in the number of notifications received, the current caseload number does not mean that EPA is “falling behind.” While the average caseload is around 300, that number can be higher or lower at any given time. Companies often voluntarily agree to suspend the review period to have technical discussions with EPA or to work on developing additional supporting information. Completing these reviews in a timely manner remains a top priority for the Agency. The Agency is taking several steps to address the immediate backlog, and to identify ways to increase overall efficiency for the program to maintain its viability over the long term. For example, we are continuing to increase the number of staff working in the new chemicals program. We’re also currently implementing process improvements identified through a recent LEAN event.

- b. What do you intend to do to eliminate the backlog and keep it at bay?

ANSWER – See response to question 14(a).

- c. One thing the EPA website does not give data on is just how long some of those applications have been sitting at EPA. The law is very clear 90 days and no more than 180 days to review and regulate.
- i. How many of the 449 new chemicals applications sitting at EPA are less than 90 days old?

ANSWER – It is important to note that companies often voluntarily agree to suspend the TSCA review period to have technical discussions with EPA or to work on developing additional supporting information.

Thus, there is a difference between the time that has elapsed (A) since EPA's receipt of a notice and (B) for purposes of the TSCA review period. For the responses below, EPA is providing statistics for the number of calendar days that a notice has been with EPA – not for purposes of the TSCA review period.

46 cases have been with EPA for less than 90 days.

- ii. How many of the 449 new chemical applications sitting at EPA are more than 90 days old, but less than 180 days?

ANSWER – 63 cases have been with EPA for less than 180 days.

- iii. How many of the 449 new chemical applications have been filed with EPA for more than 180 days and what is the range of time on them?

ANSWER – 340 cases have been with EPA for 180 days or more. The TSCA review period has been voluntarily suspended by the submitters for all of these cases. Of these 93 cases were reset on June 22, 2016, so they have been with EPA the longest. Of those 93 oldest cases:

- **40 are cases where the submitter is undertaking testing or gathering additional data;**
- **12 are cases involving Consent Orders that have not yet been signed by submitters; and**
- **41 cases involve various types of ongoing issues including: pending EPA issuance of Non-Order SNURs; company is exploring possible ways to mitigate identified risks; and company is in discussions with EPA about developing test protocols and other necessary testing information.**

15. **OCSPP** Under TSCA section 26, the Agency has authority to set fees to defray the costs of chemical testing, new and existing chemical review and regulation and to offset related costs for processing confidential business information. For new chemicals, EPA moved the fee from \$2,500 to \$16,000 – a more than 6-fold increase – and for small manufacturing entities – EPA raised the fee for new chemicals from \$100 to \$2,800 – or a 28-fold increase.

- a. How much impact with these dramatic fee increases have on improving the speed at which the Agency is reviewing new chemicals?

ANSWER – The fees collected by the Agency under TSCA Section 26 are expected to improve our ability to effectively and efficiently administer the new chemicals program and improve the timeliness of our reviews. Additional fee revenue is expected to enable the Agency to increase the number of staff working in the new chemicals program, and further enhance ongoing efforts identify ways to increase overall efficiency for the program to maintain its viability over the long term, and to implement process improvements identified through a recent LEAN event.

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b. If not much, then what is the problem?

ANSWER – See above. The Agency anticipates that fee revenues will help further efforts to improve the timeliness of new chemical reviews.

16. **OCSPP** The proposed fee rule suggests EPA will see 10 percent fewer new chemical applications based on legal changes to how EPA is supposed to review new chemicals. What kind of new chemical applicant attrition is expected due to the combined fee increase and lack of generated revenue from the chemical?

ANSWER – The proposed fee rule includes a planning assumption that the Agency will receive 20% fewer new chemicals applications as a result of the increased fees. This assumption is based on the notion that companies may be more selective in terms of which chemicals they submit for review and the timing of those submissions given the higher upfront investment due to the increased fee.

17. **OLEM/Superfund** Portland Harbor is complex site at which almost 100 potentially responsible parties (PRPs) have been identified. It is my understanding that on March 16, 2018, EPA sent all of the PRPs a letter indicating that EPA will be issuing Special Notice Letters for full performance of the remedial design/remedial action (RD/RA) at the Portland Harbor Site by the end of 2019. However, several of the PRPs have indicated that the allocation process will not be complete by that time, and that the issuance of Special Notice Letters will actually slow the clean-up, because companies will choose to litigate rather than potentially bear the full cost of the clean-up at that point. How will EPA balance the allocation process timeline and issuing the Special Notice Letters?

ANSWER – EPA is focused on getting the cleanup selected in the Record of Decision (ROD) underway at the Portland Harbor Superfund site as soon as possible. EPA is not privy to the allocation process among the PRPs at the Portland Harbor Superfund site and generally does not get involved in how responsible parties allocate costs among themselves. EPA issued the ROD at the Portland Harbor Site in January 2017. At Portland Harbor, the PRPs are conducting additional sampling to help design the remedy. That sampling also may be relevant to the PRP cost allocation, and is expected to be complete by early 2019.

Taking into account the ongoing sampling work and its potential relevance to the allocation process while still maintaining the overall goal to proceed with cleanup, on March 16, 2018, EPA sent a letter to the PRPs to notify them that EPA plans to issue Special Notice letters to commence settlement negotiations, but not until the end of 2019. To maintain progress towards cleanup while the sampling is taking place, EPA also is working with parties to perform remedial design work at specific locations of the site. By the end of 2019, the PRPs should be able to proceed on a parallel path of presenting a plan to implement the Portland Harbor ROD even if there are remaining allocation issues.

The Honorable David B. McKinley

1. **OLEM** I appreciate your commitment to supporting cooperative federalism under the Coal Combustion Residuals (CCR) permitting program by working with states to develop, submit, and implement state CCR permit programs. How is EPA working with states as they develop and submit these plans, particularly those that are seeking to incorporate WIIN Act authorities rather than just adopting the current, self-implementing federal rule?

ANSWER – EPA has been actively working with states since the passage of the WIIN Act. The agency developed an interim final guidance outlining the process and procedures that the agency generally intends to use to review and make determinations on state Coal Combustion Residual (CCR) permit programs. This document provides guidance to the states for developing and submitting a program to EPA for approval. The guidance is divided into four chapters:

- **Chapter 1 provides an overview of the provisions of the Water Infrastructure Improvements for the Nation Act (WIIN Act).**
- **Chapter 2 contains the process and procedures the EPA is planning to use to review and make determinations on state CCR permit programs as well as the documentation EPA will ask states seeking approval of a program to submit.**
- **Chapter 3 contains a checklist of all the requirements of the current CCR rule at 40 CFR Part 257 subpart D.**
- **Chapter 4 provides a checklist of those items a state would submit when seeking approval of its CCR permit program.**

EPA encourages states who are or may be considering submitting a CCR permit program for approval to consult with the agency early in the process. Such consultations will enable EPA and the state to work through any areas where the state program may be different from the federal CCR regulation. The agency is currently working with about a dozen states and we look forward to working with these and other states and key stakeholders as we move forward in implementing the WIIN Act.

2. **OLEM** As states develop these programs, guidance from EPA will be important. With that in mind, Congress appropriated \$6 million to EPA for FY18 to develop its own federal permitting program for “non-participating states”. Please provide an update on and timeline for the development of that federal permit program.

ANSWER – EPA has several activities underway which support the development of a federal permit program. First, the agency has been engaged in proposing modifications to the 2015 CCR rule which will provide the basis for both state and federal permit programs. EPA anticipates another proposal later this year, and as part of that, EPA hopes to develop and propose regulations for the federal permit program. In addition, EPA is developing draft templates for permit applications and also permits. Finally, EPA is working with our state

partners to determine which states will be developing their own permit program and which will not, so that federal permitting efforts will not duplicate state efforts.

The National Association of Scholars recently published a report titled, “THE IRREPRODUCIBILITY CRISIS OF MODERN SCIENCE, Causes, Consequences, and the Road to Reform”. They state, “The Federal government should also consider instituting review commissions for each regulatory agency to investigate whether existing regulations are based on well-grounded, reproducible research. These should establish the scope of the problem by identifying those regulations that rely on un-replicated or irreproducible research, and recommending which regulations should be revoked.”

3. **OP** Will you commit the EPA to investigate whether existing regulations are based on well-grounded, reproducible research?

ANSWER – EPA supports efforts to ensure that the regulations it promulgates are based on well-grounded, reproducible research. In accordance with Executive Order 13777, EPA is taking steps to identify regulatory issues, including the basis for existing regulations, through ongoing regulatory reform efforts.

4. **OP** Will you commit the EPA to identify those regulations that rely on un-replicated or irreproducible research?

ANSWER – EPA supports efforts to ensure that the regulations it promulgates are based on well-grounded, reproducible research. As discussed above, per E.O. 13777, EPA is taking steps to identify regulatory issues through continuing regulatory reform efforts.

5. **OP** Will you provide a report to our committee and my office with the results of your investigation?

ANSWER – EPA is open to providing updates on its regulatory reform efforts as they continue. EPA provides ongoing information about its regulatory reform efforts at <https://www.epa.gov/laws-regulations/regulatory-reform>.

6. **OP** Will you provide a report to our committee and my office regarding if the endangerment finding for CO2 was based upon well-grounded, reproducible research?

ANSWER – EPA welcomes the opportunity to address specific issues with the committee, and encourages you to reach out to EPA staff to further discuss this request.

Administrator Pruitt, I know that the ethanol industry has recently attacked the EPA for granting small refinery hardship relief.

7. **OAR** Does the Clean Air Act establish small refinery hardship relief?

Answer:

SEPW 5/11 QFR CLEARED RESPONSE: Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption from compliance with its renewable fuel volume obligations for a given year based on a small refinery's demonstration of "disproportionate economic hardship" in that year. The statute also directs EPA to consult with the Department of Energy (DOE) in evaluating small refinery exemption petitions. EPA will grant a hardship exemption if we conclude, after review of available information and in consultation with DOE, that a refinery will experience disproportionate economic hardship that can be relieved in whole or in part by removing its RFS obligations for that year.

8. **OAR** Has the Congress affirmed this on several occasions by directing the DOE to study this issue and, more recently, reminding the EPA that it did not intend for small refineries to bear a disproportionate regulatory burden?
9. **OAR** Did the DOE's 2011 report for Congress predict that harm to small refineries would increase over time, not diminish?
10. **OAR** Did the 10th circuit decision last year instruct the EPA to grant small refinery hardship relief?

Some have made the argument that hardship relief results in "demand destruction" for ethanol by resulting in less blending. Regardless of if small refineries receive hardship relief, they are incentivized to blend ethanol for many economic reasons: 1) it is cheaper than gasoline, 2) they must meet their RVO, and 3) they can sell RINS not needed for compliance.

11. **OAR** Was ethanol consumption up in the first quarter of 2018?
12. **OAR** Was it, in fact, higher than projected in November of 2017 when RINS were 80-90 cents a gallon?
13. **OAR** Did ethanol consumption increase throughout 2017 despite hardship relief?

President Obama used an EPA "veto" twice in unprecedented fashion. The Spruce Coal Mine located in West Virginia, had the required permits and approvals in hand, when the EPA "vetoed" the project. The project went through the entire regulatory process and was approved by ALL parties. Then the Obama Administration's "War on Coal" went into high gear. The EPA vetoed the project. The second instance was the Pebble Mine in Alaska, where they vetoed the project prior to the approval process starting. Both instances of using the EPA veto are very dangerous if they are allowed to stay in place. A future administration can use the veto to shut down the entire coal mining industry if both precedents are not reversed by the EPA. I can think of no greater threat to the industry.

14. **OW** Will you consider revoking both the Spruce Mine and Pebble Mine vetoes?

ANSWER – Regarding Pebble Mine, the EPA has not made a Final Determination pursuant to Section 404(c). In 2014, the EPA issued a Proposed Determination

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pursuant to 404(c) regarding Pebble Mine. In 2017, the EPA considered withdrawing that Proposed Determination but, as outlined in its January 26, 2018, decision, the EPA suspended the proceeding to withdraw the Proposed Determination and left that Proposed Determination in place pending consideration of any other information that is relevant to the protection of the world-class fisheries contained in the Bristol Bay watershed in light of the permit application that has now been submitted to the U.S. Army Corps of Engineers by the mine proponent. The EPA's January 2018 decision neither deters nor derails the Corps' review of Pebble's Section 404 permit application, which is currently ongoing. Regarding Spruce Mine, the EPA issued a Final Determination under 404(c) in 2011 that protected portions of the mine site with high ecological value from being adversely impacted by the mine's development. The mine proponent has been exploring development of revised proposals to expand mining at the site. If a revised proposal is developed and submitted to the EPA, the agency would review and consider it.

15. **OW** Do you believe that the EPA should have the authority to preemptively veto development projects under Section 404 of the Clean Water Act before any permit applications have been submitted to the Army Corps of Engineers?

ANSWER – EPA believes it has the authority to exercise its discretion under Section 404(c) to restrict, prohibit, or deny the discharge of dredged or fill material “whenever” it makes the requisite finding that the discharge will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery, wildlife, or recreation areas, and EPA takes very seriously the authority it was provided by Congress pursuant to Section 404(c). As a general matter, EPA has policy concerns about issuing a final determination under Section 404(c) before the submission of a permit application to the Corps or the completion of an EIS. EPA’s decision whether to exercise such authority preemptively would involve considerations of basic fairness and due process.

16. **OW** President Trump, in his Infrastructure Initiative, has proposed legislation that eliminates entirely EPA’s authority to veto projects under the Clean Water Act. Why have you taken a position, by leaving in place the Pebble veto, that is different than the President’s policy?

ANSWER – The EPA’s January 26, 2018 decision suspends the proceeding to withdraw the Proposed Determination and leaves that Determination in place pending consideration of any other information that is relevant to the protection of the world-class fisheries contained in the Bristol Bay watershed in light of the permit application that has now been submitted to the Corps. This decision neither deters nor derails the Corps’ review of Pebble’s Section 404 permit application, which is currently ongoing.

In making the decision regarding whether to withdraw the 2014 Proposed Determination at this time, the EPA considered its relevant statutory authority, applicable regulations, and the input it received as part of the tribal consultation, Alaska Native Claims Settlement Act, Corporation consultation, and public comment periods regarding the agency’s reasons for its proposed withdrawal, as well as recent

developments, including Pebble's submittal of a Section 404 permit application to the U.S. Army Corps of Engineers in December of 2017. The EPA received more than one million public comments regarding its proposal to withdraw the 2014 Proposed Determination, the overwhelming majority of which expressed opposition to withdrawal.

17. **OW** Isn't it correct that under the applicable regulations the Army Corps of Engineers cannot issue a permit to a project developer if the EPA has even begun the process of issuing a veto?

ANSWER – While it is true that the Army Corps cannot issue a permit while a pending 404(c) determination proceeding is ongoing, the Corps' regulations allow it to accept, review, and process a permit application for a proposed project even if EPA has an ongoing Section 404(c) review for that project. The Corps is processing Pebble's permit application consistent with its regulations, including developing an Environmental Impact Statement for the Pebble Project. EPA's decision to suspend the withdrawal process states that it will review and consider any relevant information that becomes available to inform future Section 404(c) decisions regarding the Pebble Project.

18. **OW** Is there any environmental harm that occurs whatsoever by allowing a permit application to be considered by the Army Corps of Engineers without a veto pending?

ANSWER – As a general matter, EPA has policy concerns about issuing a final determination under Section 404(c) before the submission of a permit application to the Corps or the completion of an EIS. EPA believes that a decision regarding whether to exercise its section 404(c) authority preemptively would involve considerations of basic fairness and due process. To be sure, the Corps' regulations allow it to accept, review, and process a permit application for a proposed project even if the EPA has an ongoing Section 404(c) review for that project. Pebble has now submitted its permit application to the Corps and the Corps has initiated its permit review process and begun taking steps to develop an EIS for this project. These actions resolve any potential uncertainty about Pebble's ability to submit a permit application and have that permit application reviewed by the Corps.

The EPA's January 26, 2018 decision to suspend the withdrawal process states that the EPA will review and consider any relevant information that becomes available. This will allow EPA to get the information needed to determine what specific impacts the proposed mining project will have on those critical resources.

19. **OW** Isn't it better to wait until the Army Corps of Engineers has decided whether to grant a permit before EPA issues a veto, if one is to be issued at all?

ANSWER – As a general matter, EPA has policy concerns about issuing a final determination under Section 404(c) before the submission of a permit application to the Corps or the completion of an EIS. EPA believes that a decision regarding whether to exercise its section 404(c) authority preemptively would involve considerations of

basic fairness and due process. To be sure, the Corps' regulations allow it to accept, review, and process a permit application for a proposed project even if the EPA has an ongoing Section 404(c) review for that project. Pebble has now submitted its permit application to the Corps and the Corps has initiated its permit review process and begun taking steps to develop an EIS for this project. These actions resolve any potential uncertainty about Pebble's ability to submit a permit application and have that permit application reviewed by the Corps.

The EPA's January 26, 2018 decision to suspend the withdrawal process states that the EPA will review and consider any relevant information that becomes available. This will allow EPA to get the information needed to determine what specific impacts the proposed mining project will have on those critical resources.

20. **OW** Has EPA ever before issued a preemptive veto of the sort you have left in place with your decision not to withdraw the veto of the Pebble mine?

ANSWER – Of the 13 Final Determinations completed by the EPA, two involved circumstances where permit applications had not yet been submitted to the Corps, both of which were completed nearly thirty years ago. Although Section 404(c) actions are extremely rare, and rarer still in advance of the submittal of a permit application, the EPA's 2014 Proposed Determination is not unprecedented.

21. **OW** In the Agency's decision not to withdraw the preemptive Pebble veto, you cited the risk created by the project. In doing so, you are relying on the Bristol Bay Watershed Assessment, which many of the Agency's own peer reviewers said was insufficient to support a regulatory decision. Why are you relying on science that has been discredited?

ANSWER – The EPA published its proposal to withdraw its CWA Section 404 (c) Proposed Determination in July 2017 and took public comment, held two public hearings in the Bristol Bay region, and consulted with tribal governments and Alaska Native Claims Settlement Act (ANCSA) Corporations from the Bristol Bay region. The EPA received more than a million public comments on its withdrawal proposal. In making its decision not to withdraw the Proposed Determination at this time, the EPA considered its relevant statutory authority, applicable regulations, and the input it received as part of the tribal consultation, ANCSA consultation, and public comment periods regarding the agency's reasons for its proposing withdrawal as well as the recent developments (e.g., the submittal of Pebble's permit application to the Army Corps).

The Honorable Gregg Harper

1. **OAR** Does the Clean Air Act establish small refinery hardship relief?

Answer:

SEPW 5/11 QFR CLEARED RESPONSE: Section 211(o)(9)(B) of the CAA and 40 CFR 80.1441(e)(2) allow EPA to grant an extension of a small refinery's exemption from compliance with its renewable fuel volume obligations for a given year based on a small

refinery's demonstration of "disproportionate economic hardship" in that year. The statute also directs EPA to consult with the Department of Energy (DOE) in evaluating small refinery exemption petitions. EPA will grant a hardship exemption if we conclude, after review of available information and in consultation with DOE, that a refinery will experience disproportionate economic hardship that can be relieved in whole or in part by removing its RFS obligations for that year.

2. **OAR** Has the Congress affirmed this on several occasions by directing the DOE to study this issue and, more recently, reminding the EPA that it did not intend for small refineries to bear a disproportionate regulatory burden?
3. **OAR** Did the DOE's 2011 report for Congress predict that harm to small refineries would increase over time, not diminish?
4. **OAR** Do small refineries typically produce more diesel than gasoline?
5. **OAR** Blending gasoline with ethanol to current standards will separate more RINs than blending the same volume of diesel. EPA's RVO calculation, however, imposes the same proportional ethanol RIN obligation on all refiners even though some produce significantly less gasoline and more diesel than others. Even if they blend all their production, these diesel rich refiners cannot separate enough RINs to meet their total obligation while their gasoline rich competition will separate more than required. These refiners who produce more diesel are then forced to buy RINS.

Does the hardship process give EPA a tool to mitigate this structural discrimination against these small refineries?

6. **OAR** RFA has made the argument that hardship relief results in "demand destruction" for ethanol by resulting in less blending. Regardless of whether or not small refineries receive hardship relief, they are incentivized to blend ethanol for a number of economic reasons: 1) it is cheaper than gasoline, 2) they must meet their RVO, and 3) they can sell RINS not needed for compliance.
 - a. Was ethanol consumption up in the first quarter of 2018?
 - b. Was it, in fact, higher than projected in November of 2017 when RINS were 80-90 cents a gallon?
 - c. Did ethanol consumption increase throughout 2017 despite the EPA granting small refinery hardship relief?
7. **OLEM** Some of my constituents have raised an issue regarding oil spill response training. I am told that the funding for certain training courses for federal and local responders involved in inland oil spill prevention and cleanup has been eliminated and that the EPA Environmental Response Team is no longer able to consistently make these courses available.

- a. With an increase in oil production across the country, there remains a need for oil spill response training for local, state, and federal responders. Would you commit to looking into whether funding can and will be made available for this important training?

ANSWER - The agency will continue to provide oil spill inspector training to federal and state inspectors.

8. **OAR** I want to applaud the work EPA is doing to streamline or eliminate unnecessarily costly regulations. And while most of the attention is focused on major rules like the Clean Power Plan or Waters of the United States, I am particularly pleased that under your leadership EPA is taking a second look at other regulations that may not be major but nonetheless have a serious impact on small businesses. In particular, I hear that EPA is reviewing the Obama era rule targeting wood heater manufacturers such as Hardy Manufacturing back in my district. But time is of the essence, as the regulatory deadlines are coming soon. Can you assure us that you will do all you can to provide timely regulatory relief for wood heater manufacturers?

The Honorable Tim Walberg

1. **OAR** This is a very technical issue but an extremely important one to manufacturers in Michigan. In 2011, EPA approved the use of Isobutane as a refrigerant and limited the amount of refrigerant that could be used in a refrigerator to 57 grams. This amount was based on a well-recognized safety standard limit at the time. However, the safety standard has since been updated to increase the allowable amount of refrigerant to 150 grams. These refrigerants are more environmentally friendly and supported by both industry and environmental advocates yet manufacturers are still in limbo as they await EPA's rulemaking.
 - a. Can you commit to working on this issue to recognize the updated safety standard so manufacturers can begin retooling and redesigning refrigeration products? Delay will only add cost to American workers and our manufacturing shop floors.
 - b. I know you have a lot of issues to deal with at the EPA, but I urge you to publish the technical correction without delay. It's my understanding refrigerator manufacturers have been working with your staff at the EPA for over a year now on this and would welcome the update.
2. **OAR** ENERGY STAR is an important program and one that consumers in my district value. Over the past year, manufacturers in my state have stressed the need for the program to be reformed. In the FY18 Omnibus Appropriations package, EPA and DOE were directed to revisit the Obama era Memorandum of Understanding (MOU) that changed the way the program was managed and report back to Congress within 90 days.

- a. The 2009 MOU for example moved home appliances out of DOE and over to EPA, where the products had never been managed before. DOE has the expertise in these products because they regulate them through the appliance standards program required by EPCA. It doesn't make sense to me to have duplicative programs built up within two agencies. From a good governance perspective and in the era of streamlining programs under the EPA's purview, I would like to hear from you on this specific topic.
- b. Would you support moving the ENERGY STAR program for home appliances back to DOE while still maintaining a majority of the management within EPA? It's my understanding a broad set of industries are eager to work with your agency on these issues and I look forward to working with you to revisit the MOU.

The Honorable Earl L. "Buddy" Carter

EPA Marine Engine Waivers

In a recent Energy & Commerce Committee hearing, you mentioned that you would now be personally involved in the marine engine waiver issue for pilot boats, after giving the commitment to look into in your December testimony from the committee. This is a pressing issue that could have a wide-ranging impact on our port operations and growth.

1. **OAR** Mr. Administrator, can you please provide a breakdown of the actions the EPA has taken to address the Tier 4 concerns?
2. **OAR** Please provide a timeline of what the EPA has done and any upcoming actions that will be taken by the EPA to address this concern.
3. **OAR** After you send technical experts to California, what will need to be done?
4. **OAR** Does the EPA have the authority to move forward with a waiver system? If not, what are your legal restrictions?

Tier 4 Restrictions for Generators

1. **OAR** Administrator Pruitt, I have a similar concern for the Tier 4 restrictions placed on large, 1-megawatt generators. It's my understanding that the Tier 4 restrictions are preventing Tier-4 generators from being sold in the market due to that and the portability restrictions. It's forecasted that there won't be a viable solution in the market until the early 2020s. Is this something you are working on?
2. **OAR** What would need to be done by the EPA to remedy this situation and allow for the sale of currently developed generators?
3. **OAR** Is the EPA currently reviewing this concern or working on any changes that would remedy it?

Biomass

I commend you for your policy statement clarifying biomass carbon neutrality on Monday, April 23 in my home state of Georgia. As you know, the Consolidated Appropriations Act of 2018 included language in Section 431 Policies Relating to Biomass Energy directing the Secretaries of Energy and Agriculture and the Administrator of the Environmental Protection Agency to establish clear and simple policies that reflect the carbon-neutrality of forest bioenergy and recognize biomass as a renewable energy source provided the use of forest biomass does not cause the conversion of forests to non-forest use.

1. **OAR** What is the EPA's progress in implementing a regulation on carbon neutrality of biomass? What are the next steps?

The Honorable Jeff Duncan

Some of my corporate constituents are subject to complex and, at times, inconsistent regulation by the Environmental Protection Agency. Inconsistent actions or interpretations by EPA are particularly burdensome to my constituents when the Agency's Policy and Enforcement Offices take positions that are at odds with each other. To that end, please explain whether, and to what extent, EPA's Office of Enforcement and Compliance Assurance ("OECA") consults with EPA's Office of Transportation and Air Quality ("OTAQ") prior to initiating any enforcement action involving a certification issued by OTAQ (for example, an enforcement action alleging uncertified engine parameters).

1. **OECA/OAR** In addition, what steps can be taken by EPA to improve and streamline consultation between OTAQ and OECA to avoid unnecessary hardship on the regulated community?

ANSWER: EPA's Office of Enforcement and Compliance Assurance (OECA) consults with the Office of Transportation and Air Quality (OTAQ) on all significant enforcement actions. OECA staff and middle management have weekly meetings with their OTAQ counterparts on enforcement matters. This partnership ensures efficient use of government resources and consistent compliance expectations for the regulated community.

EPA believes the current process for coordination between OECA and OTAQ is appropriate.

During the last Administration, many Energy Star program operations were shifted from the Department of Energy, where they had been since 1996, to EPA. I understand from home appliance manufacturers that they would like Energy Star efforts related to home appliances transferred back to the DOE. One of these is Electrolux, a home appliance manufacturer that has a large presence in my district in Anderson, SC. This is an important issue for South Carolina as we have recently seen a great deal of investment in the home appliance industry. In Newberry, SC Samsung recently

opened its first U.S. based home appliance manufacturing facility and is on track to create over 1,000 jobs by 2020.

1. **OAR** With the Appliance Standard program at DOE and Energy Star at EPA, companies currently have two federal agencies attempting to coordinate changes in product specifications and test procedures on the same products. This creates unnecessary cost, confusion and uncertainty for manufacturers and does not appear to bring any benefit to consumers. **Administrator Pruitt**-are there any efforts to make such a change?
2. **OAR** Wouldn't this change fit in with your desire to get EPA back to its core functions?

The Honorable Frank Pallone, Jr.

During your appearance on April 26th, you stated that purchasing real estate through a Limited Liability Corporation, or LLC, is "normally how you buy real estate in Oklahoma." Your ownership stake in that LLC was not included in your financial disclosures at the time.

1. **IO/OGC** How often have you purchased real estate through an LLC?
2. **IO/OGC** Do you currently own property through an LLC or have a stake in an LLC that owns property?
3. **IO/OGC** Please list all property you have purchased and/or owned a stake in through an LLC.
4. **IO/OGC** Please explain why your ownership stake in Capital House, LLC was not listed in your financial disclosures at the time.

Also at the April 26th hearing, you disavowed knowledge of whether you had paid taxes on the income from your ownership stake in Capital House LLC. You said "you provide information to your accountant, they determine what you pay."

5. **IO/OGC** Did you sign your tax filings for the years in question? Do you take responsibility for the accuracy of the information contained therein?

Extensive questions have been raised about your tax liability for the expenses of your security detail when they accompanied you on personal travel, including to Disney World and the Rose Bowl.

6. **IO/OGC** Did you pay taxes on that benefit?

It has been revealed that the EPA reimbursed your former landlord, Vicki Hart, for the repair of a door at your residence.

7. **IO/OGC** Did you reimburse the EPA for that expense?

8. **IO/OGC** If not, did you pay taxes on that income?

During the Administrator's April appearance before the Subcommittee, Chairman Walden underscored the importance of staffing and internal management issues at EPA, stating "it is essential that EPA have the staff with proper expertise, implementing and enforcing programs that correlate with their experience."

9. **OCFO** Please provide the Committee a copy of the EPA's reorganization plan submitted to OMB pursuant to Executive Order 13781, including any interim and final drafts submitted to OMB.

10. **OCFO** Please provide the Committee a copy of the EPA reform plan.

11. **OCFO** Explain the similarities and differences between the reform plan and the reorganization plan.

12. **OARM** Please provide the Committee a copy of the EPA's operating plan for new hires and indicate how many new employees EPA plans to hire in each program office.

13. **OARM** Please provide the Committee with the names of political and career members of the hiring review panel.

a. On what criteria were the panel members chosen?

b. What procedures do the offices need to do to make a hiring request of the panel?

14. **OARM** When filling a position from within the agency, how is it determined a staff member possesses the technological skills appropriate for the office of which they are being transferred?

15. **OARM/OCFO** Please provide the following information:

a. FTE on EPA payroll in regional offices and in HQ.

b. The number of employees that have left the EPA through attrition during 2017 and 2018, and the numbers from each office.

c. Please provide a list of employees that have been moved to a new position within the agency, including their previous office, title, position description, and their new office, title, and position description.

d. The predetermined employee headcounts for each office.

The Honorable Bobby L. Rush

During the question period I spoke to you about the widespread levels of lead that have been detected throughout homes in Chicago and I referenced a recent Tribune article entitled “Brain-damaging lead found in tap water in hundreds of homes tested across Chicago, results show” (April 12, 2018).

You agreed with me that this was a severe problem, nationally, and it would cost approximately \$45 billion to resolve. You mentioned that there was a program at the agency consisting of \$4 billion in grants, annually, for ten years that states could apply for to address this issue.

1. **OW** Can you provide more information regarding this program, including eligibility requirements, deadlines, and the dollar amounts available?

ANSWER - The program is the Water Infrastructure Finance and Innovation Act. The WIFIA program is authorized to provide and service direct federal loans and loan guarantees to cover 49 percent of eligible costs for drinking water and wastewater infrastructure projects. Eligible assistance recipients include corporations and partnerships, municipal entities, and State Revolving Fund (SRF) programs. The WIFIA program received \$63 million in funding in the Consolidated Appropriations Act, 2018, that could provide as much as \$5.5 billion in loans, leveraging over \$11 billion in water infrastructure projects.

On May 5, 2018, EPA announced that the deadline for prospective borrowers to submit letters of interest for WIFIA loans has been extended to July 31, 2018. Administrator Pruitt also sent a letter highlighting the deadline extension to the governors of 56 states and territories as well as tribal leadership. This year’s WIFIA Notice of Funding Availability highlights the importance of protecting public health, including reducing exposure to lead and other contaminants in drinking water systems and updating the nation’s aging infrastructure.

For more information about the WIFIA program and the application process please visit www.epa.gov/wifia

2. **OW/OP/R5** Will you commit to work with my office to have staff from EPA Region 5 come into my district to discuss this program with state and local leaders, as well as other stakeholders concerned with this issue?

ANSWER - EPA’s WIFIA team is available to meet with your staff and leaders and constituents in your district to discuss the program and to answer any questions.

The Honorable Diana DeGette

1. **AO/OGC** I questioned you about your legally dubious real estate transactions, but further information is needed in light of your incomplete answers and troubling new developments.²

² House Committee on Energy and Commerce, *Hearing on the Fiscal Year 2019 Environmental Protection Agency Budget*, 115th Cong. (Apr. 26, 2017).

In your testimony before the Subcommittee, you failed to disclose significant details concerning your 2003 purchase of a luxury home in Oklahoma City. According to a recent report in the *New York Times*, you purchased the home with Justin Whitefield, a registered lobbyist who, at the time, was pursuing business-friendly changes to Oklahoma's workers' compensation rules, which you allegedly helped negotiate.³ Mr. Whitefield, yourself, and four other owners reportedly used a limited liability company, Capitol House L.L.C. (Capitol House), to purchase the home.⁴ The seller, Marsha Lindsey, was a telecommunications lobbyist for SBC Oklahoma, and sold the property at a significant discount of approximately \$100,000.⁵ SBC Oklahoma reportedly offset this amount in Ms. Lindsey's retirement package.⁶

Your incomplete testimony leaves key questions unanswered concerning this transaction. You allegedly paid for one-sixth of the purchase price, and according to reports, you purchased the home with Kenneth Wagner, who now serves as a political appointee at EPA and previously served as treasurer of your political action committee,⁷ as well as health care executive Jon Jiles.⁸ However, the identity of two additional owners remains unknown.

You also apparently failed to disclose your interest in Capitol House in your financial disclosure filings, and in your testimony could not confirm whether you paid taxes on rental income received for a room on the property rented to another Republican lawmaker.⁹

Given your history of real estate transactions with lobbyists both in Oklahoma during your tenure as a state legislator and in Washington, D.C. while serving as EPA Administrator, and in light of these troubling developments, I ask that you respond to the following requests:

- a. Please provide the names and corresponding ownership share of all owners of Capitol House.

³ *Pruitt's Coziness with Lobbyists Includes Secretly Buying a House with One*, New York Times (May 3, 2018).

⁴ *Pruitt's Coziness with Lobbyists Includes Secretly Buying a House with One*, New York Times (May 3, 2018).

⁵ *Pruitt's Coziness with Lobbyists Includes Secretly Buying a House with One*, New York Times (May 3, 2018).

⁶ *Pruitt's Coziness with Lobbyists Includes Secretly Buying a House with One*, New York Times (May 3, 2018).

⁷ *Pruitt's Friend Joins Agency as Senior Adviser*, E&E News (Apr. 13, 2017).

⁸ *Pruitt's Coziness with Lobbyists Includes Secretly Buying a House with One*, New York Times (May 3, 2018).

⁹ *Scott Pruitt Before the EPA: Fancy Homes, a Shell Company and Friends with Money*, New York Times (Apr. 21, 2018).

- b. Please provide documentation of your payment for and purchase of an ownership share in Capitol House, including the terms of the payment and the individual or entity who received the payment.
- c. Please provide copies of your financial disclosures disclosing your ownership interest in Capitol House.
- d. Please provide the name of the individual(s) who arranged for cash purchase of the Oklahoma City property and subsequent transfer of ownership to Capitol House.
- e. Please provide the name of the individual(s) who requested or arranged for Spirit Bank, where former EPA appointee Albert Kelly was chief executive, to approve a mortgage in the name of Capitol House.
- f. Please provide documentation demonstrating you paid taxes on all rental income received from Jim Dunlap or any other tenant who rented space on the property, including, but not limited to, Schedule K-1 tax forms.
- g. Please provide documentation of any proceeds you received for the 2005 sale of the property, including the amount and date received.

The Honorable Janice D. Schakowsky

- 1. **OPA/AO Speeches:** Please provide the date, location, name of event, and text for all speeches you have given to industry associations (e.g. Louisiana Chemical Association) in your capacity as EPA Administrator.
- 2. **OPA/AO Official vehicle:** During the hearing, you stated that EPA staff “just asked for consultation” on the selection of your official vehicle. During this consultation, did you or people responding on your behalf express a preference for a larger vehicle, leather interior, bucket seats, Wifi, GPS navigation, or any other luxury features that were ultimately included in the vehicle selected?
- 3. **OP/OPA/AO Samantha Dravis:**
 - a. At any time during Samantha Dravis’s employment at EPA, was she employed or compensated using authority under the Safe Drinking Water Act?
 - b. How much was Samantha Dravis compensated during the three months from November 2017 to January 2018?
 - c. According to the EPA’s own spokesperson, Ms. Dravis was a “senior leader at the EPA.” Do you have record of meetings attended in person or substantial projects completed by Samantha Dravis during the three months from November 2017 to January 2018? If so, please summarize. Please provide all records of meetings attended in person or substantial projects completed, as well as any emails between

Administrator Pruitt and Ms. Dravis concerning her attendance or departure from the EPA.

- d. Was Samantha Dravis approved for first class travel to or from Morocco in December 2017? If so, who at EPA approved first class travel and on what date?

The Honorable Paul Tonko

1. **OP/ORD** Strengthening Transparency in Regulatory Science Proposed Rule

- a. Please cite specific provisions in statute that require EPA to make the changes proposed in the Strengthening Transparency in Regulatory Science rule?

ANSWER – EPA’s authority for this rulemaking can be found in Section I.C. of the proposed rule, including its ability to promulgate rules under the Administrative Procedure Act.

- b. Do any of the statutory authorities identified by the proposed rule include the ability to grant exemptions to the treatment of science at the Administrator’s discretion to address issues on a case-by-case basis?

ANSWER – In developing the proposed rule, EPA drew from various authorities that generally speak to the need for transparency in scientific rulemaking. EPA specifically cited these sources in the proposed rulemaking to allow the public to review and better understand the basis for the proposed rule.

- c. What science organizations or stakeholder groups were involved in the development of this proposed rule? Please provide a list of all meetings, including teleconferences, with these organizations, including the date, and the name, title, and organizational affiliation of participants.

ANSWER – EPA has received numerous comments from various groups on the development of the rule. The proposed rule is open for public comment until August 16, 2018. Comments are available for viewing at [regulations.gov](https://www.regulations.gov). EPA will also hold a public hearing seeking feedback on the proposed rule on July 17, 2018.

- d. Previously, EPA analyzed legislation (The HONEST Act) that would have similar goals and estimated it would cost \$250 million annually to implement. Did EPA develop any cost estimates to implement the proposed rule?

ANSWER – As stated in the proposed rule, EPA believes the benefits of this proposed rule justify the costs. The benefits of EPA ensuring that dose response data and models underlying pivotal regulatory science are publicly available in a manner sufficient for independent validation are that it will improve the data

and scientific quality of the Agency's actions and facilitate expanded data sharing and exploration of key data sets; this is consistent with the conclusions of the National Academies. This action should be implemented in a cost-effective way and is consistent with recent activities of the scientific community and other federal agencies, which will help to lower costs of implementation.

- e. If so, please provide any cost analysis completed regarding the proposed rule.

ANSWER – See response to (d) above.

- f. Why did EPA conclude this is not an economically significant rulemaking? Please explain EPA's analysis associated with this conclusion.

ANSWER – The proposed rule focuses on strengthening transparency of EPA's regulatory science. The rule will not have an "economically significant" impact on the economy as defined by E.O. 12866 and guidance from OMB.

- g. Please provide a list of all key meetings and determinations made for this rulemaking during the Action Development Process, including the rulemakings tier, meeting dates and participants in any intra-agency work group meetings, and a list of EPA offices which participated in the development of the rulemaking. For each office, please provide the name, title, and office of each work group participant.

ANSWER – The proposed rule is being overseen by EPA's Office of Research and Development. The proposed rule continues to develop, including with the comment period open until August 16, 2018, and a public hearing scheduled July 17, 2018.

- h. Did EPA examine lost benefits or costs associated with EPA's inability to consider certain scientific studies as a result of this proposal?

ANSWER – As stated above and in the proposed rule, EPA believes the benefits of this proposed rule justify the costs. The benefits of EPA ensuring that dose response data and models underlying pivotal regulatory science are publicly available in a manner sufficient for independent validation are that it will improve the data and scientific quality of the Agency's actions and facilitate expanded data sharing and exploration of key data sets; this is consistent with the conclusions of the National Academies. This action should be implemented in a cost-effective way and is consistent with recent activities of the scientific community and other federal agencies, which will help to lower costs of implementation. One recent analysis found that: "Improvements in reproducibility can be thought of as increasing the net benefits of regulation because they would avoid situations in which costs or benefits are wrongly estimated to occur or in which regulatory costs are imposed without corresponding benefits...." They concluded that "an increase in existing net benefits from greater reproducibility, which, if it occurred, would cover the costs of obtaining the data and making the data available."

- i. If so, what analysis was done on costs or lost benefits, and what were the results?

ANSWER – See response to (h) above.

- j. Many older studies may rely on data that are no longer available. Does EPA have any estimates or analysis of how many studies would be disqualified to be used for major rulemakings under this proposal?

ANSWER – Since the rule is still in development, EPA cannot comment on the substance or effect of the rule until it is final. EPA is currently accepting public comment on the impact of the rule.

- k. How long did the Office of Information and Regulatory Affairs (OIRA) take to complete its review of the proposed rule? Please provide the date OIRA accepted and began review, and the date OIRA completed review.

ANSWER – OMB received the proposed rule on April 19, 2018, and concluded its review on April 23, 2018.

- l. Did EPA or other executive officials have any communication with the Office of Information and Regulatory Affairs to accelerate this review? If so, please provide the name and title of these individuals.

ANSWER – OMB reviewed a draft of the proposed rule and indicated to EPA that it had completed its review of the draft on April 23, 2018. It was OMB's discretion to decide when its review was complete.

- m. Was the Office of Information and Regulatory informed by any EPA official that Administrator Pruitt would be testifying before Congress one week after submitting this proposed rule?

ANSWER – OMB conducted its review of the proposed rule on its own timeline, and determined when its review was complete.

- n. Office of Information and Regulatory Affairs reviews of similarly complex rules often take months to complete. What specific factors allowed this review to be completed so quickly?

ANSWER – See response to (m) above.

- o. The proposed rule solicits comments in numerous areas, indicating it hopes to develop answers during the regulatory process. Proposals with so many outstanding questions are often released as Advanced Notice of Proposed Rule Makings. Why did EPA propose this as a Notice of Proposed Rulemaking with so many outstanding questions included?

ANSWER – EPA solicited comments from the public on various areas to better inform the development of the rule. Extending the comment period by roughly two and a half months and also holding a public hearing will provide an opportunity to receive additional useful information for the agency to consider.

- p. Did the Office of Information and Regulatory Affairs ask EPA to issue an Advanced Notice of Proposed Rulemaking instead? If so, when was this request made and who at OIRA made this request?

ANSWER – No request was made to issue an Advanced Notice of Proposed Rulemaking.

2. **OP/ORD Science Advisory Boards (SAB)**

- a. How many current members of EPA Science Advisory Boards are expected to cycle off before the end of this year?

ANSWER – For the Science Advisory Board (SAB): Seven members are completing their second and final 3-year term, and eight members are completing their first 3-year term. For the Clean Air Scientific Advisory Committee (CASAC): One member is completing their second and final 3-year term, and three members are completing their first 3-year term.

- b. Since joining the agency, has Administrator Pruitt requested EPA career staff in the SAB Staff Office to provide recommendations for board appointments?

ANSWER – The career staff in the SAB Staff Office provided senior management with information and various options for the Administrator to consider for both SAB and CASAC appointments

- c. If so, how many of those recommendations have been accepted of the total amount of new appointees.

ANSWER – The senior management of the Agency considered the information and options.

- d. How many EPA Science Advisory Board members have been appointed without input by the SAB Staff Office?

ANSWER – The SAB Staff Office provided information on all nominated candidates for the Administrator to consider when making appointments.

- e. How many issues went before EPA Science Advisory Boards or the Clean Air Scientific Advisory Committee (CASAC) for review in each year for the past five years?

ANSWER – Number of advisory reports per year from the SAB and CASAC:

Year	SAB	CASAC
2013	7	6
2014	7	7
2015	14	2
2016	6	3
2017	8	4

- f. Does the Administrator plan to seek SAB or CASAC review of the recently proposed Strengthening Transparency in Regulatory Science rule?

ANSWER – REFERED TO OP

- g. Does the Administrator plan to seek SAB or CASAC review on any climate change issues?

ANSWER – REFERED TO OP

- h. Does the Administrator plan to seek SAB or CASAC review on any aspect of the long-term economic costs and benefits of any changes that have been made or are being proposed under his tenure at EPA?

ANSWER – REFERED TO OP

3. OCSPP/AO The Frank R. Lautenberg Chemical Safety for the 21st Century Act Implementation

- a. What steps has EPA taken to ensure new and existing chemical reviews include explicit considerations to protect vulnerable populations, as required by statute?

ANSWER – As required under TSCA, EPA continues to identify and give explicit consideration to “potentially exposed and susceptible subpopulations” for both new and existing chemical reviews. Although the explicit requirement in TSCA is new, the Agency has long given consideration to vulnerable subpopulations. See, for example, EPA's Policy on Evaluating Health Risks to Children (1995). The Agency has evaluated the risk of chemical substances to all sectors of the population, with particular attention to workers, indigenous peoples, pregnant women, children, infants, the elderly, environmental justice communities, and fence-line communities, among others. The Agency utilizes a number of existing guidance documents to evaluate risk at various life stages, and will continue to use and refine these processes to protect the most vulnerable.

EPA confirmed its commitment to meet this statutory requirement in the final Risk Evaluation framework rule, and in the scoping and problem formulation documents for the first ten chemical risk evaluations. The problem formulation

[PAGE * MERGEFORMAT]

documents refine the conditions of use and exposures presented in the scope of the risk evaluation and presents refinements to the conceptual models and analysis plan that describe how EPA expects to evaluate risks. EPA welcomes information from communities to further inform our risk evaluations.

EPA has sought input from specific populations and public health experts in implementing TSCA and will continue to do so. For example, EPA has had discussions on several occasions with the National Tribal Toxics Council (NTTC) to receive input on tribal lifeways and exposures. OPPT and the NTTC continue to collaborate on ways to consider tribes in conducting potentially exposed or susceptible subpopulations analyses for Draft Risk Evaluations. OPPT has also had several meetings with AFL-CIO about workers as potentially exposed or susceptible subpopulations and ways in which worker exposure information could be identified and provided for use in the risk evaluation process. OPPT has also sought advice and input regarding children as a susceptible subpopulation from the Children's Health Protection Advisory Committee (CHPAC) through a meeting and recommendations addressing the formal request from EPA for guidance on how risk evaluation should address children.

- b. In November, Administrator Pruitt and EPA staff attended an American Chemistry Council board meeting on South Carolina's Kiawah Island. The Administrator's schedule contains no details of that weekend. Please provide a list of all companies or lobbyists that met with the Administrator in South Carolina.

ANSWER – OA providing answers to parts b. and c.

- c. Please provide a list of all chemicals specifically discussed at meetings attended by the Administrator at this event.

ANSWER – OA providing answers to parts b. and c.

4. **ORD** Formaldehyde Assessment

- a. Earlier this year, Administrator Pruitt was asked by Senator Ed Markey at the Senate Committee on Environment and Public Works hearing on 1/30/18 about the delayed formaldehyde assessment. At that hearing, Administrator Pruitt said, "Senator, I commit to you that I will look into that and make sure your office is aware of what we have and when we can release it." Please provide an update on the status of the formaldehyde assessment.

ANSWER – We continue to discuss this assessment with our Agency partners and have no further updates to provide at this time.

- b. Has EPA concluded its intra-agency review process?

ANSWER – We continue to discuss this assessment with our Agency partners and have no further updates to provide at this time.

- c. What additional reviews are needed before it can be finalized?

ANSWER – We continue to discuss this assessment with our Agency partners and have no further updates to provide at this time.

- d. When does EPA expect the final report to be released?

ANSWER – We continue to discuss this assessment with our Agency partners and have no further updates to provide at this time.

5. **OP** EPA Year in Review 2017-2018 Report

- a. The “EPA Year in Review 2017-2018” report states, “In year one, EPA finalized 22 deregulatory actions, saving Americans more than \$1 billion in regulatory costs.” Please provide a list of each of these actions along with EPA’s analysis of the regulatory cost estimate for each action.

ANSWER – See attached spreadsheet.

6. **OW** Lead and Copper Rule

- a. EPA undertook efforts to revise the Lead and Copper Rule more than 13 years ago. In October 2016, the EPA published a white paper on the revisions that included a pledge to issue a proposed rule by the end of 2017. That deadline has passed. When does EPA expect to issue a proposed rule?

ANSWER - EPA expects to publish proposed revisions to the Lead and Copper Rule by February 2019.

- b. Has EPA conducted any analysis on how the proposed “Strengthening Transparency in Regulatory Science” rule may impact its ability to regulate lead in drinking water?

ANSWER - EPA has not conducted an analysis of how this proposed regulation would impact regulations of lead in drinking water. However, consistent with Section 1412b(3)(A), EPA is committed to using the best available peer reviewed science and data collected in accordance with accepted practices to inform decision making under the Safe Drinking Water Act.

7. **OW** PFAS

- a. EPA announced a National Leadership Summit on Per- and Polyfluoroalkyl Substances (PFAS). What options has EPA discussed internally to regulate or reduce PFAS contamination in drinking water?

ANSWER - Administrator Pruitt committed to initiate steps to evaluate the need for a maximum contaminant level for PFOA and PFOS at the National Leadership Summit on Per- and Polyfluoroalkyl Substances (PFAS).

- b. What options have been discussed by staff of EPA and the Department of Defense?

ANSWER - EPA staff regularly interacts with Department of Defense (DOD) officials as part of our coordination of clean-up of contaminated drinking water at Federal Facilities. EPA has briefed DOD staff on the regulatory processes under the Safe Drinking Water Act including the Contaminant Candidate List, the Regulatory Determinations process and the process for developing National Primary Drinking Water Regulations. DOD staff have offered their opinions on various options, including that EPA should promulgate Maximum Contaminant Levels for PFOA and PFOS.

- c. Has EPA conducted any analysis on how the proposed “Strengthening Transparency in Regulatory Science” rule may impact its ability to regulate PFAS in drinking water?

ANSWER - EPA has not conducted an analysis of how this proposed regulation would impact regulations of PFAS in drinking water. However, consistent with Section 1412.b.(3)(A), EPA is committed to using the best available peer reviewed science and data collected in accordance with accepted practices to inform decision making under the Safe Drinking Water Act.

8. OCFO Funding for the Office of Inspector General

- a. The Fiscal Year 2019 budget request includes a significant proposed cut to the EPA Office of Inspector General (OIG). In November 2017, in OIG’s Semiannual Report to Congress, it was reported that “OIG submitted an FY 2019 request for \$62 million to the agency for inclusion in the President’s budget. Without seeking input from the OIG, the agency provided us with a request of \$42 million.” In February, the White House requested only \$37.5 million for the OIG. What was the justification for reducing appropriations and FTEs in the FY 2019 budget request for EPA OIG?
- b. Did the EPA defend its \$42 million request to the Office of Management and Budget?

9. AO/OEX Freedom of Information Act

- a. It has been reported that political appointees’ role in reviewing documents requested under the Freedom of Information Act has increased significantly during Administrator Pruitt’s tenure. Please describe the process for “awareness reviews” or “senior management reviews” conducted by political appointees before EPA releases documents involving Administrator Pruitt, including the names and titles of all EPA political appointees who participate.

- b. Please explain EPA Chief of Staff Ryan Jackson's role in conducting awareness reviews. How many FOIA awareness reviews has Mr. Jackson completed, and in how many instances did Mr. Jackson instruct that information be withheld, redacted, or altered prior to public release?
- c. Have any other political appointees ever sought to alter, redact, or withhold portions of a FOIA disclosure following an awareness review?
- d. Please provide the start date, end date, and length of review for all awareness reviews conducted during Administrator Pruitt's tenure at EPA.
- e. Have any of these reviews resulted in a missed FOIA deadline to release documents? If so, please provide details for each instance.
- f. Please explain the rationale for moving the National FOIA office into the Office of General Counsel.
- g. Please explain the role of EPA political appointees Matthew Leopold, Eric Baptist, Marcella Burke, David Fatouhi, and Justin Schwab in the FOIA review process, including any instance where any of these individuals withheld, delayed, redacted, or altered prior to public release?

10. **AO** International Travel

- a. According to EPA emails released under a Freedom of Information Act request, on July 10, 2017, Mr. Matthew Freedman was involved in the planning of the Administrator's potential trip to Australia. Mr. Freedman wrote to EPA staff, "[Richard Smotkin] and I will attend and will be present but will not be listed as members of the delegation." It has been reported that Mr. Richard Smotkin was also involved in the planning of the Administrator's December trip to Morocco. Did Mr. Smotkin meet with Administrator Pruitt or any EPA staff, in official meetings or otherwise, during the Administrator's trip to Morocco?
- b. If so, please provide a full list of meetings between Mr. Smotkin and any EPA officials in Morocco, including any meetings with EPA officials and Moroccan government officials, during official business or otherwise.
- c. Please provide a list of all attendees for any meeting identified in (b).
- d. Recent press accounts indicated Administrator Pruitt and EPA staff missed their connecting flight to Morocco because his security detail's equipment and other gear could not be transferred to the connecting flight in time. This differs from earlier explanations from EPA that the connecting flight was missed due to weather. Please explain why Administrator Pruitt and EPA staff missed their connecting flight.

11. **IO/OECA/OCFO (m&n)** Security

- a. In March, Administrator Pruitt told CBS News, "The quantity and the type of threats I've faced are unprecedented." These threats have been used to justify costly security measures, including first-class travel and full-time protection by a 20-member security detail. How does EPA catalogue threats against officials, including the Administrator?

ANSWER - EPA collects information on potential threats against employees, including the Administrator, in several ways. The EPA Office of Homeland Security (OHS) provides information on any potential national security threats – domestic or international – and shares this information with the Office of Criminal Enforcement, Forensics and Training's (OCEFT) Protective Service Detail (PSD). Likewise, the EPA office of Inspector General (OIG) tracks instances of threats against EPA employees. The PSD uses information from OHS and the OIG, as well as open-source information and potential security threats from our federal/state/local law enforcement partners. OIG is responsible for receiving and investigates threats directed toward Administrator Pruitt.

- b. What office is primarily responsible for identifying these threats?

ANSWER - OCEFT collects threat information from multiple sources as described above.

- c. What office is primarily responsible for investigating these threats and determining their legitimacy?

ANSWER - The OIG's Office of Investigations has authority to investigate threats against EPA employees. As you know, the OIG is an independent organization. We recommend that you direct any questions about their roles and responsibilities to the OIG directly.

- d. Please describe the role in EPA security assessment, investigation, and response of each of the following offices: the Protective Security Detail, the Office of Homeland Security Intelligence Team, the Office of Inspector General, and any other EPA entity that has responsibilities related to the Administrator's security?

ANSWER - EPA OHS provides information on any potential national security threats – domestic or international – and shares this information with OCEFT/PSD. The OIG tracks instances of threats against EPA employees, reviews and investigates. The PSD uses information from OHS and the OIG, as well as open-source information and potential security threats from our federal/state/local law enforcement partners to assesses the current security climate. OCEFT develops the operational security plan to provide protection for the Administrator.

- e. If threats are deemed to be serious, are they referred to the FBI or another law enforcement agency outside of EPA?

ANSWER - EPA's OIG investigates threats made against EPA employees. As you know, the OIG is an independent organization. We recommend that you direct any questions about their roles and responsibilities to the OIG directly.

- f. Which EPA office determines whether or not to refer threats?

ANSWER - EPA's OIG makes these determinations. As you know, the OIG is an independent organization. We recommend that you direct any questions about their roles and responsibilities to the OIG directly.

- g. On how many occasions did such a referral occur in 2017 and 2018?

ANSWER – We recommend that you direct this question to the OIG directly.

- h. What spending decisions related to security require sign-off by the head of the Administrator's security detail?

ANSWER - The Special Agent in Charge of the PSD manages the resources associated with the PSD's operational mission of protecting the Administrator. The SAC/PSD would be responsible for approving travel authorizations for PSD agents and routine expenses associated with managing the PSD including purchases of equipment, training and other associated expenses in accordance with Agency and OCEFT Delegations.

- i. When did Mr. Nino Perrotta take over the role referenced in (h)?

ANSWER - Mr. Perrotta became the Acting SAC/PSD in March 2017.

- j. Before Mr. Perrotta took over this role, who was responsible for those duties?

ANSWER - Eric Weese was the SAC/PSD prior to SAC Perrotta.

- k. Why and when was the previous head of the Administrator's security detail removed from that position?

ANSWER - SAC Weese was reassigned to a new position as the Senior Law Enforcement Intelligence Advisor within the Criminal Investigation Division in March 2017.

- l. If that employee continued to work at EPA, to where was he reassigned and what is his current employment status?

ANSWER - SAC Weese was reassigned to a new position as the Senior Law Enforcement Intelligence Advisor within the Criminal Investigation Division in March 2017 and continues in that role today.

- m. How many EPA security officials hit the \$160,000 annual salary cap due to overtime last year?

ANSWER – OCFO PULLING DATA

- n. How does that compare to each of the previous 5 years?

ANSWER – OCFO PULLING DATA

- o. On May 1, 2017, Mr. Perrotta sent a memorandum requesting Administrator Pruitt be seated in first or business class on official travel. On how many instances before this memorandum did the Administrator travel in first or business class on official travel?

ANSWER – NEED AO ANSWER

- p. On how many instances after this memorandum did the Administrator travel in first or business class on official travel?

ANSWER – NEED AO ANSWER

- q. How many times and on what dates did EPA security officials travel with the Administrator for nonofficial business, where the Administrator paid for his own travel expenses?

ANSWER – OCEFT CAN ANSWER BUT NEED INFO FROM AO ON WHICH TRIPS WERE PRIVATE (they are all official duty for us since we protect 24/7).

- r. What was the total cost for security officials' airfare, hotel, and per diem for each of these instances?

ANSWER – ONCE AO PROVIDES INFO OCEFT CAN PROVIDE TOTALS

- s. Which EPA employee(s) approved the EPA payment to Mrs. Vicki Hart to compensate for a broken door at her condo?

ANSWER – AO NEEDS TO ANSWER, OCEFT DID PAPERWORK BUT AO GAVE DIRECTION

- t. Was Administrator Pruitt involved with or notified about that payment?

ANSWER – NEED AO ANSWER

- u. It has been reported that EPA entered into a new vehicle lease for a Chevrolet Suburban at \$10,200 annually. This lease was reportedly for a more upscale LT model, instead of the LS model typically leased and included monthly charges of

\$300 for luxury upgrades. What were the terms and rate of the previous vehicle used by the Administrator, and what was the rationale for these upgrades?

ANSWER – NEED AO ANSWER

12. AO The Administrator's Housing Arrangement

- a. It has been reported that the Administrator's original lease with Mrs. Vicki Hart ended at the end of April 2017, but he did not move out of that condo until later in the year. What were the terms of extending the lease?
- b. On what date did Administrator Pruitt move out of the condo owned by Mrs. Hart?

The Honorable David Loebsack

Administrator Pruitt, as I indicated to you at the hearing, I have a lot of concerns about the way in which the small refinery exemptions within the Renewable Fuel Standard (RFS) program have been handled by the Environmental Protection Agency (EPA). There needs to be much more transparency and public accountability in the with respect to the small refinery waiver exemptions. Please provide responses to the following questions regarding small refinery exemptions within the RFS.

1. **QAR** What is the total number of refinery waiver applications that EPA received in each year from 2013 through 2017?
2. **QAR** For each year from 2013 through 2017, how many waivers did the EPA grant?
3. **QAR** What companies have received waivers for each year from 2013 through 2017?
4. **QAR** What is the total volume of biofuel obligation represented by the waivers granted for each year 2013 through 2017?
5. **QAR** What is the EPA process for confirming that each applicant falls beneath the 75,000-barrell throughput capacity?
6. **QAR** Please confirm how the gallons waived under the small refinery exemption process are handled. Are the gallons reassigned to remaining obligated parties for blending? Are they reassigned within the same compliance year? If they are not reassigned to the remaining obligated parties, what is the disposition of those gallons relative to the overall renewable volume obligation set in the annual rule?
7. **QAR** Did you inform President Trump or White House staff of the unusually large number of small refinery exemptions EPA was granting and of the potential effects on the renewable fuel market of exempting additional gallons and facilities and the fact that these actions would not be well received by the agricultural community?

8. **OAR** EPA claimed recently that the Agency did not change the criteria for granting exemptions from those used in past years. Yet, numerous press reports indicate the Agency has granted almost double the amount of waivers than have been granted in past years. What is your explanation for the Agency's granting of an unusually high number of waivers under this program as compared to past years? If the Agency is applying different criteria, please provide an explanation of the changes and the justification for initiating the new criteria.
9. **OAR** Did EPA consult with the Department of Energy on each of the applications for a small refinery exemption for 2016 and 2017? For how many of the applications reviewed by DOE for these two compliance years did EPA disagree with DOE's recommendation to grant or deny the exemption?

The Honorable Joseph Kennedy, III

1. **AO** What precipitated the need for a secure phone booth inside of your office? You repeatedly have placed blame at the feet of your staff for the exorbitant \$43,000 cost of the phone booth, but it was you yourself who instructed your staff to find a way to create a secure communications line in your office in the first place. Why do you need that secure line? What is the nature of the phone calls you are making that require an additional "secure" phone line while already in the privacy of your own office? If your office does not provide sufficient privacy, why is one of the two Secure Compartmented Information Facilities (SCIFs) inside the EPA headquarters not sufficient?

Attachment 2—Member Requests for the Record

During the hearing, Members asked you to provide additional information for the record, and you indicated that you would provide that information. For your convenience, descriptions of the requested information are provided below.

The Honorable Bill Johnson

1. **OAR** I know that the EPA has expressed interest in finding a resolution to some of the concerns regarding EPA's current brick MACT rule which was issued in 2015. Would you commit to working with me and this committee in providing further information on this work and any potential possibilities?

The Honorable Bill Flores

As the American people are well aware, the EPA under the Obama administration abused environmental regulatory process by ignoring congressional statutes any by circumventing the U.S. Constitution. Fortunately, the federal court system stepped in to protect American families from this abuse of the law. In this regard I have the following questions:

1. **OGC** Can you provide this committee with a list of those overreaching and overturned regulations that were overturned by the court systems?
2. **OP** Can you provide this committee with the economic cost of those overturned regulations?
3. **OP** Can you also inform the committee about EPA's actions, if any, to modify those regulations so those overreaching regulations to conform with the rule of law?

The Honorable Richard Hudson

1. **OCSPP** Was GenX used in a manner that was incompatible with the consent agreement under the Toxic Substances Control Act?

ANSWER - EPA is investigating the facility to determine whether terms of the 2009 Consent Order were complied with. EPA has not made any final determinations as to whether the use of GenX at the plant was incompatible with the TSCA consent order. EPA is continuing to assess the use of GenX at the plant under

The Honorable Doris O. Matsui

1. **OAR** You said the EPA has data supporting your decision to revise emission standards for light duty vehicles. Will you commit to providing that data to both side of the committee?

The Honorable John P. Sarbanes

1. **OAR** Did Carl Ichan's company apply for a waiver from ethanol blending requirements for any of its refining facilities?
2. **OAR** Did Carl Ichan's company receive a waiver for any of its refining facilities?

The Honorable Tony Cardenas

1. **OGC** In regard to your lease, can you provide the written statement from the attorneys after reviewing it?

The Honorable Debbie Dingell

1. **OAR** In regard to the January 25, 2018 guidance to reverse the longstanding once in, always in policy for major sources of hazardous air pollutants, did EPA determine the location of these sources?
2. **OAR** Yes or no, did EPA conduct an analysis of the health effects including the potential increased risk of cancer of this decision before releasing the January 25th guidance memo?
3. **OAR** Yes or no, did EPA conduct an analysis of the potential health effects of this policy on children, babies, or pregnant women before releasing the January 25th?
4. **OAR** Yes or no, did EPA conduct an analysis of the potential health effects of this policy on older Americans or those with chronic health problems before releasing the January 25th guidance?
5. **OAR** Yes or no, did EPA conduct an analysis of the potential health effects of this policy on minority and low-income communities before releasing the January 25th?

Message

From: Ringel, Aaron [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1654BDC951284A6D899A418A89FB0ABF-RINGEL, AAR]
Sent: 1/24/2018 3:56:03 PM
To: Moody, Christina [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=813eb7f985c845eaa91edc10c6e9a914-CMoody]
Subject: Re: Honest Act internal call

No that's fine.

Sent from my iPhone

> On Jan 24, 2018, at 10:48 AM, Moody, Christina <Moody.Christina@epa.gov> wrote:
>
> Scheduled is pushing for Clint, rather than Mandy to participate. Do you have a preference?

Message

From: Ringel, Aaron [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1654BDC951284A6D899A418A89FB0ABF-RINGEL, AAR]
Sent: 2/13/2018 2:11:31 PM
To: Gentry, Nathan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a8f7a2857a234d06b785cc36c73fdddd-Gentry, Nathan]
Subject: Re: House Science Committee/HONEST Act Reforms

Let's do noon.

Sent from my iPhone

On Feb 13, 2018, at 9:02 AM, Gentry, Nathan <Gentry.Nathan@epa.gov> wrote:

Richard has a call with Brittany Bolen and Nancy Beck at this time. Any other time should work.

Nathan Gentry
Scheduler for Jennifer Orme-Zavaleta, Richard Yamada, Chris Robbins and Bruce Rodan
Assistant Deputy Ethics Official
EPA Office of Research and Development
Phone: 202-564-9084
Fax: 202-565-2430

-----Original Appointment-----

From: Ringel, Aaron
Sent: Tuesday, February 13, 2018 8:52 AM
To: Weber, Luke; Gentry, Nathan
Subject: House Science Committee/HONEST Act Reforms
When: Tuesday, February 13, 2018 12:00 PM-12:30 PM (UTC-05:00) Eastern Time (US & Canada).
Where: 3442WJCN

Richard to call Aaron's office: Personal Matters / Ex. 6

Appointment

From: Ringel, Aaron [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1654BDC951284A6D899A418A89FB0ABF-RINGEL, AAR]
Sent: 1/23/2018 10:25:34 PM
To: Gomez, Laura [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=575BA24FC19D429C8302A05102353238-LGOMEZ]
Subject: Accepted: EPA PRE-INTERNAL CALL : HONEST ACT IMPLEMENTATION
Location: DIAL IN: **Personal Matters / Ex. 6**
Start: 1/26/2018 4:30:00 PM
End: 1/26/2018 6:00:00 PM

Recurrence: (none)

Message

From: Ringel, Aaron [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1654BDC951284A6D899A418A89FB0ABF-RINGEL, AAR]
Sent: 4/23/2018 9:47:35 PM
To: Joseph A. Brazauskas [Joseph.Brazauskas@mail.house.gov]
Subject: Fwd: For Review: Science Transparency News Release
Attachments: Document1.docx; ATT00001.htm

Think we could get a statement from the Chairman we could add?

Sent from my iPhone

Begin forwarded message:

From: "Bowman, Liz" <Bowman.Liz@epa.gov>
Date: April 23, 2018 at 5:37:19 PM EDT
To: "Woods, Clint" <woods.clint@epa.gov>, "Bolen, Brittany" <bolen.brittany@epa.gov>, "Yamada, Richard (Yujiro)" <yamada.richard@epa.gov>, "Baptist, Erik" <Baptist.Erik@epa.gov>, "Beck, Nancy" <Beck.Nancy@epa.gov>
Cc: "Gordon, Stephen" <gordon.stephen@epa.gov>, "Letendre, Daisy" <letendre.daisy@epa.gov>, "Konkus, John" <konkus.john@epa.gov>, "Beach, Christopher" <beach.christopher@epa.gov>, "Ringel, Aaron" <ringel.aaron@epa.gov>, "Palich, Christian" <palich.christian@epa.gov>, "Jackson, Ryan" <jackson.ryan@epa.gov>
Subject: For Review: Science Transparency News Release

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

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Appointment

From: Ringel, Aaron [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1654BDC951284A6D899A418A89FB0ABF-RINGEL, AAR]
Sent: 1/19/2018 6:56:14 PM
To: Rodrick, Christian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6515dbe46dae466da53c8a3aa3be8cc2-Rodrick, Ch]
Subject: Accepted: HONEST Act meeting
Location: Personal Matters / Ex. 6
Start: 1/23/2018 8:00:00 PM
End: 1/23/2018 8:30:00 PM
Show Time As: Busy

From: Ringel, Aaron [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1654BDC951284A6D899A418A89FB0ABF-RINGEL, AAR]
Sent: 8/17/2018 1:13:34 PM
To: Palich, Christian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=330ad62e158d43af93fcbbece930d21a-Palich, Chr]; Lyons, Troy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=15e4881c95044ab49c6c35a0f5eef67e-Lyons, Troy]; Rodrick, Christian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6515dbe46dae466da53c8a3aa3be8cc2-Rodrick, Ch]; Frye, Tony (Robert) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=58c08abdfc1b4129a10456b78e6fc2e1-Frye, Rober]; Shimmin, Kaitlyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=becb3f33f9a14acd8112d898cc7853c6-Shimmin, Ka]
Subject: RE:

Personal Matters / Ex. 6

-Aaron

From: Palich, Christian
Sent: Friday, August 17, 2018 9:13 AM
To: Lyons, Troy <lyons.troy@epa.gov>; Ringel, Aaron <ringel.aaron@epa.gov>; Rodrick, Christian <rodrick.christian@epa.gov>; Frye, Tony (Robert) <frye.robert@epa.gov>; Shimmin, Kaitlyn <shimmin.kaitlyn@epa.gov>
Subject:

EPA

Ex-Trump nominee is a fan of science overhaul

Niina Heikkinen, E&E News reporter

Published: Friday, August 17, 2018

President Trump's controversial ex-nominee to head EPA's chemical safety office likes a proposal to limit which research the agency can use when crafting new rules.

Michael Dourson, director of science at the nonprofit group Toxicology Excellence for Risk Assessment, told E&E News in an interview that "overall," his group supports the agency's proposed rule, which would require that studies used in EPA rulemaking make their methodologies and data publicly available. The group submitted its opinion in writing to EPA yesterday during a public comment period.

The "Strengthening Transparency in Regulatory Science" proposal, known alternately as the "censored science" or "secret science" rule, has met with strong opposition from environmental groups who see it as a way for EPA to avoid drafting regulations on harmful pollutants.

But Dourson — like other fans of the overhaul — described the rule as a way to allow EPA to demand access to data, in much the same way the agency is already able to evaluate relevant data from the industries the agency regulates.

"There are aspects we support, and there are aspects we would like to see reworked," he said of the proposal. "EPA could have made it more clear that there are situations where they ask for data to do their own analysis and the authors have not given the data, and in that kind of situation, the EPA people are stuck."

More access to data, in turn, would help EPA make more informed decisions about whether it makes sense to proceed with future regulations, he said.

Dourson was nominated to head EPA's Office of Chemical Safety and Pollution Prevention in July 2017 but withdrew his name last December after facing fierce opposition from Senate Democrats and some Republicans. While awaiting confirmation, he worked for three months as a senior adviser to then-EPA Administrator Scott Pruitt under a special hiring authority. Both his presence at the agency without prior Senate approval and his connections to the chemical industry drew sharp scrutiny from critics.

Dourson said yesterday that during his time as Pruitt's adviser, he was given no authority to manage staff or make decisions and did not have access to offices containing confidential business information.

"It was basically to learn in office," he said of his role at the agency.

Critics of the EPA science proposal warn that the change strictly limits the types of research it could consider in rulemaking. They say EPA would not be able to consider landmark public health studies that rely on patient information, or on public health research on victims of disasters, where data cannot be ethically replicated. They say that excluding this research will mean the agency will underestimate the potential benefits of crafting new rules and that it would ultimately lead to more pollution.

However, Dourson said he did not think EPA would discount major epidemiological studies like the famous "Harvard Six Cities" research in drafting regulations. Instead, those studies would perhaps be used indirectly to develop hypotheses on what pollution or toxin levels should be used to then conduct animal research to more directly quantify the physical harm caused by the pollutants. That animal research data could then be "tied in" with epidemiological data to extrapolate the harm to human populations.

"It's an amazing amount of work," Dourson said.

The proposal also gives EPA's administrator the authority to waive the data requirements on a case-by-case basis, which has raised some concerns about what types of research may or may not face greater scrutiny.

"I like the idea of giving the administrator some latitude, but at the same time, if he's using his judgment there, he has to fully explain what he is doing," Dourson said.

Yesterday was the last day for the public to leave comments on the proposed rule.

While most of the comments on the proposal slammed EPA for considering it, EPA's plan also received a flurry of positive feedback over the past week. Supporters emphasized their right to know what the government was doing with taxpayer money, and repeatedly called for EPA to "show your work."

Dourson's group, TERA, called for EPA to have more access to data to better enable replication of and independent analysis of research.

"The public's interest is best served by trusting EPA's experts dedicated to public health protection. Withholding scientific data from EPA's independent analysis is not in the public's best interest," the comments from TERA read.

Christian R. Palich
Deputy Associate Administrator
Office of Congressional & Intergovernmental Affairs
U.S. Environmental Protection Agency

Personal Matters / Ex. 6

E: Palich.Christian@epa.gov

Appointment

From: Ringel, Aaron [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1654BDC951284A6D899A418A89FB0ABF-RINGEL, AAR]
Sent: 1/18/2018 11:18:21 PM
To: Gomez, Laura [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=575BA24FC19D429C8302A05102353238-LGOMEZ]

Subject: Accepted: HONEST ACT - Overview Planning for HSST

Location: Personal Matters / Ex. 6

Start: 1/19/2018 4:00:00 PM
End: 1/19/2018 5:00:00 PM

Recurrence: (none)

Message

From: Ringel, Aaron [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1654BDC951284A6D899A418A89FB0ABF-RINGEL, AAR]
Sent: 1/29/2018 4:01:08 PM
To: Moody, Christina [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=813eb7f985c845eaa91edc10c6e9a914-CMoody]
Subject: RE: Honest Act Call

Yup.

-Aaron

From: Moody, Christina
Sent: Monday, January 29, 2018 11:01 AM
To: Ringel, Aaron <ringel.aaron@epa.gov>
Subject: RE: Honest Act Call

K...are you there now?

Christina J. Moody
US Environmental Protection Agency
Office of Congressional Affairs & Intergovernmental Relations
Moody.Christina@epa.gov

From: Ringel, Aaron
Sent: Monday, January 29, 2018 10:59 AM
To: Moody, Christina <Moody.Christina@epa.gov>
Subject: RE: Honest Act Call

Personal Matters / Ex. 6

-Aaron

From: Moody, Christina
Sent: Monday, January 29, 2018 10:54 AM
To: Ringel, Aaron <ringel.aaron@epa.gov>
Subject: RE: Honest Act Call

Hey can you send me your desk number?

Christina J. Moody
US Environmental Protection Agency
Office of Congressional Affairs & Intergovernmental Relations
Moody.Christina@epa.gov

From: Ringel, Aaron
Sent: Friday, January 26, 2018 4:24 PM
To: Moody, Christina <Moody.Christina@epa.gov>
Subject: Re: Honest Act Call

Sent from my iPhone

On Jan 26, 2018, at 3:29 PM, Moody, Christina <Moody.Christina@epa.gov> wrote:

Can you send me your number if you have 5 mins to debrief on this?

Christina J. Moody
US Environmental Protection Agency
Office of Congressional Affairs & Intergovernmental Relations
Moody.Christina@epa.gov

Message

From: Linkins, Samantha [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B7A94AA2975D4933981A8A9BF12AAA40-LINKINS, SAMANTHA]
Sent: 7/23/2018 10:53:51 PM
To: Rodan, Bruce [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Rodan, Bruce]
CC: Blackburn, Elizabeth [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a080eb90549a453aaa6a357f5257c0b7-Blackburn, Elizabeth]; Fleming, Megan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=14b4c2e10bf84f1fa9a3f91f5ca1c4c0-Fleming, Megan]; Christian, Megan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=64a0f5e0e9d94271b23cad28db653851-Lizotte, Me]
Subject: Fwd: For Review: Hearing Prep Materials for Admin Wheeler
Attachments: Final Fact Sheets 7.18.18 ORD fact sheets updates 7-23-18.docx; ATT00001.htm; Questions for Admin Hearing - ORD 7-23-18.docx; ATT00002.htm

Hey Bruce - Liz and I were wondering if you could take a look at these hearing prep documents tonight. Could you please? They should be in good shape as most are simply updated from spring budget hearings. The only ones that might need a little more focus are **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Sent from my iPhone

Begin forwarded message:

From: "Linkins, Samantha" <Linkins.Samantha@epa.gov>
Date: July 23, 2018 at 6:31:17 PM EDT
To: "Christian, Megan" <Christian.Megan@epa.gov>, "Fleming, Megan" <Fleming.Megan@epa.gov>, "Kuhn, Kevin" <Kuhn.Kevin@epa.gov>
Cc: "Blackburn, Elizabeth" <Blackburn.Elizabeth@epa.gov>, "D'Amico, Louis" <DAmico.Louis@epa.gov>, "Hubbard, Carolyn" <Hubbard.Carolyn@epa.gov>
Subject: For Review: Hearing Prep Materials for Admin Wheeler

Hi guys,

As you know, the Administrator will likely testify at SEPW on August 1. **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

-Sam

Samantha Linkins
Science Communication
Office of Research and Development, US EPA
Washington, DC
Office: 202-564-1834

Personal Phone / Ex. 6

From: Moody, Christina
Sent: Friday, July 20, 2018 12:00 PM
To: Feeley, Drew (Robert) <Feeley.Drew@epa.gov>; Kime, Robin <Kime.Robin@epa.gov>; Cooper, Marian <Cooper.Marian@epa.gov>; Grogard, Megan <Grogard.Megan@epa.gov>; Jones-Parra, Lisa <Jones-Parra.Lisa@epa.gov>; Albores, Richard <Albores.Richard@epa.gov>; Dieu, Martin <Dieu.Martin@epa.gov>; Linkins, Samantha <Linkins.Samantha@epa.gov>; Walsh, Ed <Walsh.Ed@epa.gov>; Kelty, Diane <Kelty.Diane@epa.gov>; Brennan, Thomas <Brennan.Thomas@epa.gov>; Johnston, Khanna <Johnston.Khanna@epa.gov>
Subject: ACTION AND RESPONSE NEEDED - HEARING PREP FOR ACTING ADMINISTRATOR
Importance: High

Good Morning,

Following up on my previous email, OCIR met with Administrator Wheeler this morning to discuss how he prefers to be briefed.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thank you all for your hard work in preparing the Administrator for the August 1st hearing. Please let me know if you have any questions.

Christina J. Moody | Office of Congressional & Intergovernmental Relations
U.S. Environmental Protection Agency | 1200 Pennsylvania Ave NW (MC-1301A) |
Washington DC | 20460
Moody.Christina@epa.gov

From: Moody, Christina

Sent: Wednesday, July 18, 2018 7:31 PM

To: Feeley, Drew (Robert) <Feeley.Drew@epa.gov>; Kime, Robin <Kime.Robin@epa.gov>; Cooper, Marian <Cooper.Marian@epa.gov>; Grogard, Megan <Grogard.Megan@epa.gov>; Jones-Parra, Lisa <Jones-Parra.Lisa@epa.gov>; Albores, Richard <Albores.Richard@epa.gov>; Dieu, Martin <Dieu.Martin@epa.gov>; Linkins, Samantha <Linkins.Samantha@epa.gov>; Walsh, Ed <Walsh.Ed@epa.gov>; Kelty, Diane <Kelty.Diane@epa.gov>

Subject: Hearing

Importance: High

Colleagues:

It is likely the Administrator will be testifying before EPW on August 1 – as we found out today. This means we will need to put together a briefing binder very quickly for him and the team.

Can you please work with your respective program offices to update the fact sheets with the latest info? Attached, for your information and reference, is a file with the latest fact sheets that were used and approved for the previous round of hearings. We will need your updated (if appropriate) fact sheets no later than Noon Wednesday, July 25th. Earlier of course would be better if possible, but please note that this is an ironclad date.

Thank you and please let me know if you have any questions. If there are no updates to provide, please let me know that as well.

Christina J. Moody
US Environmental Protection Agency
Office of Congressional Affairs & Intergovernmental Relations
Moody.Christina@epa.gov

Message

From: Fleming, Megan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=14B4C2E10BF84F1FA9A3F91F5CA1C4C0-FLEMING, MEGAN]
Sent: 7/17/2018 9:22:17 PM
To: Rodan, Bruce [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Rodan, Bruce]
Subject: FW: FOR BRUCE REVIEW: Transparency Rule and PFAS
Attachments: 2018-07-13 Draft McNerney Tonko Pallone PFAS-Science rulemaking Response - OW Reviewed 7-16-18.docx; 18-000-8464.pdf

Hi Bruce - Please see attached for another review item that rolled in this afternoon. This is a draft response to a letter we received from Reps McNerney, Tonko, and Pallone regarding how the Scientific Transparency proposed rule would impact PFAS work.

OCIR drafted a response and Sam Linkins and Andy Gillespie edited it to be more consistent with other letters we've sent about the proposed rule. OW has also reviewed and this version reflects their edits. There is some discussion about whether ORD or OW would sign. The current version has Jennifer signing off.

Please let me know by COB tomorrow if you are okay with the response or have additional edits.

Thank you,
Megan

Megan Fleming
Immediate Office of the Assistant Administrator
U.S. EPA Office of Research and Development
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
202-564-6604 (desk), Personal Phone / Ex. 6

Message

From: Fleming, Megan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=14B4C2E10BF84F1FA9A3F91F5CA1C4C0-FLEMING, MEGAN]
Sent: 6/11/2018 9:20:32 PM
To: Rodan, Bruce [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Rodan, Bruce]
Subject: FW: For Review: Another Congressional Letter about Science Transparency Proposed Rule
Attachments: Transparency Rule Docket Comments House AL-18-000-8190 6-11-18.doc; AL-18-000-8190.pdf

FYI Bruce. Thanks for your review of the response.

Megan Fleming
Immediate Office of the Assistant Administrator
U.S. EPA Office of Research and Development
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
202-564-6604 (desk), Personal Phone / Ex. 6

From: Linkins, Samantha
Sent: Monday, June 11, 2018 4:29 PM
To: Kuhn, Kevin <Kuhn.Kevin@epa.gov>; Fleming, Megan <Fleming.Megan@epa.gov>; Christian, Megan <Christian.Megan@epa.gov>
Cc: Blackburn, Elizabeth <Blackburn.Elizabeth@epa.gov>
Subject: For Review: Another Congressional Letter about Science Transparency Proposed Rule

Hey,

We received a letter from over 100 congressmembers (including some republicans) asking that EPA withdraw the proposed Science Transparency rule, and they list many reasons why the rule shouldn't go through. Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks!
-Sam

Samantha Linkins
Science Communication
Office of Research and Development, US EPA
Washington, DC
Office: 202-564-1834
Personal Phone / Ex. 6

Congress of the United States

Washington, DC 20515

June 7, 2018

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20004

Dear Administrator Pruitt:

We write to express grave concerns about the Environmental Protection Agency's (EPA) proposed rule, published on April 30, 2018, titled Strengthening Transparency in Regulatory Science (Docket No. EPA-HQ-OA-2018-0259). Contrary to its name, the proposed rule would implement an opaque process allowing EPA to selectively suppress scientific evidence without accountability and in the process undermine bedrock environmental laws. We join nearly a thousand scientists^[1] and many leading scientific organizations^[2] in opposing this policy and urge you to withdraw the proposed rule.

The proposed rule suffers from significant procedural flaws including lack of supporting evidence, insufficient detail in the proposal itself, and conflicts with EPA's statutory obligations. The substance of the rule is also concerning. It appears to be targeted at excluding important public health studies while privileging industry-sponsored research. It also fails to adequately consider the costs of implementation and the potential privacy implications. Finally, the discretion it grants the Administrator to grant case-by-case exemptions completely undermines the stated goal of transparency.

Without any significant evidence supporting it, the proposed rule is a solution in search of a problem. The proposed rule fails to identify specific weaknesses in EPA's current scientific approach, which is grounded in peer review. Wendy Wagner, author of two of the studies EPA cites to rationalize the rule, said in response to the proposed rule: "They don't adopt any of our recommendations, and they go in a direction that's completely opposite, completely different."^[3] The proposed rule also invokes policies from *Nature*, *Science*, and the *Proceedings of the National Academies of Science*, but each of these organizations has argued against the rule.^[4] Additionally, EPA fails to cite any specific language providing authority for the rule and asks commenters where the authority may be found. Key issues including how data would be made available to the public and how private information would be protected are not addressed. This is a serious deficiency in a rule meant to increase access to data for the public.

^[1] <https://s3.amazonaws.com/ucs-documents/science-and-democracy/secret-science-letter-4-23-2018.pdf>

^[2] <https://blog.ucsusa.org/michael-halpern/a-list-of-scientific-organizations-that-have-supported-and-opposed-limiting-what-research-epa-can-use-to-make-decisions>

^[3] <https://www.theatlantic.com/science/archive/2018/04/how-the-epas-new-secret-science-rule/558878/>

^[4] <https://www.aaas.org/news/scientific-leaders-speak-out-epa-s-proposed-transparency-rule>

The proposed rule is inconsistent with EPA's statutory obligations to ground its actions on scientific evidence. The Toxic Substances Control Act (TSCA) and the Safe Drinking Water Act (SDWA) require that EPA use the "best available science." Courts have found this language to require that agencies "seek out and consider all existing scientific evidence" and not ignore existing data.^[5] This standard would be impossible to meet under the proposed rule.

The proposed rule requires that data underlying EPA's regulatory actions be made publicly available to allow for independent validation. Such a standard could exclude studies that utilize confidential industry and health data that are vital to understanding the nature of chemical pollutants, the impacts of pollution, and the most effective ways to protect the environment and public health. One such piece of health research is the "Six Cities" study,^[6] which followed more than 8,000 participants for nearly twenty years and was key in establishing a link between chronic air pollution exposure and increased mortality. The results of this study have stood up to extensive subsequent analysis, highlighting the strength of such research.^[7] This is just one example of an entire class of studies that the rule would remove from consideration. Excluding such health studies would hobble EPA's ability to implement laws like the Clean Air Act, SDWA, and TSCA and to fulfill its mission to protect public health and the environment.

Attempting to comply with the publication requirement and health privacy laws would place enormous burdens on EPA and researchers. According to an internal EPA analysis of the HONEST Act, which had a similar data-publishing requirement, the EPA would have to spend more than \$250 million annually to redact private health information before releasing study data to the public.^[8] EPA failed to provide a cost-benefit analysis of the proposed rule, only stating that EPA shall implement the provisions "in a manner that minimizes cost." Even with careful redaction, there is still a possibility of study participants being identified due to the amount of information that would have to be revealed under the proposed rule for the purposes of reproducibility. The rule is costly and a threat to the privacy of Americans.

Concerns with the proposed rule are not limited to the public health community. Dr. Nancy Beck, Deputy Assistant Administrator of the Office of Chemical Safety and Pollution Prevention, has expressed reservations about the publishing requirements of the proposed rule for industry as well.^[9] Industry representatives have expressed concerns about requiring public disclosure of data, such as Confidential Business Information, citing the potential for improper use of such data by competitors.^[10]

In addition, the proposal to allow the EPA Administrator to grant exemptions on a case-by-case basis would enable the Administrator to interfere in the rulemaking process in an arbitrary and capricious manner. The Administrator is not required to present the reasoning behind such

^[5] *Ecology Ctr., Inc. v U.S. Forest Serv.*, 451 F.3d 1183, 1194 n.4 (10th Cir. 2006)

^[6] *Dockery et al.* 1993. *An association between and mortality in six U.S. cities.* *New England J. Med.* 329:1753-1759. doi: 10.1056/NEJM199312093292401.

^[7] <https://www.healtheffects.org/system/files/Reanalysis-ExecSumm.pdf>

^[8] <https://www.ucsusa.org/center-science-and-democracy/attacks-on-science/administrator-pruitt-ignores-epa-staff-analysis#.WujH-KQvxaR>

^[9] <http://www.sciencemag.org/news/2018/04/trump-s-epa-wants-stamp-out-secret-science-internal-emails-show-it-harder-expected>

^[10] <https://www.bna.com/pesticide-makers-back-n57982091585/>

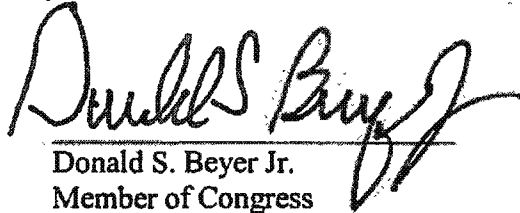
decisions. This waiver provision establishes an opaque process, completely at odds with the stated purpose of the rule, that would bring additional uncertainty to the regulatory process.

We support transparency and scientific integrity. However, the proposed rule will limit transparency and undermine the scientific integrity of EPA's rulemaking process. Given its numerous flaws and the lack of an underlying rationale, we urge you to withdraw the proposed rule.

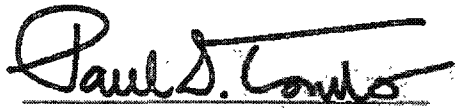
Sincerely,



Diana DeGette
Member of Congress



Donald S. Beyer Jr.
Member of Congress



Paul Tonko
Member of Congress



Daniel W. Lipinski
Member of Congress



Mark DeSaulnier
Member of Congress




Debbie Dingell
Member of Congress



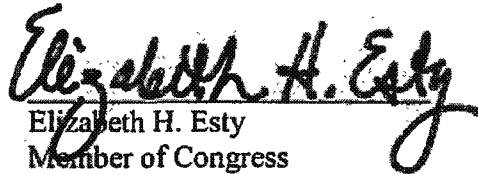
Alan Lowenthal
Member of Congress



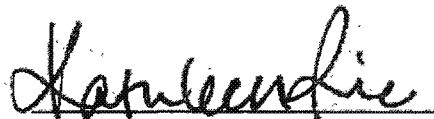
Donald M. Payne, Jr.
Member of Congress



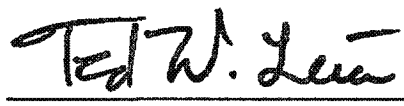
Salud O. Carbajal
Member of Congress



Elizabeth H. Esty
Member of Congress



Kathleen M. Rice
Member of Congress



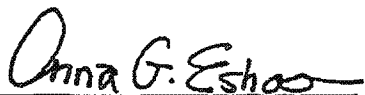
Ted W. Lieu
Member of Congress



Colleen Hanabusa
Member of Congress



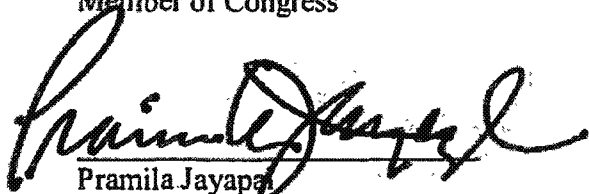
Mike Doyle
Member of Congress



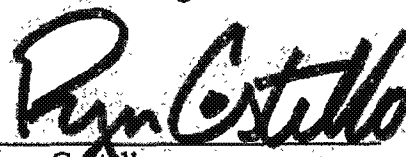
Anna G. Eshoo
Member of Congress



A. Donald McEachin
Member of Congress



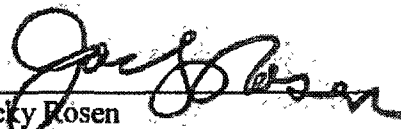
Pramila Jayapal
Member of Congress



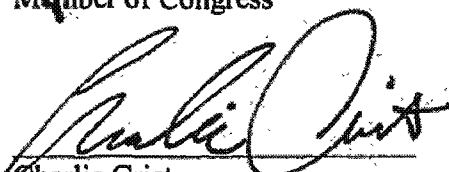
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Member of Congress



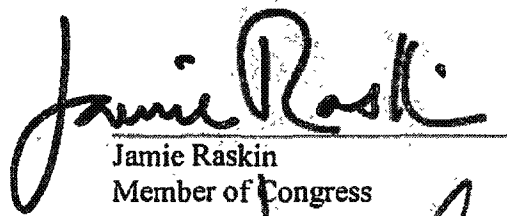
John Lewis
Member of Congress



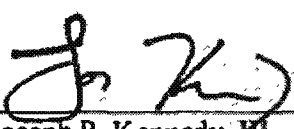
Jacky Rosen
Member of Congress



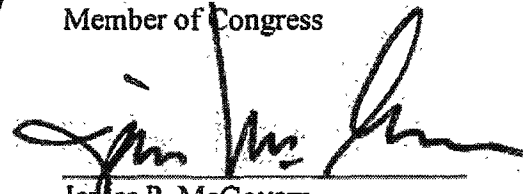
Charlie Crist
Member of Congress



Jamie Raskin
Member of Congress



Joseph P. Kennedy, III
Member of Congress



James P. McGovern
Member of Congress



Suzanne Bonamici
Member of Congress



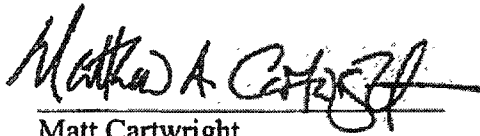
Ro Khanna
Member of Congress



Brian Fitzpatrick
Member of Congress



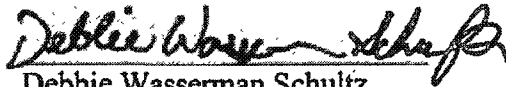
Raja Krishnamoorthi
Member of Congress



Matt Cartwright
Member of Congress



Earl Blumenauer
Member of Congress



Debbie Wasserman Schultz
Member of Congress



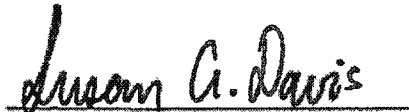
Scott H. Peters
Member of Congress



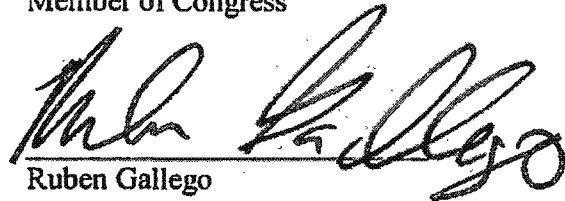
Tim Ryan
Member of Congress



Brendan F. Boyle
Member of Congress



Susan A. Davis
Member of Congress



Ruben Gallego
Member of Congress



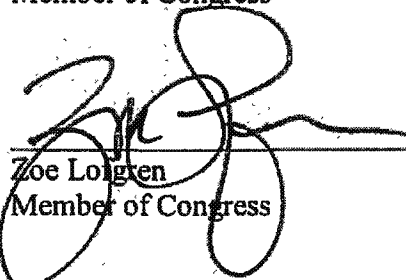
Bill Foster
Member of Congress



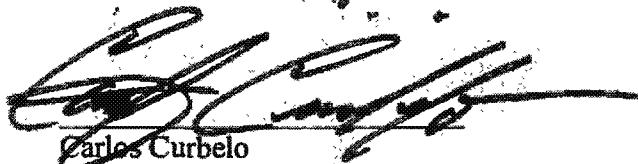
Raul Ruiz
Member of Congress



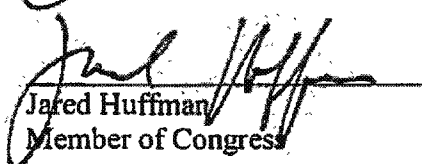
Nanette Diaz Barragán
Member of Congress



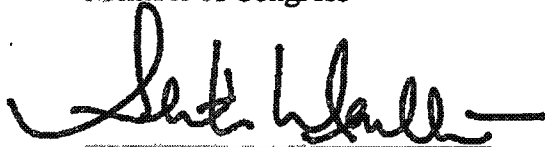
Zoe Lofgren
Member of Congress



Carlos Curbelo
Member of Congress



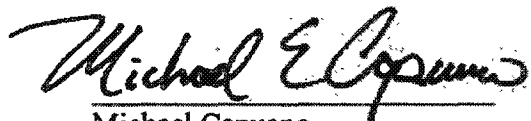
Jared Huffman
Member of Congress



Seth Moulton
Member of Congress



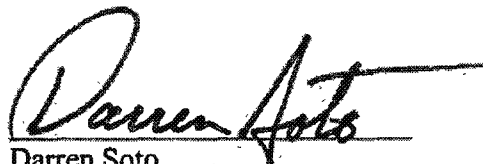
Ed Perlmutter
Member of Congress



Michael Capuano
Member of Congress



Mark Pocan
Member of Congress



Darren Soto
Member of Congress



Tulsi Gabbard
Member of Congress



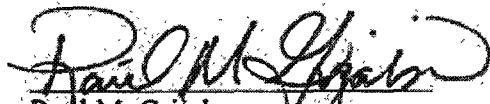
Anthony Brown
Member of Congress



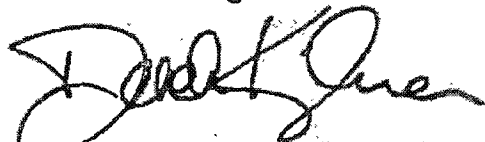
Mark Takano
Member of Congress



Tony Cárdenas
Member of Congress



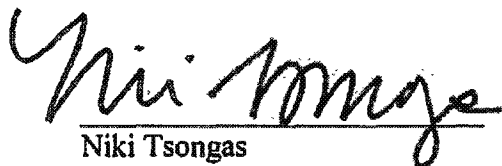
Raul M. Grijalva
Member of Congress



Derek Kilmer
Member of Congress



Carol Shea-Porter
Member of Congress



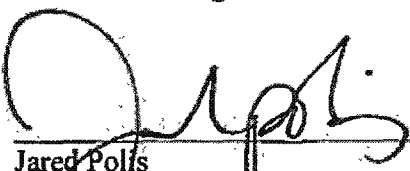
Niki Tsongas
Member of Congress



Adriano Espaillat
Member of Congress



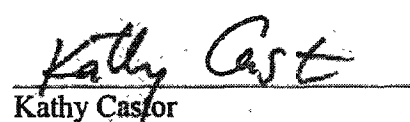
John K. Delaney
Member of Congress




Jared Polis
Member of Congress




Robert A. Brady
Member of Congress





Kathy Castor
Member of Congress



Yvette D. Clarke
Member of Congress



G.K. Butterfield
Member of Congress



Lucille Roybal-Allard
Member of Congress

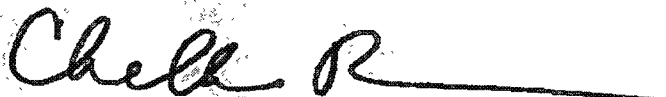

David E. Price
Member of Congress



Ferrol Nadler
Member of Congress



Rick Larsen
Member of Congress



Peter A. DeFazio
Member of Congress


Eleanor Holmes Norton
Member of Congress



Chellie Pingree
Member of Congress



Marcy Kaptur
Member of Congress



Sheila Jackson Lee
Member of Congress



Bobby L. Rush
Member of Congress



Ilana Ros-Lehtinen
Member of Congress

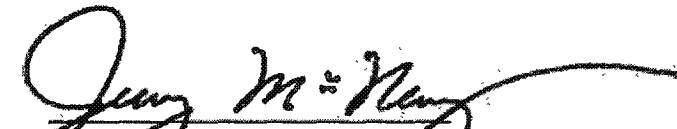

Gerald E. Connolly
Member of Congress

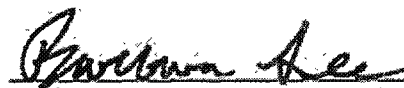

Henry C. "Hank" Johnson, Jr.
Member of Congress

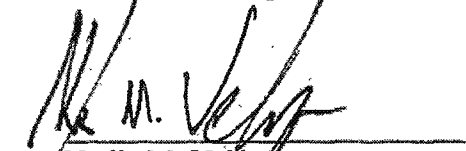

Karen Bass
Member of Congress

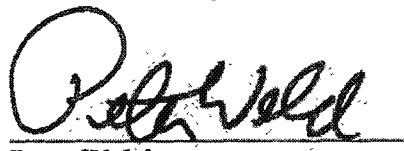

Keith Ellison
Member of Congress



Betty McCollum
Member of Congress

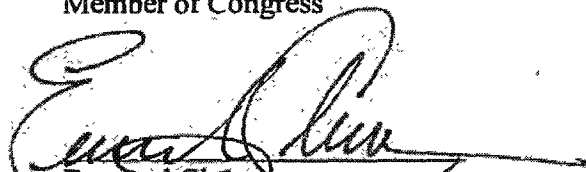

Jerry McNerney
Member of Congress

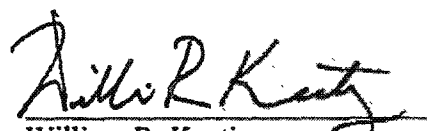

Barbara Lee
Member of Congress

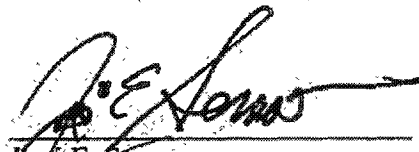

Nydia M. Velázquez
Member of Congress



Peter Welch
Member of Congress



Doris Matsui
Member of Congress


Emanuel Cleaver
Member of Congress



William R. Keating
Member of Congress

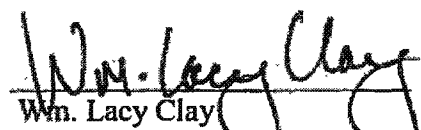

José E. Serrano
Member of Congress



Jan Schakowsky
Member of Congress

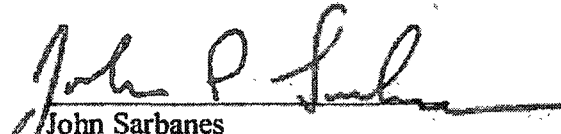

Steve Cohen
Member of Congress



Adam B. Schiff
Member of Congress

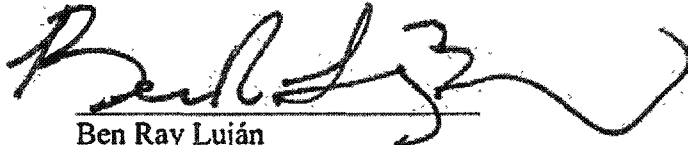

Rosa DeLauro
Member of Congress



Wm. Lacy Clay
Member of Congress

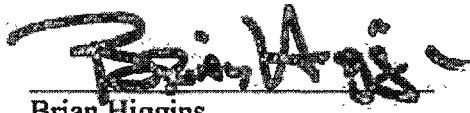

John Garamendi
Member of Congress

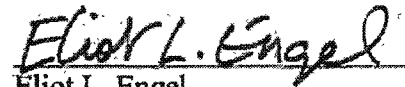

John Sarbanes
Member of Congress

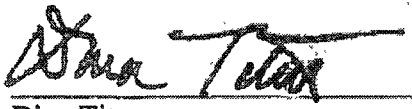

Frederica S. Wilson
Member of Congress



Ben Ray Lujan
Member of Congress



Mike Quigley
Member of Congress



Brian Higgins
Member of Congress

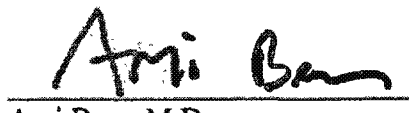

Eliot L. Engel
Member of Congress


Dina Titus
Member of Congress


Jackie Speier
Member of Congress


Gene Green
Member of Congress


Conor Lamb
Member of Congress


Ami Bera, M.D.
Member of Congress

Appointment

From: Gomez, Laura [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=575BA24FC19D429C8302A05102353238-LGOMEZ]
Sent: 1/24/2018 7:21:44 PM
To: Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]; Orme-Zavaleta, Jennifer [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3c5a111dc377411595e5b24b5d96146b-Orme-Zavaleta, Jennifer]; Bahadori, Tina [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7da7967dcafb4c5bbc39c666fee31ec3-Bahadori, Tina]; Vandenberg, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=dcae2b98a04540fb8d099f9d4dead690-Vandenberg, John]; Rodan, Bruce [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Rodan, Bruce]; Linkins, Samantha [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b7a94aa2975d4933981a8a9bf12aaa40-Linkins, Samantha]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Davis, Matthew [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=84111ec08c504b6baae0510b2d2ce46a-Davis, Matthew]; Lubetsky, Jonathan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e125d09a658e48119789ccae5712b4a5-JLUBETSK]; Saltman, Tamara [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9901d215c1e0496698e33501bac501d6-TSALTMAN]; Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]; Fotouhi, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=febaf0d56aab43f8a9174b18218c1182-Fotouhi, Da]; Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]; Rodrick, Christian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6515dbe46dae466da53c8a3aa3be8cc2-Rodrick, Ch]; Moody, Christina [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=813eb7f985c845eaa91edc10c6e9a914-CMoody]; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]; Shoaff, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ac16fb09cf2c44adb34a7405dc331532-JShoaff]; Feeley, Drew (Robert) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=abae82aa36da4d3383eae19a8efa683c-Feeley, Rob]; Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]

Subject: CONFIRMED: EPA PRE-INTERNAL CALL : HONEST ACT IMPLEMENTATION

Attachments: BILLS-115hr1430rfs.pdf

Location: Personal Phone / Ex. 6

Start: 1/26/2018 7:00:00 PM

End: 1/26/2018 8:30:00 PM

Show Time As: Tentative

Purpose: To internally discuss EPA implementation of HR 1430 (ATTACHED)

This is an internal call in preparation for a briefing with Committee on House Science, Space and Technology (HSST). DAA Ringel (OCIR) will lead a discussion with respective program offices regarding the agency's implementation efforts of the HONEST ACT.

United States Senate
WASHINGTON, DC 20510

August 09, 2018

The Honorable Andrew Wheeler
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20004

Dear Acting Administrator Wheeler:

We write to express our concerns with the Environmental Protection Agency's (EPA) proposed rule, published on April 30, 2018, titled "Strengthening Transparency in Regulatory Science" (Docket No. EPA-HQ-OA-2018-0259). We strongly urge you to withdraw it. EPA is already transparent in its use of peer-reviewed research in regulatory science. This particular proposal to "increase transparency" should not be used as a method to cast doubt on scientific consensus. In addition, the proposal lacks details on how its provisions would be implemented, specifically when it comes to privacy issues, reproducibility, and possible exemptions. It is also strongly opposed by nearly 70 public health, medical, academic, and scientific organizations.¹

One provision in the proposed rule gives the Administrator of the EPA the authority, on a case-by-case basis, to exempt some studies from the proposed rule if he or she determines that "it is not feasible to ensure that all dose response data and models underlying pivotal regulatory science are publicly available in a fashion that is consistent with law, protects privacy and confidentiality, and is sensitive to national and homeland security." The criteria for these exemptions is unclear. The proposed rule does not require the Administrator to present the reasoning behind his or her decisions. This process would only result in additional uncertainty in the regulatory process. These decisions, should they need to be made, should not be made by a political appointee, but instead by a scientist that is a subject matter expert.

Additionally, EPA regulatory decisions are based largely on human health studies that include patients' personal data and medical records, sometimes over the span of decades. These studies must comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), making the release of this data illegal as well as unethical. Data in a medical chart, test results, and billing information all constitute federally identified personal health information that must be protected under HIPAA.

We realize that the proposed rule does make an attempt to address privacy issues while requiring increased transparency of scientific data. However, they are only addressed in a vague sense. The rule states that, "EPA believes that concerns about access to confidential or private information can, in many cases, be addressed through the application of solutions commonly in use across some parts of the Federal government," but it does not state what those solutions would be. It references simple data masking, coding, and de-identification techniques, but these methods will

¹ <https://www.apha.org/news-and-media/news-releases/apha-news-releases/2018/epa-transparency>

not sufficiently protect patient identity in studies such as those in which personal health information is integral to the study. We are concerned that this proposed rule has oversimplified the issue at hand, which will lead to difficulties in implementing this rule while maintaining EPA's commitment to using the best available science in its regulatory actions.

The phrase "best available science" is an important piece of this proposed rule. This proposed rule may be striving to improve regulatory science, but we fear that it could be a case in which the "best" is the enemy of the good. EPA cannot let their pursuit of "perfect science" lead them to disregard good scientific studies. Just as scientists cannot pick and choose the data they use for analysis, it is imperative that EPA use all available scientific studies to formulate its decisions. They should not ignore existing data.

To this point, five major scientific journals, including *Science*, *Nature*, *Cell*, *PLOS One*, and *Proceedings of the National Academy of Sciences* recently released a statement opposing this proposal. In it, they noted that many scientific journals already have policies to ensure transparency as much as possible. Additionally, in cases where such transparency is not possible, reviewers can be given confidential access to the raw data so that they can check and replicate the findings. The EPA proposal does not allow for such situations.²

We support transparency and scientific integrity. However, the proposed rule would limit transparency and undermine the scientific integrity of EPA's regulatory process. We strongly urge you to withdraw the proposed rule.

Sincerely,



Christopher A. Coons
United States Senator



Jeffrey A. Merkley
United States Senator

² <http://science.sciencemag.org/content/early/2018/04/30/science.aau0116>



Tina Smith
United States Senator



Jeanne Shaheen
United States Senator



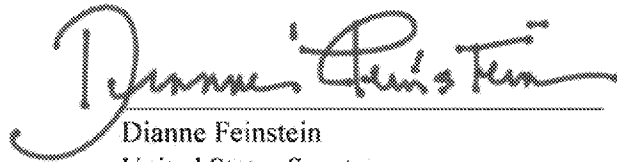
Edward J. Markey
United States Senator



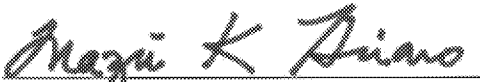
Richard J. Durbin
United States Senator



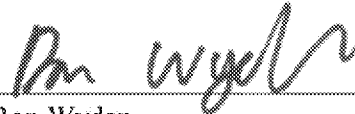
Margaret Wood Hassan
United States Senator



Dianne Feinstein
United States Senator



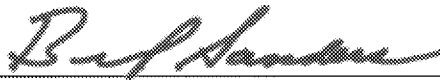
Mazie Hirono
United States Senator



Ron Wyden
United States Senator



Kirsten Gillibrand
United States Senator



Bernard Sanders
United States Senator

Thu May 10 09:37:47 EDT 2018
CMS.OEX@epamail.epa.gov
FW: Science at the EPA
To: "cms.oex@domino.epamail.epa.gov" <cms.oex@domino.epamail.epa.gov>

From: Hope, Brian
Sent: Thursday, May 10, 2018 1:37:47 PM (UTC+00:00) Monrovia, Reykjavik
To: CMS.OEX
Subject: FW: Science at the EPA

From: Sharon Johnson [mailto: **Personal Matters / Ex. 6**]
Sent: Wednesday, May 09, 2018 11:03 PM
To: Pruitt, Scott <Pruitt.Scott@epa.gov>
Subject: Science at the EPA

Dear Mr. Pruitt:

Your policies and action as regards to science are meant to reject any input from independent research and analysis. Your actions regarding pollution of water, air, land will lead to much illness and death of American citizens, including the very wealthy as there is no way to run away from some of the pollution that will result.

Your family and friends might benefit financially in the short term but it is likely that your reputation will become the object of a great deal of approbation, scandal, and financial suits by the damage caused by your removal of EPA protections and denial of proper scientific analysis.

My husband, who served on many EPA advisory boards, commented that the "real" scientists had pretty much resigned from the advisory boards. Scientists at the EPA have been reassigned or fired.

It was President Nixon, a Republican, who established the EPA and hired real scientists as advisors. While he had his faults, there were many things he started that benefitted our country.

Please reconsider your actions, both for the sake of those residing in this great country and indeed the world, and for the sake of how you will be viewed by those who follow you in future administrations.

Sharon Johnson

Personal Matters / Ex. 6

Mon May 14 08:46:51 EDT 2018
CMS.OEX@epamail.epa.gov
FW: Letter from the American Meteorological Society on Strengthening Transparency in Regulatory Science
To: "cms.oex@domino.epamail.epa.gov" <cms.oex@domino.epamail.epa.gov>

From: Hope, Brian
Sent: Monday, May 14, 2018 12:46:49 PM (UTC+00:00) Monrovia, Reykjavik
To: CMS.OEX
Subject: FW: Letter from the American Meteorological Society on Strengthening Transparency in Regulatory Science

From: Keith Seitter [mailto:kseitter@ametsoc.org]
Sent: Monday, May 14, 2018 7:50 AM
To: Pruitt, Scott <Pruitt.Scott@epa.gov>
Subject: Letter from the American Meteorological Society on Strengthening Transparency in Regulatory Science

Dear Administrator Pruitt,

Please see the attached letter from the American Meteorological Society. Please let me know if you have any questions, and we would welcome the opportunity to discuss this further.

Keith Seitter

Keith L. Seitter, CCM

Executive Director

American Meteorological Society

45 Beacon Street, Boston, MA 02108

1-617-226-3901

kseitter@ametsoc.org

www.ametsoc.org



AMERICAN METEOROLOGICAL SOCIETY

45 BEACON STREET, BOSTON, MA 02108-3693 U.S.A.

TEL: 617-227-2425
FAX: 617-742-8718
E-MAIL: amsinfo@ametsoc.org
WEB: www.ametsoc.org

KEITH L. SEITTER, EXECUTIVE DIRECTOR
E-MAIL: kseitter@ametsoc.org

14 May 2018

Scott Pruitt, Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Pruitt,

On behalf of the American Meteorological Society (AMS), I urge you to reconsider your proposal to limit use of scientific evidence in rulemakings [Strengthening Transparency in Regulatory Science (April 30, 2018) – Docket ID No. EPA-HQ-OA-2018-0259].

Rulemaking must strive to include all of the best available information to the maximum extent possible; scientific evidence is a critical component of this information. We recognize the great effort and careful judgment needed as the agency works to ensure fair and responsive rulemaking. Subject matter specialists in the sciences are actively willing to participate in developing EPA assessments, as the agency carefully and comprehensively examines the available evidence, weighing that evidence based on merit.

AMS is on record supporting full and open access to data,¹ but recognizes that this is a complex issue. In the specific case of EPA rulemaking, the complexity often arises in the need for human subject data to be treated as confidential information. The proposed rule does not sufficiently account for these complexities and could compromise rulemaking by disallowing useful scientific insights that are critical to the comprehensive assessment of environmental issues.

It would be most appropriate to withdraw this proposal and initiate an independent examination of this issue. One option for doing so would be to work with the National Academies of Sciences, Engineering, and Medicine and request a study on the topic. Ultimately, however, no change in the rulemaking process should occur without careful analysis that ensures the best available knowledge and understanding is being applied for the protection of the public.

Sincerely,

Keith L. Seitter
Executive Director

¹ AMS Statement on Full and Open Data: <https://www.ametsoc.org/index.cfm/ams/about-ams/ams-statements/statements-of-the-ams-in-force/full-and-open-access-to-data/>

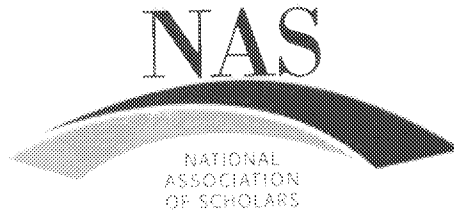
Date: Mon May 14 08:52:36 EDT 2018
From: CMS.OEX@epamail.epa.gov
To: "cms.oex@domino.epamail.epa.gov" <cms.oex@domino.epamail.epa.gov>
Subject: FW: protest against cutting any scientific info to protect us!

From: Hope, Brian
Sent: Monday, May 14, 2018 12:52:36 PM (UTC+00:00) Monrovia, Reykjavik
To: CMS.OEX
Subject: FW: protest against cutting any scientific info to protect us!

Forward to the docket

-----Original Message-----
From: Bonnie Lawlor [mailto:bonnienl@mcn.org]
Sent: Friday, May 11, 2018 12:56 PM
To: Pruitt, Scott <Pruitt.Scott@epa.gov>
Subject: protest against cutting any scientific info to protect us!

As a tax-paying citizen of the U. S, I want to fiercely protest Scott Pruitts' proposal to reduce the scientific input available about the toxins put out by industry that harm both humans and the environment. It is a short sighted attempt to cake to greed and reckless disregard for our children and future generations. It stuns me that he can be so small in his thinking and so committed to destruction. Bonnie Lawlor, North Bend WA



RECEIVED

2018 MAY 14 AM 11:26

OFFICE OF THE
May 4, 2018
EXECUTIVE SECRETARIAT

The Honorable E. Scott Pruitt
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re proposed rulemaking – Strengthening Transparency in Regulatory Science- Docket ID No.
EPA-HQ-OA-2018-0259

Dear Administrator Pruitt,

I support the Environmental Protection Agency's (EPA) proposed rulemaking, "Strengthening Transparency in Regulatory Science." The current state of science about dose-response supports this measure as do larger concerns about reproducibility in scientific research. Indeed, the larger concerns about reproducibility suggest that this measure should be applied generally within the Environmental Protection Agency and across the Federal Government.

I write as President of the National Association of Scholars (NAS). NAS is a network of scholars and citizens united by our commitment to academic freedom, disinterested scholarship, and excellence in higher education. As part of our mission, we support the highest standards of truth-seeking in the sciences, and seek to have government policy support and rely upon science that eschews political advocacy and subjects its own procedures to the strictest scrutiny.

The NAS is pleased that the EPA has chosen to prioritize the application of reproducibility reforms in the area of dose-response regulation. The NAS has long been concerned about politicized distortions of dose-response science. A notable example is the status of the linear no-threshold (LNT) dose-response model for the biological effects of nuclear radiation. The prominence of the model stems from the June 29, 1956 *Science* paper, "Genetic Effects of Atomic Radiation," authored by the NAS Committee on the Biological Effects of Atomic Radiation. This paper is now widely questioned and has been seriously critiqued in many peer-reviewed publications, including two detailed 2015 papers. These criticisms are being taken seriously around the world, as summarized in a December 2, 2015 *Wall Street Journal* commentary. This is a consequential matter that bears on a great deal of national public policy, as the LNT model has served as the basis for risk assessment and risk management of radiation and chemical carcinogens for decades. A reassessment of that model could profoundly alter many regulations from the Environmental Protection Agency, the Nuclear Regulatory Commission, and other government agencies.¹

¹ See <https://www.nas.org/images/documents/LNT.pdf>, which reproduces documents including Genetics Panel of the Biological Effects of Atomic Radiation (BEAR) I Committee of the National Academy of Sciences, "Genetic Effects of Atomic Radiation," *Science* 123 (29 June

In December 2015 the NAS called upon the National Academy of Sciences and the American Association for the Advancement of Science to revisit the 1956 *Science* paper. Both declined. In the Winter 2017 issue of our journal *Academic Questions*, Professor Edward J. Calabrese published a detailed account of the origins of the 1956 *Science* paper, raising serious questions about ethical improprieties that may have contributed to flawed and overstated conclusions in the paper. These matters are fairly well known. Yet due to the complacency of the scientific establishment and, no doubt, the prestige of some of the scientific bodies implicated in the cover-up, no one in a position of authority until now has been willing to challenge the linear no threshold dose-response orthodoxy.²

The NAS is pleased that the EPA has chosen to address increasing concerns about the irreproducibility crisis of modern science. The NAS has recently written a long report on how the improper use of statistics, arbitrary research techniques, lack of accountability, political groupthink, and a scientific culture biased toward producing positive results together have produced a reproducibility crisis that afflicts a wide range of scientific and social-scientific disciplines, from epidemiology to social psychology. Many supposedly scientific results cannot be reproduced in subsequent investigations. We have recommended extensive changes to scientific procedures and to the way government judges the science it uses to make policy—including measures such as this proposed rule, to require that government make policy only based on scientific research whose data and procedures are available for other scientists to reproduce.³

1956). pp. 1157-64; Edward J. Calabrese, "An abuse of risk assessment: how regulatory agencies improperly adopted LNT for cancer risk assessment," *Archives of Toxicology* 89, 4 (2015), pp. 647-48; Edward J. Calabrese, "On the origins of the linear no-threshold (LNT) dogma by means of untruths, artful dodges and blind faith," *Environmental Research* 142 (2015), pp. 432-42; and Holman W. Jenkins, Jr., "A Nuclear Paradigm Shift?" *The Wall Street Journal*, December 2, 2015, p. A13.

² Peter Wood, "Concerns about the National Academy of Sciences and Scientific Dissent," December 15, 2015, https://www.nas.org/articles/nas_letter; Edward J. Calabrese, "Societal Threats from Ideologically Driven Science," December 13, 2017, https://www.nas.org/articles/societal_threats_from_ideologically_driven_science.

³ David Randall and Christopher Welser, *The Irreproducibility Crisis in Modern Science: Causes, Consequences, and the Road to Reform* (National Association of Scholars: New York, 2018), https://www.nas.org/projects/irreproducibility_report. The report contains a lengthy bibliography on the irreproducibility crisis; notable works in the literature include John P. A. Ioannidis, "Why Most Published Research Findings Are False," *PLoS Med* 2, 8 (2005), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1182327/>; Joseph P. Simmons, et al., "False-Positive Psychology: Undisclosed Flexibility in Data Collection and Analysis Allows Presenting Anything as Significant," *Psychological Science* 22, 11 (2011), pp. 1359-66, <http://journals.sagepub.com/doi/pdf/10.1177/0956797611417632>; C. Glenn Begley and Lee M. Ellis, "Drug development: Raise standards for preclinical cancer research," *Nature* 483 (2012), pp. 531-33, <http://www.nature.com/nature/journal/v483/n7391/full/483531a.html?foxtrotcallback=true>; Open Science Collaboration [Brian Nosek, et al.], "Estimating the reproducibility of psychological science," *Science* 349 (2015), <http://science.sciencemag.org/content/349/6251/aac4716>.

In response to the EPA's solicitation for comment on its proposed rulemaking "Strengthening Transparency in Regulatory Science," we respectfully provide the following suggestions on ways to implement the principles of scientific reproducibility into the administrative practice of the EPA, and into the administrative practice of the Federal Government as a whole.

- 1) We recommend that the EPA draft a Reproducible Regulatory Science Guidance Document (RRSGD) that governs all administrative processes (regulatory decisions, proposed rules, promulgations, individual party adjudications, enforcement activities, permit proceedings, site-specific permitting actions, non-binding regulatory determinations, and all other agency actions with precedent-setting influence on future actions) undertaken by the EPA. The RRSGD should:
 - a. Define "best available science" to include only scientific research done using pre-registered protocols, whose research data, associated protocols, computer codes, recorded factual materials, and statistical analyses are archived and publicly available in a manner sufficient for continuing independent verification;
 - b. Explicitly rescind the "weight of evidence" standard for justifying regulatory policy, and replace it with a "best available reproducible science" (BARS) standard, which meets the definition of (a) above;
 - c. Require all *regulatory decisions*, meaning "significant regulatory actions" as defined by the Office of Management and Budget pursuant to Executive Order 12866, to be based on:
 - i. Scientific research that meets the "best available reproducible science" standard;
 - ii. At least one study on the effect of publication bias on this scientific research;
 - iii. At least one meta-analysis of this scientific research; and
 - iv. Explicit consideration of whether the corpus of scientific research has accounted for different aspects of the irreproducibility crisis, including flawed statistics, arbitrary research methods, publication bias, and disciplinary and/or political groupthink.
 - d. Direct all existing EPA risk assessments, guidance documents, etc., to be explicitly updated to include the RRSGD's standards;
 - e. Restrict all grant money for scientific research disbursed by the EPA to scientific research that meets the BARS standard;
 - f. Provide a set procedure for the EPA Administrator to waive the *regulatory decisions* requirements in (c) above on a case-by-case basis, and a set procedure for private individuals and organizations to challenge the waiver;
 - g. Provide strict criteria for the case-by-case waivers in (f) above, focused on the EPA Administrator's judgment that he must prevent immediate dangers to the health or life of American citizens;
 - h. Be drafted so that it may be used as a model for all Federal agencies that use scientific or social scientific research; and

- i. Be drafted so that it may be used as a model for Federal legislation to introduce reproducible science requirements throughout the Federal Government.
- 2) We recommend that the EPA call on Congress to enact a Reproducible Science Reform Act (RSRA) that codifies the principles and policies embodied by the RRS GD.
- 3) We recommend that the EPA prioritize its funding toward upgrading existing research data that does not meet the BARS standard; e.g., by anonymizing research data so as to preserve privacy, confidentiality, etc.
- 4) We recommend that the EPA also provide substantial funding for a “reproducibility architecture” of hardware and software to facilitate the production of reproducible science by all American scientists whose research informs the EPA’s decision-making.
- 5) We recommend that the EPA also provide substantial funding so as to make it possible—and then required—for all EPA notices, proposed rules, regulations, etc., to include easily accessible links to all scientific materials used to justify these EPA actions. These links should include all relevant scientific research that meets the BARS standard, but that does not support the proposed EPA action.
- 6) We recommend that the EPA, as it determines how best to implement the methodologies and technologies of a “reproducibility architecture” to facilitate the adoption of a BARS standard, consult with representatives of the Center for Open Science, the Meta-Research Innovation Center at Stanford (METRICS), and the Laura and John Arnold Foundation Research Integrity Initiative.⁴
- 7) We recommend that the EPA consult with the American Statistical Association about how to institute standard procedures that will ensure that all scientific research used or funded by the EPA is conducted according to the highest standards of statistical practice.
- 8) We recommend that each EPA granting program establish a funding category, with funding priority over all other categories, for meta-analysis and research into publication bias.
- 9) We recommend that the EPA institute a process by which to rescind existing regulations based upon irreproducible science. This process should include:
 - a. The establishment of a permanent investigatory commission to examine existing regulations and determine which are based on irreproducible science; and
 - b. The establishment of a process to rescind regulations based on irreproducible science, which provides a reasonable amount of time for researchers to make their science reproducible before the regulations are rescinded.

We at NAS are aware that significant numbers of scientists and prominent scientific organizations have voiced their disagreement with “Strengthening Transparency in Regulatory Science.” Responding in detail to their points is beyond the scope of this letter, but I will add that we have read their public statements carefully and we do not find them persuasive. Many of those who characterize the proposed rulemaking as unnecessary or counterproductive are the same people

⁴ Center for Open Science, <https://cos.io/>; Meta-Research Innovation Center at Stanford | METRICS, <https://metrics.stanford.edu/>; Laura and John Arnold Foundation Research Integrity Initiative, <http://www.arnoldfoundation.org/initiative/research-integrity/>.

and organizations implicated in publishing non-reproducible results and then standing in the way of reasonable and responsible independent efforts to verify important claims derived from those results.

To a woeful extent, the scientific establishment in the United States has proved to be a poor guardian of the quality of scientific research, especially in situations where (A) a large amount of federal research funding is in play, (B) significant public policy decisions hang in the balance, and (C) fixed ideological goals have been set forth. The combination of these three factors has given rise to advocacy-driven work that claims the authority of science while disregarding scientific methods and safeguards. "Strengthening Transparency in Regulatory Science" is a major step towards rectifying these problems.

NAS believes that these reforms will strengthen the Environmental Protection Agency's longstanding commitment to using only the most reliable science to inform its decision-making. We also believe these reforms will strengthen American science, by prompting researchers to incorporate and make routine in their practices the highest standards of reproducibility.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Peter Wood", with a long horizontal flourish extending to the right.

Peter Wood
President
National Association of Scholars

NAS

NATIONAL
ASSOCIATION
OF SCHOLARS

12 EAST 46TH ST., 6TH FLOOR
NEW YORK, NY 10017

MAY 14 2018

The Honorable E. Scott Pruitt
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460



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**ATTORNEYS GENERAL OF NEW YORK, CALIFORNIA, DELAWARE, IOWA,
MAINE, MINNESOTA, PENNSYLVANIA, AND THE DISTRICT OF COLUMBIA**

May 7, 2018

E. Scott Pruitt, Administrator
Environmental Protection Agency
U.S. EPA Headquarters
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N.W.
Mail Code: 1101A
Washington, DC 20460

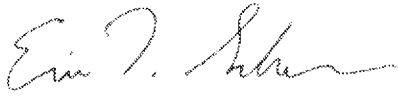
Re: Proposal to Limit Use of Scientific Evidence in Rulemakings, 83 Fed. Reg. 18,768
(April 30, 2018) - Docket ID No. EPA-HQ-OA-2018-0259.

Dear Administrator Pruitt:

The undersigned Attorneys General are very concerned by the Environmental Protection Agency's (EPA) above-referenced April 30, 2018 proposal to adopt a regulation that would limit the body of scientific evidence that EPA can consider when adopting regulatory standards to protect public health and the environment. Our concern arises both from the truncated timeline under which EPA seeks to change fundamental agency policy and from the vagueness of the proposal. In light of the far-reaching impact the proposal could have on EPA's mission to protect public health and the environment, we ask that you withdraw the proposed rule and convene a process to first consult with the National Academy of Sciences and other independent scientists and science organizations before deciding whether any proposed changes to EPA's current use of scientific evidence are in order.

If you are unwilling to withdraw the proposal, we ask at a minimum that you extend the comment period by at least 150 days to provide for appropriate consultation with the National Academy of Sciences and other independent scientists and science organizations on the proposed changes to EPA's current use of scientific evidence. A full six-month comment period would be consistent with past practice for matters of similar importance and complexity, and is necessary to provide the public and other stakeholders a meaningful opportunity to evaluate the proposal and its implications for the agency's ability to meet its obligation to protect public health and the environment under federal environmental laws. Given the extremely broad impact of this proposal, thirty days is woefully insufficient to give the affected public adequate opportunity to participate in the rulemaking and comment on the proposal as required by the Administrative Procedure Act, 5 U.S.C. § 553(c). While under section (2)(b) of Executive Order 13563, a standard comment period should be at least sixty days, this tremendously consequential proposal calls for a much more deliberate pace given the profound potential impacts on the regulatory processes for all or nearly all of the statutes EPA implements and enforces. We therefore request that should EPA decline to withdraw the proposed rule, the agency instead extend the comment period by at least 150 days, until October 29, 2018.

We appreciate your consideration of this important matter and await your decision regarding our request.



ERIC T. SCHNEIDERMAN
Attorney General of New York



XAVIER BECERRA
Attorney General of California



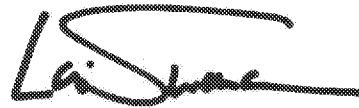
MATTHEW P. DENN
Attorney General of Delaware



TOM MILLER
Attorney General of Iowa



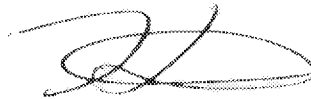
JANET T. MILLS
Attorney General of Maine



LORI SWANSON
Attorney General of Minnesota



JOSH SHAPIRO
Attorney General of Pennsylvania



KARL A. RACINE
Attorney General of the
District of Columbia

cc: Neomi Rao, Administrator, Office of Information and Regulatory Affairs
Honorable Lamar Smith, Chair, House Committee on Science, Space, and Technology
Honorable Eddie Bernice Johnson, Ranking Member, House Committee on Science, Space,
and Technology
Honorable Greg Walden, Chair, House Committee on Energy and Commerce
Honorable Frank Pallone, Jr., Ranking Member, House Committee on Energy and
Commerce
Honorable John Barrasso, Chair, Senate Committee on Environment and Public Works
Honorable Thomas R. Carper, Ranking Member, Senate Committee on Environment and
Public Works

**ATTORNEYS GENERAL OF NEW YORK, CALIFORNIA, DELAWARE, IOWA,
MAINE, MINNESOTA, PENNSYLVANIA, AND THE DISTRICT OF COLUMBIA**

May 7, 2018

E. Scott Pruitt, Administrator
Environmental Protection Agency
U.S. EPA Headquarters
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N.W.
Mail Code: 1101A
Washington, DC 20460

Re: Proposal to Limit Use of Scientific Evidence in Rulemakings, 83 Fed. Reg. 18,768
(April 30, 2018) - Docket ID No. EPA-HQ-OA-2018-0259.

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ERIC T. SCHNEIDERMAN
Attorney General of New York



XAVIER BECERRA
Attorney General of California



MATTHEW P. DENN
Attorney General of Delaware



TOM MILLER
Attorney General of Iowa



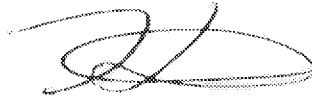
JANET T. MILLS
Attorney General of Maine



LORI SWANSON
Attorney General of Minnesota



JOSH SHAPIRO
Attorney General of Pennsylvania



KARL A. RACINE
Attorney General of the
District of Columbia

cc: Neomi Rao, Administrator, Office of Information and Regulatory Affairs
Honorable Lamar Smith, Chair, House Committee on Science, Space, and Technology
Honorable Eddie Bernice Johnson, Ranking Member, House Committee on Science, Space,
and Technology
Honorable Greg Walden, Chair, House Committee on Energy and Commerce
Honorable Frank Pallone, Jr., Ranking Member, House Committee on Energy and
Commerce
Honorable John Barrasso, Chair, Senate Committee on Environment and Public Works
Honorable Thomas R. Carper, Ranking Member, Senate Committee on Environment and
Public Works

**ATTORNEYS GENERAL OF NEW YORK, CALIFORNIA, DELAWARE, IOWA,
MAINE, MINNESOTA, PENNSYLVANIA, AND THE DISTRICT OF COLUMBIA**

May 7, 2018

E. Scott Pruitt, Administrator
Environmental Protection Agency
U.S. EPA Headquarters
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N.W.
Mail Code: 1101A
Washington, DC 20460

Re: Proposal to Limit Use of Scientific Evidence in Rulemakings, 83 Fed. Reg. 18,768
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Office of the Attorney General
28 Liberty Street
New York, NY 10005

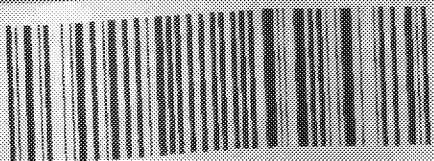
ENVIRONMENTAL PROTECTION BUREAU

E Scott Pruitt Administrator
Environmental Protection Agency
U.S. EPA Headquarters
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N.W.
Mail Code: 1101A
Washington, DC 20460

MAY

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

CERTIFIED MAIL



Message

From: Linkins, Samantha [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B7A94AA2975D4933981A8A9BF12AAA40-LINKINS, SAMANTHA]
Sent: 5/21/2018 7:05:10 PM
To: Sinks, Tom [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=001007b7d256453a8a19b91df704e22c-Sinks, Tom]
Subject: FW: Commissioner letter for your review
Attachments: 18-000-7532.pdf

FYI – I know you already have this in CMS, but sharing this thread. OCIR will want to be involved if we send a response. Have we been responding to letters on the rule so far, or will this just go in the docket?

Samantha Linkins
Science Communication
Office of Research and Development, US EPA
Washington, DC
Office: 202-564-1834
Cell: 202-604-5742

From: Barbery, Andrea
Sent: Monday, May 21, 2018 2:25 PM
To: Moody, Christina <Moody.Christina@epa.gov>
Cc: Kent, Alison <Kent.Alison@epa.gov>; Nitsch, Chad <Nitsch.Chad@epa.gov>; Saddler, Melissa <Saddler.Melissa@epa.gov>; Murphy, Dan <Murphy.Dan@epa.gov>; Linkins, Samantha <Linkins.Samantha@epa.gov>; Kime, Robin <Kime.Robin@epa.gov>; Feeley, Drew (Robert) <Feeley.Drew@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>
Subject: RE: Commissioner letter for your review

Thanks, Christina!

+ the attachment for Sam/Robin K/Drew -- Have we been responding to comment letters on this rule? If so, please advise who we might ping in ORD/OP for language.

thx
Andrea Barbery
Office of Intergovernmental Relations
U.S. Environmental Protection Agency
202-564-1397

From: Moody, Christina
Sent: Monday, May 21, 2018 2:23 PM
To: Barbery, Andrea <Barbery.Andrea@epa.gov>
Cc: Kent, Alison <Kent.Alison@epa.gov>; Nitsch, Chad <Nitsch.Chad@epa.gov>; Saddler, Melissa <Saddler.Melissa@epa.gov>; Murphy, Dan <Murphy.Dan@epa.gov>; Linkins, Samantha <Linkins.Samantha@epa.gov>; Kime, Robin <Kime.Robin@epa.gov>; Feeley, Drew (Robert) <Feeley.Drew@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>
Subject: Re: Commissioner letter for your review

The letter actually appears to be intended as comments on the proposed rule and should probably be included as such. I don't believe a response is necessary at this time.

Looping in Sam Linkins in ORD and Robin Kime/Drew Feeley to get their thoughts as well.

Adding Robin FYI and thoughts as well.

Christina J. Moody
Environmental Protection Agency
Office of Congressional Relations
Moody.Christina@epa.gov

On May 21, 2018, at 2:17 PM, Barbery, Andrea <Barbery.Andrea@epa.gov> wrote:

My apologies! It's about transparency in science. Thanks for taking a look!

From: Kent, Alison
Sent: Monday, May 21, 2018 1:57 PM
To: Barbery, Andrea <Barbery.Andrea@epa.gov>
Cc: Saddler, Melissa <Saddler.Melissa@epa.gov>; Nitsch, Chad <Nitsch.Chad@epa.gov>; Murphy, Dan <Murphy.Dan@epa.gov>
Subject: Commissioner letter for your review

Hi Andrea-

Please see the attached PDF and control slip for an assignment I received this week. MN Commissioner John Linc Stone addressed this to Admin. Pruitt and OEX is asking OCIR to consider writing a response. Let me know if you wish to write a response for Troy to sign or if you like to proceed in a different way.

Thank you,
Ali

Alison (Ali) Kent
Office of Congressional and Intergovernmental Relations
Environmental Protection Agency
WCJN 3450G | 202-564-7645 (Direct)

I am an EPA LGBTQ+ Ally. [Learn more and take the Pledge here.](#)

<Linc Stine Letter.pdf>

<18-000-7532.pdf>

Message

From: Linkins, Samantha [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B7A94AA2975D4933981A8A9BF12AAA40-LINKINS, SAMANTHA]
Sent: 1/22/2018 7:04:29 PM
To: Cawiezell, Thomas [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eb3be5507fbc4947bf3ac3d03af1f3ab-Cawiezell,]
CC: Sinks, Tom [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=001007b7d256453a8a19b91df704e22c-Sinks, Tom]
Subject: FW: BRIEFING REQUEST: HONEST ACT-HSST : EPA PRE-PLANNING CALL
Attachments: Response to CBO Questions about the HONEST Act - ORD Draft Answers 3-21-....doc; HONEST Act SMITTX_010_xml.pdf

Attached is the response we developed for CBO last spring (didn't go to CBO fyi) and the bill language. See last email in this chain for more info on how this request originated.

Samantha Linkins
Science Communication Specialist and Congressional Lead
Office of Research and Development, US EPA
Washington, DC
Office: 202-564-1834

Personal Matters / Ex. 6

From: Linkins, Samantha
Sent: Wednesday, January 17, 2018 6:11 PM
To: Orme-Zavaleta, Jennifer
Cc: Yamada, Richard (Yujiro) ; Rodan, Bruce ; Kuhn, Kevin ; Fleming, Megan ; Christian, Megan ; Bahadori, Tina ; Vandenberg, John
Subject: RE: BRIEFING REQUEST: HONEST ACT-HSST : EPA PRE-PLANNING CALL

Added John & Tina. For reference, I've attached what we developed in response to CBO questions about the HONEST Act last spring. This document includes input from OAR, OLEM, OCSPP, SAB, and OP, but was not reviewed by OGC or OEI as it was not sent to CBO.

Samantha Linkins
Science Communication Specialist and Congressional Lead
Office of Research and Development, US EPA
Washington, DC
Office: 202-564-1834

Personal Matters / Ex. 6

From: Orme-Zavaleta, Jennifer
Sent: Wednesday, January 17, 2018 5:54 PM
To: Linkins, Samantha <Linkins.Samantha@epa.gov>
Cc: Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Rodan, Bruce <rodan.bruce@epa.gov>; Kuhn, Kevin <Kuhn.Kevin@epa.gov>; Fleming, Megan <Fleming.Megan@epa.gov>; Christian, Megan <Christian.Megan@epa.gov>
Subject: Re: BRIEFING REQUEST: HONEST ACT-HSST : EPA PRE-PLANNING CALL

Include us plus tina and john vanderberg

Jennifer Orme-Zavaleta, PhD
Principal Deputy Assistant Administrator for Science
USEPA Office of Research and Development

Personal Matters / Ex. 6

On Jan 17, 2018, at 5:53 PM, Linkins, Samantha <Linkins.Samantha@epa.gov> wrote:

Hey Jennifer, Bruce, and Richard –

HSST staff have requested a meeting about the HONEST Act. OCIR wants to have an internal EPA call this Friday the 19th to discuss the meeting. Who would you like to include on the initial pre-meeting on Friday?

-Sam

Samantha Linkins
Science Communication Specialist and Congressional Lead
Office of Research and Development, US EPA
Washington, DC
Office: 202-564-1834

Personal Matters / Ex. 6

From: Gomez, Laura

Sent: Wednesday, January 17, 2018 4:39 PM

To: Feeley, Drew (Robert) <Feeley.Drew@epa.gov>; Linkins, Samantha <Linkins.Samantha@epa.gov>;
Albores, Richard <Albores.Richard@epa.gov>; Kuhn, Kevin <Kuhn.Kevin@epa.gov>

Cc: Moody, Christina <Moody.Christina@epa.gov>; Haman, Patricia <Haman.Patricia@epa.gov>

Subject: BRIEFING REQUEST: HONEST ACT-HSST : EPA PRE-PLANNING CALL

Hi Everyone,

Chairman Smith of the House Science, Space and Technology Committee (HSST) recently met with the Administrator regarding the subject area of HONEST Act implementation. Resulting from that meeting OCIR will be coordinating a follow-up meeting with HSST committee staff.

In effort to plan for that follow up meeting, OCIR would like coordinate an internal EPA meeting together with your offices to discuss and plan for the Agency's follow up meeting with HSST committee staff. We'd like to set up two meetings- preferably via-phone to ease in the flexibility of everyone's schedules.

I'd like to set-up our first call for **FRIDAY-1/19**, with our second meeting for next week. This first initial call will be to give you more background on what we in OCIR know, and understand what you know from your AA-ship perspective. From there we will also decide on possible meeting dates with the HSST committee and draft up a potential delegate list who will attend.

To make things easier, I'd like coordinate schedules via-outlook, and set up an invitation with agenda and details. As I do this, please let me know whom else to include.

Happy to answer any questions or concerns.

Best,

Laura

Laura E. Gómez Rodríguez
Congressional Liaison Specialist
US Environmental Protection Agency (EPA)
Office of Congressional and Intergovernmental Relations (OCIR)
1200 Pennsylvania Ave., N.W. MC-2650R
Washington DC, 20004
gomez.laura@epa.gov

Mon Apr 30 15:55:49 EDT 2018
CMS.OEX@epamail.epa.gov
FW: Comment period extension request for proposed rule Strengthening Transparency in Regulatory Science (Docket ID No. EPA-HQ-OA-2018-0259)
To: "cms.oex@domino.epamail.epa.gov" <cms.oex@domino.epamail.epa.gov>

.....
From: Hope, Brian
Sent: Monday, April 30, 2018 7:55:47 PM (UTC+00:00) Monrovia, Reykjavik
To: CMS.OEX
Subject: FW: Comment period extension request for proposed rule Strengthening Transparency in Regulatory Science (Docket ID No. EPA-HQ-OA-2018-0259)

From: Jyotsna Pandey [mailto:jpandey@aibs.org]
Sent: Monday, April 30, 2018 2:28 PM
To: Pruitt, Scott <Pruitt.Scott@epa.gov>
Subject: Re: Comment period extension request for proposed rule Strengthening Transparency in Regulatory Science (Docket ID No. EPA-HQ-OA-2018-0259)

April 30, 2018

The Honorable Scott Pruitt

Administrator

U.S. Environmental Protection Agency

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Dear Administrator Pruitt:

I write to respectfully request that the Environmental Protection Agency (EPA) extend by 60-days the deadline for receiving comments on the proposed rule, “Strengthening Transparency in Regulatory Science”, which was published in the Federal Register on April 30, 2018.

The American Institute of Biological Sciences (AIBS) is concerned that the current 30-day comment period does not allow sufficient time for the scientific community to fully analyze the proposed rule. It is thus not possible to submit detailed and substantive comments on a complex proposal that has such far-reaching and long-lasting impacts on public and environmental health.

We are concerned by the agency’s proposal to stop the use of scientific studies that have underlying data that are not publicly available. Many studies that inform regulations rely on scientific data that cannot be made public for reasons such as patient privacy or industry confidentiality but are still important to consider when crafting rules. The data transparency requirement is also likely to impose a significant new cost on the taxpayer as new systems will be required to manage, store, present, and track down data, as well as redact sensitive personal information. This proposed rule change is likely to negatively impact the efficiency of the rulemaking process and result in increased costs to the taxpayer.

Please extend by 60 days the deadline for comments to allow for a more thorough and thoughtful rulemaking process.

Sincerely,

Robert Gropp, Ph.D.

Co-Executive Director

Jyotsna Pandey, Ph.D.
Public Policy Manager
American Institute of Biological Sciences
1201 New York Avenue, NW
Suite 420
Washington, DC 20005
Phone: 202-628-1500 x 225
www.aibs.org



This message is confidential and should only be read by its intended recipients.

If you have received it in error, please notify the sender and delete all copies.



April 30, 2018

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Subject: Comment period extension request for proposed rule *Strengthening Transparency in Regulatory Science* (Docket ID No. EPA-HQ-OA-2018-0259)

Dear Administrator Pruitt:

I write to respectfully request that the Environmental Protection Agency (EPA) extend by 60-days the deadline for receiving comments on the proposed rule, "Strengthening Transparency in Regulatory Science", which was published in the Federal Register on April 30, 2018.

The American Institute of Biological Sciences (AIBS) is concerned that the current 30-day comment period does not allow sufficient time for the scientific community to fully analyze the proposed rule. It is thus not possible to submit detailed and substantive comments on a complex proposal that has such far-reaching and long-lasting impacts on public and environmental health.

We are concerned by the agency's proposal to stop the use of scientific studies that have underlying data that are not publicly available. Many studies that inform regulations rely on scientific data that cannot be made public for reasons such as patient privacy or industry confidentiality but are still important to consider when crafting rules. The data transparency requirement is also likely to impose a significant new cost on the taxpayer as new systems will be required to manage, store, present, and track down data, as well as redact sensitive personal information. This proposed rule change is likely to negatively impact the efficiency of the rulemaking process and result in increased costs to the taxpayer.

Please extend by 60 days the deadline for comments to allow for a more thorough and thoughtful rulemaking process.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert Gropp".

Robert Gropp, Ph.D.
Co-Executive Director

Thu May 03 15:58:26 EDT 2018
CMS.OEX@epamail.epa.gov
FW: American Lung Association Comment Period Extension and Public Hearing Request
To: "cms.oex@domino.epamail.epa.gov" <cms.oex@domino.epamail.epa.gov>

From: Hope, Brian
Sent: Thursday, May 3, 2018 7:58:23 PM (UTC+00:00) Monrovia, Reykjavik
To: CMS.OEX
Subject: FW: American Lung Association Comment Period Extension and Public Hearing Request

From: Paul Billings [mailto:Paul.Billings@lung.org]
Sent: Thursday, May 03, 2018 2:36 PM
To: Pruitt, Scott <Pruitt.Scott@epa.gov>
Cc: Leopold, Matt <Leopold.Matt@epa.gov>; Sinks, Tom <Sinks.Tom@epa.gov>; Orme-Zavaleta, Jennifer <Orme-Zavaleta.Jennifer@epa.gov>; Staff_OSA <Staff_OSA@epa.gov>
Subject: American Lung Association Comment Period Extension and Public Hearing Request

Dear Administrator Pruitt:

Attached please find a letter from Harold P. Wimmer, National President and CEO of the American Lung Association requesting a public hearing and 60 day extension to the comment period on Strengthening Transparency in Regulatory Science- Docket ID No. EPA-HQ-OA-2018-0259.

Thank you for your consideration,

Paul Billings

Paul Billings

National Senior Vice President, Advocacy
American Lung Association

Direct 202-785-3988

Harold P. Wimmer
National President and
CEO

May 3, 2018

The Honorable E. Scott Pruitt
Administrator, U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Public hearing and comment period extension request for proposed
rulemaking- Strengthening Transparency in Regulatory Science- Docket ID
No. EPA-HQ-OA-2018-0259

Dear Administrator Pruitt:

The American Lung Association respectfully requests the U.S.
Environmental Protection Agency hold a public hearing and extend the
comment deadline to July 30, 2018, specifically 60 days after the current
May 30, 2018, comment deadline on the proposed rule, "Strengthening
Transparency in Regulatory Science" -- Docket ID No. EPA-HQ-OA-2018-
0259.

Under the Clean Air Act, EPA must hold a public hearing on this proposal
because of the significant impact this rule could have on a wide range of
public health safeguards. The proposal would amend the substantive, long-
followed standards for decision-making for a host of actions covered by
Clean Air Act section 307 (d). Those actions include review of the National
Ambient Air Quality Standards (section 307 (d)(1)(A)); residual risk
determinations for hazardous air pollutants (section 307 (d) (1)(C));
standards for mobile source air toxics (section 307 (d)(1)(K)), and residual
risk standards for municipal solid waste combustors (section 307
(d)(1)(D)). Therefore, Clean Air Act sections 307 (d)(5)(ii) and (iv) require
the Administrator to hold a public hearing on his proposal and to keep the
record open for an additional thirty days after the hearing "to provide an
opportunity for submission of rebuttal and supplementary information."

Further, we request EPA to extend the public comment deadline to July 30,
2018. Under the current comment timeline, we and other commenters will
have difficulty completing detailed comments that fully analyze the

Advocacy Office:

1331 Pennsylvania Avenue NW, Suite 1425 North
Washington, DC 20004-1710
Ph: 202-785-3355 F: 202-452-1805

Corporate Office:

55 West Wacker Drive, Suite 1150 | Chicago, IL 60601
Ph: 312-801-7630 F: 202-452-1805 info@Lung.org


proposal, respond to the technical and scientific questions and address these far-reaching and long-lasting adverse impacts of this rule on the nation's air quality. Furthermore, a major federal holiday falls during the comment period that will limit the time available to review and comment.

Moreover, we note that EPA has failed to complete a regulatory impact analysis that explains the impacts of the proposal. Absent such analysis, we will have to pursue our own efforts to understand the anticipated implications of the proposal. That will require additional time to complete.

In light of the significant public health ramifications of the proposal and the challenge of the brief comment period with the proposal publication in the April 30, 2018 Federal Register, we respectfully request that the comment period be extended until July 30, 2018 to permit all stakeholders to provide comments on this proposal.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in black ink that reads "Harold Wimmer". The signature is written in a cursive, flowing style.

Harold P. Wimmer
National President and CEO

cc:

Jennifer Orme-Zavaleta, EPA Science Advisor, U.S. Environmental Protection Agency
Matthew Z. Leopold, General Counsel, U.S. Environmental Protection Agency
Tom Sinks, Office of the Science Advisor, U.S. Environmental Protection Agency

Fri May 04 16:45:01 EDT 2018
CMS.OEX@epamail.epa.gov
FW: NESCAUM request for comment period deadline extenstion on public hearings
To: "cms.oex@domino.epamail.epa.gov" <cms.oex@domino.epamail.epa.gov>

From: Hope, Brian
Sent: Friday, May 4, 2018 8:44:59 PM (UTC+00:00) Monrovia, Reykjavik
To: CMS.OEX
Subject: FW: NESCAUM request for comment period deadline extenstion on public hearings

From: Paul Miller [mailto:pmiller@nescaum.org]
Sent: Friday, May 04, 2018 1:25 PM
To: Pruitt, Scott <Pruitt.Scott@epa.gov>
Cc: Staff_OSA <Staff_OSA@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>
Subject: NESCAUM request for comment period deadline extenstion on public hearings

Dear Administrator Pruitt:

Please find attached a request by the Northeast States for Coordinated Air Use Management (NESCAUM) submitted to the EPA docket today asking for a comment deadline extension and public hearings on EPA’s proposed rule ‘Strengthening Transparency in Regulatory Science’ (EPA–HQ–OA–2018–0259).

Thank you for your consideration of our request.

Sincerely,

Paul J. Miller, Deputy Director & Chief Scientist

Northeast States for Coordinated Air Use Management
89 South Street, Suite 602

Boston, MA 02111

Ph: 617-259-2016

Fax: 617-742-9162
www.nescaum.org

Follow us:













May 4, 2018

Administrator Scott Pruitt
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Attention: Docket ID No. EPA-HQ-OA-2018-0259

Re: *Request for 90-day comment period and public hearings for Proposed Rule on Strengthening Transparency in Regulatory Science*

Dear Administrator Pruitt:

The Northeast States for Coordinated Air Use Management (NESCAUM)¹ respectfully request an additional 60 days along with public hearings to comment on the US EPA proposed rule “Strengthening Transparency in Regulatory Science” (Docket ID No. EPA-HQ-OA-2018-0259). The April 30th Federal Register notice provides for only a 30-day comment period, which ends May 30, 2018 (83 Fed. Reg. 18768).

EPA’s proposal has far-reaching consequences on the future use of science by the Agency. For example, the proposed rule lacks specificity. If finalized as is, it could unnecessarily restrict the use of peer-reviewed scientific studies that would inform reviews of the National Ambient Air Quality Standards (NAAQS). This will impede setting NAAQS levels with an adequate margin of safety necessary for public health protection as required by the Clean Air Act.

In light of its vagueness, the proposal comment period of only 30 days is too short to give our states and the public a meaningful time window for consideration and comment, therefore we ask for an additional 60 days to provide a full 90-day comment period. In addition, we also request that EPA hold public hearings during the extended 90-day comment period. A 90-day comment period with public hearings provides our states and the public a more reasonable opportunity to comment in light of this proposal’s significant implications for public health and environmental protection.

Sincerely,



Paul J. Miller

Deputy Director and Chief Scientist

¹ NESCAUM is the association of state air agencies in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont.

cc: NESCAUM state directors
Bill Wehrum, Assistant Administrator EPA OAR
Tom Sinks, EPA Office of the Science Advisor
Dave Conroy, EPA R1
Richard Ruvo, EPA R2

Fri May 04 17:50:31 EDT 2018
CMS.OEX@epamail.epa.gov
FW: Request for Extension of Time and Public Hearings on Proposed Rulemaking – Docket ID No. EPA-HQ-OA-2018-0259
To: "cms.oex@domino.epamail.epa.gov" <cms.oex@domino.epamail.epa.gov>

From: Hope, Brian
Sent: Friday, May 4, 2018 9:50:29 PM (UTC+00:00) Monrovia, Reykjavik
To: CMS.OEX
Subject: FW: Request for Extension of Time and Public Hearings on Proposed Rulemaking – Docket ID No. EPA-HQ-OA-2018-0259

From: Kym Hunter [mailto:khunter@selcnc.org]
Sent: Friday, May 04, 2018 5:28 PM
To: Pruitt, Scott <Pruitt.Scott@epa.gov>; esp7, <esp7@epa.gov>; 'adm14pruitt@epa.gov' <adm14pruitt@epa.gov>; sooners7, adm <sooners7@epa.gov>; Staff_OSA <Staff_OSA@epa.gov>
Cc: Nat Mund <nmund@selcdc.org>; 'june@cleanaircarolina.org' <june@cleanaircarolina.org>; 'rachel@cleanaircarolina.org' <rachel@cleanaircarolina.org>; 'grady@ncconservationnetwork.org' <grady@ncconservationnetwork.org>; 'kemp@cfrw.us' <kemp@cfrw.us>; 'emily@hawriver.org' <emily@hawriver.org>; 'shannon@sustaincharlotte.org' <shannon@sustaincharlotte.org>; rick.savage@carolinawetlands.org; 'julie@mountaintrue.org' <julie@mountaintrue.org>; 'clowry@alabamarivers.org' <clowry@alabamarivers.org>; Jen Hilburn <jen@altamahariverkeeper.org>; Kevin Jeselnik <KJeselnik@chattahoochee.org>; 'jesse@coosa.org' <jesse@coosa.org>; 'mary@vcnva.org' <mary@vcnva.org>; 'michael@gaspgroup.org' <michael@gaspgroup.org>; 'sralston@jrava.org' <sralston@jrava.org>; 'BethS@cahabariversociety.org' <BethS@cahabariversociety.org>; 'bianca@saf-unite.org' <bianca@saf-unite.org>; 'simona@ogeecheeriverkeeper.org' <simona@ogeecheeriverkeeper.org>; 'upperneuserk@soundrivers.org' <upperneuserk@soundrivers.org>; 'pamtarrk@soundrivers.org' <pamtarrk@soundrivers.org>; 'lowerneuserk@soundrivers.org' <lowerneuserk@soundrivers.org>; 'phillip@prknetwork.org' <phillip@prknetwork.org>; Nat Mund <nmund@selcdc.org>; Navis Bermudez <nbermudez@selcdc.org>; Geoff Gisler <ggisler@selcnc.org>; Annemarie Wamsted <awamsted@selcnc.org>
Subject: Request for Extension of Time and Public Hearings on Proposed Rulemaking – Docket ID No. EPA-HQ-OA-2018-0259

Dear Administrator Pruitt and Mr. Sinks,

On behalf of Nat Mund, Director of Federal Affairs at the Southern Environmental Law Center, and twenty-two other non-profit organizations from across the Southeast, please find attached a letter requesting that the EPA extend the comment period for Proposed Rulemaking – Strengthening Transparency in Regulatory Science, Docket ID No. EPA-HQ-OA-2018-0259 for a minimum of sixty days beyond the currently scheduled public comment deadline. We would also encourage you to schedule at least three public hearings in various locations across the country, including a hearing in the Southeast, in order to gather additional input from the public.

The proposed rule’s potential impact on science-based health and environmental safeguards is large and far-reaching, and the currently scheduled public comment period will not allow those potential impacts to be adequately addressed.

Thank you for your consideration.

Kym Hunter

Staff Attorney

Southern Environmental Law Center

601 West Rosemary Street, Suite 220

Chapel Hill, North Carolina 27516-2356

Phone: (919) 967-1450; Fax: (919) 929-9421

SouthernEnvironment.org

This email may contain information that is privileged and confidential. Unless you are the addressee (or authorized to receive email for the addressee), you may not use, copy, or disclose this email or any information therein. If you have received the email in error, please reply to the above address. Thank you.

SOUTHERN ENVIRONMENTAL LAW CENTER

Telephone 202-828-8382

112 C STREET NW, SUITE 390
WASHINGTON, DC 20001

Facsimile 202-347-6041

May 4, 2018

VIA E-MAIL AND U.S. MAIL

E. Scott Pruitt
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

**RE: Comment Period Extension Request for Proposed Rulemaking –
Strengthening Transparency in Regulatory Science, Docket ID No. EPA-HQ-
OA-2018-0259**

Dear Administrator Pruitt:

The Southern Environmental Law Center (“SELC”), Clean Air Carolina (“CAC”), Medical Advocates for Healthy Air (“MAHA”), the North Carolina Conservation Network (“NCCN”), Cape Fear River Watch, the Haw Riverkeeper Assembly (“HRA”), Sustain Charlotte, Carolina Wetlands Association, MountainTrue, Alabama Rivers Alliance, Altamaha Riverkeeper, Chattahoochee Riverkeeper (“CRK”), the Coosa River Basin Initiative (“CRBI”), the Virginia Conservation Network (“VCN”), Gasp, the James River Association (“JRA”), the Cahaba River Society, Student Action with Farmworkers (“SAF”), the Ogeechee Riverkeeper, Sound Rivers, and the Potomac Riverkeeper Network respectfully requests that the Environmental Protection Agency (“EPA”) extend the comment period for the above-referenced proposed rule for a minimum of sixty days beyond the currently scheduled public comment deadline. We would also encourage you to schedule at least three public hearings in various locations across the country, including a hearing in the Southeast, in order to gather additional input from the public. This proposed rule’s potential impact on science-based health and environmental safeguards is large and far-reaching, and the currently scheduled public comment period will not allow those potential impacts to be adequately addressed.

SELC is a nonprofit public interest law firm dedicated to the protection of natural resources, communities, and special places in a six-state region of the Southeast. SELC works in all three branches of government to help create, implement, and enforce the laws and policies that govern how our environment is protected. SELC advocates for clean energy and air, clean water, mountains and forests, land and community, coast and wetlands, and wildlife and special places. SELC has offices in Charlottesville, VA, Chapel Hill, NC, Asheville, NC, Atlanta, GA, Birmingham, AL, Charleston, SC, Nashville, TN, Richmond, VA, and Washington, DC and works with over 200 partner groups in the southeast.

CAC champions a statewide initiative to raise North Carolina's air quality to exceed that of scientific recommendations. Energized by the research-proven fact that even the smallest air pollutants are toxic to people's health, and by the urgency of pollution-induced climate change, CAC is a team driven to advance its mission to ensure cleaner air quality for all North Carolinians through education and advocacy and by working with its partners to reduce sources of pollution.

MAHA is a statewide network of medical and health professionals leading the call for cleaner air. MAHA members learn about the health impacts of air quality so that they can help their patients and advocate for strong, clean air policies.

NCCN is a statewide network of nearly 100 environmental, community, and environmental justice organizations focused on protecting North Carolina's environment and public health. NCCN supports, trains, and coordinates diverse groups throughout the state and directly advocates to achieve equitable and sustainable solutions for the environment.

Since 1993, Cape Fear River Watch has been working to protect and improve the water quality of the Lower Cape Fear River Basin through education, advocacy, and action. Cape Fear River Watch engages residents of its watershed through programs to preserve and safeguard the river. The Cape Fear Riverkeeper is a member of the Waterkeeper Alliance, an international clean water advocacy organization.

The Haw River Assembly is a nonprofit environmental organization promoting environmental education, conservation and pollution prevention. It is a member of Waterkeeper Alliance. HRA depends on its scientific partners to provide information on the quality of surface waters in order to protect the ecosystems and communities that depend on them.

Sustain Charlotte is a community-based nonprofit organization dedicated to educating, engaging and uniting citizens to solve Charlotte's sustainability challenges. Sustain Charlotte inspires choices that lead to a healthy, equitable and vibrant community for generations to come.

Carolina Wetlands Association, a nonprofit, is a nonpartisan, science-based organization advocating for wetlands. The Carolina Wetlands Association promotes the understanding, protection, restoration, and enjoyment of North and South Carolina's wetlands and associated ecosystems through science-based programs, education, and advocacy.

MountainTrue is committed to keeping its mountain region a beautiful place to live, work and play. Its members protect their forests, clean up their rivers, plan vibrant and livable communities, and advocate for a sound and sustainable future for all residents of WNC.

Alabama Rivers Alliance is a statewide network of groups working to protect and restore all of Alabama's water resources through building partnerships, empowering citizens and advocating for sound water policy and its enforcement.

The Altamaha Riverkeeper is dedicated to the protection, defense and restoration of Georgia's Altamaha River and its tributaries, the Ocmulgee, the Oconee and the Ohoopsee, and

three major lakes, Sinclair, Oconee and Jackson, within the Altamaha Watershed. The Riverkeeper works to fulfill the Clean Water Act's goal of fishable, swimmable, and drinkable waters for the communities and recreational users within this important ecological region. Altamaha Riverkeeper has more than 1,500 members, from Atlanta and Athens to the Golden Isles, and several thousand followers who support its work.

CRK is a nonprofit environmental advocacy organization dedicated to the protection and stewardship of the Chattahoochee River, its tributaries, lakes and watershed. CRK represents more than 8,600 members who use and enjoy the river system and depend on the Chattahoochee River and its lakes as a source of drinking water, recreation and economic prosperity.

CRBI is a nonprofit environmental advocacy organization headquartered in Rome, northwest Georgia with over 3,500 members in Georgia. Since 1992, CRBI has been working to protect, preserve, and restore the biologically diverse Coosa River Basin, including the Coosa River and its tributaries. To accomplish this, CRBI engages in educational efforts, research, advocacy, and legal action where necessary.

VCN began as a roundtable of major conservation groups and has grown to include over 120 Network Partners across the Commonwealth. VCN is committed to building a powerful, diverse, and highly-coordinated conservation movement focused on protecting the Commonwealth's natural resources today and for tomorrow.

Gasp is a health advocacy organization working to reduce air pollution in Alabama through education and advocacy.

JRA is a member-supported nonprofit organization founded in 1976 to serve as a guardian and voice for the James River. Throughout the James' 10,000-square mile watershed, JRA works towards its vision of a fully healthy river supporting thriving communities. With offices in Lynchburg, Richmond and Williamsburg, JRA is committed to protecting the James and connecting people to it.

The Cahaba River Society is a citizen advocacy group formed in 1989 to restore and protect the Cahaba River watershed and its rich diversity of life. The diverse lives depending on the Cahaba include the 600,000 people and numerous businesses in the Birmingham Water Board service area relying on the River as a major source of drinking water as well as its internationally significant diversity of freshwater wildlife.

SAF works with farmworkers, students, and advocates in the Southeast and nationwide to create a more just agricultural system. Since 1992, SAF has engaged thousands of students, farmworker youth, and community members in the farmworker movement.

The Ogeechee Riverkeeper's mission is to protect, preserve, and improve the water quality of the Ogeechee River watershed by building bridges between people and their local waterways. A proud Member of the Waterkeeper Alliance, the Ogeechee Riverkeeper works with over 300 organizations around the world to ensure that its waters are fishable, swimmable, and drinkable now and for future generations.

Sound Rivers is a private nonprofit organization that guards the health and natural beauty of the Neuse and Tar-Pamlico River Basins. It partners with concerned citizens to monitor, protect, restore and preserve the watersheds covering 23% of North Carolina's land mass. Sound Rivers' goal is to provide clean water to its communities for consumption, recreation, nature preservation and agricultural use.

Potomac Riverkeeper Network is a nonprofit organization with three regional Waterkeeper branches: Potomac Riverkeeper, Upper Potomac Riverkeeper, and Shenandoah Riverkeeper. Its mission is to protect the public's right to clean water in its rivers and streams. Potomac Riverkeeper Network stops pollution to promote safe drinking water, protect healthy habitats, and enhance public use and enjoyment.

EPA published a notice in the Federal Register of the proposed rule, titled "Transparency in Regulatory Decisionmaking" on April 30, 2018. 83 Fed. Reg. at 18,733 (proposed 30 C.F.R. § 30.3). By providing that, "when EPA develops regulations... with regard to those scientific studies that are pivotal to the action being taken, EPA should ensure that the data underlying those are publicly available in a manner sufficient for independent validation," 83 Fed. Reg. at 18,768, the proposed rule would dramatically alter how EPA uses science in its regulatory decisionmaking process. This change would affect all significant EPA decisions; it requires careful, considered, and in-depth analysis by a broad range of stakeholders. Additionally, since EPA did not provide any of its own analysis of the potential effects of its proposed rule on environmental regulation or the scientific studies underlying previously enacted rules, the public must undertake that task themselves. Thirty days is clearly insufficient to meaningfully assess the potential impact of the proposed rule.

Given the unmistakable complexity of the proposed rule and its potential to have a significant effect on EPA's ability to fully protect the public from environmental and public health hazards such as air pollution and unsafe chemicals, we urge EPA to extend the comment period by a minimum of sixty days and to schedule at least three public hearings.

Thank you for your consideration of this request. We would appreciate acknowledgement of this letter and look forward to your reply.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nat Mund', with a stylized, cursive script.

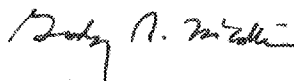
Nat Mund
Director of Federal Affairs
Southern Environmental Law Center



June Blotnick
Executive Director
Clean Air Carolina



Rachel McIntosh-Kastrinsky
Manager
Medical Advocates for Healthy Air



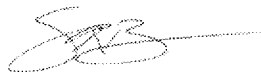
Grady McCallie
Policy Director
North Carolina Conservation Network



Kemp Burdette
Riverkeeper
Cape Fear River Watch



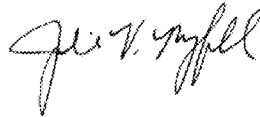
Emily Sutton
Riverkeeper
Haw River Assembly



Shannon Binns
Executive Director
Sustain Charlotte



Rick Savage
President
Carolina Wetlands Association



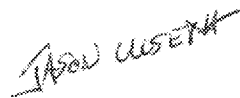
Julie Mayfield
Co-Director
MountainTrue



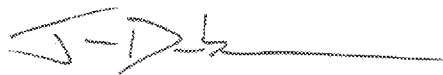
Cindy Lowry
Executive Director
Alabama Rivers Alliance

/s/ Jen Hilburn

Jen Hilburn
Riverkeeper
Altamaha Riverkeeper



Jason Ulseth
Riverkeeper
Chattahoochee Riverkeepr



Jesse Demonbruen-Chapman
Executive Director
Coosa River Basin Initiative



Mary Rafferty
Executive Director
Virginia Conservation Network



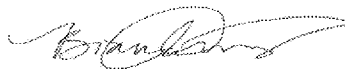
Michael Hansen
Executive Director
Gasp



Shawn Ralston
Program Director
James River Association



Beth K. Stewart
Executive Director
Cahaba River Society



Bianca Olivares
Grassroots Organizer
Student Action with Farmworkers



Simona Perry
Executive Director
Ogeechee Riverkeeper

/s/ Matthew Starr
Matthew Starr
Upper Neuse Riverkeeper
Sound Rivers

/s/ Katy Langley
Katy Langley
Lower Neuse Riverkeeper
Sound Rivers

/s/ Forrest English
Forrest English
Pamlico-Tar Riverkeeper
Sound Rivers

Phillip Musegaas

Phillip Musegaas
Vice President of Programs and Litigation
Potomac Riverkeeper Network

Thursday 26 April 2018

RECEIVED

2018 MAY -4- AM 10:24

Secretary Scott Pruitt
Environmental Protection Agency, Mail Code 1101A
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

OFFICE OF THE
EXECUTIVE SECRETARIAT

Dear Secretary Pruitt,

I am writing to ask that you reconsider a proposal to introduce a regulation that would only allow studies with public data to influence writing regulations. While this proposal sounds good, it would severely limit the pool of scientific research that the Environmental Protection Agency uses to base its rules. For example, an insistence that data be "reproducible" will prevent the EPA from looking at data from events that are impossible or unethical to simulate—such as the BP oil spill or lead in children's drinking water. The EPA should cast a broad and wide net in looking to scientific data for information that impacts human health and safety and the health of our environment.

The Union of Concerned Scientists, an organization I trust, opposes this regulation. Groups such as the oil and gas lobbyists, who are in favor of this regulation, appear to have a serious conflict of interest. The organization you oversee is the Environmental PROTECTION Agency. Please act accordingly.

I look forward to hearing from you.

Respectfully,



Cynthia Winfield

Personal Matters / Ex. 6

Cynthia Winfield

Personal Matters / Ex. 6

NASHVILLE TN 370

27 APR 2018 PM 5 L

MAY 04 2018

Secretary Scott Pruitt
EPA, Mail Code 1101A
1200 Pennsylvania Ave NW
Washington DC 20460



20460-



Wed May 09 15:57:33 EDT 2018
CMS.OEX@epamail.epa.gov
FW: Hello
To: "cms.oex@domino.epamail.epa.gov" <cms.oex@domino.epamail.epa.gov>

From: Hope, Brian
Sent: Wednesday, May 9, 2018 7:57:32 PM (UTC+00:00) Monrovia, Reykjavik
To: CMS.OEX
Subject: FW: Hello

Forward to the docket.

From: jordan scovel [mailto:jordan.scovel@gmail.com]
Sent: Wednesday, May 09, 2018 3:37 PM
To: Pruitt, Scott <Pruitt.Scott@epa.gov>
Subject: Hello

I'm writing today gravely concerned about your recent proposal to restrict EPA's ability to use life-saving science, and to ask that you extend the 30 day comment period and hold a public hearing so that Americans have a chance to weigh in on this disastrous proposal.

This proposal doesn't roll back red tape. Instead, it binds the process of legitimate scientific inquiry with it. It will obstruct EPA's ability to use highly reliable scientific information, including data used to determine whether chemicals and pollutants cause cancer, heart disease, and other health problems.

This proposal will undermine EPA's ability to safeguard the health and well-being of American families. Please abandon this attack on strong science. America's communities are counting on an EPA that uses the best and latest science to protect us. Thanks.

Jordan

Los Angeles, CA

Thu May 10 09:23:54 EDT 2018
CMS.OEX@epamail.epa.gov
FW: EPA responsibilities
To: "cms.oex@domino.epamail.epa.gov" <cms.oex@domino.epamail.epa.gov>

From: Hope, Brian
Sent: Thursday, May 10, 2018 1:23:53 PM (UTC+00:00) Monrovia, Reykjavik
To: CMS.OEX
Subject: FW: EPA responsibilities

Forward to the docket.

From: Sandi Rohde [mailto:

Personal Matters / Ex. 6

]
Sent: Thursday, May 10, 2018 9:14 AM
To: Pruitt, Scott <Pruitt.Scott@epa.gov>
Subject: EPA responsibilities

I'm writing today gravely concerned about your recent proposal to restrict EPA's ability to use life-saving science, and to ask that you extend the 30 day comment period and hold a public hearing so that Americans have a chance to weigh in on this disastrous proposal.

This proposal doesn't roll back red tape. Instead, it binds the process of legitimate scientific inquiry with it. It will obstruct EPA's ability to use highly reliable scientific information, including data used to determine whether chemicals and pollutants cause cancer, heart disease, and other health problems.

This proposal will undermine EPA's ability to safeguard the health and well-being of American families. Please abandon this attack on strong science. America's communities are counting on an EPA that uses the best and latest science to protect us. Thanks.

--

Sandra Rohde

Personal Matters / Ex. 6

Appleton, Wisconsin

Thu May 10 09:38:12 EDT 2018
CMS.OEX@epamail.epa.gov
FW: Scientific illiteracy should not drive policy
To: "cms.oex@domino.epamail.epa.gov" <cms.oex@domino.epamail.epa.gov>

From: Hope, Brian
Sent: Thursday, May 10, 2018 1:38:12 PM (UTC+00:00) Monrovia, Reykjavik
To: CMS.OEX
Subject: FW: Scientific illiteracy should not drive policy

Forward to the docket.

From: Melissa Floyd [mailto:wakerglass@gmail.com]
Sent: Wednesday, May 09, 2018 4:44 PM
To: Pruitt, Scott <Pruitt.Scott@epa.gov>
Subject: Scientific illiteracy should not drive policy

I'm writing today gravely concerned about your recent proposal to restrict EPA's ability to use life-saving science, and to ask that you extend the 30 day comment period and hold a public hearing so that Americans have a chance to weigh in on this disastrous proposal.

This proposal doesn't roll back red tape. Instead, it binds the process of legitimate scientific inquiry with it. It will obstruct EPA's ability to use highly reliable scientific information, including data used to determine whether chemicals and pollutants cause cancer, heart disease, and other health problems.

This proposal will undermine EPA's ability to safeguard the health and well-being of American families. Please abandon this attack on strong science. America's communities are counting on an EPA that uses the best and latest science to protect us. Thanks.

Melissa Floyd

University park, MD

Mon May 14 08:26:02 EDT 2018
CMS.OEX@epamail.epa.gov
FW:
To: "cms.oex@domino.epamail.epa.gov" <cms.oex@domino.epamail.epa.gov>

From: Hope, Brian
Sent: Monday, May 14, 2018 12:26:01 PM (UTC+00:00) Monrovia, Reykjavik
To: CMS.OEX
Subject: FW:

Forward to the docket.

From: JIL STEIN [mailto:jspoliticalaction@gmail.com]
Sent: Thursday, May 10, 2018 4:15 PM
To: Pruitt, Scott <Pruitt.Scott@epa.gov>
Subject:

Mr. Pruitt

I'm writing today gravely concerned about your recent proposal to restrict EPA's ability to use life-saving science, and to ask that you extend the 30 day comment period and hold a public hearing so that Americans have a chance to weigh in on this disastrous proposal.

This proposal doesn't roll back red tape. Instead, it binds the process of legitimate scientific inquiry with it. It will obstruct EPA's ability to use highly reliable scientific information, including data used to determine whether chemicals and pollutants cause cancer, heart disease, and other health problems.

This proposal will undermine EPA's ability to safeguard the health and well-being of American families. Please abandon this attack on strong science. America's communities are counting on an EPA that uses the best and latest science to protect us. Thanks.

Jillian Stein

Newbury Park CA 91320

ENVIRONMENTAL PROTECTION NETWORK

May 7, 2018

Administrator Scott Pruitt
U.S. Environmental Protection Agency (Mail Code 1101A)
U.S. EPA Headquarters, William Jefferson Clinton Building
1200 Pennsylvania Ave. N.W.
Washington, D.C. 20460
Also via email to docket

OFFICE OF THE
EXECUTIVE SECRETARY

2018 MAY 14 AM 11:27

RECEIVED

Re: Request for a Comment Period Extension, a Hearing, and CASAC Review for EPA's Proposal entitled "Strengthening Transparency in Regulatory Science", 83 Fed. Reg. 18768 (April 30, 2018); Docket No. EPA-HQ-OA-2018-0259

Dear Mr. Pruitt,

I am writing on behalf of the Environmental Protection Network, an organization of former EPA employees and others concerned about the future of the agency, to request an extension of time for public comment, the scheduling of a public hearing or hearings, and other actions.

Our reasons are supported by examples drawn from multiple statutes administered by EPA and will be presented as such.

General concerns supporting an extension of time. The proposal is far too complex, with effects too broad and indeterminate, and requests comment on far too many issues, for a thirty-day response period.

First, although the proposal suggests it will apply to eight environmental statutes, it does not identify any statutory or regulatory provisions requiring the use of science such that the rule will affect their implementation (or effectively amend them). Potential commenters will have to locate and pore through each such provision for themselves in order to assess the proposal's likely effect, *before* they can prepare comments addressing it.

Second, the astonishing breadth of the request for comments also requires extending the comment period. The notice requests comments on a host of general questions, with enough variations or alternatives to bring the total to more than fifty. In many cases, the notice simply identifies the potential comment topics, with no analysis, and no indication which approach the final rule will adopt.

Third, any proposal must meet the obligation to include sufficient, specific information to enable commenters to identify, understand, and respond to the supporting evidence advanced by the agency. This obligation is particularly weighty in a proposal with such sweeping, multi-statutory impact and ambitious, potentially unprecedented scope of change. Yet most of the footnotes are so general and unspecific as to be uninformative (see fn. 8-12, 16-21), or are conclusory without supporting evidence (see fn. 13, part fn. 3).

The amorphousness and breadth of the request for comments, combined with the absence of information about the potential statutory and regulatory provisions the proposal will affect, and the lack of specific information

www.EnvironmentalProtectionNetwork.org

info@EnvironmentalProtectionNetwork.org

202-656-6229

review. The SAB is then to review and comment on the proposal, which the Administrator is to consider, although the Administrator is not required to obtain SAB approval for any final action. See H. Rep. No. 95-722 (95th Cong. 1st Sess. (1977) (Conference Report)).

Further examples of statutory provisions which appear inconsistent with and are not addressed by the proposal

A 30 day comment period is inadequate time to identify and analyze the provisions of multiple statutes administered by EPA with language that will have implications for the actions contemplated by this proposal. Section I.C. of the preamble to this proposal asserts authority for this proposal by identifying, in a very general sense, provisions in several statutes dealing with science and research. The proposal nowhere acknowledges, identifies, or addresses many provisions in these statutes which govern regulatory decision-making and direct how the Administrator is to use science in such decision-making. A couple of illustrative examples drawn from the many relevant provisions raise serious questions as to whether the Administrator has the authority to promulgate such a sweeping, multi-statute rule without addressing the particular, distinctive requirements for regulatory decision-making Congress imposed in each statute. These are issues that would be addressed in an adequate proposal. Because they are not, the proposal in effect tries to shift the burden to commenters to try to make sense of the proposal in the context of statutory language. That is impossible to achieve in 30 days.

Toxic Substances Control Act (TSCA):

While TSCA Section 26 is not identified in the proposal, it includes provisions that raise questions about EPA's authority for and potential application of the proposal. Section 26(h), "Scientific Standards", states that "to the extent that the Administrator makes a decision based on science, the Administrator shall use scientific information, technical procedures, measures, methods, protocols, methodologies, or models, employed in a manner consistent with the best available science." EPA must consider each of these factors "as applicable." The availability of sufficient underlying data to "validate" or "reproduce" study results is *not* among the relevant factors that EPA must consider.

Similarly, section 26(i) addresses WEIGHT OF SCIENTIFIC EVIDENCE directing that:—"The Administrator shall make decisions under sections 4, 5, and 6 based on the weight of the scientific evidence." This requires the Administrator to evaluate the totality of available scientific evidence and make a judgment about its "weight"—not excluding evidence based solely on the availability of data sufficient for its validation.

These subsections indicate, at a minimum, that this proposal to require that "*dose response data and models underlying pivotal regulatory science* are publicly available in a manner sufficient for independent validation.... [w]hen promulgating significant regulatory actions" may not be consistent with the scientific standards and methodology for decision-making Congress prescribed for such actions under TSCA Section 26.

Safe Drinking Water Act (SDWA):

Similarly, although unacknowledged in the proposal including its request for comments, SDWA's standard-setting section, §1412 (42 U.S.C. § 300g-1), addresses the use of science in decisionmaking under that authority:

§1412(b)(3)(A) Use of science in decisionmaking.— In carrying out this section, and, to the degree that an Agency action is based on science, the Administrator shall use—

- (i) the best available, peer-reviewed science and supporting studies conducted in accordance with sound and objective scientific practices; and
- (ii) data collected by accepted methods or best available methods (if the reliability of the method and the nature of the decision justifies use of the data).

So long as the data used is otherwise collected, assessed, and presented "in accordance with sound and objective scientific practices," Congress did not give the Administrator discretion to ignore the "best available, peer-reviewed science and supporting studies" based on any factor relating to the public availability or unavailability of data, as this proposal would seek to compel. Further, the Report of the Senate Committee on Environment and Public Works – whose language in this provision on the use of science was adopted verbatim in P.L. 104-182 – directs that the "Administrator has a duty to seek and rely upon the best available science and information to support... [m]any of the most important activities including selecting contaminants for regulation, setting standards, designing analytical methods and structuring waivers, variances and exemptions" (Rpt. 104-169, at 28).

These fundamental omissions illustrate the proposal's inadequacy to identify or address its own implications for the statutory authorities that authorize EPA's programs. These examples, and many more that could be cited, bolster the imperative to withdraw this proposal and grapple meaningfully with these questions in an ANPRM or better fleshed out proposed rule with greater opportunities for exploration and discussion of them via public hearings. Failing that, the agency should at least extend the comment period to 90 days to enable commenters to compile and submit analyses of these questions that EPA has not examined.

The Environmental Protection Network will continue to inventory other statutes and regulations that will be affected by this rulemaking. But even where there are no requirements for a formal hearing or coordination, this proposed rule would change the regulatory framework for determining standards and requirements with no acknowledgement or identification of inconsistencies or conflicts with existing statutory or regulatory requirements or processes, and no opportunity for the public to comment on the specific changes. That makes it imperative to maximize opportunities for the public to review and comment on the regulatory changes being made in this proposal by extending the comment period.

We look forward to your affirmative response to this request.

Respectfully Submitted,

Ruth Greenspan Bell, President, Board of Directors, Environmental Protection Network
ruthgreenspanbell@gmail.com

Michelle Roos, Deputy Director, Environmental Protection Network
micheller Roos.epn@gmail.com

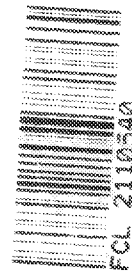
Docket No. EPA-HQ-OA-2018-0259

Environmental Protection Network
3100 Elliott NW
Washington DC 20008

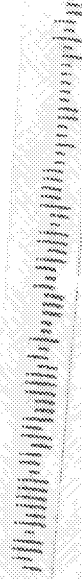
MAY 14 2018

NEW YORK NY 1003
008 MAY 20 18 PM 9 L

Administrator Scott Pruitt
US Environmental Protection Agency (Mail Code 1101A)
US EPA Headquarters, William Jefferson Clinton Building
1200 Pennsylvania Ave. NW
Washington DC 20460



20460-



Message

From: Sinks, Tom [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=001007B7D256453A8A19B91DF704E22C-SINKS, TOM]
Sent: 6/1/2018 1:11:12 PM
To: Hawkins, CherylA [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d917bee23e774e0dbb05ce06d694985e-Hawkins, CherylA]
CC: Sinks, Tom [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=001007b7d256453a8a19b91df704e22c-Sinks, Tom]; Anand Mudambi [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=29a94638932b49af8a6cf581262d5059-Mudambi, Anand]
Subject: FW: MPCA and MN Dept. of Health's joint comments regarding the U.S.EPA's proposed rule, "Strengthening Transparency in Regulatory Science" Published 4-30-18 at 83 FR 18768, Docket ID No. EPA-HQ-OA-2018-0259
Attachments: MPCA MDH Comments on Transparency in Science.pdf

Please forward to the docket. I have already responded to the sender that we will do this.

From: Schreifels, Deborah (MPCA) [mailto:deborah.schreifels@state.mn.us]
Sent: Thursday, May 31, 2018 4:32 PM
To: Sinks, Tom <Sinks.Tom@epa.gov>
Cc: Pruitt, Scott <pruitt.scott@epa.gov>; Stepp, Cathy <stepp.cathy@epa.gov>; Kohlasch, Frank (MPCA) <frank.kohlasch@state.mn.us>; James.kelly@state.mn.us; Smith, Amanda (MPCA) <amanda.smith@state.mn.us>; Anne Jackson <anne.jackson@state.mn.us>; Sanders, Vonda (MPCA) <vonda.sanders@state.mn.us>
Subject: MPCA and MN Dept. of Health's joint comments regarding the U.S.EPA's proposed rule, "Strengthening Transparency in Regulatory Science" Published 4-30-18 at 83 FR 18768, Docket ID No. EPA-HQ-OA-2018-0259

Hello,

The attached correspondence is sent on behalf of Frank Kohlasch, Minnesota Pollution Control Agency and James Kelly, Minnesota Department of Health regarding the referenced subject. A hard copy of this letter was mailed today to Tom Sinks U.S. EPA.

Thank you.

Deborah Schreifels
Office and Administrative Specialist
EAO/RMA Divisions
Minnesota Pollution Control Agency
520 Lafayette Road North 3rd Floor
St. Paul, MN 55155
651-757-2582
Deborah.Schreifels@state.mn.us



"Our mission is to protect and improve the environment and human health."

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August 16, 2018

VIA ELECTRONIC SUBMISSION

The Honorable Andrew Wheeler
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, DC 20460

Attn: EPA-HQ-OA-2018-0259

Re: Comment of the Environmental Defense Fund on the Environmental Protection Agency's Proposed Rule: *Strengthening Transparency in Regulatory Science*, 83 Fed. Reg. 18768 (Apr. 30, 2018) ("Proposal")

Environmental Defense Fund ("EDF") submits the following comments on EPA's April 30, 2018 proposed rule, "Strengthening Transparency in Regulatory Science" (the "Proposal").¹ Representing over two million members and supporters, EDF applies science, economics, and the law to solve our most urgent public health and environmental problems. EDF regularly engages in policy advocacy, regulatory proceedings, and litigation to secure and defend protections for human health and the environment under the Clean Air Act ("CAA"), Toxic Substances Control Act ("TSCA"), and other statutes administered by EPA—protections that save lives, improve well-being, and provide a more vibrant economy for all Americans, including our members. EDF and our members therefore have a profound stake in ensuring that EPA actions are anchored in the best available science, and are not distorted by policies and practices that seek to unjustifiably limit EPA's use of science for the purpose of weakening health and environmental protections.

For the reasons explained below, the Proposal would violate EPA's substantive and procedural obligations, is arbitrary and capricious, and must be withdrawn. Indeed, the Proposal is the classic wolf in sheep's clothing. Cloaked in vague platitudes about scientific quality and promoting "transparency," the Proposal would establish a sweeping new regulatory requirement prohibiting EPA from considering public health studies for which underlying data cannot be made "publicly available in a manner sufficient for independent validation."² This requirement would bar EPA from considering many vital public health studies that are based on confidential patient information that cannot be legally or ethically disclosed, and have been rigorously vetted using time-tested approaches that are widely accepted in the scientific community. Nowhere does the Proposal document what deficiencies in existing EPA regulatory science it is trying to solve, much less why such draconian restrictions on the use of science would improve the quality of EPA decision-making.

This wolf's true nature, however, cannot be covered up: the Proposal is in fact directed at excluding the best available science demonstrating significant health and welfare effects from

¹ *Strengthening Transparency in Regulatory Science*, 83 Fed. Reg. 18,768 (Apr. 30, 2018).

² *Id.* at 18,773 (proposed 40 C.F.R. § 30.5).

agency decision-making in order to thwart the agency's ability to protect the public health and welfare. As our comments document, the Administration hastily concocted this Proposal as a way of unilaterally implementing failed legislative proposals backed by prominent opponents of accepted climate change science and patterned on proposals put forward by the tobacco industry in the 1990s. According to records obtained from EPA through the Freedom of Information Act when this Administration's own political staff discovered that earlier versions of the Proposal might also restrict industry-funded science supporting the registration of pesticides and other chemicals, it decided to "thread this one real tight!" to ensure that *only* those studies supporting public health regulations would be subject to this new "transparency" rule.³

Ultimately, this Proposal does not "strengthen science." EPA's Science Advisory Board ("SAB") and the scientific community were not even consulted in its development, and a host of scientific authorities—including members of the SAB, editors of the nation's leading scientific journals, the National Academies, and numerous scientific and medical organizations—have raised fundamental concerns about the Proposal. Rather than strengthen science, the Proposal grants the Administrator vague and manipulable authority to *censor* science that by any scientific definition is the best simply because it conflicts with this Administration's political goals. We urge EPA to abandon this deeply destructive and misguided Proposal.

Respectfully submitted,

Tomás Carbonell
Ben Levitan
Jennifer McPartland
Ryan O'Connell
Martha Roberts
Ananya Roy
Surbhi Sarang
Robert Stockman
Environmental Defense Fund

Keri Powell
Alexandra Teitz
Steve Silverman
Susannah Weaver
*Consultants for Environmental
Defense Fund*

³ See discussion *infra* Section VII.

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OVERVIEW

The Proposal acknowledges that “[t]he best available science must serve as the foundation of EPA’s regulatory actions.”⁴ But it then requires EPA to systematically ignore the best available science when it regulates to protect human health and welfare. This is counter to EPA’s statutory mandates to use “best available science,” and the proposal is a transparent attempt not to *strengthen* science, but rather to *censor* science that is inconvenient to the current Administration’s political goals.

Since EPA was established nearly half a century ago, the Agency and its leadership—under Administrations of both parties—have recognized the central role that rigorous science plays in fulfilling the Agency’s mission of protecting human health and the environment.⁵ EPA’s obligation to consider the best available science is not only a policy commitment that flows from the Agency’s mission; it is a legal obligation enshrined in many of the fundamental public health and environmental statutes that EPA is charged with administering. The agency has established an array of mechanisms over the last five decades—including “rigorous review” by its scientific advisory boards “that goes beyond the typical journal peer review procedures”⁶—to ensure that the Agency’s decisions are grounded in the best available science.

The Administrator’s proposal does not build on this strong foundation; to the contrary, it crumbles it. The purpose and effect of the proposal would be to *degrade* the quality of science in EPA’s decision making. While the proposal suggests that its aim is to improve transparency by increasing public availability of data, in actuality it proposes none of the steps that a proposal seriously aimed at that goal would propose, such as increasing funding for EPA grantees to undertake this effort, or proposing solutions to real concerns about patient confidentiality. Instead, the heart of the proposal is a bar on considering science simply because the underlying data is not publicly available, regardless of whether the science has been peer reviewed, reproduced, or contains other hallmarks of scientific quality. Indeed, the agency’s recent communication to the Congressional Budget Office that a similar Congressional proposal could be implemented at “no cost” proves the point: EPA’s aim here is not to make more data available (which costs money), but to rely on less science in decisionmaking.

The agency’s arbitrary, single-minded focus on considering studies for which certain data and models are publicly available (but only the dose-response studies relevant to health

⁴ 83 Fed. Reg. at 18,769.

⁵ Brady Dennis, *Outgoing EPA chief: Science is ‘fundamental to absolutely everything we do’*, Washington Post (Dec. 21, 2016) (quoting former EPA Administrator Gina McCarthy as saying, “Science is everything. Almost every action we take is bounded by what the science tells us. It’s based on a factual record of where the world is today and what is our obligation under our mission. Science needs to be protected. Any effort to undermine that science in a way that would give undue influence to folks that aren’t scientists is a really big problem.”), https://www.washingtonpost.com/news/energy-environment/wp/2016/12/21/outgoing-epa-chief-science-is-everything-it-is-fundamental-to-absolutely-everything-we-do/?utm_term=.6f1e45472169; Christine Todd Whitman, *No room for science in Trump Administration*, CNN (May 15, 2017), <https://www.cnn.com/2017/05/15/opinions/no-science-in-trump-administration-whitman/index.html> (describing Administrator Pruitt’s actions as a “trend away from science as the backbone of the EPA and other key federal agencies”).

⁶ Memorandum by Alison Cullen, Chair, SAB Work Group on EPA Planned Actions for SAB Consideration of the Underlying Science 4 (May 12, 2018) (observing that the Proposal “fails to mention that EPA has mechanisms for vetting science through several expert panels,” including the SAB and others).

protective regulation, not the ones supporting registration of chemicals) stands in stark contrast to the way the scientific community validates research findings. The scientific community, and scientific journals look to a range of attributes when assessing the quality of a scientific study, including whether the study has been peer reviewed, whether the scientists used rigorous scientific methods, and whether the study's results have been reproduced or replicated. While scientific journals and other institutions have encouraged making data and models publicly available, there is widespread recognition in the scientific community that doing so is often legitimately constrained due to legal and ethical protections on the confidentiality and privacy of data, or because the data is unavailable. Moreover, no scientist or scientific organization supports the Proposal's approach of *excluding* research for which the underlying data cannot be disclosed. Indeed, *none* of the materials EPA cites support such an extreme approach. To the contrary, the scientific community recognizes that the quality of a study is not determined by whether the underlying data is publicly available and has long utilized a variety of tools for ensuring the integrity and rigor of research findings.⁷

For all these reasons, numerous representatives of the scientific community—including editors of the very scientific journals whose policies EPA cites to in the Proposal, the American Association for the Advancement of Science, members of the SAB, and other scientists cited to by EPA—have already voiced serious concerns about the Proposal.⁸ As these experts have recognized, it is not consistent with good scientific practice, and certainly not consistent with the Agency's responsibility to utilize “best available science,” to deem certain scientific studies unworthy of consideration simply because these studies cannot meet an arbitrary public availability requirement.⁹ Far from promoting the integrity of Agency decisions, the Proposal's simplistic approach would impoverish the Agency's decision-making by excluding the consideration of scientific studies that, standing alone or in combination with other studies, have significant bearing on vital public health and environmental protections. This, in turn, would result in regulations that are *not* based on “best available science” and that will provide inadequate protection for the very public health and welfare that EPA has been charged by Congress to safeguard.

⁷ See *id.* at 4 (“The proposed rule fails to mention that there are various ways to assess the validity of prior epidemiologic studies without public access to data and analytic methods.”).

⁸ E.g., Anne Q. Hoy, *Scientific Leaders Speak Out on EPA's Proposed “Transparency Rule,”* <https://www.aaas.org/news/scientific-leaders-speak-out-epa-s-proposed-transparency-rule>; Jeremy Berg et al., *Joint Statement on EPA Proposed Rule and Public Availability of Data*, *Science* (Apr. 30, 2018), <http://science.sciencemag.org/content/early/2018/04/30/science.aau0116>; Letter to Acting Administrator Wheeler from Marcia McNutt, President of the National Academy of Sciences, C.D. Mote, Jr., President of the National Academy of Engineering, and Victor J. Dzau, President of the National Academy of Medicine (July 16, 2018) (Warning that “overly stringent requirements for transparency may cause valid evidence to be discarded and thereby pose a threat to the credibility of regulatory science,” and stating that “The National Academies have developed a long-standing body of work that demonstrates scientific literature can be evaluated in a transparent and objective manner without complete disclosure of the underlying data.”).

⁹ See John Ioannidis, *All science should inform policy and regulation*, 15 *PLOS* 5 (May 3, 2018) (“Past collected and analyzed information can and should still be used for decision-making, taking into account any relevant imperfections. While fully transparent and reproducible information should certainly be valued more highly, studies with weaknesses can still offer insights.”).

That, of course, appears to be the current Administration's goal. A close examination of the history of this Proposal confirms that its purpose is not to strengthen science at EPA, but to undermine public health and environmental protections by arbitrarily blinding the agency to vital research. Indeed, the Proposal resembles proposals advanced by the tobacco industry for the specific purpose of suppressing public health science warning about the dangers of tobacco smoke.¹⁰ The Proposal also resembles failed legislation in Congress that was similarly advanced by industry interests seeking to undermine public health and environmental protections, and criticized by scientific experts.¹¹ EPA documents released in response to Freedom of Information Act (FOIA) requests relating to the Proposal show that Trump Administration appointees deliberately tailored the scope of the Proposal in order to promote industry interests.

EPA's purpose and mission is to protect human health and welfare, *not* to promote the agendas of the worst polluters and their allies in order to weaken health and welfare protections. EPA should withdraw this misguided and harmful proposal.

Terminology

At the outset, it is useful to review relevant terminology, which the Proposal appears to confuse and conflate. A recent National Academy of Sciences workshop produced the following definitions of "reanalysis," "replication," and "reproduction," each of which has a different scientific meaning and different applications and implications.¹² Let's consider each of these definitions separately.

A reanalysis is when you conduct a further analysis of data. A person doing a reanalysis of data may use the same programs and statistical methodologies that were originally used to analyze the data or may use alternative methodologies, but the point is to analyze exactly the same data to see if the same result emerges from the analysis.

A reanalysis does validate or invalidate a study findings. If all credible methods of reanalysis yield effectively the same results as the original analysis, this does strengthen the original findings. The use of differing statistical models should be assessed with care and demonstrate that the assumptions supporting a new method of analysis is significantly more credible than the original analysis. It is easy to develop methods of analysis that can demonstrate

¹⁰ Emily Atkin, *The EPA is Acting Like Big Tobacco*, The New Republic (Apr. 26, 2018), <https://newrepublic.com/article/148126/epa-acting-like-big-tobacco> (describing the role of Steve Milloy, a leading public proponent of the Proposal who has taken credit for its existence, in crafting similar policy proposals on behalf of the tobacco industry-funded Advancement of Sound Science Coalition).

¹¹ Letter by U.S. Science, Engineering, and Academic Institutions to Kevin McCarthy, House Majority Whip (Mar. 16, 2015) (opposing "Secret Science Reform Act, H.R. 1030"), <https://sciencepolicy.agu.org/files/2013/07/AAAS-Secret-Science-letter-McCarthy-2015.pdf>; Letter by Barry Nussbaum, American Statistical Association to Sen. Mike Rounds and Sen. Kamala Harris (May 25, 2017) (opposing HONEST Act, H.R. 1430), https://www.amstat.org/asa/files/pdfs/POL-HONEST_ActLetter.pdf.

¹² National Academies of Sciences, Engineering, and Medicine, *Principles and obstacles for sharing data from environmental health research: Workshop summary*, The National Academies Press (2016), <https://www.nap.edu/catalog/21703/principles-and-obstacles-for-sharing-data-from-environmental-health-research>.

a different finding, but are created solely for that purpose and these should not be given greater weight in evaluating a particular study.

***Replication** means that you actually repeat a scientific experiment or a trial to obtain a consistent result. The second experiment uses exactly the same protocols and statistical programs but with different data from a different population¹³. The goal is to see if the same results hold with data from a different population.*

Replication predominantly applies to laboratory studies and randomized control trials since you are able to control almost all of the experimental details making replication possible. Replication does not enhance transparency. In environmental epidemiology, randomized control trials are not feasible or ethical, and replication of observational studies is virtually impossible since it is not possible to create the same conditions as seen in the original study. Even in laboratory experiments, replication can be difficult due to uncontrolled factors like genetic drift in cell lines and animal strains. Finally, if you do have replicate studies and one has a positive finding and another has a negative finding, there would have to be additional criteria used to determine which study was correct; thus a failure to replicate should not immediately lead to the conclusion that there is no effect. Rather than replicating a study, it is far better to develop a better study that replicates the results while providing greater insight into the basis underlying any toxicity.

*And then, finally, when you **reproduce** a scientific experiment, you are producing something that is very similar to that research, but it is in a different medium or context. For example, a researcher who is reproducing an experiment addresses the same research question but from a different angle than the original researcher did.*

Here, reproduction refers to a body of evidence addressing the same hypothesis, but using different populations, methods, etc. Reproduction does not enhance transparency. The majority of research on the health effects of environmental hazards fall into this category. Here, a series of studies that address the same hypothesis and give the same basic result does indeed strengthen findings of toxicity.

None of these concepts discusses the scientific quality of the study; this is critical. The ability to replicate a study with very poor scientific quality does not strengthen the scientific belief that any toxicity is present. Similarly, studies that attempt to reproduce the same findings must have their quality clearly established before comparisons can be made across the multiple studies.

An example of how some of these different techniques work in practice is the scientific evidence on air pollution and premature death which include the Harvard Six Cities Study and the American Cancer Society Cancer Prevention Study II (ACS CPSII). The extent to which these studies have been reanalyzed and reproduced is extraordinary and by no means necessary. But they provide a good case study of how these techniques work in practice.

¹³ “Different population” in this context means a different set of the same test subjects (e.g., same animal species and strain, same cell lines).

The original Harvard Six Cities and ACS CPSII studies on mortality were published in 1993 and 1995 respectively.

- The Harvard Six Cities study assessed the long-term effects of fine particle pollution (PM_{2.5}) over 12 to 14 years (1974–1989) on premature mortality among 8,111 adult participants who lived in 6 different cities: Watertown, MA; Harriman, TN; St. Louis, MO; Steubenville, OH; Portage, WI; and Topeka, KS. After accounting for cigarette smoking, level of education, body mass index, and occupational exposure to dusts, gases, and fumes, the authors of this study found that for members of the same age and sex group there was a 26% higher risk of premature mortality between the study participants living in the city with the highest levels of particles (Steubenville) and the city with the lowest levels (Portage).¹⁴
- The investigators of the Harvard Six Cities study, along with others, **reproduced** their finding in a separate assessment of the association between fine particle levels and mortality among 295,223 adults who lived in 50 metropolitan areas across the United States, over a period of 7 years (1979–1983) in the ACS CPSII study. After accounting for smoking, education, body mass index, alcohol consumption, and self-reported occupational exposure to a number of substances, the scientists found that for participants of the same age, race and sex there was a 17% increased risk of mortality with every 25.4 microgram per meter cube change in PM_{2.5}.¹⁵

The Harvard Six Cities Study and the ACS CPSII were **reanalyzed** by the Health Effects Institute, a nonprofit independent research corporation funded by EPA and the motor vehicle industry, under a data sharing agreement. A research team evaluated the consistency and accuracy of the data and then undertook a series of comprehensive analyses to test the validity of the findings first using the same statistical analyses and then testing the robustness of the original findings and interpretations to alternative analytic approaches. The results of the reanalysis were resoundingly similar to the original studies. For the Harvard Six cities study the reanalysis found a 28% increased risk of mortality per 18.6 microgram per meter cube of PM_{2.5} in comparison to 26% found in the original study. For the ACS CPSII study the showed that for every 25.4 microgram per meter cube change in PM_{2.5} there was an associated 18% increased risk of mortality (results of the independent reanalysis) vs 17% reported by the original study.¹⁶

¹⁴ Dockery, D.W., Pope, C.A., Xu, X., Spengler, J.D., Ware, J.H., Fay, M.E., Ferris Jr, B.G. and Speizer, F.E., *An Association Between Air Pollution and Mortality in Six US Cities*, 329(24) New England Journal of Medicine 1753–1759 (1993).

¹⁵ Pope, C.A., Thun, M.J., Namboodiri, M.M., Dockery, D.W., Evans, J.S., Speizer, F.E. and Heath, C.W., *Particulate Air Pollution as a Predictor of Mortality in a Prospective Study of US Adults*, 151(3) American Journal of Respiratory and Critical Care Medicine 669–674 (1995).

¹⁶ Krewski, Daniel, et al., *Reanalysis of the Harvard Six Cities Study and the American Cancer Society Study of particulate air pollution and mortality*, footnote on 249 Health Effects Institute (2000). See also Letter to Andrew Wheeler from Harvard University (Docket ID No. EPA-HQ-OA-2018-0259) (reanalysis and “releasing raw data will not improve the quality of the resulting report/study/analysis, and therefore will do nothing to render any individual study ‘better.’”).

A large body of literature also shows that this association of fine particle pollution and mortality has been **reproduced** in different populations across the globe,¹⁷ over different periods of time, contexts and using different methods. Most recently, a study of 61 million elderly people enrolled in Medicare across the entire United States followed over 13 years found a strong association between particle pollution and increased risk of mortality, at even the current levels of air pollution and below the current air quality standards for PM_{2.5}.¹⁸ It is this accumulation of evidence of reproducible effects in multiple studies that is critical in determination of causality and validation of an effect and is already an integral part of the EPA process of supporting causality.¹⁹

Through these different methods, the original findings of the Harvard Six Cities Study have been validated many times over, and they have been used to inform countless EPA rule makings that address particulate matter pollution. Notably, however, the Proposal would appear to preclude EPA from using them because—while the Study has been reanalyzed and reproduced—the underlying data is not publicly available because of patient confidentiality protections bound by individual contractual agreements between the scientists and the research participants and by the Health Insurance Portability and Accountability Act. These reasons are unrelated to the validity, integrity or quality of the Harvard Six Cities Study. Indeed, the Office of Management and Budget’s data quality guidelines specifically point to the Harvard Six Cities Study as an example of how data may be validated or corroborated without public release of the underlying raw data.²⁰ It is critically important to note that reanalysis projects are not simple or inexpensive.²¹ The reanalysis of just the Harvard Six Cities Study and the ACS CPSII took three years to complete and cost \$899,046 in direct expenditures,²² without accounting for costs incurred by Health Effects Institute for oversight and review as well as staff compensation.

In summary, reanalysis is a tool to demonstrate the robustness of an effect to changes in the statistical model underlying an analysis of a single data set. However, it is easy to develop methods of reanalysis that can demonstrate a different finding. Therefore, care must be taken to understand the assumptions underlying models applied in reanalysis in order to judge their relevance. Replication in the environmental health context is primarily limited to laboratory studies and, without additional information to guide a decision, provides little information that can be used to decide between replicate studies with differing results. Reproducing effects in multiple studies that are not identical is the basis for almost all scientific decisions on environmental issues and should be the focus of the EPA’s approach to regulatory science. Finally, none of these issues address other key aspects of scientific quality such as

¹⁷ EPA, NCEA, *Integrated Science Assessment for Particulate Matter*, EPA/600/R-08/139F (2009); Beelen, Rob, et al., *Effects of long-term exposure to air pollution on natural-cause mortality: an analysis of 22 European cohorts within the multicentre ESCAPE project*, 383.9919 *The Lancet* 785-795 (2014).

¹⁸ Di, Qian, et al., *Air pollution and mortality in the Medicare population*, 376.26 *New England Journal of Medicine* 2513-2522 (2017).

¹⁹ EPA, *Preamble to the Integrated Science Assessments (ISA)* (EPA/600/R-15/067) (2015).

²⁰ OMB’s *Guidelines Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information*, 67 Fed. Reg. 8,452, 8,456 (Feb. 22, 2002).

²¹ Comments of Daniel Greenbaum, President, Health Effects Institute (HEI), on Proposed Rule EPA-HQ-OA-2018-0259 (July 17, 2018).

²² Krewski, Daniel, et al., *Reanalysis of the Harvard Six Cities Study and the American Cancer Society Study of particulate air pollution and mortality*, footnote on 249 Health Effects Institute (2000).

generalizability and bias; how these characteristics of any scientific study are assessed by the EPA directly relate to the transparency of any decisions they might make.

I. EPA's Proposed Rule Violates Numerous Substantive Statutory Requirements.

A. EPA Does Not Have Authority to Issue the Proposed Rule.

Agencies are creatures of Congress; “an agency literally has no power to act . . . unless and until Congress confers power upon it.” *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986); *see Am. Library Ass'n v. FCC*, 406 F.3d 689, 691 (D.C. Cir. 2005) (“It is axiomatic that administrative agencies may issue regulations only pursuant to authority delegated to them by Congress.”). EPA points to a smattering of statutes as allegedly authorizing the Proposal.²³ None of these authorities, however, authorize EPA to promulgate a one-size-fits-all regulation governing how the agency will consider science under its various statutory authorities, which is perhaps why EPA solicits comment on whether additional authorities might exist to authorize its Proposal. The varied statutes that the Proposal cites have different requirements as to the agency's obligations when considering science. *Compare* CAA § 108(a) (standards must “reflect the latest scientific knowledge useful in indicating” health and welfare effects)²⁴ *with* TSCA § 4(f) (Administrator must consider “*any other information available*”)²⁵ *with* Safe Drinking Water Act (“SDWA”) § 1412(b)(1)(B)(ii)(II) (Administrator must consider “the best available public health information”).²⁶ The Proposal gives no explanation of how *any* of the provisions it cites provide authority for the Proposal, much less how all of them authorize identical requirements.

For example, EPA cites the Clean Air Act, § 301, 42 U.S.C. § 7601, as purportedly granting authority for the Proposal.²⁷ The authority granted by section 301(a), however, applies only to the Clean Air Act and, in any event, is not broad enough to encompass this Proposal. Section 301 provides that “[t]he Administrator is authorized to prescribe such regulations subject to section 307(d) as are *necessary* to carry out his [or her] functions under this Act.”²⁸ The courts have consistently “decline[d] to read . . . open-ended power into section 301,”²⁹ and instead have required that regulations promulgated under section 301 be both necessary and appropriate.³⁰ As

²³ 83 Fed. Reg. at 18769.

²⁴ 42 U.S.C. § 7408(a).

²⁵ 15 U.S.C. § 2603(f).

²⁶ 42 U.S.C. § 300g-1(b)(1)(B)(ii)(II), (b)(1)(A)(i); *see also*, 42 U.S.C. § 300g-1(b)(3)(A)(i) (“the Administrator shall use . . . the best available, peer-reviewed science and supporting studies conducted in accordance with sound and objective scientific practices”).

²⁷ 83 Fed. Reg. at 18769.

²⁸ 42 U.S.C. § 7601(a)(1) (emphasis added).

²⁹ *Nat. Res. Def. Council v. Reilly*, 976 F.2d 36, 41 (D.C. Cir. 1992).

³⁰ *E.g., Alabama Power Co. v. Costle*, 636 F.2d 323, 403 (D.C. Cir. 1979) (finding an EPA rule unauthorized under section 301, and concluding that “[a]n extension of PSD permit requirements beyond the wording of the Act is therefore neither necessary nor appropriate to carry out EPA's functions under the Act.”); *Nat. Res. Def. Council v. EPA*, 22 F.3d 1125, 1148 (D.C. Cir. 1994) (“[S]ection 301 does not provide the Administrator ‘*carte blanche*’ authority to promulgate any rules, on any matter relating to the Clean Air Act, in any manner that the Administrator wishes,” and instead “allow[s] the promulgation of rules that are necessary and reasonable to effect the purposes of

discussed in more detail below, EPA's Proposal here is not necessary, and instead directly conflicts with several other provisions of the Clean Air Act. It is axiomatic that a "general grant of authority cannot trump specific statutory provisions."³¹

Nor does Congressional authorization to *conduct* or *fund* research authorize EPA to *ignore* research in regulatory decision-making. Accordingly, provisions like TSCA § 10, which directs that the "Administrator shall ... conduct such research, development, and monitoring as is necessary to carry out the purposes of this [Act],"³² and CAA § 103, which authorizes the agency to conduct and support research,³³ plainly do not authorize the Proposal.

B. The Proposed Rule Violates EPA's Statutory Authorities.

Not only is there no authority for EPA's pan-statutory Proposal, the Proposal would violate explicit statutory commands. Though EPA admits that "[t]he best available science must serve as the foundation of EPA's regulatory actions,"³⁴ proposed section 30.5 would *prohibit* EPA from considering high quality and critically important scientific studies—precisely that "best available science"—when undertaking regulatory actions. Specifically, section 30.5 would prevent EPA from considering any scientific study for which the underlying "dose response data and models" are not "publicly available in a manner sufficient for independent validation."³⁵ This would be true even if that scientific study constituted "information available to the Administrator" in a TSCA § 4(f) rulemaking, 15 U.S.C. § 2603(f)(2); "reflect[ed] the latest scientific knowledge useful in indicating" health and welfare effects in a CAA § 108 rulemaking, 42 U.S.C. § 7408(a)(2); or reflected "the best available public health information" in a SDWA rulemaking, 42 U.S.C. § 300g-1(b)(1)(B)(ii)(II). Accordingly, this proposed prohibition would contravene an array of statutes governing EPA's consideration of science when promulgating rules, such as requirements to consider the "best available science" when setting environmental protection standards. *See, e.g.*, SDWA, 42 U.S.C. § 300g-1(b)(3)(A) (EPA must use "[t]he best available, peer-reviewed science and supporting studies conducted in accordance with sound and objective scientific practices" and "[d]ata collected by accepted methods or best available methods"); TSCA, 15 U.S.C. § 2625(h) ("[T]he Administrator shall use scientific information, technical procedures, measures, methods, protocols, methodologies, or models, employed in a manner consistent with the best available science."); CAA, 42 U.S.C. § 7408(a) (EPA shall establish air quality criteria that "shall accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be

the Act.") (quoting *Citizens to Save Spencer County v. EPA*, 600 F.2d 844, 873 (D.C. Cir. 1979)); *Nat. Res. Def. Council v. EPA*, 749 F.3d 1055, 1063 (D.C. Cir. 2014) ("[W]e have consistently held that EPA's authority to issue ancillary regulations is not open-ended, particularly when there is statutory language on point."); *North Carolina v. EPA*, 531 F.3d 896, 922 (D.C. Cir. 2008), *on reh'g in part*, 550 F.3d 1176 (D.C. Cir. 2008) (striking down a regulation promulgated under Section 301 because EPA could not demonstrate that it was "necessary" to fulfill the purposes of the Act).

³¹ *Nat. Res. Def. Council v. EPA*, 749 F.3d 1055, 1063-64 (D.C. Cir. 2014); *API v. EPA*, 52 F.3d 1113, 1119 (D.C. Cir. 1995) (same).

³² 15 U.S.C. § 2609(a), cited at 83 Fed. Reg. at 18769.

³³ 42 U.S.C. § 7403, cited at 83 Fed. Reg. at 18769.

³⁴ 83 Fed. Reg. at 18769.

³⁵ 83 Fed. Reg. at 18773-74.

expected from the presence of such pollutant in the ambient air, in varying quantities.”). And, by excluding science that meets these statutory criteria from supporting regulations to protect public health and welfare, the Proposal would frustrate Congress’s policy in these statutes and frustrate EPA from achieving its fundamental mission.³⁶

1. EPA’s statutory authorities generally require the agency to consider *all* available data when undertaking significant rulemakings.

As just noted, EPA’s statutory authorities mandate a variety of requirements for what scientific information EPA must consider in rulemaking. These statutes are discussed in detail, *infra* at Section I.B.3. To take one example that appears in numerous statutes, including TSCA, CAA, SDWA, and the Endangered Species Act, Congress has often required agencies to act on the “best available science.” For an agency to comply with this obligation, the agency must at least consider all available scientific information. “Best” means “of the most excellent, effective, or desirable type or quality.”³⁷ “Available” means “able to be used or obtained.”³⁸ And “science” means “the intellectual and practical activity encompassing the systematic study of the structure and behavior of the physical and natural world through observation and experiment.”³⁹ Assessing which science is “best” requires consideration of the overall quality of the science, and the public availability of underlying data is, at best, one of many aspects that should inform that assessment of overall quality.

An agency “cannot ignore available. . . information.”⁴⁰ Numerous courts have indicated that a plaintiff or petitioner can establish a violation of the “best available science” requirement by “point[ing] to any scientific evidence that the agency failed to consider.”⁴¹ “The best available data requirement. . . prohibits [an agency] from disregarding available scientific evidence that is in some way better than the evidence [it] relies on.”⁴² “An agency does. . . have an obligation to deal with newly acquired evidence in some reasonable fashion.”⁴³ EPA’s proposal will result in EPA precluding itself from considering certain studies that are “available,” thus violating the requirement that EPA rely on the best available science.

In addition, the requirement that agencies use “best available” science or information often means that the agency must act *even if* the available science or information is imperfect.

³⁶ See, e.g., *Shays v. FEC*, 528 F.3d 914, 919 (D.C. Cir. 2008) (“[W]e ‘must reject administrative constructions of [a] statute that frustrate the policy that Congress sought to implement.’”) (quoting *Cont’l Air Lines, Inc. v. Dep’t of Transp.*, 843 F.2d 1444, 1453 (D.C. Cir. 1988)).

³⁷ *Oxford American Dictionary* 159 (3d ed. 2010).

³⁸ *Id.* at 111.

³⁹ *Id.* at 1564.

⁴⁰ *Conner v. Burford*, 848 F.2d 1441, 1454 (9th Cir. 1988); *San Luis & Delta-Mendota Water Auth. v. Jewell*, 747 F.3d 581, 602 (9th Cir. 2014) (quoting *Kern Cnty.*, 450 F.3d at 1080-81 (quoting *Conner v. Burford*, 848 F.2d 1441, 1454 (9th Cir. 1988))).

⁴¹ *Safari Club Int’l v. Salazar (In re Polar Bear Endangered Species Act Listing & Section 4(d) Rule Litig. - MDL No. 1993)*, 709 F.3d 1, 9 (D.C. Cir. 2013).

⁴² *Kern Cty. Farm Bureau v. Allen*, 450 F.3d 1072, 1080 (9th Cir. 2006) (quoting *Sw. Ctr. for Biological Diversity v. Babbitt*, 215 F.3d 58, 60 (D.C. Cir. 2000)).

⁴³ *Catawba County v. EPA*, 571 F.3d 20, 45 (D.C. Cir. 2009) (quoting *American Iron & Steel Institute v. EPA*, 115 F.3d 979, 1007 (D.C. Cir. 1991)).

“Even if the available scientific and commercial data were quite inconclusive, [the agency] may—indeed must—still rely on it” when the agency has a duty to act.⁴⁴ “[W]here the information is not readily available, we cannot insist on perfection.”⁴⁵ Just as the Courts have recognized that they cannot expect perfection, agencies cannot choose to ignore certain studies or sources of information based solely on whether the data is publicly available—especially where the validity of those studies has been established using techniques that do not rely on public availability of underlying data.

EPA cannot reasonably elevate the interest in public availability of all underlying information above all other factors in assessing the “best available science.” Textually, EPA’s approach is unlawful.

2. The proposal violates these statutory commands by requiring EPA to ignore science when undertaking significant rulemakings.

In direct violation of statutory requirements to consider, for example, “any other information available” or “the latest scientific knowledge [that is] useful” or “best available science,” the Proposal would *prohibit* EPA from considering relevant and high quality science whenever the underlying data for a study is not publicly available. Through the Proposal, EPA unlawfully tries to engraft an additional statutory requirement onto each of these statutes, requiring that to be considered a study’s underlying data must be publicly available.⁴⁶ For EPA’s Proposal to succeed, EPA must demonstrate that a study *cannot* be “other information available to the Administrator” or the “latest scientific knowledge useful in indicating” health or welfare effects or the “best available science,” or any of a number of other statutory formulations if the underlying data is not publicly available. EPA’s Proposal fails to do so, and it could not do so.

As explained *infra* at Section II.A.1, there are many reasons that underlying study data may not be available that have no bearing on the quality or validity of the study. These include legal restrictions or concerns about privacy (especially with respect to studies involving human subjects), confidentiality, confidential business information, or national security. Further, if this requirement were applied retroactively to existing studies, it may no longer be possible to make underlying data and models publicly available. EPA acknowledges these impediments in proposed section 30.9, which provides the Administrator with discretion—but not an obligation—to allow the agency to consider a study for which underlying data or models are not publicly available if he determines that public disclosure is infeasible. But where the Administrator fails to exercise his discretion to grant an exemption pursuant to proposed section 30.9, or where data or models are unavailable for reasons that do not satisfy the infeasibility standard, proposed section 30.5 would prohibit EPA from considering such studies, regardless of whether they meet the statutory criteria for consideration.

The only way that this prohibition could comport with EPA’s statutory obligations is if a study for which underlying data is not available *cannot* be, for example, “other information

⁴⁴ *Southwest Ctr. for Biological Diversity v. Babbitt*, 215 F.3d 58, 60 (D.C. Cir. 2000) (quoting *City of Las Vegas v. Lujan*, 891 F.2d 927, 933 (D.C. Cir. 1989)).

⁴⁵ *San Luis*, 747 F.3d at 602.

⁴⁶ See *Nat’l Ass’n of Homebuilders v. Defenders of Wildlife*, 551 U.S. 644, 663-64 (2007).

available” or “the latest scientific knowledge [that is] useful” or “best available science”—i.e., if the public unavailability of a study’s underlying dose response data and models makes the study ineligible to meet these criteria, regardless of whether the study has been peer reviewed, is based on rigorous methodologies, or has been published in a leading journal, and regardless of the reason for the public unavailability. EPA makes no such demonstration—nor could it. There is simply no support for such a proposition; to the contrary, all of the evidence shows that studies may be “best available science,” and certainly “other information available” regardless of whether the data underlying them is publicly available.

What the Proposal fails to recognize is that disclosure of data addresses only *one* method of validating scientific research—and a relatively less important aspect at that. Disclosure of data for a given study—the focus of the Proposal—permits independent researchers to determine whether the data and methodology *used in that study* can be applied to generate the *same* results. This may help protect against sources of error or misrepresentation in a particular study. However, both EPA and independent researchers have recognized that such reanalysis does not by itself *validate* a particular study.⁴⁷ Rather, a study’s evidentiary weight rests both on the strength of its methodology, as well as whether similar results can be obtained by applying the study’s methodology to a relevant, but *different* dataset or population, or by using a distinct methodology to interrogate the same hypothesis.⁴⁸

a) The scientific community

Publication in a peer-reviewed scientific journal is the way that scientists communicate their findings to other scientists and is considered the hallmark of scientific quality. Notably, the editors in chief of the world’s top scientific journals have notified EPA that “[i]t does not strengthen policies based on scientific evidence to limit the scientific evidence that can inform them; rather, it is paramount that the full suite of relevant science vetted through peer review, which includes ever more rigorous features, inform the landscape of decision making.”⁴⁹ In response to EPA’s Proposal, the editors-in-chief of *Science* and *Nature*, and other leading scientists explained that though “[d]ata sharing is a feature that contributes to the robustness of published scientific results. . . in not every case can all data be fully shared.”⁵⁰ For example, full

⁴⁷ See EPA, *Preamble to the Integrated Science Assessment* at 20 (2015) (“An inference of causality is strengthened when a pattern of elevated risks is observed across several independent studies. *The reproducibility of findings constitutes one of the strongest arguments for causality.* . . .”) (emphasis added); National Academies, *Principles and Obstacles for Sharing Data From Environmental Health Research* 6 (2016) (quoting researcher Lynn Goldman’s observation that reproducibility and replicability across independent studies – as distinct from reanalysis of a single set of data using the same methodology – are the most convincing ways of validating a research finding); Lynn R. Goldman & Ellen Silbergeld, *Correspondence on Access to Chemical Data Used in Regulatory Decision Making*, 121 *Environmental Health Perspectives* A111 (Apr. 2013), <https://ehp.niehs.nih.gov/wp-content/uploads/121/4/ehp.1206438.pdf> (“Replication in science is quite different; it involves performance of an independent study with the same hypothesis and then testing the extent to which this independent study reaches the same conclusions. . . Designing and conducting a replication study does not require access to raw data from the original study; this would abrogate the concept of independence.”)

⁴⁸ See National Academies, *Principles and Obstacles* at 6.

⁴⁹ Jeremy Berg et al., *Joint Statement on EPA Proposed Rule and Public Availability of Data*, *Science* (Apr. 30, 2018), <http://science.sciencemag.org/content/early/2018/04/30/science.aau0116>.

⁵⁰ *Id.*

sharing is not possible when data sets include “personal identifiers.”⁵¹ The scientists confirm that even under circumstances where underlying data cannot be made generally available, it is possible to evaluate the merits of a study, explaining:

Importantly, the merits of studies relying on data that cannot be made publicly available can still be judged. Reviewers can have confidential access to key data and as a core skill, scientists are trained in assessing research publications by judging the articulation and logic of the research design, the clarity of the description of the methods used for data collection and analysis, and appropriate citation of previous results.⁵²

They conclude that EPA’s proposal to exclude relevant studies from EPA’s consideration based solely on the fact that underlying data or methods cannot be made available to the public “will adversely affect decision-making processes.”⁵³

In a letter filed in this docket, the Presidents of the National Academies of Science, Engineering, and Medicine similarly observe that the public availability of data is not necessary to ensure the integrity of regulatory science and is not a sufficient criterion for excluding a particular study from consideration. The Presidents’ letter notes: “The National Academies have developed a long-standing body of work that demonstrates scientific literature can be evaluated in a transparent and objective manner without complete disclosure of the underlying data.”⁵⁴ The letter goes on to explain: “If the study data are not available, their absence may affect how the study is rated and used in the [agency’s] analysis, but the study should not necessarily be eliminated from the assessment.”⁵⁵

b) EPA policy and practice

EPA has previously stated in several different forums that a scientific study can be valid even if the underlying dose response data and models are not publicly available. For example, EPA recently explained in its own *Plan to Increase Access to Results of EPA-Funded Scientific Research* that even though “some research data cannot be made fully available to the public but instead may need to be made available in more limited ways,” the lack of full public availability “does not affect the validity of the scientific conclusions from peer-reviewed research publications.”⁵⁶ Under the plan, EPA must make publications resulting from EPA-funded research publicly accessible on National Institute of Health’s PubMed Central (PMC).⁵⁷ The plan

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Letter to Acting Administrator Wheeler from Marcia McNutt, President of the National Academy of Sciences, C.D. Mote, Jr., President of the National Academy of Engineering, and Victor J. Dzau, President of the National Academy of Medicine 2 (July 16, 2018), <http://www.nationalacademies.org/includes/EPA%20Proposed%20Rule%20Docket%20EPA-HQ-OA-2018-0259%20NASEM%20Comment.pdf>.

⁵⁵ *Id.* at 2-3.

⁵⁶ EPA, *Plan to Increase Access to Results of EPA-Funded Scientific Research* 4-5 (Nov. 29, 2016), <https://www.epa.gov/sites/production/files/2016-12/documents/epascientificresearchtransparencyplan.pdf>.

⁵⁷ *Id.* at 8.

aims to “maximize access, by the general public and without charge, to digitally formatted data resulting from EPA funded research, *while protecting confidentiality and personal privacy, recognizing proprietary interests, business confidential information and intellectual property rights, and preserving the balance between the relative benefits and costs of long-term preservation and access.*”⁵⁸ The plan recognizes important exceptions for when “the research data cannot be released due to one or more constraints, such as requirements to protect confidentiality, personal privacy, proprietary interest, or property rights.”⁵⁹ It specifically declares: “The validity of scientific conclusions drawn from research publications or their associated research data, or EPA’s ability to consider those conclusions and data in its actions, does not depend on compliance with this Plan.”⁶⁰

Likewise, EPA’s Science Policy Council explains in *A Summary of General Assessment Factors for Evaluating the Quality of Scientific and Technical Information* that EPA’s determination as to the quality and reliability of a particular scientific study does not depend on one single factor (e.g., the public availability of underlying data), but instead turns on the agency’s consideration of five general factors.⁶¹ Congress implicitly endorsed this approach by including a directive for EPA to use these same five factors in evaluating science under the Toxic Substances Control Act Amendments passed in 2016,⁶² and just last year this Administration included these same factors in a recent regulation implementing TSCA.⁶³ The factors comprise: (1) soundness; (2) applicability and utility; (3) clarity and completeness; (4) uncertainty and variability; and (5) evaluation and review.⁶⁴ Of these, the only ones with any possible direct relevance to EPA’s proposed approach are the third and fifth factors, but neither supports the elevation of public availability of data above all other considerations or the exclusion of studies with non-public data. The third factor, “clarity and completeness” requires EPA to consider “[t]he degree of clarity and completeness with which the data, assumptions, methods, quality assurance, sponsoring organizations and analyses employed to generate the information are documented.” The fifth factor, “evaluation and review,” requires EPA to consider “[t]he extent of independent verification, validation and peer review of the information or of the procedures, measures, methods or models.” Even clear and complete “documentation” of the data used does not require that the data be made publicly available. Nor does factor five require either that a study’s findings must have been replicated using the same data, or that the data must be available

⁵⁸ *Id.* at 11 (emphasis added).

⁵⁹ *Id.*

⁶⁰ *Id.* at 6.

⁶¹ EPA Science Policy Council, *A Summary of General Assessment Factors for Evaluating the Quality of Scientific and Technical Information*, EPA 100/B-03/001 (June 2003) <https://www.epa.gov/risk/summary-general-assessment-factors-evaluating-quality-scientific-and-technical-information>.

⁶² *Id.* at 7.

⁶³ EPA Science Policy Council, *A Summary of General Assessment Factors for Evaluating the Quality of Scientific and Technical Information*; 15 U.S.C. § 2625(h)(1)-(5); 82 Fed. Reg. 33,726, 33,731 (July 20, 2017), 42 U.S.C. § 300g-1(b)(3)(A).

⁶⁴ Note that TSCA and the regulations do not include the headers for the five factors (“soundness,” “applicability and utility,” etc.) included in the Science Policy Council guidance, but the description of each factor to be considered is largely identical.

to allow for such replication. Moreover, these are only portions of two of five key factors to consider.⁶⁵

Similarly, EPA's *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of the Information Disseminated by the Environmental Protection Agency*,⁶⁶ ("EPA Information Quality Guidelines") issued pursuant to Section 515(a) of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106-554; H.R. 5658) (the "Data Quality Act") make it clear that the public unavailability of underlying data or models does not render a study inappropriate for EPA's consideration. Specifically, the EPA Information Quality Guidelines acknowledge that even with respect to science that will have "a clear and substantial impact on important public policies or private sector decisions," there will be circumstances where "access to data and methods cannot occur due to compelling interests such as privacy, trade secrets, intellectual property, and other confidentiality protections."⁶⁷ Significantly, the Guidelines do not instruct EPA to ignore such science. Rather, the Guidelines instruct that if underlying data or methods are unavailable, "EPA should, to the extent practicable, apply especially rigorous robustness checks to analytic results and carefully document all checks that were undertaken."⁶⁸ The Guidelines further explain: "Original and supporting data may not be subject to the high and specific degree of transparency provided for analytic results; however, EPA should apply, to the extent practicable, relevant Agency policies and procedures to achieve reproducibility, given ethical, feasibility, and confidentiality constraints."⁶⁹

Far from instructing EPA not to consider scientific studies for which underlying data or models are unavailable, the EPA Information Quality Guidelines expressly acknowledge that EPA must balance a variety of important aims to fulfill its statutory obligations to protect public health and the environment. EPA explains in the guidelines that "most environmental statutes obligate EPA to act to prevent adverse environmental and human health impacts" and that "[f]or many of the risks that we must address, data are sparse and consensus about assumptions is rare."⁷⁰ Thus, rather than set rigid rules regarding what science and information EPA can rely upon in its rulemakings, EPA "seek[s] to strike a balance among fairness, accuracy, and efficient implementation."⁷¹ EPA states: "Refusing to act until data quality improves can result in substantial harm to human health, safety, and the environment."⁷²

As discussed *infra* at Section I.B.3.b)ii, even this Administration, in the context of promulgating regulations under TSCA, has adopted a regulatory definition of "best available

⁶⁵ See EPA Science Policy Council, *A Summary of General Assessment Factors for Evaluating the Quality of Scientific and Technical Information*.

⁶⁶ EPA, *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the EPA* (2002), <https://www.epa.gov/quality/guidelines-ensuring-and-maximizing-quality-objectivity-utility-and-integrity-information>.

⁶⁷ *Id.* at 21.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.* at 52.

⁷¹ *Id.*

⁷² *Id.*

science” expressly incorporating a multi-factor analysis, and that definition recognizes that public unavailability of data does not render a study incapable of being “best available science.”

c) The courts

As EPA acknowledges in footnote 3 of the Proposal, in at least two instances the D.C. Circuit Court of Appeals has recognized that studies for which underlying data is not publicly available may constitute “best available science.”⁷³ The D.C. Circuit’s decisions in these cases further demonstrate that the public unavailability of a study’s underlying data does not render a study incapable of constituting “best available science” otherwise unworthy of EPA’s consideration.

In *American Trucking Associations v. EPA*, the petitioner challenged EPA’s reliance on scientific studies for which underlying data was not publicly available in deciding to strengthen the national ambient air quality standards for particulate matter.⁷⁴ The Court held that the Clean Air Act did not require EPA to make public underlying data where EPA relied on the study itself and not the raw data underlying the study. The Court agreed with EPA’s position that requiring agencies to obtain and publicize the data underlying all studies on which they rely “would be impractical and unnecessary.”⁷⁵ Importantly, the Court concluded that:

If EPA and other governmental agencies could not rely on published studies without conducting an independent analysis of the enormous volume of raw data underlying them, *then much plainly relevant scientific information would become unavailable to EPA for use in setting standards to protect public health and the environment.* . . . Such data are often the property of scientific investigators and are often not readily available because of . . . proprietary interests. . . or because of [confidentiality] arrangements [with study participants].⁷⁶

The court accordingly recognized that ignoring relevant scientific information simply because the underlying data is not available would violate EPA’s obligations to consider “best available science.” *Coalition of Battery Recyclers Association v. EPA* involved another challenge to EPA’s reliance on a scientific study for which the underlying data was not publicly available.⁷⁷ In that case, EPA had relied upon the study in question to determine the “concentration-response relationship between blood lead levels and IQ changes.”⁷⁸ The D.C. Circuit again upheld EPA’s reliance on studies without making the underlying data publicly available and explained, “raw data often is unavailable due to proprietary interests of a study’s scientific investigators or confidentiality agreements with study participants.”⁷⁹ Likewise, in *City of Waukesha v. EPA* the

⁷³ 83 Fed. Reg. at 18769.

⁷⁴ 283 F.3d 355, 372 (D.C. Cir. 2002).

⁷⁵ *Id.* at 372 (quoting National Ambient Air Quality Standards for Particulate Matter, 62 Fed. Reg. 38,652, 38,689 (July 18, 1997)).

⁷⁶ *Id.* (emphasis added).

⁷⁷ 604 F.3d 613, 622-23 (D.C. Cir. 2010).

⁷⁸ *Id.* at 622.

⁷⁹ *Id.* at 623.

D.C. Circuit concluded that agency peer review satisfies the requirement to use best, peer-reviewed science and supporting studies.⁸⁰

d) The Proposal

Finally, even the Proposal appears to concede that studies for which data is not publicly available could constitute the “best available science” that EPA is statutorily required to consider. The proposed exemption provision in section 30.9 makes it clear that EPA does not consider a study to be invalid or unsuitable for EPA’s consideration based only on the public unavailability of underlying data or models. Specifically section 30.9 would give the Administrator discretion to authorize consideration of a scientific study where “[i]t is not feasible to ensure that all dose response data and models underlying pivotal regulatory science is publicly available.” Of course, EPA could not have intended for proposed section 30.9 to provide the Administrator with discretion to take a study that is not “best available science” into consideration when promulgating a rulemaking. If the Administrator has discretion to allow consideration of a study for which it is infeasible to make the study’s underlying data and models publicly available, then it obviously is not necessary for such underlying data and models to be publicly available for a scientific study to constitute “best available science.” Yet, unless the Administrator elects to exercise his discretion under proposed section 30.9 and find that it is “infeasible” to make a study’s underlying data and models publicly available, proposed section 30.5 broadly prohibits EPA from relying on the study in support of “significant regulatory actions.”

Moreover, while proposed section 30.5’s prohibition would apply to “pivotal regulatory science” used for “significant regulatory actions,” the proposed rule says nothing to prohibit EPA’s reliance on these studies for other agency purposes, such as in permitting, enforcement, or regulatory actions that do not qualify as “significant.” Thus, EPA clearly does not believe that a study cannot be “best available science” based solely on the fact that underlying data and models are not publicly available.

In sum, if finalized, EPA’s proposed rule would restrict EPA’s ability to consider “best available science” when undertaking significant rulemakings, contrary to the numerous statutory directives discussed in detail below.

3. By prohibiting EPA from considering all valid and relevant studies when undertaking significant rulemakings, the proposed rule would prevent EPA from complying with an array of statutory provisions governing EPA’s consideration of available science.

a) The Proposal Contravenes the Clean Air Act

⁸⁰ 320 F.3d 228, 247 (D.C. Cir. 2003).

Under Clean Air Act section 108(a),⁸¹ EPA must establish air quality criteria for each air pollutant that serves as the basis for setting the national ambient air quality standards. Such criteria “shall accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of such pollutant in the ambient air, in varying quantities.”⁸² As explained above, the scientific community, EPA, and the courts have all concluded that lack of public availability of underlying data does not render the study invalid. And, consideration of such studies can be essential for EPA to fulfill Clean Air Act section 108(a)’s directive that it consider “the latest scientific knowledge” in establishing air quality criteria, that it consider studies “useful” in indicating effects of pollutants on ambient air, and in providing an adequate margin of safety in the standard itself.⁸³ Thus, EPA’s proposal to bar EPA from considering such studies would prevent EPA from complying with its statutory obligation under Clean Air Act section 108(a).

Section 108(a)(2) says nothing about excluding information—its evident purpose is to be inclusive as to information to be considered. EPA’s historic practice reflects this broad directive: each NAAQS review evaluates virtually all studies in the area, excluding none, but assigning appropriate weight based on study-by-study evaluation. Since the NAAQS provisions were enacted in 1970, EPA has conducted many NAAQS rulemakings. The agency does not establish *per se*, *a priori* rules regarding study inclusion or exclusion, but rather evaluates each of the individual studies—and there are thousands typically evaluated for each NAAQS review—on their merits based on reasoned criteria. While details of the development and review of the criteria and standards have evolved over time, in practice, EPA has endeavored to include all relevant scientific studies in the process, even providing provisional assessments of relevant literature that appears after the formal scientific review has been completed. Over the years, tens of thousands of peer-reviewed studies of health effects, exposure, and atmospheric interactions, and monitoring have been included in reviews of criteria and standards. A requirement that they must be excluded from consideration unless the raw data and full methodologies are made available for all of them is inconsistent with the legislative mandate and EPA’s practice over the last 40 years.

Thus, a science regulation that applies to the NAAQS is unlawful unless EPA can show that the new standard can be established and implemented consistent with the applicable statutory requirements. To do so, EPA must prove that public unavailability of data means that a study does not constitute “latest scientific knowledge useful” in indicating effects on human health or welfare.⁸⁴ EPA’s Proposal neither acknowledges this requirement nor explains how the Proposal would not violate this statutory command.

⁸¹ 42 U.S.C. § 7408(a).

⁸² 42 U.S.C. § 7408(a)(2).

⁸³ *Id.*

⁸⁴ 42 U.S.C. § 7408(a)(2).

For example, in past NAAQS reviews, EPA has considered the Harvard Six Cities study⁸⁵ and American Cancer Society studies⁸⁶, despite the fact that the data underlying these studies is not publicly available. These studies, however, are plainly “useful in indicating the kind and extent of all identifiable effects on public health or welfare.”⁸⁷ These seminal studies have been part of the air quality criteria since the mid-1990s—they have thus been accepted as “useful” by separate panels of CASAC, and by EPA, in three separate NAAQS reviews. Their use has been upheld by the D.C. Circuit.⁸⁸ Both studies have been reanalyzed and validated by highly competent third-party reviewers (the Health Effects Institute) with access to the underlying data.⁸⁹ The study results have been reproduced many times over.⁹⁰ Extended follow-up analyses of the ACS and Harvard Six Cities studies provide consistent and stronger evidence of an association with PM 2.5 and mortality at even lower air quality distributions than had previously been observed.⁹¹ This type of cumulative weight of evidence is highly probative in assessing both causality and in establishing the level of the NAAQS.⁹² The proposal says almost nothing about any of these other attributes that not only make these studies “useful,” but indeed make them particularly high quality and reliable.

The primary ozone NAAQS provides further examples of the pernicious effects the proposal would have. Among the key controlled human exposure studies demonstrating that exposure to ozone causes adverse health effects in even healthy subjects at levels below the level of the then-current NAAQS are Adams (2006) and Schelegle (2009).⁹³ These studies were sponsored by the American Petroleum Institute, which controls access to the underlying data. The American Petroleum Institute refused an EPA researcher access to the data of a related

⁸⁵ Dockery, D.W., Pope, C.A., Xu, X., Spengler, J.D., Ware, J.H., Fay, M.E., Ferris Jr, B.G. and Speizer, F.E., *An association between air pollution and mortality in six US cities*, 329(24) *New England Journal of Medicine* 1753-1759 (1993).

⁸⁶ Pope, C.A., Thun, M.J., Namboodiri, M.M., Dockery, D.W., Evans, J.S., Speizer, F.E. and Heath, C.W., *Particulate air pollution as a predictor of mortality in a prospective study of US adults*, 151(3) *American Journal of Respiratory and Critical Care Medicine* 669-674 (1995); Krewski, D., Jerrett, M., Burnett, R.T., Ma, R., Hughes, E., Shi, Y., Turner, M.C., Pope, C.A. III, Thurston, G., Calle, E.E., Thun, M.J., *Extended Follow-up and Spatial Analysis of the American Cancer Society Study Linking Particulate Air Pollution and Mortality*, 140 *Health Effects Institute*, Boston, MA (2009).

⁸⁷ CAA section 108 (a)(2), 42 U.S.C. §7408(a)(2).

⁸⁸ *Coalition of Battery Recyclers Ass’n v. EPA*, 604 F.3d at 623.

⁸⁹ Krewski, Daniel, et al., *Reanalysis of the Harvard Six Cities Study and the American Cancer Society Study of Particulate Air Pollution and Mortality*, Health Effects Institute, Cambridge, MA (2000).

⁹⁰ See EPA, NCEA, *Integrated Science Assessment for Particulate Matter* (EPA/600/R-08/139F), 7-86 (2009).

⁹¹ See EPA, *Policy Assessment for the Review of the Particulate Matter National Ambient Air Quality Standard* (EPA 452/R-11-003), 2-31 to 33 (Apr. 2011). See also Memorandum by Alison Cullen, Chair, SAB Work Group on EPA Planned Actions for SAB Consideration of the Underlying Science at 4 (May 12, 2018) (noting that “additional studies have confirmed the basic findings” of the Six Cities and American Cancer Society studies and that “the rigorous form of peer review and independent reanalysis” applied “has accomplished a measure of confidence in findings without public access to data and analytic methods.”).

⁹² *State of Mississippi v. EPA*, 744 F.3d 1334, 1344 (D.C. Cir. 2013) (endorsing EPA’s weight of evidence approach, and stating that “incremental (and arguably duplicative) studies are valuable precisely because they confirm or quality previous findings or otherwise decrease uncertainty”).

⁹³ See EPA, *Policy Assessment for the Review of the Ozone National Ambient Air Quality Standards* (EPA -452/R-14-006, 3-27, 4-10 (Aug. 2014).

Adams study it sponsored (Adams (1998)).⁹⁴ So not only would these evidently “useful” (under CAA section 108(a)(1)) studies be barred from consideration under the Proposal, but the Proposal creates a perverse incentive for industry to refuse access to study data. The published studies— peer reviewed—would obviously be providing information “useful” in indicating effects of air pollution, but the Proposal would not only bar their consideration but create an incentive for industry never to provide underlying data for any industry-sponsored study with a result not to industry’s liking.

The most recent premiere long-term cohort study for PM is Domenici (2017) which found even greater effects of fine particles at levels below EPA’s current standards.⁹⁵ This study used a Medicare database available to any research group that can guarantee confidentiality of personal data.⁹⁶ Yet the proposal could evidently bar consideration of this powerful study.⁹⁷

NAAQS must be requisite to protect the public health, and to provide an “adequate margin of safety” in doing so.⁹⁸ The proposal violates this central statutory requirement. NAAQS are required to provide this margin of safety “to build a buffer to protect against uncertain and unknown dangers to human health.”⁹⁹ EPA’s Proposal would build a buffer against using the very studies necessary to guard against these dangers.¹⁰⁰

b) EPA’s Proposal contravenes the Toxic Substances Control Act (TSCA).

i. TSCA expressly requires that EPA consider reasonably available information and EPA’s proposal would preclude EPA from considering some reasonably available information.

When Congress amended TSCA through passage of the Frank R. Lautenberg Chemical Safety for the 21st Century Act (Lautenberg Act), Congress provided a number of detailed instructions on how EPA should consider scientific information with respect to chemical substances; EPA’s proposal contradicts Congress’s carefully crafted scheme. In particular, Congress included a provision specifically requiring that EPA consider all “reasonably available

⁹⁴ See EPA, *First External Review Draft Integrated Science Assessment for Ozone and Related Photochemical Oxidants* (EPA/600/R-10/076A), 6-7 n. 1 (Feb. 2011).

⁹⁵ Qian Di et. al., *Air Pollution and Mortality in the Medicare Population*, 376 *New England Journal of Medicine* 2513 (2017), <https://www.nejm.org/doi/pdf/10.1056/NEJMoa1702747>.

⁹⁶ See CMS, *Limited Data Set (LDS) Files*, https://www.cms.gov/Research-Statistics-Data-and-Systems/Files-for-Order/Data-Disclosures-Data-Agreements/DUA_-_NewLDS.html (last accessed Aug. 9, 2018) (noting data requires a signed data use agreement and data cannot be disclosed).

⁹⁷ See 83 Fed. Reg. 18768, 18773, Proposed section 30.5 final sentence (“where data is controlled by third parties, EPA shall work with those parties to endeavor to make the data available in a manner that complies with this section”). There appears to be some interaction required before third party studies are considered to be publicly available.

⁹⁸ CAA section 109(b); 42 U.S.C. § 7409(b).

⁹⁹ *State of Mississippi*, 744 F.3d at 1353.

¹⁰⁰ See *American Farm Bureau v. EPA*, 559 F.3d 512, 525-26 (D.C. Cir. 2009) (remanding primary Particulate Matter NAAQS because inadequate consideration of certain epidemiologic studies resulted in a standard lacking an adequate margin of safety).

information.”¹⁰¹ When making decisions about testing or the risk evaluation or regulation of new or existing chemicals, “the Administrator shall take into consideration *information* relating to a chemical substance or mixture, including hazard and exposure information, under the conditions of use, *that is reasonably available to the Administrator*.” 15 U.S.C. § 2625(k) (emphases added). But under EPA’s proposed rule, EPA would often be precluded from considering such reasonably available information if all the underlying data and models were not publicly available. *See* 83 Fed. Reg. at 18,769 n.3 (stating that proposal “would preclude [EPA] from using [non-public] data in future regulatory actions”). EPA’s proposal violates the plain language of TSCA § 26(k), as well as Congress’s clear purpose of ensuring that EPA consider all reasonably available information relating to a chemical when making a decision about the chemical.

Under its plain language, “available” means “able to be used or obtained; at someone’s disposal.”¹⁰² Congress chose this standard to ensure that EPA would make decisions based on all reasonably available information. S. Rep. No. 114-67 at 9 (June 18, 2015) (“The section ... requires EPA to consider reasonably available information about potential hazards and exposures of a chemical substance under the conditions of use when making decisions under TSCA.... The Committee intends that EPA systematically search for and identify relevant information that is available to inform safety assessments and determinations.”); Oversight of the Environmental Protection Agency’s Progress in Implementing Inspector General and Government Accountability Office Recommendations: Hearing before the Subcomm. on Superfund, Waste Management, and Regulatory Oversight of the S. Comm. on Environment and Public Works, 114th Cong. at 63 (June 14, 2016) (“[F]or the EPA to properly evaluate and regulate toxic substances, it is essential that they have the most up-to-date chemical and toxicity data available.”). Congress also selected this standard to avoid paralysis by analysis—Congress wanted EPA to act on available information and not to postpone action waiting for new or perfect information to become available. *See, e.g.*, 162 Cong. Rec. S3511, S3517 (daily ed. June 7, 2016) (referring to “information reasonably available to EPA” as “ensur[ing] that such considerations do not require additional information to be collected or developed”). “Congress recognized the need to use available studies, reports and recommendations for purposes of chemical assessments rather than creating them from whole cloth.” *Id.* at S3522. And Congress intended for EPA to consider studies even when they had not undergone all possible forms of vetting. “[I]n instances where there were other studies and reports unavailable at the time of the [National Academy of Sciences] recommendations, EPA should take advantage of those studies and reports in order to ensure that the science used for chemical assessments is the best available and most current science.” *Id.* at S3522. Congress intended for EPA to consider all reasonably available information, and EPA’s proposal would thwart that clear purpose.

Notably, this Administration has adopted two regulations under the amended TSCA defining reasonably available information. These regulations generally provide that:

Reasonably available information means information that EPA possesses or can reasonably generate, obtain, and synthesize for use in risk evaluations, considering the deadlines specified in TSCA [for action]. Information that meets the terms of the

¹⁰¹ Pub. L. No. 114-182, § 17(k), 130 Stat. 448, 502 (June 22, 2016) (codified at 15 U.S.C. § 2625(k)).

¹⁰² *Oxford American Dictionary* 111 (3d ed. 2010).

preceding sentence is reasonably available information whether or not the information is confidential business information, that is protected from public disclosure under TSCA section 14.

40 C.F.R. § 702.33; *see also* 40 C.F.R. § 702.3 (similar definition for prioritization decisions). This bears no resemblance to the limitations put forward in the Proposal. Indeed, EPA has defined “reasonably available information” to include information EPA withholds as Confidential Business Information (CBI) under TSCA § 14. 15 U.S.C. § 2613. If the proposed rule forecloses EPA from considering information that cannot be fully disclosed, as it appears to do, then EPA cannot comply with both these regulations and the proposed rule.

EPA’s proposal also violates other provisions of TSCA that expressly require EPA to act on “available information.” For example, in preparing risk evaluations for existing chemicals, EPA “shall integrate and assess *available information* on hazards and exposures for the conditions of use of the chemical substance, including information that is relevant to specific risks of injury to health or the environment and information on potentially exposed or susceptible subpopulations identified as relevant by the Administrator.”¹⁰³ Under the proposed rule, EPA would not be able to integrate and assess available information where all underlying data has not been disclosed. Similarly, when developing regulations for existing chemicals, EPA “shall consider and publish a statement based on *reasonably available information* with respect to” a number of factors, including the effects of the chemical on health and the environment.¹⁰⁴ But under the proposed rule, EPA cannot consider all reasonably available information when assessing those health and environmental effects.

Indeed, TSCA § 4(f) imposes a duty upon EPA to initiate regulation in response to any available information that meets certain substantive standards. However, if all the underlying information were not available, EPA’s proposed rule would then foreclose EPA from considering that information during the resulting rulemaking. Congress would not have created a scheme where EPA *must* act in response to certain information but then cannot consider that information in taking action. Specifically, under TSCA § 4(f):

Upon the receipt of—(1) *any information* required to be submitted under this Act, or (2) *any other information available* to the Administrator—which indicates to the Administrator that there may be a reasonable basis to conclude that a chemical substance or mixture presents a significant risk of serious or widespread harm to human beings, the Administrator shall, ... initiate applicable action under section 5, 6, or 7 to prevent or reduce to a sufficient extent such risk or publish in the Federal Register a finding, made without consideration of costs or other nonrisk factors, that such risk is not unreasonable.¹⁰⁵

Thus if “any ... information available” to EPA provides a reasonable basis to conclude that a chemical “presents a significant risk of serious or widespread harm to human beings,” then EPA must initiate action to regulate the chemical. But under EPA’s proposed rule, EPA would then be

¹⁰³ 15 U.S.C. § 2605(b)(4)(F)(i) (emphasis added).

¹⁰⁴ *Id.* § 2605(c)(2)(A) (emphasis added).

¹⁰⁵ 15 U.S.C. § 2603(f) (emphases added).

required to ignore the information triggering this duty when crafting the final regulation unless the source of the information fully disclosed all underlying data. That result clearly contradicts Congress's intent, which was to create a duty for EPA to react to any available information meeting the substantive standard of TSCA § 4(f).

In sum, Congress repeatedly directed EPA to consider all reasonably available information when making decisions under TSCA. The proposed rule would illegally preclude EPA from considering available information. The two cannot be reconciled, and the rule is unlawful.

ii. TSCA requires an agency to act on the “best available science,” meaning that EPA must consider all available science and assess the quality of the science based on a variety of factors.

EPA's proposed blanket prohibition against basing a rulemaking on science for which underlying data or models are not publicly available would be particularly hard to reconcile with the “best available science” standard as articulated in TSCA, which clearly contemplates a case-by-case analysis in which EPA weighs a variety of factors when identifying the best available science. The relevant provision of TSCA requires that:

- (h) Scientific standards. In carrying out sections 4, 5, and 6, to the extent that the Administrator makes a decision based on science, the Administrator shall use scientific information, technical procedures, measures, methods, protocols, methodologies, or models, employed in a manner consistent with the *best available science*, and shall consider *as applicable*—
 - (1) the extent to which the scientific information, technical procedures, measures, methods, protocols, methodologies, or models employed to generate the information are reasonable for and consistent with the intended use of the information;
 - (2) the extent to which the information is relevant for the Administrator's use in making a decision about a chemical substance or mixture;
 - (3) *the degree of clarity and completeness* with which the data, assumptions, methods, quality assurance, and analyses employed to generate the information *are documented*;
 - (4) the extent to which the variability and uncertainty in the information, or in the procedures, measures, methods, protocols, methodologies, or models, are evaluated and characterized; and
 - (5) *the extent of independent verification or peer review* of the information or of the procedures, measures, methods, protocols, methodologies, or models.¹⁰⁶

Thus, Congress provided EPA with factors to guide its consideration of the “best available science,” and Congress did not make the public disclosure of all underlying data a requirement for material to be the “best available science.” Quite the opposite; Congress included aspects of disclosure and independent review as parts of factors to be considered when weighing scientific information. But these are just aspects of five different factors to be weighed “as applicable,” and

¹⁰⁶ 15 U.S.C. § 2625(h) (emphases added).

Congress clearly contemplated that EPA would sometimes rely on science that does not meet the proposed rule's requirement of full disclosure of all underlying data.

First, Congress directed EPA to consider these factors when weighing particular information; Congress specifically did not develop (or direct EPA to develop) bright-line criteria for eliminating information from consideration entirely. Thus, each factor includes the phrase “degree of” or “extent to which,” without identifying any threshold that would be disqualifying.¹⁰⁷ This shows that Congress intended these factors to help EPA assess the weight information should be given based on its relative scientific reliability, not to create minimum thresholds of reliability below which information must be ignored by EPA altogether. For EPA to insert a screen on top of these factors—excluding information where the underlying data and models are not publicly available as required by the proposed rule—contradicts Congress's unambiguous intent about how EPA should approach its assessment of the best available science.

Second, Congress made the “degree of clarity and completeness” with which the underlying data is documented to be part of one factor for EPA to consider in evaluating whether a particular study is the “best available science.”¹⁰⁸ But EPA must also consider “the degree of clarity and completeness” with which “assumptions, methods, quality assurance, and analyses” are documented as well.¹⁰⁹ Thus, Congress contemplated that EPA would still rely on some studies that did *not* document completely all the underlying data, much less disclose all of that information.

Third, Congress made “the extent of independent verification *or* peer review of the information *or* of the procedures, measures, methods, protocols, methodologies, or models” another factor to be weighed when considering whether information is the “best available.”¹¹⁰ Notably, Congress's choice of the disjunctive “or” reflects that “peer review” can be an adequate alternative to “independent verification,” and Congress did not require that either “independent verification *or* peer review” be accomplished through public availability of data as required in the proposed rule. Moreover, Congress contemplated scenarios where EPA would give more weight to evidence even if the “information” had not undergone “independent verification or peer review” based on the extent to which the “procedures, measures, methods, protocols, methodologies, or models” had done so.

Fourth and most importantly, EPA cannot rationally elevate the interest in public disclosure of all underlying data above all the other factors that Congress expressly required EPA to consider in evaluating science. Congress required EPA to consider these five factors “as applicable” when weighing information, and Congress did not make full public availability of underlying data one of the factors, much less a decisive or absolute one.

¹⁰⁷ See, e.g. 15 U.S.C. § 2625(h)(1) (“*the extent to which* the scientific information...[are] consistent with the intended use of the information”) (emphasis added).

¹⁰⁸ 15 U.S.C. § 2625(h)(3).

¹⁰⁹ *Id.*

¹¹⁰ 15 U.S.C. § 2625(h)(5).

This administration recently adopted a regulatory definition of “best available science” for purposes of TSCA which expressly incorporated consideration of these five factors and was otherwise inspired by use of the term in the Safe Drinking Water Act (SDWA).¹¹¹ EPA defined the phrase:

Best available science means science that is reliable and unbiased. Use of best available science involves the use of supporting studies conducted in accordance with sound and objective science practices, including, when available, peer reviewed science and supporting studies and data collected by accepted methods or best available methods (if the reliability of the method and the nature of the decision justifies use of the data). Additionally, EPA will consider as applicable:

[TSCA § 26(h)(1)(5) factors]¹¹²

According to EPA in selecting this definition, “the Agency is remaining consistent with the current approach already used Agency-wide, while also acknowledging the specific standards under TSCA.”¹¹³ Notably, this definition does not require public disclosure of all underlying data for science to be the “best available science,” yet many studies that meet this definition of “best available science” would be excluded under EPA’s proposed rule.

EPA’s Proposal cannot be reconciled with EPA’s existing definition of best available science, with decades of court and agency precedent, or with text of the statute. When a statute requires the agency to make a decision based on the “best available science,” it would be unlawful to follow EPA’s proposed rule.

iii. EPA’s proposed rule also contradicts TSCA’s requirement that decisions be made based on the weight of the scientific evidence.

TSCA § 26(i) requires EPA to make decisions regarding testing and regulating new and existing chemicals “based on the weight of the scientific evidence.”¹¹⁴ If EPA excludes certain information, as proposed, then EPA will not be able to weigh the evidence as a whole.

Indeed, this administration recently adopted a regulation defining “weight of scientific evidence” to mean “a systematic review method . . . that uses a pre-established protocol to *comprehensively*, objectively, transparently, and consistently, identify and evaluate *each stream of evidence*, including strengths, limitations, and relevance of *each* study and to integrate evidence as necessary and appropriate based upon strengths, limitations, and relevance.”¹¹⁵ Systematic reviews consider the entire body of scientific evidence, but EPA’s proposed rule would prevent EPA from conducting true systematic review because it would prohibit the Agency from considering studies where the data were not publicly available and it would

¹¹¹ See 82 Fed. Reg. 33,726, 33,731 (July 20, 2017), 42 U.S.C. § 300g-1(b)(3)(A).

¹¹² 40 C.F.R. § 702.33.

¹¹³ 82 Fed. Reg. at 33,731.

¹¹⁴ 15 U.S.C. § 2625(i).

¹¹⁵ 40 C.F.R. § 702.33 (emphases added).

eliminate studies based on criteria other than their “strengths, limitations, and relevance.”¹¹⁶ If the proposed rule forecloses EPA from considering information that cannot be fully disclosed, as it appears to do, then EPA cannot comply with this regulation and the proposed rule.

In sum, EPA’s proposed rule is inconsistent with TSCA’s plain text. EPA should not adopt the proposed rule because it cannot be reconciled with the agency’s duties under TSCA.

iv. Section 10 of TSCA does not authorize this proposal.

Nothing in Toxic Substances Control Act (TSCA) § 10 authorizes EPA to exclude scientific information during rulemakings on any basis. Section 10 authorizes EPA to research and develop information for purposes of carrying out TSCA.¹¹⁷ Section 10 also authorizes EPA to develop systems to collect and disseminate information about chemical substances.¹¹⁸ But TSCA § 10 is silent regarding rulemaking or EPA’s use of scientific information in rulemaking. It does not authorize EPA to exclude scientific information on *any* basis; if anything, TSCA § 10 reflects a congressional judgment that EPA should be prepared to use any and all “toxicological and other scientific information which could be useful to the Administrator in carrying out the purposes of this [Act].”¹¹⁹

c) EPA’s Proposal contravenes the Safe Drinking Water Act.

The Safe Drinking Water Act requires EPA to issue national drinking water regulations setting required purity levels for water from public water supply systems.¹²⁰ Before regulating, the Administrator must conclude that the contaminant at issue “may have” an adverse effect on the health of persons.¹²¹ In regulating, the Administrator must consider “the best available public health information”¹²² The section adds that in setting regulations, the Administrator “shall use ...the best available, peer-reviewed science and supporting studies conducted in accordance with sound and objective scientific practices” and in addition “data collected by accepted methods or best available methods.”¹²³ When Congress promulgated these statutory requirements in 1996, the Senate Committee on Environment and Public Works¹²⁴ explained that the “Administrator has a *duty* to seek and rely upon the best available science and information to support.... [m]any

¹¹⁶ *Id.*

¹¹⁷ See 15 U.S.C. § 2609(a) (“The Administrator shall ... conduct such research, development, and monitoring as is necessary to carry out the purposes of this [Act].”); see also 15 U.S.C. § 2609(c), (d), (e).

¹¹⁸ See 15 U.S.C. § 2609(b), (c), (g).

¹¹⁹ 15 U.S.C. § 2609(b)(2)(A).

¹²⁰ 42 U.S.C. § 300g-1.

¹²¹ *Id.* at (b)(1)(A)(i).

¹²² *Id.* at (b)(1)(B)(ii)(II).

¹²³ 42 U.S.C. § 300g-1(b)(3)(A). See *City of Waukesha v. EPA*, 320 F.3d at 247-48 (D.C. Cir. 2003) (holding that agency peer review satisfies requirement to use best, peer-reviewed science and supporting studies); *City of Portland v. EPA*, 507 F.3d 706, 716 (D.C. Cir. 2002) (same).

¹²⁴ The Report of the Senate Committee on Environment and Public Works is authoritative on these provisions, as the language adopted in the Committee bill (S.1316) on the use of science was adopted verbatim in Pub. L. 104-182. See S. Rep. 104-169 at p. 121 and Pub. L. 104-182 at §103.

of the most important activities including selecting contaminants for regulation, setting standards, designing analytical methods and structuring waivers, variances and exemptions.”¹²⁵

By restricting EPA to considering only those scientific studies for which underlying data, models, and other information is publicly available, EPA’s proposal prevents EPA from complying with the SDWA directive that it consider the “best available” public health information and science when setting SDWA standards. Specifically, as explained above, the public will not necessarily have access to the underlying information used to produce the “best available, peer-reviewed science and supporting studies.”¹²⁶ Nowhere does the SDWA authorize EPA to ignore such studies based on the public unavailability of underlying information. Thus, regardless of the merits of the core objective of EPA’s proposal—“to ensure that the regulatory science underlying its actions is publicly available in a manner sufficient for independent validation” (proposed § 30.1 “What is the purpose of this subpart?”), EPA’s attempt to elevate this objective above the agency’s statutory obligation to consider the “best available” science when promulgating SDWA standards is unlawful.¹²⁷

4. EPA’s proposed exemption provision does not remedy the unlawfulness of prohibiting EPA from considering valid and relevant studies due to the public unavailability of underlying data and methods.

Though the proposed exemption provision in section 30.9 would grant the EPA Administrator discretion to authorize the agency to consider studies for which underlying data or models are not publicly available, this provision is insufficient to remedy the proposed rule’s unlawfulness and detrimental impacts. It is well established that existence of a waiver or exemption mechanism cannot be used to justify a provision otherwise beyond an agency’s legal authority. *Dimension Financial Corp. v. Board of Governors of Federal Reserve System*, 744 F.2d 1402, 1410 (10th Cir. 1984) (“The possible exception to the initial impact of Regulation Y (Part 225.21(B)(4)) contains requirements with no objective standard and thus unbounded agency discretion. This as a device to meet objections to the new regulation cannot cure the exercise of powers denied by Congress or not provided for by Congress. *Public Utilities Comm. of Calif. v. United States*, 355 U.S. 534 (1958); *In re Surface Mining Regulation Litigation*, 627 F.2d 1346 (D.C. Cir. 1980); *ALLTEL Corp. v. FCC*, 838 F.2d 551, 561 (D.C. Cir. 1988) (“The FCC cannot save an irrational rule by tacking on a waiver procedure. ‘The very essence of waiver is the assumed validity of the general rule’”(citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1158 (D.C. Cir. 1969)); *United States Telecom Ass’n v. FCC*, 359 F.3d 554, 571 (D.C. Cir. 2004) (“Moreover, even if the FCC had adopted some lawful mechanism for making exemptions from its general national rule, it could not necessarily rely on the existence of that mechanism as the sole justification for not adopting a more narrowly tailored rule. . . . [T]he mere existence of a safety valve does not cure an irrational rule.”))

¹²⁵ S. Rep. 104-169 at 28 (emphasis added).

¹²⁶ 42 U.S.C. § 300g-1(b)(3)(A).

¹²⁷ 83 Fed. Reg. at 18773.

First, while the statutory provisions described above *require* EPA to consider best available science and other relevant information when making regulatory decisions, *see, e.g.*, Safe Drinking Water Act, 42 U.S.C Section 300g-1(b)(3)(A)(i) (“The Administrator *shall* use the best available, peer reviewed science.”), the Administrator has discretion over whether to grant an exception. *See* Proposed § 30.9 (“The Administrator *may* grant an exemption to this subpart on a case-by-case basis...”)(emphasis added).¹²⁸ Where a statute requires that the agency consider certain information in reaching a decision, EPA cannot promulgate a rule that gives the Administrator discretion over whether to allow such consideration.

Second, the only basis on which the Administrator may grant an exemption under Proposed § 30.9 is that it “is not feasible” to “ensure that all dose response data and models underlying pivotal regulatory science is publicly available” as the rule requires.¹²⁹ However, the Proposal does not explain how “feasibility” is to be determined in this context—or even whether the term encompasses practical feasibility, cost-effectiveness, or other considerations. Moreover, there can easily be situations where it is theoretically “feasible” to make underlying data publicly available, but this information is nonetheless not publicly available. For example, a scientist who intends to rely on the same data to publish multiple papers may be disinclined to make that data available to competitors.¹³⁰ Yet, because it is technically “feasible” to make the underlying data publicly available, the proposed rule would not even provide the Administrator with authority to grant an exemption authorizing such consideration, thus forcing the Administrator to violate the law.

Third, even if it were lawful for EPA to ignore relevant science, the exemption provision is arbitrary, as it does not define sufficient criteria or process steps by which the Administrator may decide to exempt a study. The provision instructs the Administrator to rely on a handful of broad (and highly manipulable) policy considerations in determining whether it would be infeasible to make data and methods publicly available.¹³¹ These factors could be applied broadly to give the Administrator nearly absolute discretion. From the face of the Proposal, it is not even clear that the Administrator would be required to provide a public, written explanation of his decision to grant (or deny) a waiver. This lack of accountability could lead to the arbitrary exclusion of studies the Administrator unilaterally chooses to not exempt.

¹²⁸ 83 Fed. Reg. at 18774.

¹²⁹ 83 Fed. Reg. at 18774.

¹³⁰ Or in cases where companies jointly funded research it may be unclear who owns the data and has the right to share it, and companies may be reluctant to share it with competitors. *See, e.g.*, National Academies of Sciences, Engineering, and Medicine, *Principles and obstacles for sharing data from environmental health research: Workshop summary*, 45 The National Academies Press (2016), <https://www.nap.edu/catalog/21703/principles-and-obstacles-for-sharing-data-from-environmental-health-research>. (“As you can imagine. . . not all competitors play nicely together. Some even resort to gamesmanship to try to exclude competitors from the market. Things can get nasty and messy in a hurry in these discussions.”).

¹³¹ *See* 83 Fed. Reg. at 18774. Under §30.9(a), the Administrator should consider whether it is infeasible “in a fashion that is consistent with law, protects privacy, confidentiality, confidential business information, and is sensitive to national and homeland security.” §30.9(b) references 70 Fed. Reg. 2664, which exempts peer review in situations of “disseminations of sensitive information related to certain national security, foreign affairs, or negotiations involving international treaties and trade where compliance with this Bulletin would interfere with the need for secrecy or promptness.”

Finally, the exemption provision is impractical and likely could not be implemented effectively. According to the Congressional Budget Office, EPA “relies on about 50,000 scientific studies annually to perform its mission,” and at times, relies on thousands of studies for one action.¹³² Many of the studies that would be affected by this rule are complex and include large datasets that would lead to an extensive decision-making process under the exemption provision. EPA does not include any rationale in the proposal justifying how the Administrator could reasonably decide to exempt studies on a case-by-case basis given the tens of thousands of studies EPA considers each year. This provision could create a large backlog, which would result in important studies being effectively removed from EPA consideration because of the need to finalize a regulation before an exemption for every relevant study is granted. Accordingly, the exemption provision fails to safeguard against the unlawful exclusion of valid science from EPA’s regulatory process.

C. EPA’s Proposed Rule Would Violate the Information Quality Act.

EPA’s proposed rule is also unlawful because it exceeds EPA’s authority under Section 515(a) of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 16-554; H.R. 5658), commonly referred to as the Information Quality Act.¹³³ Specifically, the Information Quality Act requires EPA promulgate data quality guidelines that are consistent with those promulgated by the Office of Management and Budget. Contrary to EPA’s assertion in the preamble to the proposal, the Proposed Rule is not consistent with OMB’s data quality regulations.

The OMB Guidelines recognize that data availability is not necessary to high quality science, but is one among many factors. While imposing high standards of quality, objectivity, utility, and integrity of information disseminated by Federal Agencies, the Guidelines recognize the need to implement controls “flexibly, and in a manner appropriate to the nature . . . of the information to be disseminated.”¹³⁴ As part of ensuring “objectivity” these guidelines encourage agencies that disseminate influential scientific, financial, or statistical information, “to include a high degree of transparency about data and methods to facilitate the reproducibility of such information by qualified third parties.”¹³⁵ However, they emphasize the need to treat certain data differently, due to privacy and confidentiality concerns.¹³⁶ In fact, the OMB Regulations specifically declare that “[w]ith regard to original and supporting data related thereto, *agency guidelines shall not require that all disseminated data be subjected to a reproducibility requirement.*”¹³⁷ Rather, the OMB Guidelines instruct that agencies “identify, in consultation with the relevant scientific and technical communities, those particular types of data that can

¹³² Congressional Budget Office, *Cost Estimate: H.R. 1430* 2-3 (March 29, 2017), <https://www.cbo.gov/system/files/115th-congress-2017-2018/costestimate/hr1430.pdf>.

¹³³ Codified at 44 U.S.C. 3504(d)(1) and 3516.

¹³⁴ OMB’s *Guidelines Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information*, 67 Fed. Reg. 8,452, 8,453 (Feb. 22, 2002).

¹³⁵ 67 Fed. Reg. at 8460.

¹³⁶ OMB’s *Guidelines Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information*, 67 Fed. Reg. 8, 452, 8,460 (Feb. 22, 2002) (interest in making data publicly available “does not override other compelling interests such as privacy, trade secrets, intellectual property, and other confidentiality protections”).

¹³⁷ 67 Fed. Reg. at 8460 (emphasis added).

practicable [sic] be subjected to a reproducibility requirement, given ethical, feasibility, or confidentiality constraints.”¹³⁸ The OMB Regulations further explain that while “[m]aking the data and methods publicly available will assist in determining whether analytic results are reproducible...*the objectivity standard does not override other compelling interests such as privacy, trade secrets, intellectual property, and other confidentiality protections.*”¹³⁹ OMB explains that “where public access to data and methods will not occur due to other compelling interests, agencies shall apply especially rigorous robustness checks to analytic results and document what checks were undertaken.”¹⁴⁰

By outright prohibiting EPA from relying on a study to support a significant rulemaking if that study’s underlying data and models are not publicly available, EPA’s proposed rule departs from OMB’s unambiguous language instructing agencies that they “shall not” require that all data and models be subject to the reproducibility requirement, and that “the objectivity standard does not override other compelling interests.”¹⁴¹ The fact that EPA’s proposed rule includes a discretionary “exemption” provision does not correct this problem, as that provision would not require the Administrator even to consider whether an exemption is warranted, let alone grant such an exemption under appropriate circumstances.

Because Congress expressly granted OMB the authority to set guidelines for data quality and instructed agencies like EPA to follow OMB’s lead, EPA lacks statutory authority to adopt a regulation that is contrary to OMB’s guidelines. Accordingly, EPA’s proposed regulation violates the Information Quality Act and must be withdrawn.¹⁴²

II. EPA’s Proposed Rule is Unreasonable and Arbitrary and Capricious.

In addition to violating the requirements of the various statutes that EPA administers or is subject to, the Proposal suffers from a total failure to consider important dimensions of the profound shift in policy that it implements. In the Proposal, EPA neglects to consider the many legitimate reasons why a study’s underlying data may not be publicly available—reasons that have nothing to do with the quality of the study—and fails to offer solutions consistent with these legitimate limitations. EPA makes vague gestures to various guidelines and practices issued by other agencies and scientific organizations, none of which actually support the Proposal’s radical position that EPA should exclude consideration of studies that rely upon confidential data. EPA does not even establish that there is a real problem that the Proposal would actually address: nowhere in the Proposal does EPA identify any prior agency action that has been called into serious question due to a failure to release study data. EPA’s utter failure “to consider an important aspect of the problem” and to provide an explanation for the Proposal

¹³⁸ 67 Fed. Reg. at 8460. There is no indication that EPA consulted with the scientific and technical community—or even its own Science Advisory Board—before proposing to require that the underlying data and models be made publicly available for all pivotal regulatory science regardless of ethical, feasibility, or confidentiality constraints.

¹³⁹ 67 Fed. Reg. at 8460 (emphasis added).

¹⁴⁰ 67 Fed. Reg. at 8460.

¹⁴¹ See 67 Fed. Reg. at 8460.

¹⁴² *Prime Time Int’l Co. v. Vilsack*, 599 F.3d 678, 685 (D.C. Cir. 2010) (“[B]ecause Congress delegated to OMB authority to develop binding guidelines implementing the IQA, we defer to OMB’s reasonable construction of the statute.”)

that is consistent with the evidence before the agency renders the Proposal wholly arbitrary and capricious. *See Motor Vehicle Mfrs. Ass'n. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). Likewise, EPA's failure to explain its 180-degree change in position from its former belief that the lack of publicly-available data does not render a study inappropriate for consideration in regulating is a hallmark of arbitrary and capricious decision-making. *FCC v. Fox Telev. Stations, Inc.*, 556 U.S. 502, 515-16 (2009).

A. EPA Failed to Consider the Legitimate Reasons That Underlying Data May Not be Made Publicly Available, or to Propose Solutions to Remedy These Actual Limitations.

1. There are multiple reasons why underlying data are not publicly available for all studies.

There are legal and ethical requirements that restrict making public the data underlying studies, including rules to shield private personal information, requirements to maintain confidential business information, situations where obtaining the necessary permissions to release data are logistically difficult or impossible, and situations in which researchers have made significant investments in developing datasets that they intend to continue to work with for future studies. Not all of these barriers can be overcome, nor can they be overcome in every case. While there are ways potentially to address some of them, they can be extremely costly and burdensome, and/or may harm the prospects for further research. Accordingly, while the scientific community has made efforts to make more data publicly available, to the best of our knowledge all of the policies adopted by government and academic journals recognize that data is not, and need not be, publicly available to evaluate their quality.

a) Strong legal and ethical requirements limit the release of data in human subjects studies.

Particularly with respect to human subjects, there are strong legal and ethical privacy and confidentiality protections, which researchers are bound to respect.¹⁴³ In some cases, researchers would be subject to civil or criminal penalties for violations.¹⁴⁴

The environmental health dose response studies targeted by EPA's proposal are likely to include human population studies (or epidemiological studies). Often the best available epidemiological studies contain extensive and sensitive data on individuals, such as environmental exposures, medical history (such as infant reproductive developmental abnormalities, children's behavioral and development problems, heart attacks or dementia among the elderly), dates of birth, residential address, drug use, race, socio-economic status (income,

¹⁴³ See, e.g., The National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, *The Belmont Report* (Apr. 18, 1979), <https://www.hhs.gov/ohrp/sites/default/files/the-belmont-report-508c-FINAL.pdf>; *Federal Policy for the Protection of Human Subjects; Final Rule*, 82 Fed. Reg. 7,149 (Jan. 19, 2017); HIPAA Privacy Rule, 45 C.F.R. §§ 160, 164.102-06, 164.500-534.

¹⁴⁴ See, The Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191 (enacted Aug. 21, 1996) (providing for criminal and civil penalties for violations).

education), status of subjects' marriages, employment history, etc. For example, air pollution studies commonly use residential address information to assign air pollution exposures and link them to health effects.¹⁴⁵ Other studies focused on genetically susceptible populations may also be linked to genetic databases or contain information on key genetic mutations that are strongly predictive of serious health risks, such as risk of Alzheimer's disease, and are thus very sensitive.¹⁴⁶

To conduct these studies, investigators must obtain informed consent from the study participants to collect protected health information, and investigators must sign documents promising to protect the privacy of this individually identifiable health information. Absent complex, difficult and costly de-identification and redaction techniques, these data simply cannot be released publicly. As discussed below in section II.A.2.b), in some cases such techniques are simply not applicable or still leave significant risk of breach of privacy.

Additional protections apply to specific types of human subject information. For example, medical records are subject to strict requirements governing the use and disclosure of such information under the Health Insurance Portability and Accountability Act of 1996 (HIPAA).¹⁴⁷ HIPAA requires researchers to protect identifiable information, and it provides that such information may only be disclosed for research purposes with the written consent of the person providing the information.¹⁴⁸

Another limitation on public availability of data is the requirement under the Federal Policy for the Protection of Human Subjects (also known as the Common Rule) that for all federally funded studies involving human research subjects, researchers must first obtain Institutional Review Board (IRB) approval and informed consent from study participants.¹⁴⁹

An IRB reviews each human subjects research project to ensure that the specific research protocol protects individual rights. Participants must be notified about the degree to which the confidentiality of their records will be maintained, and must receive appropriate notification and

¹⁴⁵ See, e.g., Kaufman, Joel D., et al., *Association between air pollution and coronary artery calcification within six metropolitan areas in the USA (the Multi-Ethnic Study of Atherosclerosis and Air Pollution): a longitudinal cohort study*, 388.10045 *The Lancet* 696-704 (2016).

¹⁴⁶ See, e.g., Richardson JR, Roy A, Shalat SL, von Stein RT, Hossain MM, Buckley B, Gearing M, Levey AI, German DC, *Elevated serum pesticide levels and risk for Alzheimer disease*, 71(3) *JAMA Neurology* 284-90 (Mar. 1, 2014).

¹⁴⁷ Public Law 104 – 191.

¹⁴⁸ National Research Council, *Expanding Access to Research Data: Reconciling Risks and Opportunities*, The National Academies Press (2005).

¹⁴⁹ 45 C.F.R. §§ 46.101-124 is the U.S. Department of Health and Human Services ("HHS") citation for the Common Rule. A total of 18 federal agencies have adopted it; each agency has its own separate entry in the Code of Federal Regulations. This federal rule governs ethical constraints that federally funded studies must follow, including academic research, responding to earlier concerns of ethical lapses in medical research. See, e.g., Jerry Menikoff, *Could Tuskegee happen Today?*, 1 *St. Louis U. J. Health L. & Pol'y* 311, 312-16 (2008) (describing the Congressional response to public outcry when the details of the Tuskegee experiment were brought to light). The thrust of the Common Rule is to address such matters of research ethics as informed consent, informational risk, and institutional oversight when research involves human subjects.

give consent if study data is to be shared outside the research team.¹⁵⁰ The IRB also considers risks to the participants and how use of the information obtained may adversely impact the rights and welfare of the subjects.¹⁵¹ Most institutions have committed to comply with the Common Rule for all of their research, even when it is not federally-funded.¹⁵²

For studies that had received IRB approval prior to finalization of this proposed rule, there may be no practical opportunity to make the data publicly available. Even for new studies going forward, it may be extremely difficult, require additional (often unavailable) funding for elaborate protective measures, or simply impossible to obtain IRB approval for protocols that would allow the data to be made publicly available.

EPA's own Science Advisory Board voiced these concerns that EPA was discounting the challenges to making even limited releases of data, saying:

The proposed rule oversimplifies the argument that “concerns about access to confidential or private information can, in many case, be addressed through the application of solutions commonly in use across some parts of the Federal government.” For studies already completed or underway, the participation of human subjects is undertaken according to terms approved by the cognizant IRB. These terms can vary from study to study. In some cases, the data cannot be released simply by redacting portions of it. For example, data may have been collected with an assurance to the participating individuals that their data would be kept confidential.¹⁵³

Some researchers might respond by choosing to work only on public administrative datasets, but this would harm rather than strengthen science quality by curtailing scientific inquiry. Thus, the effects of EPA's proposed approach would cause some researchers to choose not to pursue research with human subjects, stifling scientific discovery, while others would forgo compliance with EPA's regulatory requirements and have their research ignored by EPA. As a result, EPA's proposal would both discourage the development of best available science as well as EPA's use of it.

b) There are especially significant barriers to public release of underlying data and models from studies that have already been completed.

With respect to studies that have already been completed, there are additional formidable barriers to public release of underlying data and models. Particularly, with older studies, simply finding the data sets and determining ownership may be expensive or impossible. For older studies with human subjects, obtaining consent to release of data may be practically impossible,

¹⁵⁰ See, 82 Fed. Reg. 7,149-7,274.

¹⁵¹ *Id.*

¹⁵² HHS, *Federalwide Assurance (FWA) for the Protection of Human Subjects*, <https://www.hhs.gov/ohrp/register-irbs-and-obtain-fwas/fwas/fwa-protection-of-human-subjectt/index.html> (last accessed Aug. 13, 2018).

¹⁵³ Memorandum by Alison Cullen, Chair, SAB Work Group on EPA Planned Actions for SAB Consideration of the Underlying Science (May 12, 2018).

and the data may have been collected in ways that would make protecting privacy with release difficult or impossible.¹⁵⁴

For some studies, administrative issues related to the data could be the most difficult barrier to overcome in providing for public release. Larger and more costly studies are often performed by groups of researchers within a university, across multiple institutions, or across multiple individual companies. Over time, the data itself may become lost or misplaced, or it may become unclear who actually owns and controls access to the data. Academics move among institutions, companies merge and spin off, and the initial agreements were not always clear in the first instance. Obtaining consent from multiple institutional players takes extensive time and resources, at minimum, and simply may no longer be possible in some instances.¹⁵⁵

These problems are exacerbated with respect to human subject studies. Researchers are legally and ethically obliged either to protect the privacy of the individual study subjects or attain each subject's consent to share data.¹⁵⁶ This can be impractical for older studies and virtually impossible for larger studies, and extremely burdensome. For example, the Harvard Six cities study was started in 1975 and had 8,111 participants.¹⁵⁷ The ACS CPSII extended analysis by Krewski in 2009, which is central to PM_{2.5} NAAQS standards, was initiated in 1979 and encompassed data from 500,000 study participants who lived in 116 metropolitan areas.¹⁵⁸ For these types of situations, tracking down participants (or where the participants have passed away, their family members) to get consent is simply not realistically possible.

Even in situations where investigators might theoretically be able to attain consent, it would require extensive financial and human resources, which are usually simply not available, especially to academic researchers or to EPA. EPA ignores this prohibitive constraint and makes no attempt to address it.

- c) There are additional significant barriers to public release of data in some situations, even for prospective studies.

Even with respect to prospective application of EPA's proposal, providing for public release of underlying data and models is costly and resource intensive, creating a serious disincentive for researchers to meet EPA's proposed requirements. Investigators willing to make their study underlying data publicly available would still face the logistical hurdle of making the data and models available in a manner sufficient for independent validation by the public. In

¹⁵⁴ See, e.g., National Academies of Sciences, Engineering, and Medicine, *Principles and obstacles for sharing data from environmental health research: Workshop summary*, 61-63 The National Academies Press (2016), <https://www.nap.edu/catalog/21703/principles-and-obstacles-for-sharing-data-from-environmental-health-research>.

¹⁵⁵ *Id.* at 45.

¹⁵⁶ *Federal Policy for the Protection of Human Subjects; Final Rule*, 82 Fed. Reg. 7,149 (Jan. 19, 2017); HIPAA Privacy Rule, 45 C.F.R. §§ 160, 164.102-106, 164.500-534.

¹⁵⁷ Dockery, D.W., Pope, C.A., Xu, X., Spengler, J.D., Ware, J.H., Fay, M.E., Ferris Jr, B.G. and Speizer, F.E., *An association between air pollution and mortality in six US cities*, 329(24) New England Journal of Medicine, 1753-1759 (1993).

¹⁵⁸ Krewski D, Jerrett M, Burnett RT, et al., *Extended Follow-Up and Spatial Analysis of the American Cancer Society Study Linking Particulate Air Pollution and Mortality*, 140 Health Effects Institute, Boston MA (2009).

addition to the cost of thoughtful and effective deidentification or redaction of sensitive information, the proposed text would likely require researchers to prepare annotated manuals including precise detail as to what variables were collected, how information was collected, and the rationale for each step taken. Some manuals alone run into hundreds of pages. One press account noted the example of publicly available datasets from the National Center for Health Statistics, which can come with 100-page manuals; researchers would need to hire additional staff to meet such requirements.¹⁵⁹ Yet EPA fails even to recognize (much less propose any means to address) the cost to researchers in time and money, on top of the constraints on academic research already imposed by the very limited funding available for this type of work.

In addition, there are other barriers to public release of underlying data. Studies conducted on behalf of industry or with industry cooperation may contain confidential business information, the release of which could jeopardize a company's competitiveness.

Also, in some instances, researchers cannot make their data sets public without losing much of the value to the researcher of these laboriously and meticulously collected sets of information. Research, especially those studies that include large numbers of human subjects, are incredibly human and capital intensive endeavors. Moreover researchers may base years of work and multiple papers on unique datasets they developed and hold, and many scientists build their careers on carefully harvesting information from single large studies for years to come. It is not only unreasonable, but also unfair, to expect academic scientists to turn over their intellectual property and research investments, forgoing potential earnings and career advancements. Moreover, EPA's myopic and inflexible approach to data access gives no consideration to data sharing arrangements between researchers and the agency that could be developed to support EPA's consideration and integration of research.

If scientists are forced to choose between giving away their hard-earned data or forgoing any regulatory impact, it will discourage scientists from engaging in critical science that is targeted to help prevent disease and disability in our population. It appears that in many cases, scientists will choose to retain their datasets, with a worst-of-both-worlds result—EPA will be deprived of valid scientific information and the scientific community will be discouraged from contributing their critical expertise to policy-making. EPA's Proposal does not consider the real-world implications of forcing such choices on researchers.

The agency's failure to consider or examine any of these legitimate reasons for not making data publicly available is arbitrary and capricious.

2. The Proposal fails to propose any actual solutions to remedy the legitimate reasons for why data may not be made publicly available.

In the proposal EPA blithely and irrationally ignores or assumes away the real and significant issues raised above, suggesting that existing mechanisms and techniques can be used

¹⁵⁹ Alessandra Potenza and Rachel Becker, *Scott Pruitt's new 'secret science' proposal is the wrong way to increase transparency. Here's what scientists think a science transparency rule should include*, The Verge (May 1, 2018, 8:30am EDT), <https://www.theverge.com/2018/5/1/17304298/epa-science-transparency-rule-scott-pruitt-data-sharing>.

to protect privacy and confidentiality while making underlying research data publicly available. In fact, the evidence (including several of the sources that EPA cites) indicates that the potential mechanisms alluded to by EPA would only have the potential to address some of the barriers cited above, have serious limitations even for those, and are actually becoming less effective as it becomes easier to combine and manipulate public data sets.

- a) EPA vaguely references a range of possible approaches to protecting privacy and confidentiality, but provides no evidence that any of these are sufficient to address the legitimate concerns raised above.

EPA vaguely claims “concerns about access to confidential or private information can, in many cases, be addressed through the application of solutions commonly in use across some parts of the Federal government.”¹⁶⁰ EPA claims that there are examples from the Department of Health and Human Services, the National Institute of Standards and Technology, the Department of Education, and the Census Bureau. Unfortunately, apart from a reference to HHS guidance on data de-identification (discussed below), EPA does not actually identify or cite to any specific examples from these agencies in the proposed rule itself, making it impossible to discern what examples EPA believes exist or to meaningfully comment upon the degree to which such examples, if they exist, might suggest that these issues are manageable. The additional hyperlinks added to the docket on May 25, 2018, weeks into the comment period, also link to examples that provide no further assurance that this proposal can be implemented without implicating privacy concerns, and as discussed in detail below, the vaguely referenced other agencies’ “solutions” are unlikely to be of much help.

The “solutions” EPA might have in mind do not address the issues raised by the Proposal because no other agency has tried to implement a requirement such as the one EPA proposes. Other agencies provide guidance and techniques to protect privacy during data collection and disclosure to allow more use of data collected by the *government*, not to mandate that data collected by academic or industry researchers be publicly available for purposes of replicating analyses. The Department of Education, for example, has shared techniques for institutions to provide data on students and schools to meet reporting requirements without compromising privacy.¹⁶¹ They recognize that each technique “requires some loss of information.”¹⁶² While de-identified information may still be useful, e.g., to show overall school progress, in the context of the Education Department, it is not clear these techniques are transferable to other contexts.

EPA links to a document of the Privacy Technical Assistance Center, *Data De-identification: An Overview of Basic Terms*, which provides a high-level overview of key terms and practices to help educational agencies and institutions comply with the Family Educational Rights and Privacy Act (FERPA).¹⁶³ This document is concerned with data disclosure that occurs

¹⁶⁰ 83 Fed. Reg. 18,770.

¹⁶¹ National Center for Education Statistics, *SLDS Technical Brief: Statistical Methods for Protecting Personally Identifiable Information in Aggregate Reporting* (Dec. 2010), <https://nces.ed.gov/pubs2011/2011603.pdf>.

¹⁶² *Id.* at 27.

¹⁶³ Privacy Technical Assistance Center, *Data De-identification: An Overview of Basic Terms* (2001), <https://studentprivacy.ed.gov/sites/default/files/resource/document/file/datadeidentificationterms.pdf>.

“when schools, districts, or states publish reports on student achievement or share students’ data with external researchers” not to make underlying data publicly available for independent validation.¹⁶⁴ Thus, it is unclear that methods used to de-identify but preserve data for those purposes would be adequate in this context. For example, one of the methods that the U.S. Department of Education uses for disclosure avoidance for tabular data is to not release information for any cell that has a size below some minimum, which essentially means not disclosing information where there are small numbers in a certain cell.¹⁶⁵ Thus, it is quite possible that techniques that result in a loss of information would prevent researchers from repeating the experiment. Yet EPA fails to acknowledge the nuances and limitations of these policies.

EPA links to a NIST document entitled *De-Identification of Personal Information* by Simson L. Garfinkel (NISTIR 8053), which discusses de-identification, but not in the context of making research data publicly available for independently validating scientific studies. The document instead notes that “that there is a trade-off between the amount of de-identification and the utility of the resulting data” and that “[i]t is thus the role of the data controller, standards bodies, regulators, lawmakers and courts to determine the appropriate level of security, and thereby the acceptable trade-off between de-identification and utility.”¹⁶⁶ It further notes that “de-identification approaches based on suppressing or generalizing specific fields in a database cannot provide absolute privacy guarantees, because there is always a chance that the remaining data can be re-identified using an auxiliary dataset.”¹⁶⁷

EPA’s reference to the U.S. Census Bureau is similarly unhelpful. Here EPA provides a link to a website titled *Data Ingest and Linkage* that details the U.S. Census Bureau’s approach to linking data across many records they hold.¹⁶⁸ The Website links to a working paper that describes the method by which the Census assigns a unique person identifier to records it holds that enables it to link records together to create the final file.¹⁶⁹ It is totally unclear how this process on linking together records is a solution that EPA could implement to protect privacy of individuals when disclosing data as it concerns how to identify data with specific people—not protecting privacy.

While other agencies are clearly grappling with the issue of how to make government-collected data available, they have also highlighted the many challenges in protecting privacy and confidentiality while doing so—such as the ability for de-identified data to be re-identified—and these agencies accept that there is more work to be done before these concerns are fully

¹⁶⁴ *Id.* at 1.

¹⁶⁵ *Id.* at 4.

¹⁶⁶ Simson L. Garfinkel, *De-Identification of Personal Information* (NISTIR 8053), 11-12 NIST (Oct. 2015), <https://nvlpubs.nist.gov/nistpubs/ir/2015/NIST.IR.8053.pdf>.

¹⁶⁷ *Id.* at 5.

¹⁶⁸ U.S. Census Bureau, *Data Ingest and Linkage*, <https://www.census.gov/about/adrm/linkage/technical-documentation/processing-de-identification.html> (last accessed Aug. 13, 2015).

¹⁶⁹ Deborah Wagner & Mary Layne, *The Person Identification Validation System (PVS): Applying the Center for Administrative Records Research and Applications’ (CARRA) Record Linkage Software*, CARRA Working Paper Series, Working Paper # 2014-01, U.S. Census Bureau (July 1, 2014).

addressed.¹⁷⁰ The letter filed in this docket by the Presidents of the National Academies of Science, Engineering and Medicine underscores these difficulties, specifically noting the National Academies' previous work finding that "statistical analyses of data sets that generate highly precise results—such as geographic specificity or other characteristics that identify respondents—may result in privacy breaches . . . This presents a new challenge that federal statistical agencies are just beginning to address."¹⁷¹ EPA does not even acknowledge, much less try to address, these gaps in agencies' abilities to protect sensitive data.

EPA cursorily mentions a range of options for facilitating secure access to confidential data, including: "[r]equiring applications for access; restricting access to data for the purposes of replication, validation, and sensitivity evaluation; establishing physical controls on data storage; online training for researchers; and nondisclosure agreements."¹⁷² EPA does not indicate whether it would deem providing access with these types of controls in place sufficient to meet EPA's proposed requirement "publicly available in a manner sufficient for independent validation." EPA also fails to recognize the significant costs associated with implementing most of these options or the risks to privacy that remain even if these methods are employed.

b) EPA cites to one example—the technique of deidentification—but fails to acknowledge, let alone address, the significant costs and limitations of this approach.

As already discussed, it is legally and ethically necessary to ensure the privacy of the individuals whose data have been collected, as some of these data, such as medical history or employment data, can be quite sensitive. EPA suggests deidentification and redaction of sensitive information can be used to protect privacy when study data is made public. EPA fails to recognize that these techniques are generally burdensome and costly, and may lose too much information for replication purposes. EPA also ignores the real concerns, based in empirical evidence, about reidentification of individuals through cross linking with existing public datasets and the ensuing breach of privacy.¹⁷³

¹⁷⁰ See, e.g., Simson L. Garfinkel, *De-Identification of Personal Information* (NISTIR 8053), NIST (Oct. 2015) (detailing methods of re-identification and challenges to de-identifying information, concluding "there is comparatively little known about the underlying science of de-identification" and "there is a clear need for standards and assessment techniques that can measurably address the breadth of data and risks described in this paper.").

¹⁷¹ Letter to Acting Administrator Wheeler from Marcia McNutt, President of the National Academy of Sciences, C.D. Mote, Jr., President of the National Academy of Engineering, and Victor J. Dzau, President of the National Academy of Medicine at 4 (July 16, 2018) (citations removed).

¹⁷² 83 Fed. Reg. 18,771.

¹⁷³ "Recently, a peer reviewed study examined the identifiability of records from an environmental health study in Northern California. Using data considered by HIPAA to be sufficiently de-identified to be made public, which involved far fewer variables than would be required to make public in the cohort studies, they were able to correctly identify over 25% of the participants. Another study searched the Lexis-Nexis database for stories that mentioned hospitalization, and by matching that with age, race, sex and Zip code from a supposedly anonymized hospital admissions data base was able to match 43% of the people named in the news stories to their medical records." Comments of the International Society for Environmental Epidemiology on EPA's proposed rule on Strengthening Transparency in Regulatory Science (EPA-HQ-OA2018-0259-0001), <https://www.regulations.gov/document?D=EPA-HQ-OA-2018-0259-1973> (citing Sweeney L, Yoo JS, Perovich L, Boronow KE, Brown P and JG B., *Re-identification Risks in HIPAA Safe Harbor Data: A study of data from one*

Indeed, experts have observed that even the disclosure of redacted or “de-identified” data sets has become more fraught as public health studies have become more rigorous, because these studies are relying upon greater quantities of ever more granular personal information.¹⁷⁴

i. Deidentification is complicated and costly.

EPA states that “[o]ther federal agencies have developed tools and methods to deidentify private information,” but then cites to only one source, which does not address the concerns raised here.¹⁷⁵ EPA cites to the U.S. Department of Health and Human Services’ *Guidance Regarding Methods for De-identification of Protected Health Information in Accordance with the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule*.¹⁷⁶ This guidance provides two methods for de-identifying data: (1) expert determination method, where an expert determines that, after application of statistical and scientific principals and methods, the risk is very small that the information alone or with other available information could be used to identify the subject; and (2) the safe harbor method, requiring that a number of identifiers are removed.¹⁷⁷ The first method requires case-by-case work, and EPA has provided no information regarding how EPA or others could potentially implement it or how much it might cost. In addition, there is no indication of how broadly this technique might be applicable to adequately de-identify data. *I.e.*, EPA must provide its views on whether this technique is likely to be applicable to the majority of studies relevant to EPA with non-public data, some studies, or only a handful. The second method requires removal of much information that may be necessary to be able to reanalyze or reproduce the research results, so it is unclear whether it would satisfy EPA’s requirements in the Proposal. The second method is also costly, which EPA also completely disregards. Furthermore, even the safe harbor method has been shown to provide potentially insufficient privacy protections due to the mosaic effect, discussed more below.

EPA further states: “The National Academies have noted that simple data masking, coding, and de-identification techniques have been developed over the last half century. . . ,” seemingly suggesting that data can easily be modified to address privacy concerns.¹⁷⁸ This is incorrect. The National Academies in fact recognizes that complex, evolving, and yet undeveloped techniques are needed to resolve these concerns: “Initially, relatively simple data masking techniques, such as top coding income amounts. . . were used to generate restricted data

environmental health study, Technology Science (2017) and Sweeney L., *Only You, Your Doctor, and Many Others May Know*, Technology Science (2015)).

¹⁷⁴ See Letter from Daniel S. Greenbaum, Health Effects Institute, to Lek Kadeli, Environmental Protection Agency 3 (Aug. 27, 2013) (describing the use of increasingly fine-grained community-level and zip code-level data in public health studies, and noting that “these characteristics – which have in general enhanced the quality and the sensitivity of the studies – increase the difficulty of providing a fully “de-identified” data set while also enabling a different investigator to conduct a full replication and sensitivity analysis of the original study results.”).

¹⁷⁵ 83 Fed. Reg. at 18,771.

¹⁷⁶ 83 Fed. Reg. at 18,771 n. 17.

¹⁷⁷ HHS, *Guidance Regarding Methods for De-identification of Protected Health Information in Accordance with the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule*, <https://www.hhs.gov/hipaa/for-professionals/privacy/special-topics/de-identification/index.html>

¹⁷⁸ 83 Fed. Reg. at 18,771.

products [,] [d]uring the last decade the increasing risks of confidentiality breaches have led researchers to develop increasingly sophisticated methodologies for restricted data products.”¹⁷⁹ They state, “more research is clearly needed to assess the relative ability of different masking methods, and of synthetic data, to reduce the risk of disclosure while preserving data utility.”¹⁸⁰ They recognize the current limitations of producing restricted data that sufficiently limits identifiability to allow it to be made publicly available in a useful form. They note that “well-informed policy making” requires “[r]esearch using detailed confidential data” that cannot be made public—which the Proposal fails to acknowledge to the detriment of the quality of EPA’s policy decisions.¹⁸¹ In the meantime, the National Academies state that more work is needed to allow “[h]igh-quality public-use files” that still assure “the inferential validity of the data while safeguarding their confidentiality.”¹⁸²

ii. Ongoing developments in data analytics make data deidentification more difficult to conduct and less likely to adequately protect privacy and confidentiality.

In pointing to the option of deidentification and redaction techniques, EPA also fails even to mention, let alone address, the increasing risk of re-identification through data analysis using multiple data sets. The so-called “mosaic effect” makes even very limited, redacted releases of data to the public a threat to the privacy of study subjects. OMB has recognized the threat to privacy from the mosaic effect, which it describes as “when the information in an individual dataset, in isolation, may not pose a risk of identifying an individual (or threatening some other important interest such as security), but when combined with other available information, could pose such risk.”¹⁸³ OMB specifically highlighted the complicated nature of this threat and the need for agencies to address it carefully, particularly as they may not possess the needed expertise.¹⁸⁴

Studies show the reality and scope of the re-identification threat. For example, Dr. Latanya Sweeney, professor of government and technology in residence at Harvard University, has examined deidentified datasets and combined them with other public data sets to test this concern. She was able to use information in medical information and a voter list, such as birth date, gender, and zip code, to identify individuals in the deidentified Massachusetts Group Health Insurance Commission dataset in 1997, including the then Massachusetts Governor,

¹⁷⁹ National Research Council, *Expanding Access to Research Data: Reconciling Risks and Opportunities*, 27 The National Academies Press (2005).

¹⁸⁰ *Id.* at 28.

¹⁸¹ *Id.* at 2.

¹⁸² *Id.*

¹⁸³ OMB Memorandum M-13-13, Memorandum for the Heads of Executive Departments and Agencies on Open Data Policy—Managing Information as an Asset 4-5 (May 9, 2013).

¹⁸⁴ *Id.* at 9-10 (“Agencies should note that the mosaic effect demands a risk-based analysis, often utilizing statistical methods whose parameters can change over time, depending on the nature of the information, the availability of other information, and the technology in place that could facilitate the process of identification. Because of the complexity of this analysis and the scope of data involved, agencies may choose to take advantage of entities in the Executive Branch that may have relevant expertise, including the staff of Data.gov.”)

William Weld.¹⁸⁵ Studies have indicated that between 63% and 87% of the population of the United States could be uniquely identified by using only gender, ZIP code, and date of birth.¹⁸⁶ Dr. Sweeney was also able to link data in the Personal Genome Project to names and contact information, identifying between 84 to 97% of profiles.¹⁸⁷ In 2011 she was able to identify 43% of individuals in a department of health in Washington state hospital discharge database using newspaper stories.¹⁸⁸ Another study¹⁸⁹ showed how “data on air and dust samples from 50 homes in two communities in California could be combined with data released under the Safe Harbor provisions of the Health Insurance Portability and Accountability Act (HIPAA) to ‘uniquely and correctly identify [in one community] 8 of 32 (25 percent) by name and 9 of 32 (28 percent) by address.’”¹⁹⁰

The Commission on Evidence-Based Policymaking, which EPA also cites in the Proposal¹⁹¹, also stresses the dangers of re-identification of data that has been stripped of direct identifiers. They note: “No existing statistical disclosure limitation method. . . is able to completely eliminate the risk of re-identification,” despite increasingly complex techniques that have been developed since the 1970s.¹⁹² They also note the threat posed by the “cumulative amount of information available about individuals and businesses that could be used for re-identification,”¹⁹³ with the threat increasing as available information grows and technology to allow re-identification improves.¹⁹⁴

Further, the National Academies note, “data that are most useful to legitimate researchers typically have characteristics that pose substantial risk of disclosure.”¹⁹⁵ This includes information such as:

- detailed geographic information;
- repeated data collection from the same subjects;
- outliers, such as people with very high incomes;
- many attribute variables; and

¹⁸⁵ Rothstein, Mark A., *Is deidentification sufficient to protect health privacy in research?*, 10.9 *The American Journal of Bioethics* 3-11, 6 (2010).

¹⁸⁶ *Id.* at 5.

¹⁸⁷ Sweeney, Latanya and Abu, Akua and Winn, Julia, *Identifying Participants in the Personal Genome Project by Name* (April 29, 2013), <https://ssrn.com/abstract=2257732> or <http://dx.doi.org/10.2139/ssrn.2257732>.

¹⁸⁸ Sweeney L., *Matching known patients to health records in Washington State data*, Harvard University, Data Privacy Lab (2013), <https://dataprivacylab.org/projects/wa/1089-1.pdf>.

¹⁸⁹ Latanya Sweeney, Ji Su Yon, Laura Perovich, Katherine E Boronow, Phil Brown, and Julia Green Brody, *Re-identification Risks in HIPAA Safe Harbor Data: A Study of Data From One Environmental Health Study*, Technology Science (Aug. 28, 2017), <https://techscience.org/a/2017082801/>.

¹⁹⁰ Commission on Evidence-Based Policymaking, *The Promise of Evidence-Based Policymaking*, 54 (2017), <https://www.cep.gov/content/dam/cep/report/cep-final-report.pdf>.

¹⁹¹ 83 Fed. Reg. at 18771, n. 19.

¹⁹² Commission on Evidence-Based Policymaking, *The Promise of Evidence-Based Policymaking* 53 (2017).

¹⁹³ *Id.* at 54.

¹⁹⁴ *Id.* at 55.

¹⁹⁵ National Research Council, *Expanding Access to Research Data: Reconciling Risks and Opportunities*, 21 The National Academies Press (2005).

- complete census data rather than a survey of a small sample of the population.¹⁹⁶

There is increased vulnerability in “[d]ata with geographic detail, such as census block data” and longitudinal data obtained in panel surveys, which is often salient in environmental research.¹⁹⁷

iii. Deidentification may make data sets unusable for reanalysis purposes.

Work by other experts in this area suggests that deidentification can be carried out and help protect privacy, but it may produce datasets that have lost vital information needed for specific analyses.¹⁹⁸ Even the HIPAA guidelines document states: “Of course, de-identification leads to information loss which may limit the usefulness of the resulting health information.”¹⁹⁹ Such results limit the utility of deidentified data sets and would not meet the requirements of the proposed rule which state that “*EPA will ensure that the data and models underlying the science is publicly available in a manner sufficient for validation and analysis.*”

Further, even if it may be technically possible to release some amount of data while preserving privacy in some cases, doing so imposes substantial additional costs.²⁰⁰ The preamble of the proposed rule suggests that privacy concerns can be addressed through mechanisms such as data masking, coding, and de-identification techniques—all of which would impose additional costs on researchers. The preamble also indicates that requirements for dose response data and availability may differ and involve a range of mechanisms such as deposition in public data repositories, and controlled access in federal research data centers—which would require EPA funding to maintain the facilities.²⁰¹ As discussed further in Section V of these comments, the proposed rule fails to acknowledge these costs, let alone provide any information about them or suggest ways to provide for them. Nevertheless, the costs can be significant, and even smaller costs could be prohibitive for many researchers.

At a time when federal funding for research in environmental and public health-related fields has largely flat-lined, academic researchers, in particular, are likely to have few additional

¹⁹⁶ *Id.* at 21-22.

¹⁹⁷ *Id.* at 22.

¹⁹⁸ Simson L. Garfinkel, *De-Identification of Personal Information* (NISTIR 8053), NIST (Oct. 2015) (saying the goals of allowing data to be used while providing privacy protections “are antagonistic, in that there is a trade-off between the amount of de-identification and the utility of the resulting data.”).

¹⁹⁹ HHS, *Guidance Regarding Methods for De-identification of Protected Health Information in Accordance with the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule*, <https://www.hhs.gov/hipaa/for-professionals/privacy/special-topics/de-identification/index.html>.

²⁰⁰ National Academies of Sciences, Engineering, and Medicine, *Principles and obstacles for sharing data from environmental health research: Workshop summary*, 46-47 The National Academies Press (2016), <https://www.nap.edu/catalog/21703/principles-and-obstacles-for-sharing-data-from-environmental-health-research>.

²⁰¹ See, The National Academies, *Improving Access to and Confidentiality of Research Data: Report of a Workshop*, National Academies Press 48 (2000) (At present, [costs for federal research data centers] are being covered partly by federal agency budgets and partly by user fees. The Census Bureau’s research data centers have been supported in part by grants from the National Science Foundation and NIA, but may eventually have to recover more of their costs from users.”).

funds available to undertake these activities.²⁰² This raises additional concerns—if researchers funded by industry are generally able to support the additional costs of making data publicly available, while academic researchers are far less likely to be able to do so, EPA’s proposed approach could institutionalize a dangerous bias in the source of studies that EPA is allowed to use for regulatory activity.

With respect to the potentially very large costs that would accrue to EPA, EPA’s proposal provides no indication that any funding to support such activities would be available. EPA funding is at its lowest level since the 1980s.²⁰³ Absent a significant change in Congressional priorities, any EPA expenditures for the purposes of supporting making data publicly available would necessarily require cutbacks in other critical areas of environmental protection, which might include supporting additional research, conducting inspections, issuing permits, setting standards, or many other activities. EPA’s Proposal includes no discussion of whether funds would be made available, nor whether other activities would be sacrificed, whether these trade-offs would make any sense, and what the overall impacts might be on public health and the environment.

B. The Proposal Will Not Advance the Supposed Cause of “Transparency” Upon Which it is Based.

The Proposal does not present or support the case that public accessibility to underlying data is necessary to vet scientific research—which, as discussed above, it is not—but even if it was, as discussed above, the scientific community is already taking steps to make underlying data publicly available where feasible, with the widespread understanding that this is neither necessary nor appropriate in all cases.²⁰⁴ The Proposal does not examine the policies and practices that are already working to make data publicly available where feasible, the extent to which existing policies may already be sufficient to meet EPA’s alleged transparency goals, or the reasons why some data is still not released publicly. Still less does EPA question whether this proposal would add anything to the current efforts, or whether it would have any effect whatsoever in increasing public accessibility of data.

1. Where there are lower hurdles to making data publicly available, this is already commonly occurring, with support from various initiatives.

²⁰² See, American Association for the Advancement of Science, *Trends in Federal Research by Discipline FY 1970-2017*, chart, (last updated July 2018), http://mcnprowdaas.s3.amazonaws.com/s3fs-public/Disc-1_0.jpg?RrBDGaSpG5edeDsiBRyoQyApdamjOs4O.

²⁰³ Compare FY 2018 budget of \$5.655 billion (EPA, *FY 2018 Budget in Brief* (May 2017)) and projected FY 2019 EPA budget of \$6.146 billion (EPA News Release, *EPA FY 2019 Budget Proposal Released* (Feb. 12, 2018), <https://www.epa.gov/newsreleases/epa-fy-2019-budget-proposal-released>) with fiscal year 2017’s budget of \$8.058 billion and historical budgets (*EPA’s Budget and Spending*, <https://www.epa.gov/planandbudget/budget> (last accessed July 26, 2018)).

²⁰⁴ See National Academies of Sciences, Engineering, and Medicine, *Principles and obstacles for sharing data from environmental health research: Workshop summary*, The National Academies Press (2016), <https://www.nap.edu/catalog/21703/principles-and-obstacles-for-sharing-data-from-environmental-health-research>.

There are already various ongoing initiatives to make scientific data and models more commonly publicly available, where appropriate, as discussed more below. For example, EPA cites the ongoing implementation of the 2016 *Plan to Increase Access to Results of EPA-Funded Scientific Research*.²⁰⁵ This Plan aims to maximize access to “research data underlying a publication” resulting from EPA-funded research.²⁰⁶ It is worth emphasizing the Plan also exempts “research data [that] cannot be released due to one or more of constraints, such as requirements to protect confidentiality, personal privacy, proprietary interest, or property rights.”²⁰⁷ There is also a 12-month embargo period before publications are made publicly available.²⁰⁸ The Plan also explicitly indicates that

[i]t is important to recognize that some research data cannot be made fully available to the public but instead may need to be made available in more limited ways, e.g., establishing data use agreements with researchers that respect necessary protections. *Whether research data are fully available to the public or available to researchers through other means does not affect the validity of the scientific conclusions from peer-reviewed research publications.*²⁰⁹

EPA also mentions the data availability policies or requirements of many scientific journals (although EPA does not specifically discuss any of these policies or indicate how or why they are not sufficient to address EPA’s concerns).²¹⁰ Thus, where there are not significant barriers due to costs, or confidentiality or other concerns, there are increasing mechanisms to encourage scientists to make their data meaningfully and responsibly publicly available, and in response to these mechanisms, scientists frequently do so already.²¹¹

2. EPA’s proposed approach does not require researchers to make underlying data publicly available.

There are multiple real and significant barriers to the public release of underlying data from some studies, and the Proposal cites no reason to believe that, in the majority of cases where data is not already released, one or more of those barriers are not present. Because those barriers are significant, this is not a situation where creating an incentive to private action is likely to be sufficient to drive such action where it is not already occurring.

²⁰⁵ 83 Fed. Reg. at 18770.

²⁰⁶ EPA, *Plan to Increase Access to Results of EPA-Funded Scientific Research* 11 (Nov. 29, 2016), <https://www.epa.gov/sites/production/files/2016-12/documents/epascientificresearchtransperancyplan.pdf>.

²⁰⁷ *Id.* at 11.

²⁰⁸ *Id.*

²⁰⁹ *Id.* at 4-5 (emphasis added).

²¹⁰ 83 Fed. Reg. at 18,770 (stating that the policies and recommendations EPA considered were “informed by the policies recently adopted by some major scientific journals and cites to “related policies from the Proceedings of the National Academy of Sciences, PLOS ONE, Science, and Nature.”); 83 Fed. Reg. at 18,771 n. 20 (claiming the “policies or recommendations of publishers Taylor & Francis, Elsevier, PLOS, and Springer Nature” support the Proposal because they require authors to deposit the data underlying their studies in public data repositories).

²¹¹ Jeremy Berg, *Obfuscating with transparency*, 360 Science 133 (Apr. 13, 2018), <http://science.sciencemag.org/content/360/6385/133/tab-pdf> (“Increasingly, many publications, including those from the Science family of journals, are linked to underlying data in accessible forms in repositories where they are readily available to interested parties, particularly those who seek to reproduce results or extend the analysis.”).

Yet, with respect to release of data, the Proposal would only create an incentive for private action, not an actual requirement that data be released. First, this Proposal addresses data produced and held by external scientists, not data held by EPA itself or that EPA has authority to gain access to. Where EPA holds data, it is already governed by the Information Quality Act, OMB Circular A-110, and the Freedom of Information Act.²¹² The Shelby Amendment required OMB to amend Circular A-110 to require that federal agencies provide “research data relating to published research findings produced under an award that were used by the Federal Government in developing an agency action that has the force and effect of law” to the public through the Freedom of Information Act.²¹³ Importantly, the term “research data” excludes “[t]rade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law” as well as “[p]ersonnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.”²¹⁴ Many voiced concerns that even this provision could compromise scientific research and personal privacy.²¹⁵ This Proposal presumably is also not directed at studies funded by EPA, where the researchers must generally make data publicly available as a condition of receiving funding.²¹⁶ There are already mechanisms by which EPA is making research data publicly available where it has the authority and access to do so, and only after carefully ensuring that doing so will not compromise privacy interests.

Second, EPA has no authority to regulate the authors of studies or the scientific journals in which the studies are published, and EPA makes no attempt to regulate them directly. The preamble to the proposed rule states: “EPA should ensure that the data and models underlying scientific studies that are pivotal to the regulatory action are available to the public.”²¹⁷ It further states that the proposed regulation is “designed to provide a mechanism to increase access to dose response data and models underlying pivotal regulatory science...”²¹⁸ The proposed regulations then state that for significant regulatory actions EPA “shall ensure that dose response data and models underlying pivotal regulatory science are publicly available in a manner

²¹² OMB Circular A-110 Revised 11/19/93 As Further Amended 9/30/99 36(d)(1) (“In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under an award that were used by the Federal Government in developing an agency action that has the force and effect of law, the Federal awarding agency shall request, and the recipient shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA.”); See also, Lynn R. Goldman & Ellen K. Silbergeld, *Assuring Access to Data for Chemical Evaluation*, 121 *Environmental Health Perspectives* 149 (Feb. 2013), <https://ehp.niehs.nih.gov/wp-content/uploads/121/2/ehp.1206101.pdf> (noting the numerous feasibility concerns that would arise were EPA to be required to make raw underlying data available for studies not governed by these mechanisms, given the large number of studies it usually relies on and that fact that EPA is usually not in possession of the raw data, in addition to funding and ethical limitations).

²¹³ OMB Circular A-110 (36)(d)(1).

²¹⁴ OMB Circular A-110 (36)(d)(2)(i).

²¹⁵ See Eric A. Fischer, *Public Access to Data from Federally Funded Research: Provisions in OMB Circular A-110*, Congressional Research Service, 13 (Mar. 1, 2013), <https://fas.org/sgp/crs/secrecy/R42983.pdf>.

²¹⁶ U.S. EPA, *Plan to Increase Access to Results of EPA-Funded Scientific Research* (Nov. 29, 2016), <https://www.epa.gov/sites/production/files/2016-12/documents/epascientificresearchtransparencyplan.pdf>.

²¹⁷ 83 Fed. Reg. at 18769.

²¹⁸ 83 Fed. Reg. at 18770.

sufficient for independent validation.”²¹⁹ But (apart from studies that EPA funds) EPA has no authority to require those data and models to be made public.

Hence, this proposal would regulate not the scientists, but EPA itself. EPA would “ensure” that data and models underlying scientific studies “pivotal” to regulatory action are publicly available *simply by barring EPA’s own use in regulatory actions of any studies for which the authors do not make the data and models publicly available*. The “mechanism” mentioned in the preamble is not technical assistance or funding to encourage greater availability of data; it is simply the pressure generated by EPA’s refusal to consider the results of a study if the authors do not release publicly the underlying data and models. The obvious question that EPA has neither asked nor attempted to answer in the Proposal is whether such a ban would be sufficient to incentivize study authors to make their data and models publicly available, where they have not already done so, or whether the ban will largely result in just limiting the studies available to EPA. Most of the significant barriers to release detailed above are not a matter of the researcher’s preference, but rather take the form of legal and ethical constraints, significant costs, large time investments, or the loss of proprietary data critical to a researcher’s future career prospects. While it seems plausible that having their research applied in a regulatory context would be viewed as an incentive by some, or perhaps many, researchers, there is no reason to believe that such an incentive would be sufficient to overcome the significant barriers to public release of data where those barriers exist. Indeed, the party most likely to be incentivized by EPA’s proposed requirements is the regulated community which has vested financial interests in regulatory actions the agency may take—a situation that almost certainly will lead to significant bias and conflicts of interests in the scientific evidence that the agency considers.

Yet EPA barely acknowledges the nature of the “mechanism” it is proposing, and EPA certainly does not explore in any way how the mechanism would operate or whether it would be effective in driving release of data. Still less does EPA admit that the primary effect of this approach is very likely to be the exclusion of critical valid scientific studies from EPA’s consideration. Finally, EPA utterly fails to contemplate what the effect of such exclusion would be on EPA’s ability to adopt regulatory standards that protect public health and the environment.

C. The Proposal does not Acknowledge, Much Less Examine, its Likely Actual Effect—Reducing the Quality and Quantity of Studies upon which Regulatory Decisions are Based.

1. EPA fails to recognize that forcing the disclosure of all data and models would have harmful effects on the quality and quantity of scientific research used by EPA.

Although it appears highly unlikely that this proposal would drive additional data to be released, EPA presumes otherwise, and fails to recognize the harms that would likely result if EPA actually were successful in finalizing the rule. One reason researchers are particularly cautious about releasing human subjects data is that they understand that public willingness to

²¹⁹ 83 Fed. Reg. 18773.

participate in research studies depends upon protecting the privacy of the participants. Risks of privacy breaches and researchers' inability to control use of subject data will undermine potential participants' confidence in scientists' ability to protect their information.²²⁰ This will likely reduce participation in studies or even lead to biases in responses from participants.²²¹ It could also result in attrition of participation by select subpopulations, particularly those who may be most vulnerable, such as children or people with disabilities or disease, or those with the most to protect, such as high socioeconomic populations. Reduced participation and particularly reduced participation among select subpopulations will reduce scientists' ability to draw meaningful inferences from their results to broader populations, the whole of which EPA is charged with protecting.

In addition, the prospect that their research would not be used if researchers were unable to make their data public is likely to deter researchers from even engaging in environmental health research, particularly research involving human subjects.²²² Lynn Goldman and Ellen Silbergeld conclude that a requirement by EPA that researchers release raw data underlying studies reviewed for rulemakings on pesticides and chemicals "would not be tenable" and would in fact "have a chilling effect on the engagement of the global scientific community in research relevant to the protection of human health and the environment."²²³ Overall, the result will be to diminish and undermine the strength of the scientific information available to EPA.

2. Because EPA will be barred from using many valid scientific studies with nonpublic data, the net effect of this proposal will be to harm, not strengthen, EPA's use of science in the regulatory process.

The most damaging aspect of EPA's proposal is that it will bar EPA from using many valid scientific studies that provide critically important information supporting regulatory standards and requirements. This will significantly harm, not strengthen, EPA's use of science in the regulatory process—especially since the public availability of data is neither necessary nor sufficient to ensure the validity of the studies EPA relies upon. It is clearly arbitrary and

²²⁰ See Eugenia Economos, Farmworker Association of Florida, Testimony at EPA Public Hearing on Proposed Rule "Strengthening Transparency in Regulatory Science" (July 17, 2018); Leila Jamal et. al, *Research Participants' Attitudes Towards the Confidentiality of Genomic Sequence Information*, 22 Eur. J. Hum. Genetics 964 (2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4350593/>.

²²¹ Christine Lothen-Kline et al., *Truth and Consequences: Ethics, Confidentiality, and Disclosure in Adolescent Longitudinal Prevention Research*, 33 Journal of Adolescent Health 385-394 (2003).

²²² See Augusta Wilson, Climate Sci. Legal Def. Fund, Testimony at EPA Public Hearing on Proposed Rule "Strengthening Transparency in Regulatory Science" (July 17, 2018), <https://www.csldf.org/2018/07/16/why-we-oppose-to-the-epas-proposed-transparency-rule/> ("This could have a deeply concerning chilling effect on the conduct of important human health studies. Privacy concerns could influence what science gets done and what does not. Lines of scientific inquiry that would have been pursued may not be. The quality of data may be poorer than it otherwise would have been."); Augusta Wilson, *Big Tobacco's Smoke and Mirrors Revived by Pruitt's Science Transparency Policy*, The Hill (June 4, 2018, 5:00 PM), <http://thehill.com/opinion/energy-environment/390638-big-tobaccos-smoke-and-mirrors-revived-by-pruitts-science> ("Good scientists may understandably hesitate to pursue important lines of scientific inquiry if doing so will make them targets for regulators, interest groups and legislators who seek to impugn their credibility and troll through their emails looking for ways to publicly embarrass them.").

²²³ Lynn R. Goldman & Ellen K Silbergeld, *Assuring Access to Data for Chemical Evaluation*, 121 Environmental Health Perspectives 149, 150 (Feb. 2013), <https://ehp.niehs.nih.gov/wp-content/uploads/121/2/ehp.1206101.pdf>.

capricious for EPA to sacrifice the agency's use of the best available science under these circumstances.

- a) The prohibition on using studies with underlying nonpublic data will operate to exclude quality research results from EPA's regulatory process.

The next subsection provides an extensive discussion of some of the types of studies and specific studies that EPA would be unable to use under the Proposal.²²⁴ Prior analyses by the Congressional Budget Office of related legislative proposals have also concluded that public availability requirements would significantly reduce the number of studies EPA relies upon—perhaps by as much as one-half.²²⁵ Bizarrely, however, EPA does not even mention this probable effect of the Proposal, let alone provide information on which particular studies or types of studies would be excluded (absent a case-by-case exemption). Further, EPA utterly fails to consider what the effects of such exclusions could be on EPA's ability to develop and support standards to protect public health and the environment. There are many areas where these effects might be extremely damaging, as the examples below detail.

Not only would this proposal exclude valid studies, but it may well disproportionately exclude high quality studies. Some of the most robust and informative environmental health studies are human subjects studies with a large number of geographically distributed participants who are tracked over very long periods of time. These attributes make the results of these studies especially useful in regulatory decision making, since they are more representative of the population being addressed and provide information on exposure and health effects over a period of time. But these are also the attributes that make public release of the underlying data most difficult, and frequently impossible, as discussed above in Section II.A.1. Excluding these studies is highly likely to distort and undermine regulatory decision making by removing support for standards that are actually health protective. EPA has not identified any harms it is aiming to address through this Proposal, but whatever they are perceived to be, it is hard to see how they could outweigh the harm from barring EPA from considering the best available scientific information.

This Proposal also could be particularly harmful to EPA's ability to act in areas where the science is less developed, such as emerging threats. If there are a relatively small number of studies, the inability to consider some or all of them could cripple EPA's ability to act. This is

²²⁴ Note that EPA has proposed to allow the Administrator to grant exemptions to the prohibition on a case-by-case basis, but the hurdle of requiring case-by-case determinations is so high (EPA relies on roughly 50,000 studies per year according to the CBO) and the criteria are sufficiently stringent (public availability must be "not feasible," which may well exclude, e.g., cost concerns) that it appears most plausible to assume that many studies will not be granted an exemption. *See* Section I.B.4 for further discussion.

²²⁵ *See* Susanne S. Mehlman, Jon Sperl & Amy Petz, Cong. Budget Office, H.R. 1030: Secret Science Reform Act of 2015 at 2-3 (2015) ("CBO expects that EPA . . . would base its future work on fewer scientific studies . . . CBO expects that the agency would probably cut the number of studies it relies on by about one-half . . ."); Jon Sperl & Amy Petz, Cong. Budget Office, H.R. 1430: Honest and Open New EPA Science Treatment (HONEST) Act of 2017 at 1-2 (2017) ("EPA officials have explained to CBO that the agency would implement H.R. 1430 with minimal funding . . . That approach to implementing the legislation would significantly reduce the number of studies that the agency relies on . . .").

precisely the type of situation where a proactive early response could avoid extensive contamination (which is expensive to address) and multiple exposures (which are impossible to reverse), and the resulting adverse outcomes. Yet, apart from a question about how to apply the proposed rule to existing administrative records such as for the NAAQS, the closest EPA comes to hinting at the possibility of the regulatory and public health effects of excluding valid studies is when EPA asks the public to comment “on the effects of this proposed rule on individual EPA programs.” None of these extremely consequential impacts of the Proposal are acknowledged or explored in any depth in the Proposal.

b) Examples of scientific studies that would be excluded

The proposed rule seeks to “ensure that dose response data and models underlying pivotal regulatory science are publicly available in a manner sufficient for independent validation.”²²⁶ The proposal indicates that “[i]nformation is considered ‘publicly available in a manner sufficient for independent validation’ when it includes the information necessary for the public to understand, assess, and replicate findings.”²²⁷ Further, footnote three of the proposal states:

Historically, EPA has not consistently observed the policies underlying this proposal, and courts have at times upheld EPA’s use [sic] non-public data in support of its regulatory actions. *See Coalition of Battery Recyclers Ass’n v. EPA*, 604 F.3d 613, 623 (D.C. Cir. 2010); *American Trucking Ass’n v. EPA*, 283 F.3d 355, 372 (D.C. Cir. 2002). EPA is proposing to exercise its discretionary authority to establish a policy that would preclude it from using such data in future regulatory actions.²²⁸

Taken together, EPA is proposing to prohibit the use of studies involving dose response data and models in significant regulatory decisions where the underlying data are not publicly available. Such a prohibition would affect virtually all pending and future regulatory actions and, if applied retrospectively, past regulatory actions. Regulatory actions would not reflect the best available science, leading to inadequate or absent critical public health and environmental protections.

Eight examples of pending, past, and future regulatory actions that are themselves put at risk from the proposed regulation, or cite to studies that under the Proposal may not be able to be utilized in future actions, explained in more detail below, include:

- **proposed bans of trichloroethylene (TCE) for use in vapor degreasing, aerosol degreasing, and spot cleaning in dry cleaning facilities under TSCA section 6(a);**²²⁹

²²⁶ 83 Fed. Reg. at 18773 (emphasis omitted).

²²⁷ *Id.* at 18773–74.

²²⁸ *Id.* at 18769 n.3.

²²⁹ Trichloroethylene (TCE); Regulation of Use in Vapor Degreasing Under TSCA Section 6(a), 82 Fed. Reg. 7432 (Jan. 19, 2017); Trichloroethylene; Regulation of Certain Uses Under TSCA § 6(a), 81 Fed. Reg. 91,592 (Dec. 16, 2016).

- proposed ban of methylene chloride for use in paint and coating removal under TSCA section 6(a);²³⁰
- final rule setting formaldehyde emission standards for composite wood products under TSCA Title VI;²³¹
- National Primary Drinking Water Regulation for arsenic under the SDWA;²³²
- NAAQS for oxides of nitrogen under the CAA;²³³
- NAAQS for ozone under the CAA;²³⁴
- forthcoming proposed National Primary Drinking Water Regulation for perchlorate in development under the SDWA;²³⁵ and
- future regulatory action on the perfluoroalkyl substances (PFASs) perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS) under SDWA and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).²³⁶

Explanations of the likely effect of EPA's Proposal on these regulatory activities are described below.

Proposed bans of TCE for use in vapor degreasing, aerosol degreasing, and spot cleaning in dry cleaning facilities under TSCA section 6(a)

EPA has proposed two regulations under TSCA section 6(a) to ban the use of TCE in vapor degreasing, aerosol degreasing and spot cleaning in dry cleaning facilities.²³⁷ Exposure to TCE is linked to several adverse health outcomes, including liver and kidney issues, developmental effects, and several forms of cancer.²³⁸ The scientific basis for these proposed regulations is provided in the agency's 2014 risk assessment: *TSCA Work Plan Chemical Risk Assessment, Trichloroethylene: Degreasing, Spot Cleaning and Arts & Crafts Uses*²³⁹ which

²³⁰ Methylene Chloride and N-Methylpyrrolidone; Regulation of Certain Uses Under TSCA Section 6(e), 82 Fed. Reg. 7464 (Jan. 19, 2017).

²³¹ Formaldehyde Emission Standards for Composite Wood Products, 81 Fed. Reg. 89,674 (Dec. 12, 2016).

²³² National Primary Drinking Water Regulations; Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring, 66 Fed. Reg. 6976 (Jan. 22, 2001).

²³³ Review of the Primary National Ambient Air Quality Standards for Oxides of Nitrogen, 83 Fed. Reg. 17,226 (Apr. 18, 2018).

²³⁴ National Ambient Air Quality Standards for Ozone, 80 Fed. Reg. 65,292 (Oct. 26, 2015).

²³⁵ Drinking Water: Regulatory Determination on Perchlorate, 76 Fed. Reg. 7762 (Feb. 11, 2011).

²³⁶ Press Release, EPA, In Case You Missed It: "EPA Chief Vows that Clean Drinking Water is National Priority" (May 22, 2018), <https://www.epa.gov/newsreleases/case-you-missed-it-epa-chief-vows-clean-drinking-water-national-priority>.

²³⁷ 82 Fed. Reg. at 7432; 81 Fed. Reg. at 91,592

²³⁸ 82 Fed. Reg. at 7435–36.

²³⁹ EPA, Office of Chem. Safety & Pollution Prevention, EPA Doc. No. 740-R1-4002, "TSCA Work Plan Chemical Risk Assessment: Trichloroethylene: Degreasing, Spot Cleaning and Arts & Crafts Uses" (2014) [hereinafter TCE Work Plan Risk Assessment], https://www.epa.gov/sites/production/files/2014-11/documents/tce_opptworkplanchemra_final_062414.pdf.

drew heavily from the 2011 EPA Integrated Risk Information System (IRIS) Toxicological Review of TCE.²⁴⁰ As noted in the 2014 work plan risk assessment,

EPA/OPPT's work plan risk assessment for TCE is based on the hazard and dose-response information published in the toxicological review that the U.S. EPA's [IRIS] published in 2011. EPA/OPPT used the TCE IRIS assessment as the preferred data source for toxicity information. . . . The TCE IRIS assessment used a weight-of-evidence approach, the latest scientific information and physiologically-based pharmacokinetic (PBPK) modeling to develop hazard and dose-response assessments for TCE's carcinogenic and non-carcinogenic health effects. . . . Development of TCE's hazard and dose-response assessments considered the principles set forth by the various risk assessment guidelines issued by the National Research Council and the U.S. EPA.²⁴¹

EPA clearly found the TCE IRIS assessment to be scientifically rigorous. EPA made this determination without the data underlying the key, peer-reviewed studies²⁴² used in the assessment being publicly available. EPA's proposed science rule would preclude the use of these studies, severely jeopardizing the fate of the proposed TCE bans and allowing high-risk uses of TCE to continue.

Proposed ban of methylene chloride for use in paint and coating removal under TSCA section 6(a)

EPA has proposed a ban on the use of methylene chloride in paint and coating removers.²⁴³ Methylene chloride is associated with a number of hazardous health effects, including impaired visual and motor functions, respiratory irritation, headaches, nausea, and death.²⁴⁴ The scientific basis for this proposed regulation is provided in the agency's 2014 risk assessment, *TSCA Work Plan Chemical Risk Assessment: Methylene Chloride: Paint Stripping Use*.²⁴⁵ The work plan risk assessment for methylene chloride identified both cancer and non-cancer risks resulting from exposure to the use of methylene chloride in paint and coating

²⁴⁰ EPA, EPA/635/R-09/011F, "Toxicological Review of Trichloroethylene" (2011), https://cfpub.epa.gov/ncea/iris/iris_documents/documents/toxreviews/0199tr/0199tr.pdf.

²⁴¹ TCE Work Plan Risk Assessment at 65.

²⁴² The key studies used by EPA to derive the noncancer toxicity values for TCE are Deborah E. Keil et al., *Assessment of Trichloroethylene (TCE) Exposure in Murine Strains Genetically-Prone and Non-Prone to Develop Autoimmune Disease*, 44 J. Env'tl. Sci. & Health, Part A 443 (2009); Margie M., Peden-Adams et al., *Developmental Immunotoxicity of Trichloroethylene (TCE): Studies in B6C3F1 Mice*, 41 J. Env'tl. Sci. & Health, Part A 249 (2006), and Paula D. Johnson et al., *Threshold of Trichloroethylene Contamination in Maternal Drinking Waters Affecting Fetal Heart Development in the Rat*, 111 Env'tl. Health Persp. 289 (2003). The key studies used by EPA to derive the cancer toxicity values for TCE are B. Charbotel et al., *Case-control Study on Renal Cell Cancer and Occupational Trichloroethylene Exposure in the Arve Valley (France)* (2006); and Ole Raaschou-Nielsen et al., *Cancer Risk Among Workers at Danish Companies Using Trichloroethylene: A Cohort Study*, 158 Am. J. Epidemiology 1182 (2003).

²⁴³ 82 Fed. Reg. at 7464.

²⁴⁴ *Id.* at 7468.

²⁴⁵ EPA, Office of Chem. Safety & Pollution Prevention, EPA Doc. No. 740-R1-4003, *TSCA Work Plan Chemical Risk Assessment: Methylene Chloride: Paint Stripping Use* (2014) [hereinafter *Methylene Chloride Work Plan Risk Assessment*], https://www.epa.gov/sites/production/files/2015-09/documents/dcm_opptworkplanra_final.pdf.

removers. As detailed in the work plan assessment, the proposed ban notes that liver toxicity and central nervous system effects are the most sensitive non-cancer endpoints for chronic and acute exposure, respectively.²⁴⁶ Accordingly, these endpoints were used to evaluate the extent of risk resulting from exposure to methylene chloride using a margin of exposure (MOE) approach. The raw data underlying key studies used to derive the benchmark MOE for chronic exposure²⁴⁷ and acute²⁴⁸ exposures to methylene chloride are not publicly available. As with TCE, EPA's proposed regulation would preclude the agency from using these key studies to support the proposed rule to ban methylene chloride in paint and coating removers. The effect would be to severely jeopardize the finalization of this life-saving ban.

Final rule setting formaldehyde emission standards for composite wood products under TSCA title VI

In 2016, EPA issued a final rule establishing federal formaldehyde emission standards for composite wood products.²⁴⁹ Formaldehyde exposure is associated with several adverse health impacts, including respiratory issues, eye and nose irritation, and lung and nasopharyngeal cancers.²⁵⁰ As part of the rulemaking process, EPA conducted an economic analysis to determine which of several prospective regulatory actions would result in the largest net benefit after weighing the compliance costs that firms would incur and the public health benefits that would result from reduced formaldehyde exposure.²⁵¹ The monetary benefit that would result from the alleviation of adverse health outcomes associated with formaldehyde exposure was a core component of the economic analysis. Specifically, EPA calculated the annual estimated monetary benefits of avoided cases of eye irritation and nasopharyngeal cancer.

²⁴⁶ *Id.* at 115.

²⁴⁷ K.D. Nitschke et al., *Methylene Chloride: A 2-Year Inhalation Toxicity and Oncogenicity Study in Rats* 11 *Fundamental & Applied Toxicology* 48 (1988).

²⁴⁸ As discussed in the work plan chemical assessment for methylene chloride, EPA considered two different benchmark MOEs in its assessment of acute exposure risks—one derived from a 1-hour Spacecraft Maximum Allowable Concentration (SMAC) and the other from a California acute reference exposure level (REL). Methylene Chloride Work Plan Risk Assessment at 23. EPA preferred the SMAC-derived approach for reasons articulated in the work plan assessment. Raw data underlying many of the key studies used to derive the SMAC are not publicly available (Melvin E. Andersen et al., *Physiologically Based Pharmacokinetic Modeling with Dichloromethane, its Metabolite, Carbon Monoxide, and Blood Carboxyhemoglobin in Rats and Humans*, 108 *Toxicology & Applied Pharmacology* 14 (1991); Irma, Åstrand et al., *Exposure to Methylene Chloride: I. Its Concentration in Alveolar Air and Blood During Rest and Exercise and Its Metabolism*, 1 *Scandinavian J. of Work, Env't & Health* 78 (1975); G.D. DiVincenzo and C.J. Kaplan, *Uptake, Metabolism, and Elimination of Methylene Chloride Vapor by Humans*, 59 *Toxicology & Applied Pharmacology* 130 (1981); Jack E. Peterson, *Modeling the Uptake, Metabolism and Excretion of Dichloromethane by Man*, 39 *Am. Indus. Hygiene Ass'n J.* 41 (1978); V.R. Putz et al., *A Comparative Study of the Effects of Carbon Monoxide and Methylene Chloride on Human Performance*, 2 *J. Env'tl. Pathology & Toxicology* 97 (1979); Ronald S. Ratney et al., *In Vivo Conversion of Methylene Chloride to Carbon Monoxide*, 28 *Archives of Env'tl. Health: An Int'l J.* 223 (1974); Richard D. Stewart et al., *Experimental Human Exposure to Methylene Chloride*, 25 *Archives of Env'tl. Health: An Int'l J.* 342 (1972).

²⁴⁹ 81 Fed. Reg. at 89,674.

²⁵⁰ *Id.* at 89,677–78.

²⁵¹ EPA, *Economic Analysis of the Formaldehyde Standards for Composite Wood Products Act Final Rule* (2016) [hereinafter *Formaldehyde Standards Econ. Analysis*], Docket ID: EPA-HQ-OPPT-2016-0461-0037.

EPA relied on several robust, peer-reviewed studies to demonstrate the relationship between exposure to formaldehyde and these endpoints. For nasopharyngeal cancer, EPA referenced the highly regarded U.S. National Toxicology Program (NTP) Report on Carcinogens (RoC).²⁵² The U.S. NTP concluded that chronic exposure to formaldehyde increases risk of nasopharyngeal cancer as evidenced by several key human epidemiological studies.²⁵³ For eye irritation, EPA relied on two epidemiological studies that examined residential exposure to formaldehyde.²⁵⁴ Both these studies showed that the prevalence of eye irritation increases with heightened exposure to formaldehyde. The data underlying key, peer-reviewed studies that identify nasopharyngeal cancer and eye irritation resulting from formaldehyde exposure are not publicly available. EPA would have been forced ignore these studies were the proposed rule in place at the time the formaldehyde rule was developed. If the proposed rule is applied retrospectively, the formaldehyde rule will be at significant risk.

National Primary Drinking Water Regulation (NPDWR) for arsenic under the Safe Drinking Water Act (SDWA)

In 2001, EPA published a final rule, pursuant to its obligations under the Safe Drinking Water Act, establishing a new maximum contaminant level (MCL) for arsenic.²⁵⁵ Ingestion of high levels of arsenic can result in death, and even low-level ingestion can lead to severe health impacts, including skin diseases.²⁵⁶ As part of the rulemaking process, EPA requested that the National Research Council (NRC) review the agency's prior standards and risk assessments for arsenic as well as the available scientific data regarding the risks of arsenic exposure and ingestion.²⁵⁷ Among the critical studies that the NRC analyzed were two epidemiological studies performed in the 1960s and 1970s that documented the relationship between arsenic in well water and skin diseases of an affected community in Taiwan.²⁵⁸ The studies found that ingestion of high levels of arsenic through well water correlated to a higher likelihood of developing skin

²⁵² Nat'l Toxicology Program, Formaldehyde, in Report on Carcinogens (RoC), 14th ed. 2016), <https://ntp.niehs.nih.gov/ntp/roc/content/profiles/formaldehyde.pdf>; Nat'l Toxicology Program, *Final Report on Carcinogens Background Document for Formaldehyde* (Jan. 22, 2010) (used to develop the 2011 RoC review for formaldehyde).

²⁵³ *Id.* at 1–2 (citing M. Hauptmann et al., *Mortality from Solid Cancers Among Workers in Formaldehyde Industries*, 159 Am. J. Epidemiology 1117 (2004); Allan Hildesheim et al., *Occupational Exposure to Wood, Formaldehyde, and Solvents and Risk of Nasopharyngeal Carcinoma*, 10 Cancer Epidemiology, Biomarkers & Prevention 1145 (2001); Thomas L. Vaughan et al., *Occupational Exposure to Formaldehyde and Wood Dust and Nasopharyngeal Carcinoma*, 57 Occupational & Env'tl. Med. 376 (2000); Sheila West et al., *Non-viral Risk Factors for Nasopharyngeal Carcinoma in the Philippines: Results from a Case-Control Study*, 55 Int'l J. Cancer 722 (1993)).

²⁵⁴ Formaldehyde Standards Econ. Analysis at 4-24 to -25 (citing Lawrence P. Hanrahan et al., *Formaldehyde Vapor in Mobile Homes: A Cross-Sectional Survey of Concentrations and Irritant Effects*, 74 Am. J. Pub. Health 1026 (1984); Kai-Shen Liu et al., *Irritant Effects of Formaldehyde Exposure in Mobile Homes*, 94 Env'tl. Health Persp. 91 (1991)).

²⁵⁵ 66 Fed. Reg. at 6976.

²⁵⁶ CDC Fact Sheet, Arsenic – ToxFAQs (2007), <https://www.atsdr.cdc.gov/toxfaqs/tfacts2.pdf>.

²⁵⁷ See Nat'l Research Council, *Arsenic in Drinking Water* (1999).

²⁵⁸ See generally *id.* (citing Wen-Ping Tseng, *Effects and Dose-response Relationships of Skin Cancer and Blackfoot Disease with Arsenic*, 19 Env'tl Health Persp. 109 (1977); Wen-Ping Tseng et al., *Prevalence of Skin Cancer in an Endemic Area of Chronic Arsenicism in Taiwan*, 40 J. Nat'l Cancer Inst. 453 (1968)).

cancer and other skin diseases. NRC's report concluded that based on the available evidence, EPA's previous standard for arsenic was inadequate for protecting the public health.²⁵⁹

Following the NRC report, EPA finalized a MCL of 10 ppb for arsenic, which was based on the two epidemiological studies from Taiwan.²⁶⁰ Both studies were peer reviewed, published in prestigious health and environmental journals, and have been cited numerous times by other researchers. Yet it is unlikely the data from these studies could be made publicly available, as the data are four to five decades old and include confidential individual health information. If applied retroactively, or if EPA re-evaluates the MCL for arsenic, the proposed rule would likely mean that EPA could not rely on these studies.

National Ambient Air Quality Standards (NAAQS) for oxides of nitrogen under the Clean Air Act (CAA)

In 2004, EPA awarded a grant to the University of Washington to study the effects of long-term air pollution on the development of cardiovascular disease. More than 6,000 patients across the nation participated in the 10-year study, called the Multi-Ethnic Study of Atherosclerosis Air Pollution Study ("MESA Air").²⁶¹ Results from the initial study showed that long-term exposure to oxides of nitrogen (NO_x) and fine particulate matter contributes to cardiovascular disease.²⁶² MESA Air was the first study to show the negative health effects of long-term exposure to air pollution. Through funding from EPA, the National Institutes of Health, and the Health Effects Institute, MESA Air research is ongoing.²⁶³

On April 18, 2018, EPA published a final rule maintaining the current NAAQS for NO_x.²⁶⁴ As part of the rulemaking process, EPA published the *Integrated Science Assessment for Oxides of Nitrogen – Health Criteria*.²⁶⁵ This assessment incorporated research from MESA Air, including research related to modeling and statistical techniques, and was relied on by EPA in maintaining the NAAQS for NO_x in 2018. Yet because confidential health data comprises most of the research's data, as well as other identifying data such as ages and addresses, it is extremely unlikely the underlying data can be made publicly available. Researchers seeking to use the study's data must formally request and be granted access to de-identified datasets and are prohibited from further distributing data received.²⁶⁶ Despite initially funding the research, under the proposed rule, EPA would be restricted from relying on this research in future rulemakings.

²⁵⁹ See Nat'l Research Council, *Arsenic in Drinking Water* 8-9 (1999).

²⁶⁰ EPA, Six-Year Review 2 Health Effects Assessment: Summary Report 34 (2009) (citing Tseng (1977); Tseng et al. (1968)), <https://www.epa.gov/sites/production/files/2014-12/documents/822r09006.pdf>.

²⁶¹ *Multi-Ethnic Study of Atherosclerosis (MESA) Air Study*, EPA (last visited Aug. 13, 2018), <https://www.epa.gov/air-research/multi-ethnic-study-atherosclerosis-mesa-air-study>.

²⁶² Dr. Wayne Cascio, *EPA's MESA Air Study Confirms that Air Pollution Contributes to the #1 Cause of Death in the U.S.*, The EPA Blog (May 25, 2016), <https://blog.epa.gov/blog/2016/05/epa-mesa-air-study/>.

²⁶³ MESA AIR HOME, Univ. of Wash. Sch. of Pub. Health, Dep't of Env'tl. & Occupational Health Servs. (last visited Aug. 13, 2018), <http://deohs.washington.edu/mesaair/home>.

²⁶⁴ 83 Fed. Reg. at 17226.

²⁶⁵ EPA, EPA/600/R-15/-68, *Integrated Science Assessment for Oxides of Nitrogen—Health Criteria* (2016).

²⁶⁶ Memorandum from W. Craig Johnson, MESA Coordinating Ctr., on MESA Deidentified Dataset Distribution Policy Statement (Apr. 12, 2016), https://www.mesa-nhlbi.org/PublicDocs/MESA_DeidentifiedDataDistribution_PolicyStatement_04122016.pdf.

NAAQS for ozone under the CAA

In October of 2015, EPA strengthened the NAAQS for ozone,²⁶⁷ which is the main component of smog. Ozone pollution is linked to asthma and other respiratory health problems, and it is particularly dangerous for children and the elderly. As part of the rulemaking process, EPA published the *Integrated Science Assessment for Ozone and Related Photochemical Oxidants* in 2013, which reviewed the available science to build the scientific basis for the NAAQS.²⁶⁸ In the Integrated Science Assessment, EPA relied on recent epidemiological studies demonstrating the causal relationship between ozone and childhood asthma as well as other developmental effects.²⁶⁹ These studies were peer-reviewed and are invaluable to ensuring that all people, and especially children and older adults, are protected from the dangerous impacts of smog. However, the studies include individual demographic and genetic data. It is unlikely the data could be made publicly available. Under the proposed rule, when EPA reviews the ozone NAAQS, the agency would likely be unable to rely on these studies.

Forthcoming proposed NPDWR for perchlorate in development under the SDWA

In 2011, EPA made a regulatory determination to develop a national primary drinking water regulation for perchlorate under the SDWA, based on the conclusion that “there is a substantial likelihood that perchlorate will occur in public water systems with a frequency and at levels of public health concern.”²⁷⁰ Underlying this conclusion is a body of literature detailing the health risks associated with perchlorate, namely the chemical’s interference with normal thyroid function by inhibiting uptake of iodide into the thyroid gland. Iodide is essential to making thyroid hormones that regulate the body’s metabolism and orchestrate fetal and infant brain development. In its determination, EPA cited a study by Michael Zimmermann, which reviews the adverse effects that iodine deficiency has on children’s health.²⁷¹

Currently EPA is using peer-reviewed studies²⁷² to develop the dose-response model central to deriving the maximum contaminant level goal (MCLG) for perchlorate in drinking water. These studies demonstrate that perchlorate exposure during pregnancy results in low

²⁶⁷ 80 Fed. Reg. at 65292.

²⁶⁸ EPA, EPA/600/R-10/076F, *Integrated Science Assessment for Ozone and Related Photochemical Oxidants* (2013), <https://www.moms-clean-air-force.org/wp-content/uploads/2015/05/Ozone-2013-ISA-Executive-Summary.pdf>.

²⁶⁹ See, e.g., Muhammad T. Salam et al., *Roles of Arginase Variants, Atopy, and Ozone in Childhood Asthma*, 123 J. of Allergy & Clinical Immunology 596 (2009); Talat Islam et al., *Glutathione-S-transferase (GST) P1, GSTM1, Exercise, Ozone, and Asthma Incidence in School Children*, 64 Thorax 197 (2009).

²⁷⁰ 77 Fed. Reg. at 7762.

²⁷¹ *Id.* at 7763 (citing Michael Zimmerman, *Iodine Deficiency*, 30 Endocrine Reviews 376 (2009)).

²⁷² EPA, Post-Meeting Peer Review Summary Report: External Peer Review for EPA’s *Proposed Approaches to Inform the Derivation of a Maximum Contaminant Level Goal for Perchlorate in Drinking Water* (Mar. 2018), <https://www.regulations.gov/document?D=EPA-HQ-OW-2016-0439-0012>, Docket ID: EPA-HQ-OW-2016-0439-0012.

maternal level of the thyroid hormone T4 leading to neurodevelopmental problems in children.²⁷³ As with the Zimmermann study, the data underlying these studies are not publicly available. Under EPA's Proposal, the agency would be unlikely to rely on these studies putting at risk both the 2011 regulatory determination itself and EPA's ongoing work to develop the perchlorate NPDWR.

Future regulatory action on PFOA and PFOS under the SDWA and CERCLA

In May 2018, EPA announced that the agency will begin the process of developing, under the SDWA, maximum contaminant levels (MCLs) for perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS), in addition to designating these chemicals as "hazardous substances," possibly under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).²⁷⁴

EPA developed health advisories for PFOA and PFOS in 2016. The supplementary documents²⁷⁵ provided with these advisories detail the various sources of evidence that EPA considered in its characterization of the health impacts of PFOA and PFOS. Among the sources of health effect information was the C8 Health Project,²⁷⁶ a community-wide assessment of approximately 69,000 individuals living in or near Parkersburg, West Virginia, that was mandated as part of a lawsuit following a major release of PFOA from the DuPont Washington Works production plant into the area's drinking water. Based on this data set and other relevant studies, the researchers leading the C8 Health Project concluded that there was a probable link between PFOA exposure and several harmful health effects, including thyroid disease, ulcerative colitis, kidney cancer, and testicular cancer.²⁷⁷

The presiding judge sealed the data from the C8 Health Project to protect participant privacy.²⁷⁸ Under EPA's proposed rule, when the Agency is developing regulations for PFOA—as it intends to do in the near future—it would not consider publications from the C8 Health

²⁷³ Martijn Finken, et al., *Maternal Hypothyroxinemia in Early Pregnancy Predicts Reduced Performance in Reaction Time Tests in 5- to 6-Year-Old Offspring*, 98 J Clin Endocrinol Metab, 1417 (2013). ; Korevaar et al., *Association of Maternal Thyroid Function During Early Pregnancy with Offspring IQ and Brain Morphology in Childhood: A Population-Based Prospective Cohort Study* 4 Lancet Diabetes & Endocrinology 35 (2016); Victor J. Pop et al., *Low maternal free thyroxine concentrations during early pregnancy are associated with impaired psychomotor development in infancy*, 50 Clinical Endocrinology 149 (1999); Victor J. Pop et al., *Maternal hypothyroxinaemia during early pregnancy and subsequent child development: a 3-year follow-up study* 59 Clinical Endocrinology 282 (2003); F. Vermiglio et al., *Attention deficit and hyperactivity disorders in the offspring of mothers exposed to mild-moderate iodine deficiency: a possible novel iodine deficiency disorder in developed countries*, 89 J. Clinical Endocrinology & Metabolism 6054 (2004).

²⁷⁴ Press Release, EPA, In Case You Missed It: "EPA Chief Vows that Clean Drinking Water is National Priority" (May 22, 2018), <https://www.epa.gov/newsreleases/case-you-missed-it-epa-chief-vows-clean-drinking-water-national-priority>.

²⁷⁵ EPA, EPA-822-R16-003, Health Effects Support Document for Perfluorooctanoic Acid (PFOA) (2016); EPA, EPA-822-R16-002, Health Effects Support Document for Perfluorooctane Sulfonate (PFOS) (2016).

²⁷⁶ Frisbee, et al., *The C8 Health Project: Design, Methods, and Participants*, 117 Env'tl. Health Persp. 1873 (2009), <https://ehp.niehs.nih.gov/wp-content/uploads/117/12/ehp.0800379.pdf>.

²⁷⁷ C8 Science Panel, *The Science Panel Website*, <http://www.c8sciencepanel.org/index.html> (last updated Jan. 4, 2017).

²⁷⁸ Frisbee et al., at 1876.

Project because the raw underlying data are not publicly available. In failing to consider such crucial case studies, EPA would be ignoring best available science, thereby undermining its own attempt to protect Americans from emerging health threats such as PFOA and PFOS.

- c) Prominent scientists and leaders in public health agree that this Proposal would harm science-based public health protections.

Leading experts in public health, science, and environmental policy agree that the proposed rule would have far-reaching, detrimental impacts on public health and would constrain EPA's decision-making capabilities. By limiting the scientific studies that EPA may consider, the proposed rule would lead to less effective environmental policies and weaker public health protections. Experts have said the following:

- “[The proposed rule] will threaten the lives of real people.” – Commissioners of the Minnesota Pollution Control Agency and Department of Health²⁷⁹
- “If the proposed rule is approved, science will be practically eliminated from all decision-making processes. Regulation would then depend uniquely on opinion and whim.” – John P. A. Ioannidis, C.F. Rehnborg Chair in Disease Prevention at Stanford University²⁸⁰
- “It does not strengthen policies based on scientific evidence to limit the scientific evidence that can inform them. . . . Excluding relevant studies simply because they do not meet rigid transparency standards will adversely affect decision-making processes.” – Editors of *Science* family of journals, *Nature*, *Public Library of Science* journals, *Proceedings of the National Academic of Sciences*, and *Cell*.²⁸¹
- “Without access to the restricted data, regulatory programs could become more or less stringent than they otherwise would be, with consequences for both regulatory costs and benefits. . . . [the proposed rule] could have the effect of removing legal, ethical, and peer-reviewed studies of health effects as sources to support the agency's regulatory efforts.” – Members of the Science Advisory Board²⁸²
- “[The proposed rule] would prevent the best science from informing policy decisions and result in weaker health safeguards.” – Harold P. Wimmer, National President and CEO of the American Lung Association²⁸³

²⁷⁹ Letter from John Linc Stine, Comm'r, Minn. Pollution Control Agency, & Jan Malcolm, Comm'r, Minn. Dep't of Health, to E. Scott Pruitt, Adm'r, EPA (May 15, 2018), <http://www.documentcloud.org/documents/4465265-MPCA-MDH-Joint-Letter-to-EPA-Science.html#document/p1>.

²⁸⁰ John P.A. Ioannidis, *All Science Should Inform Policy and Regulation*, 15 PLoS Med. 5 (2018), <http://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.1002576>.

²⁸¹ Jeremy Berg et al., *Joint Statement on EPA Proposed Rule and Public Availability of Data*, 360 Science (2018), http://science.sciencemag.org/content/360/6388/eaau0116?utm_campaign=toc_sci-mag_2018-05-03&et rid=296581013&et cid=2008556.

²⁸² Memorandum from Alison Cullen, Chair of SAB Work Group on EPA Planned Actions for SAB Consideration of the Underlying Science to the Members of the Chartered SAB and SAB Liaisons (May 12, 2018), [https://yosemite.epa.gov/sab/sabproduct.nsf/E21FFAE956B548258525828C00808BB7/\\$File/WkGrp_memo_2080-AA14_final_05132018.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/E21FFAE956B548258525828C00808BB7/$File/WkGrp_memo_2080-AA14_final_05132018.pdf).

²⁸³ Press Release, Am. Lung Ass'n, American Lung Association Strongly Opposes EPA's Proposed Rule to Limit Critical Health Science (Apr. 24, 2018), <http://www.lung.org/about-us/media/press-releases/epa-propose-limit-health-science.html>.

- “If [the proposed rule] had been in effect 20 years ago, the nation might have forgone programs that are preventing over 50,000 premature deaths each year.” – Environmental Protection Network²⁸⁴
- “[The proposed rule] would greatly weaken EPA’s ability to comprehensively consider the scientific evidence across the full array of health effects studies. This would negatively impact EPA public protections that reduce levels of lead, harmful chemicals, and fine particle pollution, among others.” – 985 scientists in a joint letter to Administrator Pruitt²⁸⁵
- “[The proposed rule] would severely hamstring the agency when it comes to developing and enforcing public health rules by limiting the kinds of research the EPA can use in crafting rules.” – Union of Concerned Scientists²⁸⁶
- “[Administrator] Pruitt is moving to rid the EPA of the science needed for effective regulation. . . . Its potential impact goes well beyond the EPA’s regulatory effectiveness to the underlying role of science in American society.” – Dr. Bernard Goldstein, Professor Emeritus of Environmental and Occupational Health at the University of Pittsburgh and former EPA Assistant Administrator for Research and Development.²⁸⁷

Additionally, when the U.S. House of Representatives passed similar legislation in 2017, H.R. 1430, numerous professional organizations raised concerns about the implications of the proposed legislation.²⁸⁸ The Environmental Data & Governance Institute (EDGI) found that:

A bill that provided genuine provisions for public data access and usability, and did not focus on mandating the reproducibility of studies and on prohibiting the use of any data that could not be divulged to the general public in its entirety, would not be expected to hamper the EPA in a significant way. EDGI’s analysis of H.R. 1430 shows that it does not achieve its stated goals. Instead, our research shows that H.R. 1430 would not promote transparency and that its passage would instead block the EPA from using the data it needs to fulfill its mission of protecting public health and the environment.²⁸⁹

²⁸⁴ Memorandum from Env’tl. Prot. Network on Preliminary Assessment of Pruitt’s Proposed Regulation to Restrict EPA’s Use of Sound Science 2 (Apr. 26, 2018),

https://docs.wixstatic.com/ugd/4868e0_8bbc47f8b66848e4a60503d4dd3a9e72.pdf.

²⁸⁵ Letter from 985 Scientists to E. Scott Pruitt, Adm’r, EPA (Apr. 23, 2018), <https://s3.amazonaws.com/ucs-documents/science-and-democracy/secret-science-letter-4-23-2018.pdf>.

²⁸⁶ Press Release, Union of Concerned Scientists, Scientists Oppose Pruitt’s Research Restrictions (Apr. 23, 2018), <https://www.ucsusa.org/news/press-release/scientists-oppose-new-pruitt-restrictions#.WwM1Mu4vyUl>.

²⁸⁷ Press Release, Union of Concerned Scientists, Scientists Oppose Pruitt’s Research Restrictions (Apr. 23, 2018), <https://www.ucsusa.org/news/press-release/scientists-oppose-new-pruitt-restrictions#.WwM1Mu4vyUl>.

²⁸⁸ Bernard Goldstein, *Why the EPA’s ‘Secret Science’ Proposal Alarms Public Health Experts*, The Conversation (May 18, 2018, 6:40 AM), <https://theconversation.com/why-the-epas-secret-science-proposal-alarms-public-health-experts-96000>.

²⁸⁹ See Vivian Underhill et al., Env’tl. Data & Governance Initiative, Public Protections Under Threat at the EPA: Examining Safeguards and Programs that Would Have Been Blocked by H.R. 1430 (2017), <https://enviroadatagov.org/wp-content/uploads/2017/03/Public-Protections-under-Threat-at-the-EPA.pdf>; Jon Sperl & Amy Petz, Cong. Budget Office, H.R. 1430: Honest and Open New EPA Science Treatment (HONEST) Act of 2017 (2017).

²⁸⁹ See Vivian Underhill et al., Env’tl. Data & Governance Initiative, Public Protections Under Threat at the EPA: Examining Safeguards and Programs that Would Have Been Blocked by H.R. 1430 18 (2017), <https://enviroadatagov.org/wp-content/uploads/2017/03/Public-Protections-under-Threat-at-the-EPA.pdf>.

D. EPA's Policy Rationales for its Proposal are Arbitrary and Capricious

1. EPA arbitrarily fails to provide a reasoned explanation for why the proposed rule is needed.

In essence, EPA's proposed regulation is a solution in search of a problem—a problem that does not exist. The administrative record for the Proposal fails to show that the Agency's past regulatory decisions inappropriately relied on scientific information of questionable value. In fact, EPA fails to point to a single example of a case in which, in developing regulations, EPA relied upon a study or studies later found to be questionable or invalid. Having failed to address this foundational question, EPA also misses the questions that would build on that—even if EPA actually had used invalid science in some instance, EPA would still have to ask whether the underlying data for that study had been made publicly available, and if not, if the problems with the study could have been avoided through having made the data publicly available.

The Proposal neither acknowledges the mechanisms EPA already uses to ensure the integrity of science in decision-making nor establishes that there is a problem that the Proposal is needed to solve. The reality is that both Congress and EPA have established an array of mechanisms and safeguards over the last five decades to ensure that the Agency's decisions are grounded in best available science. These mechanisms include review of agency science and decisions by EPA's scientific advisory boards, including the Science Advisory Board (SAB), the Clean Air Scientific Advisory Committee, Board of Scientific Counselors, the Science Advisory Committee on Chemicals, and the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel²⁹⁰—a process that a work group of the SAB recently described as a “rigorous review process that goes beyond the typical journal peer review procedures,”²⁹¹ and that the National Research Council recognized as playing an “important role in helping EPA to ensure the credibility and quality of . . . science-based decisions.”²⁹² The Proposal also ignores EPA's use of independent peer review processes to evaluate certain studies used in regulatory decisions;²⁹³ the use of transparent literature surveys that are themselves subject to peer review

²⁹⁰ See 42 U.S.C. § 4365 (establishing the Science Advisory Board and requiring that EPA seek its review of, among other things, certain rulemakings under the Clean Air Act, Federal Water Pollution Control Act, Resource Conservation and Recovery Act, Noise Control Act, Toxic Substances Control Act, and Safe Drinking Water Act); 42 U.S.C. § 7409 (requiring the Clean Air Scientific Advisory Committee to advise EPA on matters relating to the National Ambient Air Quality Standards); 7 U.S.C. § 136w (requiring EPA to seek comments from the FIFRA Science Advisory Panel on certain rulemakings under FIFRA, and to seek advice on operating guidelines for scientific analyses by EPA that lead to actions carrying out FIFRA);

²⁹¹ Memorandum by Alison Cullen, Chair, SAB Work Group on EPA Planned Actions for SAB Consideration of the Underlying Science 4 (May 12, 2018) (observing that the Proposal “fails to mention that EPA has mechanisms for vetting science through several expert panels,” including the SAB and others).

²⁹² Nat'l Research Council, *Science for Environmental Protection: The Road Ahead* 181 (2012) (“External advisory groups—including SAB, BOSC, and NACEPT—play an important role in helping EPA to ensure the credibility and quality of its scientific studies and science-based decisions.”).

²⁹³ See, e.g., EPA Sci. and Tech. Policy Council, *Peer Review Handbook* xiii, 15 (4th ed. 2015) (noting that EPA has a “long-standing history of peer review” and providing for peer review of internally generated studies designated as “Influential Scientific Information” or “Highly Influential Scientific Assessments”); Nat'l Research Council,

and public comment, such as the Integrated Science Assessments (ISA) that inform the National Ambient Air Quality Standards,²⁹⁴ and independent review of EPA science programs and risk assessment practices by authorities such as the National Research Council.²⁹⁵ Major regulatory decisions—and the underlying scientific bases for those decisions—are also subject to public comment and judicial review, which serves as an important check on agency decisions that fail to properly account for the best available science.

Thanks to these multiple and overlapping safeguards, the quality of the science underlying EPA decisions is robust.²⁹⁶ More to the point, there is no indication that EPA science suffers from the so-called “replication crisis” that the Proposal identifies as the principal reason for requiring the public disclosure of underlying data or models for studies used in EPA decisions.²⁹⁷ It is telling that the sources EPA cites in support of its claims of a “replication crisis”²⁹⁸ call into question its existence²⁹⁹ and in many instances promote solutions that do not involve access to underlying data³⁰⁰—such as looking at cumulative evidence using a variety of methods instead of over-emphasizing the results of a single study.³⁰¹ It is even more telling that

Science for Environmental Protection: The Road Ahead 180 (2012) (“In rule-making processes that rely on extensive reviews of scientific information, EPA generally imposes a strong preference for reliance on published, peer-reviewed studies. The agency’s peer review policy states that ‘peer review of all scientific and technical information that is intended to inform or support Agency decisions is encouraged and expected.’”).

²⁹⁴ See EPA, EPA/600/R-15/067, *Preamble to the Integrated Science Assessments* 5-25 (2015) (describing the steps EPA undertakes in preparing an Integrated Science Assessment, including extensive and transparent compilation and screening of relevant literature; public comment and independent review by the CASAC; and EPA’s application of recognized frameworks in evaluating public health causation relationships).

²⁹⁵ See, e.g., Nat’l Research Council, *Review of EPA’s Integrated Risk Information System (IRIS) Process* 3 (2014) (describing the charge of the authoring committee as encompassing a review of recent changes to EPA’s IRIS program as well as to “review current methods for evidence-based reviews and recommend approaches for weighing scientific evidence for chemical hazard and dose-response assessments.”); Nat’l Research Council, *Science for Environmental Protection: The Road Ahead* at x (explaining that EPA asked authoring committee “to assess independently the overall capabilities of the agency to develop, obtain, and use the best available scientific and technologic information and tools to meet persistent, emerging, and future mission challenges and opportunities”).

²⁹⁶ See Nat’l Research Council, *Science for Environmental Protection: The Road Ahead* at 13 (“For over 40 years, EPA has been a national and world leader in addressing the scientific and engineering challenges of protecting the environment and human health.”); Wendy Wagner, *Science in Regulation: A Study of Agency Decisionmaking Approaches* 29 (2013) (describing EPA’s NAAQS review process as “exemplary” and a “five-star process for incorporating science into regulatory policy”).

²⁹⁷ 83 Fed. Reg. at 18770.

²⁹⁸ It is additionally unclear what EPA means by “replication crisis,” and EPA appears to be misusing the term, as the source it cites to describes a “reproducibility crisis,” Marcus R. Munafò et. al, *A Manifesto for Reproducible Science*, 1 *Nature Human Behavior* 1 (2017), and another source details how “[a]s the movement to examine and enhance the reliability of research expands, it is important to note that some of its basic terms—reproducibility, replicability, reliability, robustness, and generalizability—are not standardized,” Steven N. Goodman et al., *What Does Research Reproducibility Mean?*, 8 *Sci. Translation Med.* 1 (2016).

²⁹⁹ Munafò et. al, *A Manifesto for Reproducible Science*, 1 *Nature Human Behavior* 1 (2017) (“Whether ‘crisis’ is the appropriate term to describe the current state or trajectory of science is debatable. . . .”)

³⁰⁰ See, e.g., Marcia McNutt, *Reproducibility*, 343 *Science* 229 (2014) (“[J]ournals can only do so much to assure readers of the validity of the studies they publish. The ultimate responsibility lies with authors to be completely open with their methods, all of their findings, and the possible pitfalls that could invalidate their conclusions.”).

³⁰¹ John P.A. Ioannidis, *Why Most Published Research Findings Are False*, 2 *PLoS Med.* 0696, 0700–01 (2005) (“Second, most research questions are addressed by many teams, and it is misleading to emphasize the statistically significant findings of any single team. What matters is the totality of the evidence.”).

the Proposal identifies *no* EPA actions that have been called into question because the science underlying those actions cannot be validated or replicated. In any event, the Proposal does not require replication of studies and only limits the cumulative evidence and context in which to interpret any given study—only hampering EPA’s reliance on more robust scientific findings even if such a crisis were to exist.³⁰²

In addition, numerous independent reviews of EPA’s science-based actions by the courts, as well as the consistency with which the Agency has solicited and relied on the advice and approval of its external Science Advisory Board committees have added to the credibility of EPA’s decisions. The Proposal provides no information supporting the notion that the overarching processes of EPA assessment of relevant scientific studies and subsequent peer review of such assessments, as well risk and policy assessments that EPA has developed and improved over time, are in any way insufficient to address the concerns that are allegedly the main focus of the proposal.

EPA’s failure to identify a problem or inadequacy that new regulations are needed to address is not only arbitrary—it is also contrary to the directive of E.O. 12866 which states that:

[f]ederal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people. In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating.³⁰³

E.O. 12866 further directs each agency to “identify the problem that it intends to address (including, where applicable, the failures of private markets or public institutions that warrant new agency action) as well as assess the significance of that problem.”³⁰⁴ Before proceeding any further with this proposal, EPA should clearly identify the problem it is trying to solve, provide evidence that there is, in fact, a problem, and allow for public comment on whether a problem exists that could be addressed through EPA regulation.

This is not to say that EPA’s use of science cannot be improved or strengthened—of course continued improvement is always desirable. But to improve upon current practices it is necessary to identify what is deficient, why, how it can be corrected and the potential effects of such deficiency and any proposed changes to practice. EPA does none of these.

³⁰² Marcus R. Munafò & George Davey Smith, *Repeating Experiments Is Not Enough*, 553 *Nature* 399, 399–400 (2018), <https://www.nature.com/articles/d41586-018-01023-3#ref-CR3> (noting that “[i]f a study is skewed and replications recapitulate that approach, findings will be consistently incorrect or biased” and suggesting that instead, “an essential protection against flawed ideas is triangulation,” or “the strategic use of multiple approaches to address one question”).

³⁰³ Exec. Order No. 12,866, 58 Fed. Reg. 51,735 (Oct. 4, 1993).

³⁰⁴ *Id.*

2. EPA arbitrarily fails to offer a reasoned explanation for its departure from existing policies that broadly require the agency to consider all available scientific information when undertaking rulemakings.

In addition to the statutes discussed in Section I.B.3 that require EPA to use the best available science when making regulatory decisions, a number of EPA's own policies embed this requirement as well. By arbitrarily limiting the science EPA considers when making regulatory decisions, the Proposal contravenes these policies, injuring the scientific integrity of EPA's actions. As discussed in more detail in Section II.E because EPA is changing course from established policy, EPA must fully acknowledge and justify its decision, which it has failed to do in the Proposal.

EPA's own existing Scientific Integrity Policy states:

To support a culture of scientific integrity within the Agency, this policy. . . [r]ecognizes . . . policy makers within the Agency weigh the best available science, along with additional factors such as practicality, economics, and societal impact, when making policy decisions.³⁰⁵

The Proposal conflicts with this policy by restricting what may be the best available science on a given topic from EPA's consideration solely because the underlying data cannot be made public. As described above, public availability of data is neither necessary nor sufficient to ensure that studies constitute "best available science." The Proposal does not acknowledge this departure from the agency's Scientific Integrity Policy, much less explain why such a departure is reasonable.

Likewise, the Proposal is in tension with EPA's Information Quality Guidelines, developed in response to OMB guidelines issued under Section 515(a) of the Treasury and General Government Appropriations Act for Fiscal Year 2001, which require EPA to ensure the objectivity of influential scientific information it disseminates by using "the best available science and supporting studies conducted in accordance with sound and objective scientific practices."³⁰⁶ EPA considers information to be disseminated when EPA prepares and distributes information to support an Agency decision or regulation or when EPA distributes information in a way that suggests EPA agrees with it, that it supports EPA's viewpoint, or if in the distribution EPA proposes to use it to support or formulate a regulation or agency decision.³⁰⁷ Thus, the Proposal conflicts with the Guidelines by restricting scientific studies that EPA may use to support regulations, which may cause it to disseminate other information to support its regulations that is not based on the best available science.

³⁰⁵ EPA, Scientific Integrity Policy 3-4.

³⁰⁶ EPA, Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency 21-22 (2002), <https://www.epa.gov/sites/production/files/2017-03/documents/epa-info-quality-guidelines.pdf>.

³⁰⁷ *Id.* at 15-16.

EPA's Peer Review Handbook similarly acknowledges that "EPA strives to ensure that the scientific and technical bases of its decisions meet two important criteria: (1) they are based upon the best current knowledge from science, engineering, and other domains of technical expertise; and (2) they are credible."³⁰⁸ EPA's Science Policy Council Handbook on Risk Characterization also requires reasonableness in the agency's risk assessments, which is achieved when "the characterization is based on the best available scientific information."³⁰⁹ These policies clearly impact EPA's regulatory actions, and thus will be impacted by the Proposal. Yet EPA completely fails to analyze the impact the Proposal will have on its ability to comply with these policies and fails to explain why it is changing course or justify its decision to do so. Indeed, the Proposal fails to even acknowledge that the agency *is* changing positions.

3. EPA's Proposal arbitrarily fails to consider and deviates from best practices in scientific review, which support using a broad array of information, informed by a "weight of the evidence" approach, rather than arbitrarily excluding certain studies up front.

There is broad agreement in the scientific literature, reflected in EPA's own guidance, that a "weight of the evidence" approach is an optimal way to analyze and synthesize an array of scientific information in a decision-making context.³¹⁰ This approach, which is described in more detail below, calls for scientific assessments to be based on a broad array of studies—reflecting multiple lines of inquiry, where appropriate—each of which is carefully weighted based on various indicia of credibility. This careful and rigorous process is incompatible with the requirements of the Proposal, which would bar EPA from considering even highly credible, persuasive studies based solely on whether the underlying data is available. Yet the Proposal never acknowledges the conflict between its requirements and EPA's proven practices for scientific assessments, and never provides any good reasons for this change of course.

One prominent example of this "weight of the evidence" approach is contained in EPA's *Preamble to the Integrated Science Assessments*.³¹¹ The *Integrated Science Assessments* are pollutant-specific reports that EPA produces as the scientific basis for establishing and updating

³⁰⁸ EPA, EPA Peer Review Handbook 4th Edition A-4 (Oct. 2015), https://www.epa.gov/sites/production/files/2016-03/documents/epa_peer_review_handbook_4th_edition.pdf.

³⁰⁹ EPA, Sci. Policy Council, Risk Characterization Handbook 18 (2000), https://www.epa.gov/sites/production/files/2015-10/documents/osp_risk_characterization_handbook_2000.pdf.

³¹⁰ See, e.g., Matthew E. Bates, Olivia C. Massey, & Matthew D. Wood, *Weight-of-Evidence Concepts: Introduction and Application to Sediment Management* 5-8 (US Army Corps of Engineers ERDC/EL SR-18-1, Mar. 2018), <http://www.dtic.mil/dtic/tr/fulltext/u2/1048843.pdf> (reviewing literature on development of and best practices in weight-of-evidence assessment, and observing that "Within the US, the USEPA and its partner agencies use and recommend the use of WOE extensively."); Cf. John P.A. Ioannidis, *All science should inform policy and regulation*, PLOS Med 15:5 (May 3, 2018) ("Even the strongest science may have imperfections. In using scientific information for decision-making, it is essential to examine evidence in its totality, recognize its relative strengths and weaknesses, and make the best judgment based on what is available."); U.S. EPA. Preamble to the Integrated Science Assessments (ISA). U.S. Environmental Protection Agency, Washington, DC, EPA/600/R-15/067, 2015. See also EPA Science Policy Council, *A Summary of General Assessment Factors for Evaluating the Quality of Scientific and Technical Information* at 2 (June 2003) (describing EPA's guidance for carcinogen risk assessment and ecological risk assessment as additional examples of the agency's "weight-of-evidence" approach).

³¹¹ EPA, Preamble to the Integrated Science Assessments (ISA) (EPA/600/R-15/067) (2015).

EPA's National Ambient Air Quality Standards (NAAQS), which establish health-based standards for critical air pollutants. The Integrated Science Assessments are intended to implement the Clean Air Act's directive to "accurately reflect the latest scientific knowledge useful in indicating the kind and extent of identifiable effects on public health and welfare which may be expected from the presence of [a] pollutant in the ambient air."³¹² These are some of the most consequential scientific evaluations that EPA performs, in terms of the health, environmental, and economic impacts of the resulting standards, and they must withstand the highest level of technical and legal scrutiny.³¹³ Thus, EPA uses the very best and most defensible scientific methods to produce them, which are described in the *Preamble to the Integrated Science Assessments*.

The *Preamble to the Integrated Science Assessments* is an "overview document outlining the basic steps and criteria used in developing the Integrated Science Assessments," which EPA references as a companion document to each Integrated Science Assessment.³¹⁴ As EPA explains, the "Preamble describes the process of searching the literature, selecting studies for consideration, evaluating study quality, synthesizing and integrating the evidence, and characterizing the evidence for public health and welfare impacts of criteria air pollutants."³¹⁵ It also "describes the five-level causal framework for evaluating weight of evidence and drawing scientific conclusions and causal judgments."³¹⁶ Central to this scientific assessment process is the understanding that evidence from all types of studies, such as animal studies, human observational studies (cohort, time series), controlled chamber studies, and exposure assessments, among others, must be evaluated and incorporated into final determinations of effects. No single study alone drives the final determinations of causality; rather, the weight of evidence from several lines of inquiry is critical.³¹⁷ This framework to evaluate all available science builds upon decades of accrued knowledge and thinking drawing from expertise across several disciplines, including evidence-based decision making.³¹⁸

The Preamble states: "In its evaluation and integration of the scientific evidence on health or welfare effects of criteria pollutants, the U.S. EPA determines the weight of evidence in support of causation and characterizes the strength of any resulting causal classification."³¹⁹ The

³¹² *Learn About the ISAs*, EPA (quoting 42 U.S.C. § 7408(b)) (alteration in original), <https://www.epa.gov/isa/learn-about-isas> (last visited Aug. 14, 2018).

³¹³ See *Mississippi v. EPA*, 744 F.3d 1334, 1344-45 (D.C. Cir. 2013) (upholding EPA's use of the "weight of evidence" approach in setting NAAQS, saying EPA "evaluated the evidence as a whole through an 'integrative synthesis,' what it called a 'weight of evidence approach.' And appropriately so: one type of study might be useful for interpreting ambivalent results from another type, and though a new study does little besides confirm or quantify a previous finding, such incremental (and arguably duplicative) studies are valuable precisely because they confirm or quantify previous findings or otherwise decrease uncertainty") (citations omitted).

³¹⁴ EPA, *Preamble to the Integrated Science Assessments*, <https://cfpub.epa.gov/ncea/isa/recordisplay.cfm?deid=310244> (last visited Aug. 14, 2018).

³¹⁵ *Id.*

³¹⁶ *Id.*

³¹⁷ See EPA, *Preamble to the Integrated Science Assessments* at 22.

³¹⁸ See Marcus R. Munafó & George Davey Smith, *Robust research needs many lines of evidence*, *Nature* (Jan. 23, 2018), <https://www.nature.com/articles/d41586-018-01023-3#ref-CR3>.

³¹⁹ EPA, *Preamble to the Integrated Science Assessments* at 18.

Preamble explains in further detail:

In the ISA, the U.S. EPA assesses the body of relevant literature, building upon evidence available during previous NAAQS reviews, to draw conclusions on the causal relationships between relevant pollutant exposures and health or environmental effects. ISAs use a five-level hierarchy that classifies the weight of evidence for causation. This weight-of-evidence evaluation is based on the integration of findings from various lines of evidence from across health and environmental effect disciplines that are integrated into a qualitative statement about the overall weight of the evidence and causality.³²⁰

Similarly, section 26 of the Toxic Substances Control Act (TSCA) requires that decisions made under sections 4, 5, or 6 of the law must adhere to certain scientific standards including use of best available science and a weight of the scientific evidence approach.³²¹ In its final regulation, Procedures for Chemical Risk Evaluation Under the Amended Toxic Substances Control Act, EPA defines weight of scientific evidence as:

Weight of scientific evidence means a systematic review method, applied in a manner suited to the nature of the evidence or decision, that uses a pre-established protocol to comprehensively, objectively, transparently, and consistently, identify and evaluate each stream of evidence, including strengths, limitations, and relevance of each study and to integrate evidence as necessary and appropriate based upon strengths, limitations, and relevance.³²²

Systematic review in turn requires a full review of the body of scientific evidence available, where study quality is evaluated largely according to methodological design and not the degree to which underlying data are publicly available.³²³ EPA's Proposal contravenes TSCA's requirements to apply a weight of the scientific evidence approach, as defined by the agency, by instating a process that, among other things, conflicts with applying a systematic review approach in the evaluation of chemicals under TSCA.

The Proposal's approach of preemptively barring studies based on the unavailability of data cannot be reconciled with EPA's detailed policies for scientific assessment.

4. EPA irrationally conflates scientific "validity" and "transparency" with data availability, incorrectly assuming that eliminating the use of studies without publicly available data will improve scientific validity and transparency.

In the preamble to the proposed rule, EPA states that the intent of the regulation is "to strengthen the transparency of EPA regulatory science."³²⁴ Later in the preamble, EPA states: "[e]nhancing the transparency and validity of the scientific information relied upon by EPA

³²⁰ *Id.* at 22 (footnote omitted).

³²¹ 15 U.S.C. § 2625(h), (i).

³²² 40 C.F.R. § 702.33.

³²³ Nat'l Research Council, Review of EPA's Integrated Risk Information System (IRIS) Process, <https://www.nap.edu/catalog/18764/review-of-epas-integrated-risk-information-system-iris-process>.

³²⁴ 83 Fed. Reg. at 18,768.

strengthens the integrity of EPA's regulatory actions and its obligation to ensure the Agency is not arbitrary in its conclusions." ³²⁵ EPA then leaps to the unexplained conclusion that barring the use of studies without publicly available data will enhance transparency and validity. EPA's assumption that data availability (or "transparency" in the form of data availability) ensures the use of valid science or its equivalent to using the best available science is manifestly incorrect, and hence provides an irrational basis for the proposed rule. In fact, neither data availability in particular, nor transparency in general, is equivalent to or a guarantee of "validity" in scientific studies.

- a) EPA arbitrarily fails to explain why EPA's existing mechanisms are inadequate to ensure the scientific integrity of its actions.

The Proposal ignores both the available approaches embraced by the scientific community and the record of past EPA assessments, which reveal alternative methods for ensuring the credibility of potentially useful scientific studies. These alternatives include, but are not limited to: confidential sharing of data with independent research teams that are in a position to validate results; comparisons of research findings with the results of other peer-reviewed research efforts, including through meta-analyses and literature reviews that are designed to shed light on consistent findings across studies; and strong peer-review processes led by scientific journals, by EPA, or by advisory bodies such as the SAB. ³²⁶ Indeed, the SAB workgroup that examined the Proposal expressly noted its failure to acknowledge any of these mechanisms:

The proposed rule fails to mention that there are various ways to assess the validity of prior epidemiologic studies without public access to data and analytic methods. For example, the Health Effects Institute (HEI) conducted a re-analysis of the influential Harvard Six Cities and American Cancer Society (ACS) epidemiologic studies and was able to replicate its findings and to assess the robustness of the findings via sensitivity analysis . . . in this particular case, an unusually rigorous form of peer review and independent reanalysis, coupled with many follow-up studies, has accomplished a measure of confidence in findings without public access to data and analytic methods. . . . The proposed rule fails to mention that EPA has mechanisms for vetting science through several expert panels For example, the EPA CASAC routinely reviews and evaluates epidemiologic and toxicological studies that are the basis for dose-response relationships used in risk and exposure assessments for air pollutants regulated under the National Ambient Air Quality Standards. Although such mechanisms do not typically engage in reanalysis of original data using the same methods as the original investigators, they do entail a rigorous review process that goes beyond the typical journal peer review procedures. ³²⁷

³²⁵ *Id.* at 18,769.

³²⁶ *See, e.g.*, Letter to Acting Administrator Wheeler from Marcia McNutt, President of the National Academy of Sciences, C.D. Mote, Jr., President of the National Academy of Engineering, and Victor J. Dzau, President of the National Academy of Medicine 2 (July 16, 2018) ("The National Academies have developed a long-standing body of work that demonstrates scientific literature can be evaluated in a transparent and objective manner without complete disclosure of the underlying data.").

³²⁷ Memorandum from Chair of the SAB Work Group on EPA Planned Actions for SAB Consideration of the Underlying Science, Alison Cullen, to Members of the Chartered SAB and SAB Liaisons 4 (May 12, 2018), [https://yosemite.epa.gov/sab/sabproduct.nsf//E21FFAE956B548258525828C00808BB7/\\$File/WkGrp_memo_2080-AA14_final_05132018.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf//E21FFAE956B548258525828C00808BB7/$File/WkGrp_memo_2080-AA14_final_05132018.pdf).

EPA scientific assessments typically begin with expert staff identifying and assessing peer reviewed studies and studies published in reputable scientific journals. This includes examining the strengths and weaknesses of individual studies, including factors such as design, the reputation and past work of the researchers, quality assurance, methods and analyses. This is followed by a broader look to examine the consistency and coherence of the study with respect to the findings of similar study types across multiple studies, as well as a more integrated assessment of the weight-of-evidence that considers multiple lines of scientific evidence. The assessments are in turn peer reviewed by EPA scientific advisory committees as well as the public.³²⁸ In certain exceptional cases, reanalysis by EPA or competent third party investigators can provide some additional credibility.

As the SAB workgroup that examined the Proposal noted, the record of EPA's treatment of the evidence in the case of two landmark fine particle epidemiology studies shows how scientific researchers and EPA used all of these approaches in examining the association between long-term exposures to fine particles and mortality. This effort began with Harvard's "Six Cities" study, reported in (Dockery et al., 1993).³²⁹ The researchers initially sought to reproduce their initial findings using a data base with a much larger number of subjects and cities and did indeed reproduce those findings (Pope et al., 1995) (see below).³³⁰ By 2009 enough new evidence had accumulated for EPA's integrated assessment for particulate matter to conclude that the number of large U.S. cohort studies, together with supporting evidence from other epidemiology and toxicological studies were sufficient to infer a causal relationship between long-term PM_{2.5} exposures and mortality and cardiovascular effects. This conclusion regarding causality (the strongest finding possible under the causality classification methodology³³¹) based on these studies was endorsed by the external Clean Air Scientific Advisory Committee (CASAC), which noted: "The five-level classification of strength of evidence for causal inference has been systematically applied; this approach has provided transparency and a clear statement of the level of confidence with regard to causation, and we recommend its continued use in future ISAs."³³² (Samet, 2009). Thus, the link between particulate matter exposure and mortality that was observed in the Six Cities study has been vetted through multiple mechanisms that have confirmed the validity of the findings *without* public access to the underlying data—including extensive reanalysis using larger datasets with longer duration of follow up and different statistical methods; reproduction and corroboration with independent studies using distinct populations and methodologies; and rigorous external review by independent scientists.

³²⁸ See, e.g., EPA, Preamble to the Integrated Science Assessments 3, Figure II, (2015) <https://cfpub.epa.gov/ncea/isa/recordisplay.cfm?deid=310244>.

³²⁹ Douglas W. Dockery et al., *An Association Between Air Pollution and Mortality in Six U.S. Cities*, 329 New Eng. J. Med. 1753 (2003).

³³⁰ C. Arden Pope, III et al., *Particulate Air Pollution as a Predictor of Mortality in a Prospective Study of U.S. Adults*, 151 Am. J. Respiratory & Critical Care Med. 669 (1995).

³³¹ The Preamble to the Integrated Science Assessments Sections describes the five-level hierarchy that classifies the weight of evidence for causation and methodology to make the determination, and "causal relationship" is the strongest finding.

³³² Letter from Dr. Jonathan M. Samet, Professor & Chair, Dep't of Preventive Med, Univ. of S. Cal., to Lisa P. Jackson, Adm'r, EPA (Nov. 2, 2009).

The Proposal says virtually nothing about the use of these existing mechanisms in EPA's current scientific assessment practices, or the level of confidence those mechanisms afford in EPA's regulatory science. Yet despite the proven track record of these mechanisms in assuring the validity of landmark studies such as the ACS and Six Cities studies, the Proposal would effectively reject their use and require EPA instead to exclude consideration of studies based on the sole criterion of public availability of underlying data. The Proposal's failure to explain this choice is arbitrary and capricious.

b) EPA arbitrarily equates data availability with valid science.

As discussed in detail in Section II.C.2, the absence of publicly available underlying data does not make the results of a study invalid or even suggest that the study is likely to be invalid. Nor has EPA presented evidence to suggest that studies with publicly available underlying data are more likely to represent strong science than studies without such data availability. As discussed in Section II.A.1, key reasons why researchers do not make data for some studies publicly available have nothing to do with scientific quality. Further, as discussed below and in the *Terminology* section, while reanalyzing study results using the same data is one way to help validate those results, it is neither the primary nor a sufficient way to do so. Hence, EPA's apparent conflation of data availability and best available science is not based on any evidence cited by EPA, is contrary to the evidence before EPA, and is simply arbitrary.

EPA's Preamble to the Integrated Science Assessments provides another discussion of how EPA evaluates study quality, and similarly, does not call out publicly available data:

[T]he individual study quality is evaluated by considering the design, methods, conduct, and documentation of each study, but not the study results. This uniform approach aims to consider the strengths, limitations, and possible roles of chance, confounding, and other biases that may affect the interpretation of individual studies and the strength of inference from the results of the study.³³³

A statement by the American Statistical Association on p-Values: Context, Process, and Purpose further emphasizes the multiple considerations related to quality, stating "Researchers should bring many contextual factors into play to derive scientific inferences, including the design of a study, the quality of the measurements, the external evidence for the phenomenon under study, and the validity of assumptions that underlie the data analysis."³³⁴ Similarly, the letter filed by the Presidents of the National Academies of Sciences, Engineering, and Medicine in this docket lists multiple reports conducted since 2007 that have examined EPA's scientific assessment processes and "that advise EPA on the scientific bases of regulatory decisions related to human health and the environment."³³⁵ According to the NASEM Presidents,

³³³ EPA, Preamble to the Integrated Science Assessments at 7, <https://cfpub.epa.gov/ncea/isa/recordisplay.cfm?deid=310244>.

³³⁴ Ronald L. Wasserstein & Nicole A. Lazar, *The ASA's Statement on p-Values: Context, Process and Purpose*, 70:2 *The American Statistician* 129, 131 (2016).

³³⁵ Letter to Acting Administrator Wheeler from Marcia McNutt, President of the National Academy of Sciences, C.D. Mote, Jr., President of the National Academy of Engineering, and Victor J. Dzau, President of the National Academy of Medicine 2 (July 16, 2018).

These reports encourage EPA to consider *all available science in the rule-making process* and provide guidance about how the agency could be more transparent in describing how evidence is gathered and evaluated. . . . Individual study quality should be evaluated on the basis of information that is available in standard journal articles, such as the study design elements, analytical techniques, and statistical methods. Researchers may be contacted to answer questions about the conduct of the study or be asked to provide additional data. *If the study data are not available, their absence may affect how the study is rated and used in the analysis, but the study should not necessarily be eliminated from the assessment.*³³⁶

OMB's *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies* provide another important example of the distinction between information transparency and quality. Unlike the Proposal, which conflates transparency with quality, OMB's Guidelines encourage transparency as a means to obtain greater objectivity in data, but do not consider it an absolute requirement or the only means by which objectivity can be achieved. The Guidelines specifically provide that it is possible to verify the objectivity of information that cannot be made publicly available through other types of "robustness checks."³³⁷

As an example, the OMB Guidelines point to the Harvard Six Cities Study, where underlying data could not be made publicly available due to confidentiality concerns. In that case, the raw data was released only to researchers at the Health Effects Institute, who were bound to the same confidentiality requirements as the original researchers, and who were able to reanalyze and reproduce the study's results.³³⁸

c) Reanalyzing a study using publicly available data is not necessary to ensure valid science nor sufficient to ensure against invalid results.

To ensure the validity of scientific research, the scientific community relies most heavily upon peer review. In peer review, independent scientists with related expertise evaluate a study's quality using the types of factors discussed above. Studies used by EPA are often further evaluated by one of EPA's scientific advisory boards, such as the Clean Air Science Advisory Committee or the Science Advisory Board. These types of reviews do not depend on a study's data being made publicly available.

Making data available does allow independent researchers to try to reanalyze the same data and produce the same results. But reanalyzing a study is just one of many ways the scientific community ensures integrity, and it is not, in fact a widely used mechanism.³³⁹

³³⁶ *Id.* (emphasis added).

³³⁷ OMB, *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies*; *Republication*, 67 Fed. Reg. 8,452, 8,460 (Feb. 22, 2002).

³³⁸ *Id.* at 8,456.

³³⁹ See John P.A. Ioannidis, *All science should inform policy and regulation*, 15 PLOS Med 1, 2 (May 3, 2018), <http://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.1002576> (However, we should recognize that

Reproducing study results using a different population or method is generally considered a stronger validation than simply reanalyzing the results using the same data, as it shows that the results hold across a different population.³⁴⁰

5. EPA arbitrarily attempts to bolster one element of scientific transparency, while ignoring significant other transparency-related concerns.

Another arbitrary aspect of this proposal is that EPA appears to assume that the only way to enhance transparency in regulatory science is to ensure that the underlying data and modeling for individual studies are publicly available. In fact, significant concerns have been raised about other non-public aspects of the modern scientific research and publication process that may undermine the accuracy of scientific results. For example, there are rising concerns about the increasing numbers of predatory pay-to-publish journals, which provide little-to-no guarantee of scientific integrity of their published studies.³⁴¹ Other areas of concern include undisclosed financial bias.³⁴² But rather than evaluating concerns related to transparency across the spectrum of peer-reviewed science, EPA has arbitrarily seized upon one narrow area. This area also happens to be a target of regulated industries, as discussed further in Section VII.

6. EPA's justification of the proposal is incoherent and lacks almost any evidentiary support.

Although as discussed above, EPA has not identified a problem with EPA's use of science, EPA may be assuming (without any basis of support) that it needs to strengthen the validity of the science EPA uses in rulemaking. If so, EPA then appears to leap to the conclusions (again without any supporting evidence) that the only way to strengthen the validity of the science is by enhancing transparency, that no other possible steps to enhancing integrity are worth considering, and that enhancing transparency means making underlying data and models publicly available. This is all before EPA even gets to its obviously illogical conclusion

most of the raw data from past studies are not publicly available. In a random sample of the biomedical literature (2000–2014), none of 268 papers shared all of their raw data. Only one shared a full research protocol. The proportion of studies that have had all their raw data independently re-analyzed is probably less than one in a thousand. The number of studies that have been exactly replicated in new investigations is quite larger, but still a minority in most fields.”) (citing Iqbal S, Wallach J, Khoury MJ, Schully S, Ioannidis JPA., *Reproducible research practices and transparency across the biomedical literature*, 14 PLoS Biol. 1 (2016) (“Replication studies were rare ($n = 4$), and only 16 studies had their data included in a subsequent systematic review or meta-analysis.”)).

³⁴⁰ See, e.g., Comments of the International Society for Environmental Epidemiology on EPA's proposed rule on Strengthening Transparency in Regulatory Science Section 2 (EPA-HQ-OA2018-0259-0001), <https://www.regulations.gov/document?D=EPA-HQ-OA-2018-0259-1973> (“However, although data reanalysis has a role to play, ultimately, the key determination of the consistency of scientific evidence comes from replication, not reanalysis.”) (note that ISEE uses the term “replicate” to mean what we have defined in these comments as “reproduce”).

³⁴¹ See Gina Kolata, *Many Academics are Eager to Publish in Worthless Journals*, N.Y. Times (Oct. 30, 2017), <https://www.nytimes.com/2017/10/30/science/predatory-journals-academics.html>; *Publish and Don't Be Damned*, The Economist (June 23, 2018), <https://www.economist.com/science-and-technology/2018/06/23/some-science-journals-that-claim-to-peer-review-papers-do-not-do-so>.

³⁴² EPA, *Scientific Integrity Policy*, https://www.epa.gov/sites/production/files/2014-02/documents/scientific_integrity_policy_2012.pdf (seeking to protect agency reliance on science from political interference, personal motivations, conflicts of interest, bias, etc.).

that threatening exclusion of studies without publicly available data will “increase access to dose response data and models underlying pivotal regulatory science,”³⁴³ rather than simply bar EPA from considering a vast universe of useful and rigorously vetted studies. The evidence cited by EPA in support of the need to strengthen science through its proposed approach is so vague and perfunctory that it is largely impossible even to tell which conclusions various sources are supposed to support. EPA’s rationale for its data availability requirements consists of a few conclusory statements by EPA itself, a reference to “the replication crisis,” and citations to a handful of articles and guidance issued by EPA and OMB. None of these provide a rational basis of support for the Proposal.

EPA begins by stating that the “proposed rule is consistent with the principles underlying the Administrative Procedure Act and programmatic statutes that EPA administers to disclose to the public the bases for agency rules and to rationally execute and adequately explain agency actions.”³⁴⁴ While EPA is correct that it must disclose the basis and provide an adequate explanation for rulemaking (principles EPA manifestly fails to follow in this Proposal), it does not follow that these principles either require or support the quite specific notion that dose response data and models must be publicly available. Nor does EPA attempt to explain how these broadest of rulemaking principles support EPA’s specific proposed approach here.

Next, EPA states that the proposal is “consistent with” two recent executive orders and OMB guidelines on information quality and agency information management.³⁴⁵ One of the executive orders says nothing more than that environmental regulations should be “developed through transparent processes that employ the best available peer-reviewed science”³⁴⁶ The other is targeted at eliminating regulations including those that are “unnecessary” and “ineffective,” which, as our comments detail, the Proposal clearly would be.³⁴⁷ While the OMB guidelines on information quality generally support transparency in science, they call for a far more nuanced approach than EPA proposes here and do not call for agencies to exclude studies for which underlying data is not available, as discussed above in section I.C. In fact, as discussed above, EPA’s proposal unlawfully contravenes these guidelines.

EPA then states that the Proposal “builds upon” prior EPA actions in response to government-wide data access and sharing policies.³⁴⁸ In support of this claim, EPA cites generally to five prior EPA policy documents related to science. EPA fails to point to a single statement, provision or requirement in any of these documents, however, as support for the specific approach proposed here. This is not surprising, as EPA’s proposal to exclude studies with non-public data is actually a significant change from the prior policies, which supported balancing the interest in access to data with interests in privacy and confidentiality, as discussed in more detail in Section II.E. In fact, one of the documents cited by EPA, the *Plan to Increase Access to Results of EPA-Funded Scientific Research*, directly contradicts an apparent premise of

³⁴³ 83 Fed. Reg. at 18,770.

³⁴⁴ 83 Fed. Reg. at 18,769.

³⁴⁵ *Id.*

³⁴⁶ Exec. Order No. 13,783, 82 Fed. Reg. 16,093, 16,093 (Mar. 31, 2017); *see also* discussion in Appendix A.

³⁴⁷ Exec. Order No. 13777, 82 Fed. Reg. 12285, 12286 (Mar. 1, 2017); *see also* discussion in Appendix A.

³⁴⁸ 83 Fed. Reg. at 18,770.

EPA's Proposal, stating: "Whether research data are fully available to the public or available to researchers through other means does not affect the validity of the scientific conclusions from peer-reviewed research publications."³⁴⁹ EPA ignores this contradiction altogether and provides no explanation whatsoever as to how the Proposal "applies concepts and lessons learned from [EPA's] ongoing implementation" of this plan, as EPA asserts.³⁵⁰

EPA also claims that the Proposal builds on the "experience of other federal agencies in this space."³⁵¹ In this case, EPA simply lists other federal agencies without referring to any policies, documents or actions by those agencies, except for one particular Census Bureau database that allows federal Census data to be shared securely. Obviously a bald uncited statement that other federal agencies have "experience in this space" is far too vague to allow meaningful comment by the public on EPA's rationale for its action, much less provide any support or rationale for the proposed policy. Further, the Census Bureau database cited is an example of how an agency can provide secure access to its own data, but it does nothing to explain or justify EPA's Proposal to exclude third party studies with nonpublic data from consideration in rulemaking. The U.S. Census Bureau operates the Federal Statistical Research Data Centers, which are secure facilities providing authorized access to restricted-use microdata for statistical purposes only. To gain access, researchers must obtain Census Bureau Special Sworn Status—passing a moderate risk background check and swearing to protect respondent confidentiality for life. This approach meets the U.S. Census Bureau's needs by allowing access to confidential information only to researchers whose proposals meet certain criteria, who go through a vetting process, and who agree to protect the information. Yet again, this is a structure designed to protect data collected by the government, not third parties, and there are substantial costs to this approach, which are borne by the Census Bureau. It is clearly not directly transferable to the context of the Proposal.³⁵² It is also unclear whether such a structure, even if it were practical (which it is not), would be sufficient to satisfy EPA's requirement to make data and models "publicly available."

Next, EPA vaguely refers to recommendations from third party advocates supporting "open science."³⁵³ EPA does not specify, let alone discuss, those recommendations. EPA certainly does not explain how EPA's current use of science is inconsistent with any such recommendations or inadequate in light of them, or whether any of these third party organizations believe that studies with nonpublic data are insufficiently valid for use in rulemaking. Indeed, one of the organizations cited by EPA—the Bipartisan Policy Center

³⁴⁹ EPA, Plan to Increase Access to Results of EPA-Funded Scientific Research 4–5 (2016) (emphasis omitted), <https://www.epa.gov/sites/production/files/2016-12/documents/epascientificresearchtransparencyplan.pdf>.

³⁵⁰ 83 Fed. Reg. at 18,770.

³⁵¹ *Id.*

³⁵² See Letter to Acting Administrator Wheeler from Marcia McNutt, President of the National Academy of Sciences, C.D. Mote, Jr., President of the National Academy of Engineering, and Victor J. Dzau, President of the National Academy of Medicine 3 (July 16, 2018). ("There are several differences in the confidential microdata collected from individuals and businesses by federal statistical agencies through surveys, versus data and results from the kinds of studies that are within the scope of the EPA proposed rule. These differences have important implications about making data publicly accessible. What works well in the federal statistical environment may not translate effectively to EPA, where stakeholders might be strongly motivated to discount study results that run counter to their regulatory preferences.").

³⁵³ 83 Fed. Reg. at 18770.

“BPC”)—filed a letter in this docket stating emphatically that “the proposed rule is not consistent with the BPC report in substance or intent. While the Science for Policy Project panel encouraged greater transparency and access to data, the report never suggested excluding studies from consideration in developing regulation if data from those studies were not publicly available.”³⁵⁴ Again, the policy documents cited in the footnote accompanying this statement generally undercut rather than support EPA’s Proposal, as discussed in detail in Appendix A.

EPA also suggests that “these policies” (which policies it is unclear) “are informed by the policies recently adopted by some major scientific journals.”³⁵⁵ EPA does not cite any specific policies adopted by the journals named in the footnote, but it does not appear that any of those journals has determined that studies with nonpublic data are invalid and should not be relied upon or used. To the contrary, the editors of these journals issued a strong public statement affirming that “in not every case can all data be fully shared,” that “the merits of studies relying on data that cannot be made publicly available can still be judged,” and that “[i]t does not strengthen policies based on scientific evidence to limit the scientific evidence that can inform them... Excluding relevant studies simply because they do not meet rigorous transparency standards will adversely affect decision-making processes.”³⁵⁶ Again, however, EPA’s failure to provide any specific information or citations in support of its conclusory statements make it impossible to meaningfully comment on the support for EPA’s Proposal.

Further, EPA mentions “the replication crisis,”³⁵⁷ but provides no information on the reality, seriousness, scope, implications, or causes of such a crisis. EPA fails to explain what it understands the “replication crisis” to be, much less how EPA’s proposal might ameliorate it. It is not even clear whether EPA understands the meaning of the term “replication,” as the agency fails to distinguish between “replicability” and “reproducibility,” and uses both terms apparently interchangeably.³⁵⁸ See earlier discussion of key terminology at page 9.

The proposed regulatory text provides, “[i]nformation is considered ‘publicly available in a manner sufficient for independent validation’ when it include the information necessary for the public to understand, assess, and *replicate* findings” and then lists “data” as the first type of information that may be included.³⁵⁹ Yet “replicating findings” is essentially limited to laboratory animal and randomized controlled trials and does not capture the vast majority of human epidemiological studies. More importantly, replicating studies does not require access to underlying study data, but rather details regarding the methodological design. Further “reproducing” studies is generally viewed as a more informative and resource efficient approach to validation of research.

³⁵⁴ Letter from Jason Grumet, President of BPC to Administrator Scott Pruitt (May 22, 2018).

³⁵⁵ *Id.*

³⁵⁶ Jeremy Berg et al., *Joint statement on EPA proposed rule and public availability of data*, Science (Apr. 30, 2018).

³⁵⁷ *Id.*

³⁵⁸ Compare, e.g., 83 Fed. Reg. at 18774 (proposed rule requires information to be available “for the public to understand, assess, and replicate findings”), and 83 Fed. Reg. at 18770 (alluding to “replication crisis” as a basis for the need for the proposed rule), with 83 Fed. Reg. at 18772 (discussing an analysis purporting net benefits from the proposal due to “greater reproducibility”), and 83 Fed. Reg. at 18769 (“EPA must. . . ensure that its decision-making is marked by independence, objectivity, transparency, clarity, and reproducibility.”).

³⁵⁹ 83 Fed. Reg. at 18773-74 (emphasis added).

Finally, to the extent that specific circumstances justify actually replicating a study, EPA fails to explain why it is necessary to make a study's underlying data broadly available to the public rather than employing a more secure approach that protects personal privacy. For example, to quell concerns about the validity of the American Cancer Society Cancer Prevention Study II (ACS CPSII) and the Harvard Six Cities Study—both seminal air pollution studies that are described earlier in these comments—an independent panel of Canadian and American scientists independently audited and reanalyzed them. Due to personal privacy concerns, the data was not made publicly available but was instead held in a restricted access data warehouse at the Health Effects Institute, an organization funded by both the automotive industry and EPA. The independent audit and reanalysis took three years and roughly one million dollars. It evaluated the consistency and accuracy of the data and then undertook a series of comprehensive analyses to test the robustness of the original findings and interpretations to alternative analytic approaches. The results of the independent analysis found resoundingly similar results for both studies.³⁶⁰

The results of this reanalysis suggest that routine assessment of quality indicators such as methodology, confounding and bias routinely evaluated in the peer review process are generally sufficient to confirm a study's validity. Further, while it plainly would be infeasible to undertake such an expensive and time-consuming reanalysis for the vast majority of studies, this example demonstrates that it is possible to undertake a reanalysis without making underlying data broadly available to the entire public. Yet EPA's proposed rule apparently would bar regulators from relying on these high quality and extensively vetted studies due to the fact that the underlying data was never made publicly available. EPA does not—and cannot—explain how a rule that would prohibit the agency from considering these seminal, high quality scientific studies comports with its goal of strengthening the agency's use of science in regulatory actions.

7. EPA has failed to explain why it has singled out dose response studies to be excluded if their underlying data and models are not publicly available, but has not similarly targeted any other types of studies commonly used by EPA.

EPA also has proposed to target the requirements for public availability specifically to the data and modeling underlying one specific subset of scientific research—dose response studies. EPA has provided no explanation or justification for targeting dose response studies in particular or for not including other types of studies or scientific information. EPA has not suggested that these studies are inherently less reliable than other studies, that they more

³⁶⁰ For the Harvard Six cities study, the reanalysis results were 1.28 hazard ratio for mortality per 18.6 microgram per meter cube of PM_{2.5}, in comparison to a hazard ratio of 1.26 found in the original study. For the ACS CPSII study, the reanalysis showed that for every 25.4 microgram per meter cube change in PM_{2.5} there was an associated hazard ratio for mortality of 1.18 (results of the independent reanalysis), as compared to the hazard Ratio of 1.17 reported by the original investigators. Daniel Krewski, et al., *Overview of the reanalysis of the Harvard six cities study and American Cancer Society study of particulate air pollution and mortality*, 66 J. Toxicology & Envtl. Health Part A 1507 (2003); Health Effects Inst., *Reanalysis of the Harvard Six Cities Study and the American Cancer Society Study of Particulate Air Pollution and Mortality* (2000).

commonly fail to publicly disclose data and modeling information, that replication is more necessary for these studies than others, or any other conceivable reason. Absent any explanation from the agency, it is impossible to comment on the factual predicates for EPA's proposed decision, or the reasonableness of EPA's justification, except to state that it appears completely arbitrary in the absence of any rationale. *See, e.g., Transactive Corp., v. United States*, 91 F.3d 232, 237 (D.C. Cir. 1996) ("A long line of precedent has established that an agency action is arbitrary when the agency offered insufficient reasons for treating similar situations differently.").

8. EPA arbitrarily failed to consider the implications of this proposal on interagency coordination.

Additionally, EPA arbitrarily failed to consider the far-reaching implications this Proposal could have on inter-agency coordination and consultation given that other agencies normally rely on research potentially excluded by the Proposal.³⁶¹ In the numerous environmental statutes that EPA cites, there are dozens of provisions that require EPA to coordinate or consult with other Federal entities—especially when implementing research programs and issuing information or guidelines.³⁶² The Proposal would almost certainly frustrate and impair this coordination and consultation, either by forcing EPA to ignore the science provided by other agencies or by severely restricting the science that EPA itself would be able to share with other agencies in these statutorily required processes. The Proposal arbitrarily ignores these potential impacts.

In addition to the many examples of statutorily required consultation that are identified in Appendix B, other federal agencies routinely incorporate and rely upon EPA science assessments in their own efforts to carry out their mandates to protect human health and safety. As with statutorily required consultations, the Proposal utterly fails to acknowledge or consider what impacts restricting EPA's own use of dose-response studies would have on the work of these other agencies. Indeed, there is no evidence that these other agencies were even permitted to comment on the Proposal as part of the usual process of interagency review.

Some selected examples of other federal agency programs that rely on EPA science include:

- The Food and Drug Administration (FDA) enforces tolerances established by EPA for pesticide chemical residues in human and animal foods under the Federal Insecticide,

³⁶¹ *See Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) ("Normally, an agency rule would be arbitrary and capricious if the agency has . . . entirely failed to consider an important aspect of the problem.").

³⁶² *See* 42 U.S.C. §§ 7403, 7408(a), 7408(c), 7408(f), 7412 (Clean Air Act §§ 103, 108, 112); 33 U.S.C. §§ 1314, 1317(a)(7), 1345(d)(1) (Clean Water Act §§ 304, 307(a)(7), 404(d)(1)); 42 U.S.C. §§ 6907(a), 6911, 6912(a)(2)-(6), 6942(b), 6981(a) (Resource Conservation and Recovery Act §§ 1008(a), 2001, 2002(a)(2)-(6), 4002(b), 8001(a)); 7 U.S.C. §§ 136w-3, 136w(d), 136a-1(n)(2)-(3), 136(l)(2), 136t(b), 136i-2(c) (Federal Insecticide, Fungicide, and Rodenticide Act §§ 2, 4, 11, 22, 25, 28); 15 U.S.C. §§ 2608(d), 2604(f)(5), 2604(h)(2)(B)(ii) (Toxic Substances Control Act); 42 U.S.C. § 300g-1 (b)(1)(D), 300g-1(d), 300j-13(a)(5), 300j-3d, 300j-19(b)(2)(A) (Safe Water Drinking Act). *See also* Appendix B: Table of Consultation Requirements.

Fungicide, and Rodenticide Act, including through a comprehensive pesticide residue monitoring program that tests for approximately 700 pesticide residues in both imported and domestic commodities.³⁶³ To the extent the Proposal affects EPA's tolerances, the nature and effectiveness of FDA's own work to monitor for violations of those tolerances would be impacted.

- FDA also regulates contaminants in bottled water under the Federal Food, Drug and Cosmetics Act. Section 410 of the Act requires that FDA regulations for bottled water be issued in coordination with the effective date of National Primary Drinking Water Regulations issued under the Safe Drinking Water Act, and be no less protective of public health than those standards. If the Proposal impedes EPA's work to establish drinking water standards, this may affect FDA's own ability to justify protective bottled water standards.³⁶⁴
- In certain circumstances, FDA also coordinates with EPA to provide the public with information and advice on environmental contaminants in foods. For example, in 2017 FDA and EPA released a joint advisory on mercury hazards associated with the consumption of fish and shellfish, which was based in part on EPA's assessment of the "reference dose" or level of exposure that a person can experience over a lifetime without a risk of harm.³⁶⁵ The Proposal could radically alter the science EPA would be permitted to consider in future such initiatives, and frustrate the ability of FDA and other agencies to coordinate effectively with EPA to develop joint advice and information.
- The Department of Housing and Urban Development is required by statute to assist EPA in assessing the extent of radon contamination in the United States and developing measures to avoid and reduce radon contamination.³⁶⁶ HUD has also developed policies to require radon testing at properties receiving federal financing, which incorporate EPA radon standards.³⁶⁷ To the extent the Proposal affects future EPA assessments of radon risks, the scope, cost and effectiveness of HUD radon programs could be affected as well.

9. EPA's proposal irrationally excludes proceedings that tend to benefit industry interests, even though these proceedings are far less transparent than the rulemakings EPA has targeted.

EPA's claims that it values transparency are clearly a pretext for eliminating "inconvenient," life-saving science from rulemakings that increase public health protection. Among other things, by excluding adjudications, permit proceedings, and certain rulemakings, EPA has excluded proceedings where EPA and industry regularly rely on nondisclosed information and where agency action in general, and particularly expeditious action, tends to

³⁶³ FDA, *Pesticide Residue Monitoring Program Questions and Answers*, <https://www.fda.gov/Food/FoodborneIllnessContaminants/Pesticides/ucm583711.htm> (last visited Aug. 13, 2018).

³⁶⁴ FDA, *Guidance for Industry: Bottled Water and Total Coliform and E. Coli; Small Entity Compliance Guide*, <https://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/ucm206215.htm> (last visited Aug. 14, 2018).

³⁶⁵ Advice About Eating Fish, From the Environmental Protection Agency and Food and Drug Administration; Revised Fish Advice; Availability, 82 Fed. Reg. 6572 (Jan. 19, 2017).

³⁶⁶ See Pub. L. 100-628, title X, § 1091, Nov. 7, 1988, 102 Stat. 3283.

³⁶⁷ See HUD, HUD Office of Multifamily Development Radon Policy, Notice H 2013-03 (Jan. 31, 2013), available at <https://www.hud.gov/sites/documents/13-03HSGN.PDF>.

favor industry. By limiting the proposal to “significant regulatory actions,” the proposed rule would treat exactly the same study differently depending on whether it supports regulation or non-regulation in a particular context. The proposed rule will tend to exclude evidence when it supports a health-protective regulation that is costly to industry, but the proposed rule will then allow the use of the exact same evidence when the ultimate agency decision avoids regulation or deregulates industry activities or otherwise has low compliance costs. Thus, the Proposal is clearly shaped to favor industry interests, not to further transparency.

Specifically, EPA has chosen to limit the application of this Proposal to “significant regulatory actions” under E.O. 12866, and thus EPA does not extend this Proposal to adjudications, permit proceedings, or many less economically significant rulemakings.³⁶⁸ In particular, EPA has effectively exempted the TSCA new chemicals program where industry seeks expeditious actions allowing market access and EPA regularly fails to disclose its own analyses and the studies and materials supporting those decisions, much less any underlying data. As explained below, in these proceedings industry seeks affirmative authorization from EPA to commercialize chemicals, so industry has a vested interest in expeditious government action.

EPA’s decision to exempt these proceedings is particularly egregious because these proceedings are extraordinarily more opaque than the rulemakings EPA has targeted with this Proposal. In the TSCA new chemicals program, EPA often provides no meaningful opportunity for public review or comment before EPA takes action, and EPA regularly violates its existing statutory and regulatory obligations by disclosing almost none of its analyses or the information supporting its decisions to authorize the manufacture of new chemicals. Notably, much of the information at issue has never been peer-reviewed or subjected to nearly the level of public scrutiny as have the studies that EPA is trying to exclude from health-protective rulemakings under the proposed rule. EPA cannot credibly claim to pursue transparency with this Proposal while running certain programs as “black boxes” where little, if any, information is disclosed. To be clear, the problem is that EPA often does not disclose its own analyses or many of the underlying studies at all, much less underlying data; it is outrageous for EPA to then turn around and suggest that, in other contexts, disclosure of its analyses and the supporting peer-reviewed studies provides insufficient transparency.

As drafted, EPA’s Proposal will not apply to EPA’s New Chemicals Review Program under TSCA. TSCA § 5 governs EPA’s review of “new chemical substance[s],” generally chemicals that have not previously been distributed in U.S. commerce.³⁶⁹ By and large, no person may manufacture (defined to include import) a “new chemical substance” in the United States without providing EPA notice at least 90 days beforehand.³⁷⁰ When a person submits a pre-manufacture notice (PMN), EPA must review the PMN and make one of three types of determinations under TSCA § 5(a)(3).³⁷¹ EPA then must take the actions required by the

³⁶⁸ 83 Fed. Reg. at 18,771.

³⁶⁹ See 15 U.S.C. §§ 2604, 2602(11).

³⁷⁰ *Id.* § 2604(a)(1).

³⁷¹ *Id.* § 2604(a)(1)(B). Depending on the circumstances, instead of submitting a PMN, a person may seek to obtain one of several exemptions from the PMN process, such as the Test Marketing Exemption. The proceedings governing applications for these exemptions involve even less public disclosure than EPA’s processing of PMNs. EPA’s proposal will also not apply to the proceedings governing these exemptions.

relevant determination, and the person must comply with any applicable requirement imposed.³⁷² The person may not begin manufacturing the chemical substance until EPA has completed its review and made a determination. These proceedings do not qualify as significant regulatory actions under E.O. 12866, because EPA does not consider them rulemakings and because the regulation of chemicals that have not yet been introduced to the market generally will not be economically significant within the meaning of the E.O.

Because industry generally cannot manufacture a new chemical substance until EPA has completed its review, industry has a strong interest in expeditious action on PMNs. Nor is this idle speculation; industry commenters have repeatedly called for EPA to move more expeditiously.³⁷³ Providing disclosure in these proceedings would likely, at a minimum, take additional time, and thus it seems likely that EPA has exempted these proceedings to serve industry's interest in hasty resolution.

Moreover, the New Chemicals Program is infinitely more opaque than the rulemakings EPA is currently targeting with its Proposal, often in direct violation of law. EPA does not make the public files for new chemicals electronically available, and when a person does obtain a copy of the public file from EPA,³⁷⁴ the files generally reveal almost none of EPA's analyses supporting its decisions or the information submitted to support those decisions, with massive amounts of data redacted or concealed as Confidential Business Information (CBI). It's not a question of failing to disclose all the underlying data; EPA often fails to disclose the supporting studies or information at all.

³⁷² *Id.*

³⁷³ See, e.g., Am. Coatings Ass'n Comment on New Chemicals Review Program 2 (Jan. 20, 2018), <https://www.regulations.gov/document?D=EPA-HQ-OPPT-2017-0585-0068> ("We urge the Agency to expedite the process as much as possible, so that manufacturing is able to commence."), Docket ID: EPA-HQ-OPPT-2017-0585-0068; Am. Chemistry Council Comment on New Chemicals Review Program 7 (Jan. 19, 2018), <https://www.regulations.gov/document?D=EPA-HQ-OPPT-2017-0585-0062> ("These delays underscore industry's continuing concerns that the section 5 program remains too slow . . ."), Docket ID: EPA-HQ-OPPT-2017-0585-0062; U.S. Chamber of Commerce Comment on New Chemicals Review Program 3 (Jan. 19, 2018), <https://www.regulations.gov/document?D=EPA-HQ-OPPT-2017-0585-0057> ("[T]he Chamber believes that EPA should continue to strive to meet the 90-day goal in a timelier and more effective fashion . . ."), Docket ID: EPA-HQ-OPPT-2017-0585-0057; Am. Petrol. Inst. Comment on New Chemicals Review Program 2 (Jan. 19, 2018), <https://www.regulations.gov/document?D=EPA-HQ-OPPT-2017-0585-0053> ("EPA should respond to a request for a Pre-Notice Consultation in a short timeframe—two to four days, rather than two to four weeks."), Docket ID: EPA-HQ-OPPT-2017-0585-0053; Int'l Fragrance Ass'n N. Am. Comment on New Chemicals Review Program 1 (Jan. 20, 2018), <https://www.regulations.gov/document?D=EPA-HQ-OPPT-2017-0585-0064> (identifying as a problem "review periods far exceeding 90 days – some exceeding a year"), Docket ID: EPA-HQ-OPPT-2017-0585-0064.

³⁷⁴ As EDF has previously explained, EPA is already committing systematic procedural violations by failing to make the public files for new chemicals electronically available to the general public. Env'tl. Def. Fund Comment on New Chemicals Review Program 23–26 (Jan. 20, 2018), <https://www.regulations.gov/document?D=EPA-HQ-OPPT-2017-0585-0071>, Docket ID: EPA-HQ-OPPT-2017-0585-0071. Under TSCA § 5(d), each Pre-manufacture Notice (PMN) "shall be made available, subject to section 14, for examination by interested persons." 15 U.S.C. § 2604(d)(1). EPA's implementing regulations provide that "[a]ll information submitted with a notice, including any health and safety study and other supporting documentation, will become part of the public file for that notice," 40 C.F.R. § 720.95, and those public files are supposed to be "available in the electronic docket at <http://www.regulations.gov>." *Id.* § 700.17(b)(1). But EPA generally does not make the public files for PMNs electronically available.

As EDF detailed in prior comments and in various blog posts, EPA regularly conceals vast swathes of information in this program, including providing many blank documents identified as consisting of health and safety studies.³⁷⁵ Notably, in this same context, industry commenters have urged EPA to take steps to accept data and information that will not be publicly disclosed or where EPA will only be provided with or make public industry-prepared summaries of the underlying data. *See, e.g.*, Comment submitted by Raleigh Davis, Assistant Direction, EHS, American Coatings Association (ACA), <https://www.regulations.gov/document?D=EPA-HQ-OPPT-2017-0585-0068> (“ACA strongly encourages EPA to develop as many of these [non-disclosure agreements] as possible.”); Comment submitted by Jared Rothstein, Senior Manager, Regulatory Affairs, Society of Chemical Manufacturers & Affiliates (SOCMA), p.1 <https://www.regulations.gov/document?D=EPA-HQ-OPPT-2017-0585-0049> (“EPA should accept the submission of robust summaries.”). Thus, industry has expressed a desire for EPA to continue to operate the new chemicals program with limited disclosure, and thus far, EPA has acceded to that wish.

If EPA extended the rule articulated in proposed § 30.5 to the new chemicals program, it would seem that EPA would either have to make much of the information in the public files available *or* EPA would be precluded from using this information. 83 Fed. Reg. at 18,769 n.3 (stating that EPA is proposing to preclude itself from using such data in future regulatory actions). Without this information, EPA generally would not be able to find that the new chemical “is not likely to present an unreasonable risk of injury to health or the environment,” the finding that allows unregulated manufacture of the chemical. *See* 15 U.S.C. § 2604(a)(3)(C). Notably, TSCA expressly provides a resolution when EPA has insufficient information, requiring that EPA regulate the chemical. *Id.* § 2604(a)(3)(B)(i), (e). When “the information available to [EPA] is insufficient to permit a reasoned evaluation of the health and environmental effects of the relevant chemical substance; ... [EPA] shall issue an order” regulating the chemical “to the extent necessary to protect against an unreasonable risk of injury to health or the environment.” *Id.* 2604(e). Thus, excluding the information would require EPA to regulate the new chemicals before they could enter the market.

Thus, EPA’s exclusion of the new chemicals program clearly favors industry, allowing industry to conceal information and evade regulation. In addition, EPA cannot rationally impose stringent new disclosure requirements that exclude extensive peer-reviewed, high-quality studies in some contexts while simultaneously authorizing the commercial distribution of new chemicals with almost no disclosure and no peer-review.

³⁷⁵ Env’tl. Def. Fund Comment on New Chemicals Review Program 24-25, <https://www.regulations.gov/document?D=EPA-HQ-OPPT-2017-0585-0071>. For more detail, see EDF’s series of blog posts on its finding in its our review of public files for nearly 70 new chemicals for which EPA made “not likely to present an unreasonable risk” determinations, *E.g.*, Stephanie Schwartz & Richard Dennison, *EPA’s Appalling Failure to Provide Public Access to Public Data on TSCA New Chemicals*, EDF Health Blog (Jan. 24, 2018), <http://blogs.edf.org/health/2018/01/24/epas-appalling-failure-to-provide-public-access-to-public-data-on-tsca-new-chemicals/>.

E. EPA's Proposal is Arbitrary Because it is Inconsistent With Long-Standing EPA and Federal Government Policies and Ongoing Efforts to Strengthen Science Quality in a Measured and Balanced Way through EPA's Existing Science Policies.

EPA claims throughout the Proposal that it is consistent with EPA and other federal government policies and approaches to transparency. However, a closer look reveals that the documents that EPA itself cites do not support the over-simplified and drastic approach taken by the Proposal. Federal government policies to promote data transparency have instead advocated a careful approach that balances the benefits of data disclosure with the costs and risks associated with it. Nowhere do they suggest that confidential information that cannot be made public is no longer valid for agency use. Instead, they aim to maximize the integrity and usability of data through data sharing when possible and practical—to enhance rather than hinder the ability of government agencies to achieve their missions. The Proposal is based on unsubstantiated claims that lack evidence, deviates from existing EPA and broader federal government policy without acknowledgement or explanation, and conflicts with leading research and policy proposals in this area—rendering the Proposal arbitrary and capricious.

Agencies are required to justify reversals in policy by addressing the existing record and reasons for why a change in policy is appropriate.³⁷⁶ They must acknowledge the change and “show that there are good reasons for the new policy.”³⁷⁷ The agency must supply a reasoned analysis beyond which would be required in the absence of the old policy.³⁷⁸ An agency may not “disregard contrary or inconvenient factual determinations that it made in the past.”³⁷⁹ EPA in the past took the position that:

[EPA] does not believe that it is appropriate to refuse to consider published studies in the absence of underlying data. The EPA frequently relies on peer reviewed studies in the public literature across agency programs without possessing underlying data and the Federal courts have made clear that the EPA is not required to obtain or analyze the raw data in order to rely on such studies. If the EPA and other governmental agencies could not rely on published studies without conducting independent analyses of the raw data underlying them, then much relevant scientific information would become unavailable for use in setting standards to protect public health and the environment.³⁸⁰

³⁷⁶ *FCC v. Fox Television Stations, Inc.* 556 U.S. 502, 515 (2009).

³⁷⁷ *Id.*

³⁷⁸ *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42 (1983) (“[A]n agency changing its course by rescinding a rule is obligated to supply a reasoned analysis for the change beyond that which may be required when an agency does not act in the first instance”).

³⁷⁹ *FCC v. Fox Television Stations, Inc.* 556 U.S. 502, 537 (2009) (Kennedy, J. concurring).

³⁸⁰ House of Representatives, Committee on Agriculture, *Hearing to Consider the Impacts of the Environmental Protection Agency's Actions on the Rural Economy* Serial No. 114-41, 82 (Feb. 11, 2016) (response to questions from Gina McCarthy, Administrator, EPA); *See also* Email from Nancy Beck to Justin Schwab and Richard Yamada (Mar. 5, 2018, 1:42:01 AM) (part of FOIA release to request by Union of Concerned Scientists citing EPA pesticide program documents from December 2016) (email flags language from EPA pesticide program documents: “To be clear, EPA continues to believe that the raw data should be made available for public inspection to ensure that EPA’s assessments are as transparent as possible. While the EPA therefore strives to ensure that data underlying research it relies upon are accessible to the extent possible, it does not believe that it is appropriate to refuse to consider published studies in the absence of underlying data. The EPA frequently relies on peer reviewed studies in

Thus, EPA in the past set forth a view diametrically opposed to the one it is taking now—in the past relying heavily on studies it would now be excluded from using. EPA previously recognized that there are other ways to validate scientific studies, such as through peer review, that do not require release of underlying data and its prior view rightly saw the danger in adopting a policy that would require EPA to make public underlying data.

EPA's current policies set forth standards of scientific integrity that involve use of the best scientific information available (see II.D.2), which the Proposal also now re-writes. While previously EPA took the view that all valid science (with proper quality control and assessment measures in place) should be considered as it sets standards, EPA now takes the position that it is more important to use only those studies where the underlying data and models are made available to the public, even if this compromises EPA's ability to use the best available science. EPA's existing open data policies recognize with exceptions and exemptions that as much as the pursuit of making data public is a worthy goal, there are competing interests. EPA has always taken the view that not releasing certain kinds of data to uphold these competing interests does not in fact compromise its scientific integrity or commitment to transparency—and the balance it strikes is the one most suitable to help it achieve its greater mission. The Proposal is arbitrary because EPA does not even acknowledge that it is now changing its view drastically and does not address the valid reasons underlying its prior policies or explain why they now merit changing.

1. Instead of providing a reasoned explanation for its change in policy, EPA wrongfully claims the Proposal is consistent with existing EPA, federal government, and third-party practices and policies.

As discussed further below in Section VIII.D, the footnotes of EPA's Proposal in many cases provide only vague references to policies and reports that purportedly support the Proposal, leaving the public to guess as to what EPA is referring and embark on a treasure hunt for the relevant item. But even where EPA provides specific citations, examination quickly reveals that frequently they do not fully support the propositions they accompany, and, when viewed in full context, provide evidence against the Proposal. Because EPA makes a series of conclusory statements provided with no explanation or reasoning that would help the reader understand why EPA interpreted the cited record to support the Proposal, the Proposal appears to be completely unsupported by evidence and explanation—rendering it arbitrary and capricious. A full documentation of the misrepresentations made in the footnotes of the Proposal is available in Appendix A and demonstrates that EPA is not able to substantiate its claims that the Proposal has been informed by or is consistent with the policies of EPA, other agencies, or other organizations.

the public literature across agency programs without possessing underlying data and the federal courts (see *Coalition of Battery Recyclers Association v. EPA*, 604 F.3d 613 (D.C. Cir. 2010); *American Trucking Associations v. EPA*, 203 F.3d 355 (D.C. Cir. 2002)) have made clear that EPA is not required to obtain or analyze the raw data in order to rely on such studies. If EPA and other governmental agencies could not rely on published studies without conducting an independent analysis of the raw data underlying them, then much relevant scientific information would become unavailable for use in setting standards to protect public health and the environment.”).

EPA claims: “The proposed rule takes into consideration the policies or recommendations of third party organizations who advocated for open science.”³⁸¹ The sentence is accompanied by a footnote listing a number of organizations, for most of them not providing reference to any specific policies, recommendations, or statements.³⁸²

One of these vague references points to the Administrative Conference of the United States’ Science in the Administrative Process Project, without providing further detail. Assuming that EPA is referring to the Administrative Conference of the United States’ *Recommendation 2013-3: Science in the Administrative Process*, Wendy Wagner, sole author of ACUS’s final report *Science in Regulation: A Study of Agency Decisionmaking Approaches* and who served on the panel that produced the Bipartisan Policy Center’s recommendations also cited by the Proposal has stated: “They don’t adopt any of our recommendations, and they go in a direction that’s completely opposite, completely different. . . . They don’t adopt any of the recommendations of *any* of the sources they cite. I’m not sure why they cited them.”³⁸³ While ACUS recommends agencies increase transparency of how they rely on scientific information and strive to make data underlying scientific information publicly available, nowhere does it suggest that agencies should not consider or rely on studies where underlying data and models cannot be made publicly available, or that these circumstances make scientific information less valid. ACUS instead suggests that information be made publicly available “to reproduce or assess the agency’s technical or scientific conclusions” “[c]onsistent with the limitations in the Information Quality Act (IQA) guidelines issued by the Office of Management and Budget and its own IQA guidelines”³⁸⁴ Moreover, ACUS acknowledges valid limitations on public disclosure of data such as legal protections for privacy, trade secrets, and confidential business information.³⁸⁵ Thus, ACUS recommends data be made public only “[t]o the extent practicable and permitted by law and applicable policies.”³⁸⁶ Unlike the Proposal, the recommendation acknowledges that agencies may still use information where underlying data cannot be publicly disclosed, and suggest agencies “note that fact and explain why they used the results if they chose to do so.”³⁸⁷ It thus provides a much more nuanced policy recommendation than that outlined in the Proposal—which suggests EPA either find a way to make underlying data and models public, despite the numerous potential obstacles and concerns in doing so, or completely disregard the research study.

³⁸¹ 83 Fed. Reg. at 18,770.

³⁸² 83 Fed. Reg. at 18,770. n. 10 (“These include policies and recommendations from: The Administrative Conference of the United States’ Science in the Administrative Process Project; National Academies’ reports on *Improving Access to and Confidentiality of Research Data*, *Expanding Access to Research Data*, and *Access to Research Data in the 21st Century*; the Health Effects Institute; Center for Open Science; members of the Risk Assessment Specialty Section of the Society of Toxicology, the Dose Response Section of the Society for Risk Analysis, and the International Society for Regulatory Toxicology and Pharmacology; and the Bipartisan Policy Center’s Science for Policy Project”).

³⁸³ Robinson Meyer, *Scott Pruitt’s New Rule Could Completely Transform the EPA*, The Atlantic (Apr. 25, 2018), <https://www.theatlantic.com/science/archive/2018/04/how-the-epas-new-secret-science-rule/558878/>.

³⁸⁴ *Administrative Conference Recommendation 2013-3: Science in the Administrative Process*, 78 Fed. Reg. 41,352, 41,358 (July 10, 2013).

³⁸⁵ 78 Fed. Reg. 41,352, 41,358 n.12 (July 10, 2013).

³⁸⁶ 78 Fed. Reg. 41,352, 41,358 (July 10, 2013).

³⁸⁷ 78 Fed. Reg. 41,352, 41,358 (July 10, 2013).

EPA's claims that its Proposal is consistent with the policies of major science journals is similarly misleading.³⁸⁸ EPA does not explain why the policies of scientific journals regarding the disclosure of data underlying their published studies *should* inform how an agency with a mission to protect human health and the environment uses research for regulatory actions. Additionally, these journals' policies provide exceptions for when privacy or other concerns do not allow for public sharing of data, and they never represent that this on its own weakens the validity of the research.³⁸⁹ And, as discussed *supra* in Section I.B.2.a), the editors of these journals have specifically dismissed the Proposal.³⁹⁰

EPA wrongfully claims its policy is consistent with existing OMB and EPA policies, while failing to recognize that these policies—while advocating for more transparency—take a measured, nuanced approach to data disclosure.³⁹¹ EPA cannot finalize this policy without acknowledging and providing a reasoned explanation for its divergence from long-standing policy and without providing actual evidence that supports the Proposal, which it has not done. Prior policies recognize that government decision-making requires considering all scientific information, and legitimate limitations to data disclosure should not obstruct sound policy-making. EPA cannot rely on these documents to support the rule, leaving an inadequately thin record of evidence to support the Proposal, and must respond to policy rationales articulated in these documents as it now changes course.

³⁸⁸ 83 Fed. Reg. at 18,770 (EPA states that the policies and recommendations it considered were “informed by the policies recently adopted by some major scientific journals and cites to “related policies from the Proceedings of the National Academy of Sciences, PLOS ONE, Science, and Nature.”); 83 Fed. Reg. at 18,771 n. 20 (citing “policies or recommendations of publishers Taylor & Francis, Elsevier, PLOS, and Springer Nature” as potential mechanisms for compliance with Proposal).

³⁸⁹ Taylor & Francis, *Data Sharing FAQs*, <https://authorservices.taylorandfrancis.com/data-sharing-faqs/> (All our policies allow exceptions where data sharing violates protection of human subjects or other valid subject privacy concerns.) (last accessed Aug. 15, 2018); Elsevier, *Research Data Policy*, <https://www.elsevier.com/about/our-business/policies/research-data> (policy merely encourages when possible, rather than requires, data sharing: “Research data should be made available free of charge to all researchers wherever possible and with minimal reuse restrictions.”) (last accessed Aug. 15, 2018); PLOS One, *Data Availability*, <http://journals.plos.org/plosone/s/data-availability> (allows exceptions to making data public “for ethical or legal reasons, e.g., public availability would compromise patient confidentiality or participant privacy” or present other threats) (last accessed Aug. 15, 2018); Springer Nature, *Research data policies FAQs*, <https://group.springernature.com/gp/authors/research-data-policy/faqs/12327154> (“reasonable restrictions on data availability are permitted to protect human privacy, biosafety or respect reasonable terms of use for data obtained under license from third parties.”) (last accessed Aug. 15, 2018). See, also, discussion in Appendix A.

³⁹⁰ Jeremy Berg et. al., *Joint statement on EPA proposed rule and public availability of data*, Science (Apr. 30, 2018), <http://science.sciencemag.org/content/early/2018/04/30/science.aau0116>.

³⁹¹ EPA states: “This proposed rule is also consistent with . . . the focus on transparency in OMB’s *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Information Disseminated by Federal Agencies* (the Guidelines) and OMB Memorandum 13–13: *Open Data Policy—Managing Information as an Asset*.” 83 Fed. Reg. at 18,769–70. EPA says the Proposal “builds upon prior EPA actions in response to government wide data access and sharing policies,” that it applies “concepts and lessons learned” from implementation of to the 2016 *Plan to Increase Access to Results of EPA-Funded Scientific Research*, 83 Fed. Reg. at 18,770, also citing to EPA *Open Government Plan 4.0*, *Open Data Implementation Plan*, *EPA’s Scientific Integrity Policy*, and *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency*, 83 Fed. Reg. at 18,770 n. 8.

The *Plan to Increase Access to Results of EPA-Funded Scientific Research*, discussed supra at I.B.2.b), represents the view EPA has consistently espoused in the past, that when it can make data available without compromising other critical values, it does, but will not exclude information from its consideration when it cannot.³⁹²

EPA cites to its implementation of OMB's guidelines, *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency*. These Guidelines note "[t]he mission of the EPA is to protect human health and safeguard the natural environment upon which life depends" and "[t]he collection, use, and dissemination of information of known and appropriate quality are integral to ensuring that EPA achieves its mission."³⁹³ They thus highlight that the controls on data quality exist to allow EPA to meet its mission—unlike the Proposal, which changes EPA's existing view by placing transparency of data, apparently for its own sake even when unrelated to data quality, ahead of EPA's ability to achieve its mission. As explained above in Section I.C, the Proposal violates the Information Quality Act and these Guidelines.³⁹⁴

EPA disregards the careful approach to data disclosure outlined in OMB Memorandum M-13-13, *Open Data Policy-Managing Information as an Asset*, which requires agencies to collect or create information in a way that supports downstream information processing and dissemination activities, and does not establish a policy of requiring agency data to be made public in order for the agency to be able to rely on it.³⁹⁵ It recognizes that sharing agency data with the public can result in numerous benefits, but requires careful thought about privacy and confidentiality concerns. The memorandum establishes "a framework to help institutionalize the principles of effective information management at each stage of the information's life cycle to promote interoperability and openness," noting "[w]hether or not particular information can be made public, agencies can apply this framework to all information resources to promote efficiency and produce value."³⁹⁶ It places consideration of privacy concerns at the forefront, saying "[a]gencies should exercise judgment before publicly distributing data residing in an existing system by weighing the value of openness against the cost of making those data public."³⁹⁷ EPA has provided no indication that it has carefully weighed these costs and benefits.

Before agencies make data publicly available, OMB Memorandum M-13-13 requires that agencies "review the information collected or created for valid restrictions" such as legal, "privacy, confidentiality pledge, security, trade secret, contractual, or other valid restrictions to release."³⁹⁸ OMB recognizes these restrictions "may affect the amount, type, form, and detail of

³⁹² See, also, discussion in Appendix A.

³⁹³ EPA, *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency* (EPA/260R-02-008) 5 (Oct. 2002), <https://www.epa.gov/quality/guidelines-ensuring-and-maximizing-quality-objectivity-utility-and-integrity-information>.

³⁹⁴ See, also, discussion in Appendix A.

³⁹⁵ OMB Memorandum M-13-13, *Open Data Policy-Managing Information as an Asset* 1 (May. 9, 2013).

³⁹⁶ *Id.*

³⁹⁷ *Id.* at 6.

³⁹⁸ *Id.* at 9.

data released by agencies.”³⁹⁹ It also requires agencies to consider the “‘mosaic effect’ of data aggregation,” discussed at Section II.A.2.b)ii, which EPA does not acknowledge at all in the Proposal.⁴⁰⁰

EPA’s *Open Government Plan 4.0* acknowledges that not all data is releasable to the public, even as it aims to “increase publicly accessible EPA data to support citizens’ participation in government and promote transparency and accountability of Agency operations.”⁴⁰¹ EPA states: “By providing *releasable* information in open and machine-readable formats, EPA enables the public and other organizations to better leverage the rich wealth of information available.”⁴⁰² EPA’s own *Open Data Policy* notes that it is important to develop “policies and processes to ensure that only appropriate data are released to the public and made available online.”⁴⁰³ To do so, EPA uses different “access levels” for different data sets, (public, restricted public and non-public) and notes that it may not be able to publicize data due to “law, regulation or policy, which address privacy, confidentiality, security or other valid restrictions.”⁴⁰⁴ EPA has not made clear that restricted access would satisfy the requirement of making information “publicly available.” The Proposal seems to completely do-away with this multi-level, nuanced approach, imposing a blanket “publicly available” requirement for all studies EPA intends to rely on, despite obstacles to their release.

The Proposal turns away from EPA’s *Scientific Integrity Policy*, which stresses “a firm commitment to evidence,”⁴⁰⁵ endorses use of “the best available science”⁴⁰⁶ and “[r]equire[s] reviews. . . regarding the content of a scientific product to be based only on scientific quality considerations.”⁴⁰⁷ The Proposal, on the other hand, inhibits use of sound scientific information and evidence by arbitrarily excluding science for reasons unrelated to its quality. While the policy “[r]ecognizes the value of independent validation of scientific methods”⁴⁰⁸ and facilitating “the free flow of scientific information” by making information available “including access to data and non-proprietary models underlying Agency policy decisions,”⁴⁰⁹ this is proposed as a flexible standard and an ideal to aspire to, not an absolute rule that takes priority over other competing interests—such as use of the best scientific information. As discussed more in Section VII.C this Administration has blatantly violated key aspects of the policy by silencing scientists and the dissemination of scientific information, which this Proposal seems aimed at continuing, directly undoing “EPA’s longstanding commitment to the timely and unfiltered dissemination of its scientific information – uncompromised by political or other interference” and goal to communicate scientific findings openly and actively to the public.⁴¹⁰ By now placing

³⁹⁹ *Id.* at 10.

⁴⁰⁰ *Id.* at 9-10.

⁴⁰¹ EPA, *Open Government Plan 4.0* 4 (Sept. 2016).

⁴⁰² *Id.* (emphasis added).

⁴⁰³ EPA, *Open Data Policy Implementation Plan 4*, https://www.epa.gov/sites/production/files/2015-05/documents/opendatapolicyimplementationplan_030415_finalb.pdf.

⁴⁰⁴ *Id.*

⁴⁰⁵ EPA, *Scientific Integrity Policy* 3.

⁴⁰⁶ *Id.* at 3-4.

⁴⁰⁷ *Id.* at 4.

⁴⁰⁸ *Id.*

⁴⁰⁹ *Id.*

⁴¹⁰ *Id.* at 5.

“transparency” ahead of use of the best available science, aside from violating statutory requirements, EPA is changing its own policies and priorities and must justify this new position.

In footnote 2, EPA dubiously claims the Proposal is consistent with the *Memorandum for the Heads of Executive Department and Agencies on Scientific Integrity* (Mar. 9, 2009).⁴¹¹ Notably, the Memorandum specifies, “Except for information that is *properly restricted from disclosure* under procedures established in accordance with statute, regulation, Executive Order, or Presidential Memorandum, each agency should make available to the public the scientific or technological findings or conclusions considered or relied on in policy decisions.”⁴¹² Not only does the Memorandum provide no support for the notion that agencies should be barred from relying on studies where the underlying data is properly restricted from disclosure it additionally discusses disclosure only of findings and conclusions, not underlying data.

Thus, despite EPA’s claims to the contrary, the Proposal marks a shift in policy that EPA has up to this point followed EPA arbitrarily fails to acknowledge this shift, to identify good reasons for the change, or to explain why EPA believes the proposed rule would be an improvement over current mechanisms utilized by EPA to ensure the integrity of EPA’s actions.

2. EPA’s Proposal fails to consider important implementation problems that existing EPA and federal government policies place at the forefront.

An agency rule is arbitrary and capricious if it “entirely failed to consider an important aspect of the problem.”⁴¹³ EPA’s Proposal completely fails to consider the numerous barriers that currently exist to making underlying data public. As highlighted in OMB and EPA policies, there is an understanding that the worthy goal of ensuring greater transparency of scientific information is in tension with other compelling, competing interests such as privacy and confidentiality. When these two are in tension, existing policies have recognized that this will prevent certain data from being publicly released—and that agencies still need to be able to use scientific information in these circumstances. Transparency goals should not override the ability of the agency to rely on otherwise valid scientific information as it goes about achieving its core mission. While the Proposal purports to take into account privacy and confidentiality concerns, it appears to do so by either grossly oversimplifying EPA’s ability to address these concerns or by deeming all such information unusable—essentially completely failing to consider the problems of this approach.

OMB Circular A-130 recognizes that the values of openness, transparency, and allowing the free flow of information between the federal government and the public are important values, they must be contextualized. Thus, it cautions: “Promoting openness and interoperability, *subject*

⁴¹¹ 83 Fed. Reg. at 18,769 n. 2 (“If scientific and technological information is developed and used by the Federal Government, it should ordinarily be made available to the public. To the extent permitted by law, there should be transparency in the preparation, identification, and use of scientific and technological information in policymaking.”)

⁴¹² *Memorandum for the Heads of Executive Department and Agencies on Scientific Integrity* (Mar. 9, 2009), 74 Fed. Reg. 10671 (Mar. 11, 2009), <https://obamawhitehouse.archives.gov/the-press-office/memorandum-heads-executive-departments-and-agencies-3-9-09> (emphasis added).

⁴¹³ *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

to applicable legal and policy requirements, increases operational efficiencies, reduces costs, improves services, supports mission needs, and increases public access to valuable Federal information.”⁴¹⁴ Similarly it states: “The open and efficient exchange of scientific and technical Federal information, *subject to applicable security and privacy controls* and the proprietary rights of others, fosters excellence in scientific research and effective use of Federal research and development resources.”⁴¹⁵ Circular A-130 makes clear that “[p]rotecting an individual’s privacy is of utmost importance. The Federal Government shall consider and protect an individual’s privacy throughout the information life cycle.”⁴¹⁶ It requires that agencies recognize that “Federal information is managed by making information accessible, discoverable, and usable by the public to the extent permitted by law and *subject to privacy, security (which includes confidentiality), or other valid restrictions pertaining to access, use, dissemination, and disclosure*. . . .”⁴¹⁷

Further, Circular A-130 requires agencies to “[l]imit the creation, collection, use, processing, storage, maintenance, dissemination, and disclosure of [personally identifiable information] to that which is legally authorized, relevant, and reasonably deemed necessary for the proper performance of agency functions” and “[t]o the extent reasonably practicable. . . .reduce all [personally identifiable information] to the minimum necessary for the proper performance of authorized agency functions.”⁴¹⁸

The appendix to the Circular realizes that privacy protections require ongoing progress and:

Emerging technologies and services may continue to shift the ways in which agencies acquire, develop, manage, and use information and technology. As technologies and services continue to change, so will the threat environment. Agency programs must have the capability to identify, respond to, and recover from current threats while protecting their information resources and the privacy of the individuals whose information they maintain.⁴¹⁹

OMB Memorandum M-14-06 specifically lays out policies intended to help agencies make the most of “administrative data that cannot be made publicly available due to statutory, regulatory, or policy protections,” for statistical purposes, including “activities typically characterized as research, evaluation, and analysis, as long as the focus of those activities is on reporting aggregate findings about a group.”⁴²⁰ It notes “[s]ome administrative data can be publicly released, whereas other administrative data cannot be released. . . [and] it is the case that both types of administrative data (public and nonpublic) can be useful for Federal statistical

⁴¹⁴ OMB Circular A-130 at 3 (emphasis added).

⁴¹⁵ *Id.* at 4 (emphasis added).

⁴¹⁶ *Id.*

⁴¹⁷ *Id.* at 14 (emphasis added).

⁴¹⁸ *Id.* at 17.

⁴¹⁹ *Id.* at Appendix 1-1.

⁴²⁰ OMB Memorandum M-14-06 at 6.

purposes,” suggesting agencies should not abandon reliance on data not able to be publicly released.⁴²¹

OMB Memorandum M-11-02 “strongly encourages Federal agencies to engage in coordinated efforts to share high-value data” but notes that in certain cases sharing data will contravene other compelling concerns and that federal agencies need to think about applicable privacy laws, regulations, and policies to “fully protect[] individual privacy” and preserve public trust.⁴²² Unlike the Proposal, it takes a more nuanced approach recognizing that sharing data is not always appropriate and should only be done “responsibly and appropriately.”⁴²³

OMB recognizes that even when just sharing information among agencies, privacy concerns must be weighed against those benefits that agencies can achieve with sharing data: “Agencies should work together to determine what data sharing opportunities are desirable, feasible, and appropriate. In general, data sharing should only be pursued if the benefits outweigh the costs.”⁴²⁴

OMB Memorandum M-10-06 also encourages “a plan for timely publication of the underlying data. . . in an open format and as granular as possible, consistent with statutory responsibilities and subject to valid privacy, confidentiality, security, or other restrictions.”⁴²⁵ The memorandum aims to achieve “transparency, participation, and collaboration,”⁴²⁶ recognizing that not making data available does not deter those goals when there are valid concerns and the legitimacy of the data is not otherwise questioned.

EPA’s *Draft Strategic Data Action Plan Version 1.0* similarly aims to work towards a more open government, and to increase the public’s access to high quality data. However, the agency recognizes barriers to this goal, not applying the plan to “data resources containing Confidential Business Information (CBI) or sensitive data that are not available for public access.”⁴²⁷ In similarly recognizes that “[i]n order to protect the privacy and security of the public, businesses, and US Government staff and operations, some types of data may be deemed sensitive and will not be made public or published on Data.gov.”⁴²⁸

These all highlight instances where EPA and OMB have recognized that privacy and confidentiality present ongoing concerns that are not easily addressed and that conflict with other aims of federal government. Yet, they recognize that protecting information in these cases is a valid path, and not making data public does not compromise the validity of the findings or

⁴²¹ *Id.* at 2.

⁴²² OMB Memorandum M-11-02.

⁴²³ *Id.*

⁴²⁴ Memoranda 01-05 -- Guidance on InterAgency Sharing of Personal Data - Protecting Personal Privacy (Dec. 20, 2000), <https://www.whitehouse.gov/wp-content/uploads/2017/11/2001-M-01-05-Guidance-on-Inter-Agency-Sharing-of-Personal-Data-Protecting-Personal-Privacy.pdf>.

⁴²⁵ OMB Memorandum M-10-06 on Open Government Directive at 8.

⁴²⁶ *Id.* at 1.

⁴²⁷ EPA, *Draft Strategic Data Action Plan Version 1.0* 3 (Mar. 2011) https://www.epa.gov/sites/production/files/documents/epa_sdap_v1.0.pdf.

⁴²⁸ *Id.* at 14.

conclusions upon which the data is based and should prevent agencies from using those findings, conclusions, and data to inform their work. The Proposal provides no explanation for why EPA is now changing its view to a conflicting one, making the Proposal arbitrary.

III. The Proposed Rule's Peer Review Provisions Raise Numerous Concerns.

Proposed section 30.7 provides that “EPA shall conduct independent peer review on all *pivotal regulatory science* used to justify *regulatory decisions* consistent with the requirements of the OMB Final Information Quality Bulletin for Peer Review (70 Fed. Reg. 2664) and the exemptions described therein.” This proposed provision generally appears to be designed to enshrine OMB’s existing peer review requirements for “influential scientific information.”⁴²⁹

Remarkably, the preamble to the proposed rulemaking lacks any explanation whatsoever for why EPA is proposing this new peer review requirement or what its impact might be. EPA has additionally not provided any information to suggest that EPA is not already following OMB’s Peer Review Bulletin. EPA’s lack of any supporting rationale or analysis frustrates the public’s ability to provide meaningful comment on this provision,⁴³⁰ and is itself a sign that this requirement is fundamentally arbitrary. In addition, the discussion below outlines several specific concerns with this proposed regulatory requirement.

A. EPA Has Failed to Consider the Costs of Making OMB Peer Review Requirements Judicially Enforceable.

The most obvious change wrought by EPA’s incorporation of OMB’s Peer Review Bulletin into EPA’s regulations is that it apparently would make the OMB Peer Review requirements judicially enforceable. At present, OMB Peer Review Bulletin requirements are not judicially enforceable.⁴³¹ Rather, the Bulletin “specifically disclaims that its contents create any enforceable rights, thereby preserving the agency’s discretion to interpret and apply” the Bulletin.⁴³² If EPA finalizes its proposed peer review rules, EPA may find itself subject to countless legal challenges to its regulations based on compliance with OMB Peer Review requirements. These additional legal challenges would come at a cost, including the financial cost of increased litigation as well as the cost to public health and the environment when unwarranted legal challenges lead to lengthy delays in implementation of needed regulatory protections. Given that EPA is already subject to OMB Peer Review requirements, it is unclear

⁴²⁹ OMB, *Final Information Quality Bulletin for Peer Review*, 70 Fed. Reg. 2664, 2677 (Jan. 14, 2005) [Hereinafter: OMB Peer Review Bulletin].

⁴³⁰ See *Connecticut Light & Power Co. v. Nuclear Regulatory Com.*, 673 F.2d 525, 530 (D.C. Cir. 1982) (“The purpose of the comment period is to allow interested members of the public to communicate information, concerns, and criticisms to the agency during the rule-making process. If the notice of proposed rule-making fails to provide an accurate picture of the reasoning that has led the agency to the proposed rule, interested parties will not be able to comment meaningfully upon the agency’s proposals.”); *Honeywell Int’l, Inc. v. EPA*, 372 F.3d 441, 445, (D.C. Cir. 2004) (“Under the Administrative Procedure Act, a notice of proposed rulemaking must “provide sufficient factual detail and rationale for the rule to permit interested parties to comment meaningfully.”).

⁴³¹ OMB Peer Review Bulletin § XII, 70 Fed. Reg. at 2674 (“This Bulletin is intended to improve the internal management of the executive branch, and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its agencies or other entities, its officers or employees, or any other person.”).

⁴³² *Family Farm Alliance v. Salazar*, 749 F.Supp. 2d 1083, 1095 (E.D. Ca. 2010).

whether the proposed regulation would provide any new benefits in terms of ensuring that EPA's regulations are based on valid and unbiased science. Yet the administrative record for this proposed rulemaking is devoid of any EPA analysis of the costs and benefits of making the existing peer review requirements judicially enforceable. EPA must carefully evaluate the anticipated costs and benefits from these proposed regulatory requirements and provide a reasoned explanation for why they are needed.

B. EPA Must Clarify that Studies that Have Already Been Adequately Peer-Reviewed by Third Parties Need Not be Re-Reviewed by EPA.

Because proposed section 30.7 expressly incorporates the OMB Peer Review Bulletin “and the exemptions described therein,” it appears that EPA intends to incorporate the OMB Peer Review Bulletin provision providing that “agencies need not have further peer review conducted on information that has already been subjected to adequate peer review.”⁴³³ However, there is some ambiguity due to language in proposed section 30.7 instructing that EPA must “ask peer reviewers to articulate the strengths and weaknesses of EPA’s justifications for the assumptions applied and the implications of those assumption for the results.” Obviously, peer review conducted prior to EPA’s reliance on a study would not have involved review of the strengths and weaknesses of EPA’s justifications. If EPA were required to re-peer review all influential scientific information, this rulemaking would burden EPA with needless and significant costs that likely would bring many EPA rulemakings to a standstill, preventing EPA from fulfilling its statutory mission of protecting public health and the environment. To prevent this from happening, EPA must clarify that the proposed rule will not supplant EPA’s existing authority under the OMB Peer Review Bulletin not to conduct further peer review where information has already been subject to adequate peer review—and that such prior peer review is not subject to the requirement in proposed section 30.7 that reviewers consider the strengths and weaknesses of EPA’s justifications.

C. EPA Must Clarify the Intent of the Exemption Provision with Respect to Peer Review Requirements and Confirm that the OMB Peer Review Bulletin’s Waiver Provision Would Remain in Effect for EPA.

EDF does not support the peer review provisions for the reasons detailed in this section, but if EPA moves ahead with these proposed provisions, EPA must revise the proposed regulatory language to clarify that the waiver authority provided by the OMB Peer Review Bulletin—which OMB itself has emphasized “ensure[s] needed flexibility”—would remain in effect for EPA even if EPA finalizes the proposed peer review regulations.⁴³⁴

Proposed section 30.9(b) provides that the Administrator may grant an exemption from the peer review requirements if he or she determines that “[it] is not feasible to conduct independent peer review on all pivotal regulatory science used to justify regulatory decisions for reasons outlined in OMB Final Information Quality for Peer Review (70 FR 2664), Section IX.” Oddly, however, only two of the seven enumerated exemptions in Section IX of the OMB Peer

⁴³³ OMB Peer Review Bulletin, 70 Fed. Reg. at 2675.

⁴³⁴ OMB Peer Review Bulletin, 70 Fed. Reg. at 2673.

Review Bulletin pertain to feasibility—Exemption 1 governing “national security, foreign affairs, or negotiations involving international trade or treaties” and Exemption 3 governing time-sensitive health or safety disseminations.⁴³⁵ If EPA decides to finalize peer review requirements, EPA must amend its proposed regulation to clarify that all of the exemptions set forth in section IX of the OMB Peer Review Bulletin remain in effect regardless of whether they pertain to feasibility. Furthermore, EPA must clarify what, if any, additional effect is intended by the exemption provision in proposed section 30.9.

Additionally, EPA must amend the proposed rule to confirm that the “Deferral and Waiver” provision set forth in Section VIII of the OMB Peer Review Bulletin remains in effect for EPA. That provision provides: “The agency head may waive or defer some or all of the peer review requirements of Sections II and III of this Bulletin where warranted by a compelling rationale. If the agency head defers the peer review requirements prior to dissemination, peer review shall be conducted as soon as practicable.”⁴³⁶ OMB explained that this provision “ensure[s] needed flexibility in unusual and compelling situations not otherwise covered by the exemptions in the Bulletin before information is disseminated.”⁴³⁷ If EPA were to finalize the “exemption” language in proposed section 30.9(b) without clarification, it is possible that it could be read to encompass the entirety of the Administrator’s ability to grant exemptions, supplanting Section VIII of the OMB Peer Review Bulletin.

D. EPA Must Clarify How the Proposed Rule Would Impact EPA’s Existing Peer Review Handbook.

EPA’s Peer Review Handbook incorporates the provisions of OMB’s Peer Review Bulletin.⁴³⁸ In the Handbook, EPA confirms that it “conducts peer review of its products in accordance with the guidance in the OMB Peer Review Bulletin.”⁴³⁹ However, the EPA Peer Review Handbook adds details and specific procedures that are not present in the OMB Peer Review Bulletin.

Surprisingly, EPA’s proposed peer review regulations do not even mention EPA’s Peer Review Handbook, let alone explain how the new proposed regulations would impact EPA’s compliance with the Handbook. For example, EPA’s Handbook specifies “exemption criteria” in Section 3.3.⁴⁴⁰ EPA must clarify whether anything in the proposed peer review regulation would supplant instructions in the Peer Review Handbook, and if so, provide a reasoned explanation for the change. Likewise, EPA must explain the role of the Peer Review Handbook going forward in administering peer review requirements.

⁴³⁵ OMB Peer Review Bulletin, 70 Fed. Reg. at 2674.

⁴³⁶ OMB Peer Review Bulletin, 70 Fed. Reg. at 2673.

⁴³⁷ OMB Peer Review Bulletin, 70 Fed. Reg. at 2673.

⁴³⁸ U.S. EPA, *Science and Technology Policy Council Peer Review Handbook*, 4th Ed. (2015), https://www.epa.gov/sites/production/files/2016-03/documents/epa_peer_review_handbook_4th_edition.pdf. [Hereinafter: EPA Peer Review Handbook].

⁴³⁹ EPA Peer Review Handbook at 26.

⁴⁴⁰ EPA Peer Review Handbook at 44-45.

IV. The Proposal Would Impose Arbitrary and Inappropriate Methods for Assessing Health Risks

A. EPA's Proposal Seeks to Undermine Key Scientific and Public Health Tenets Relating to Dose-Response and the Use of Defaults.

The proposed rule asserts that a broad interest of the current Administration is to “ensure that the data and models underlying scientific studies that are pivotal to . . . regulatory action are available to the public”⁴⁴¹ and to “change agency culture and practices regarding data access so that the scientific justification for regulatory actions is truly available for validation and analysis.”⁴⁴² However, the Proposal specifies a particular interest and initial focus on “dose response data and models” as evident throughout the preamble and proposed regulatory provisions.

Dose-response studies are a critical element of risk assessments for toxicants including air pollutants. Assessment of a toxicant's risks typically proceeds through a four-step process: 1) hazard identification, 2) dose-response assessment, 3) exposure assessment, and 4) risk characterization.⁴⁴³ Dose-response assessment describes the relationship between exposure to a toxicant and observed effect on human or ecological receptor. EPA provides the following description of dose-response on its website: “Dose-Response Assessment . . . characterizes the quantitative relationship between chemical exposure and each credible health hazard. These quantitative relationships are then used to derive toxicity values.”⁴⁴⁴ Dose-response plays a central role in the evaluation of chemical risks as it provides the characterization of the potency or effect size of the toxicant. In other words, dose-response assessment is used to determine the levels of exposure at which adverse effects will occur and thus informs what risk management actions should be taken to protect human and ecological health. Dose-response assessments are commonly used to derive chemical toxicity values. The lower a substance's toxicity value the greater its potency and the less exposure is necessary for an effect to occur.

EPA reveals the underlying motivation behind its interest in transparency of dose-response data and models on page eight of the Proposal, where it states:

In addition, this proposed regulation is designed to increase transparency of the assumptions underlying dose response models. As a case in point, there is growing empirical evidence of non-linearity in the concentration-response function for specific pollutants and health effects. The use of default models, without consideration of alternatives or model uncertainty, can obscure the scientific justification for EPA actions. To be even more transparent about these complex relationships, EPA should give appropriate consideration to high quality studies

⁴⁴¹ Proposed Rule, 83 Fed. Reg. at 18769-70.

⁴⁴² Proposed Rule, 83 Fed. Reg. at 18770.

⁴⁴³ EPA, *Conducting a Human Health Risk Assessment*, <https://www.epa.gov/risk/conducting-human-health-risk-assessment> (last accessed Aug. 16, 2018).

⁴⁴⁴ EPA, *Basic Information about the Integrated Risk Information System*, <https://www.epa.gov/iris/basic-information-about-integrated-risk-information-system> (last accessed Aug. 16, 2018).

that explore: A broad class of parametric concentration-response models with a robust set of potential confounding variables; nonparametric models that incorporate fewer assumptions; various threshold models across the exposure range; and spatial heterogeneity. EPA should also incorporate the concept of model uncertainty when needed as a default to optimize low dose risk estimation based on major competing models, including linear, threshold, and U-shaped, J-shaped, and bell-shaped models.⁴⁴⁵

This excerpt raises several troubling and erroneous concepts that are contrary to core scientific tenets and best practices in chemical hazard and risk assessment as discussed extensively in a seminal 2009 report by the National Academies (Academies): *Science and Decisions: Advancing Risk Assessment (Science and Decisions)*.⁴⁴⁶ The report was requested and sponsored by EPA's National Center for Environmental Assessment and was developed over a three-year period by a 15-member committee that included state environmental agencies, non-governmental organizations, industry, and academic institutions. The committee was specifically tasked with "developing scientific and technical recommendations for improving risk analysis approaches used by EPA, including providing practical improvements that EPA could make in the near term (2-5 years) and in the longer term (10-20 years)."⁴⁴⁷ The report has been cited over 400 times in the scientific literature.

The Proposal fails to discuss these best practices for risk assessment, much less provide any persuasive reason for departing from them. The Proposal provides no support for its assertion that there is "growing empirical evidence" of nonlinearity in dose-response relationships; fails to acknowledge or contend with the National Academies' finding that non-threshold dose-response relationships are common for toxicants, and should be assumed as a default; fails to discuss the well-known rationales put forward by the National Academies for using default models; and irrationally prioritizes consideration of studies that employ a wide range of dose-response models, without any consideration for whether those alternative dose-response models are appropriate for risk assessment. Alarming, the Proposal offers no analysis of how the proposed requirements to consider threshold-response relationships and avoid default models would further the protection of human health and the environment—and gives no indication that the Agency has considered whether its proposed approach affords appropriate protection for the public in evaluating the risks of dangerous pollutants and toxicants. The proposed requirement is irretrievably arbitrary and unjustified, and must be withdrawn.

1. The proposal arbitrarily dismisses linear (i.e., non-threshold) dose-response relationships.

EPA makes a blanket assertion that "there is growing empirical evidence of non-linearity in the concentration-response function for specific pollutants and health effects" without any evidentiary basis.⁴⁴⁸ In contrast, in *Science and Decisions*, the Academies discussed at length the

⁴⁴⁵ Proposed Rule, 83 Fed. Reg. at 18770.

⁴⁴⁶ National Academies, *Science and Decisions: Advancing Risk Assessment* (2009), <https://www.nap.edu/catalog/12209/science-and-decisions-advancing-risk-assessment>.

⁴⁴⁷ *Id.*

⁴⁴⁸ Proposed Rule, 83 Fed. Reg. at 18770.

evidence for the opposite. Namely, non-linear dose-response relationships—that is the existence of thresholds of chemical exposure below which effects are not expected to be observed—is the exception rather than the rule when considering background exposures, co-exposures, variability across the diverse population and other considerations. The *Science and Decisions* report notes:

. . . [A]n individual's risk from exposure to an environmental chemical is determined by the chemical itself, by concurrent background exposures to other environmental and endogenous chemicals that affect toxicity pathways and disease processes, and by the individual's biologic susceptibility due to genetic, lifestyle, health, and other factors. How the population responds to chemical insults depends on individual responses, which vary among individuals.⁴⁴⁹

In this regard, it is important to note that risk assessments are typically designed to estimate incremental risk in the population due to exposure to a single hazard. As discussed by the Academies, individual risk is determined by both the chemical exposure and an individual's unique circumstance of factors (e.g., co-exposures and susceptibilities). Cancer incidence in the population illustrates the significance of these additional factors in considering actual individual risk to a particular chemical exposure. Individual lifetime risk of developing cancer is 1 in 3, and 1 in 5 for dying from cancer,⁴⁵⁰ indicating a substantial population baseline risk resulting from a large number of exposures and other risk factors. Assuming that there is somehow a threshold for everyone cannot be supported by the evidence. Therefore, given that the mission of EPA is to protect public health, the linear approach is most appropriate unless there is strong evidence in favor of an alternative as recommended in *Science and Decisions*.

EPA currently approaches risk assessment of 1) carcinogens and 2) noncarcinogens and carcinogens “acting through an MOA [mode of action] considered nonlinear at low doses”⁴⁵¹ separately—applying a linear dose-response framework for the former and a non-linear dose-response framework for the latter. The Academies strongly argued against this arbitrary distinction and recommended a uniform *linear* approach to the assessment of all chemicals. Indeed, for carcinogens purported to have a non-linear MOA, the Academies indicated:

. . . omissions in this overall approach for low-dose nonlinear carcinogens could yield inaccurate and misleading assessments. . . . [T]he current EPA practice of determining “nonlinear” MOAs does not account for mechanistic factors that create linearity at low dose. The dose-response relationship can be linear at a low dose when an exposure contributes to an existing disease process. Effects of exposures that add to background processes and background endogenous and exogenous exposures can lack a threshold if a baseline level of dysfunction occurs without the toxicant and the toxicant adds to or augments the background process. Thus, even small doses may have a relevant biologic effect. That may be difficult

⁴⁴⁹ National Academies, *Science and Decisions: Advancing Risk Assessment* 135 (2009).

⁴⁵⁰ American Cancer Society, Lifetime Risk of Developing or Dying From Cancer, <https://www.cancer.org/cancer/cancer-basics/lifetime-probability-of-developing-or-dying-from-cancer.html> (last revised Jan. 4, 2018).

⁴⁵¹ National Academies, *Science and Decisions: Advancing Risk Assessment* 129 (2009).

to measure because of background noise in the system but may be addressed through dose-response modeling procedures. Human variability with respect to individual thresholds for a nongenotoxic cancer mechanism can result in linear dose-response in the population.⁴⁵²

Similarly, for noncarcinogens, the Academies indicated that “noncarcinogens can exhibit low-dose linearity, for example, when there is considerable interindividual variability in susceptibility and each individual has his or her own threshold, especially when an underlying disease (such as cardiopulmonary disease) can interact with the toxicant (such as particulate matter [PM] or ozone).”⁴⁵³

The Academies ultimately and definitively recommended that “cancer and noncancer responses be assumed to be linear as a default. . . [and that] [a]n alternative analytic option. . . is available for cases in which it can be shown that background is unlikely to be an important contributor to risk, according to the recommended evaluation of MOAs and background.”⁴⁵⁴

2. The proposal improperly dismisses defaults.

EPA’s Proposal also indicates an interest and intent to move away from “default models, without consideration of alternatives or model uncertainty” which purportedly “can obscure the scientific justification for EPA actions.”⁴⁵⁵ Here, EPA demotes and ignores the purpose of science-based defaults, in suggesting that they “obscure the scientific justification for EPA actions” while simultaneously encouraging routine application of model alternatives without meaningful justification or substantiation.

Again, EPA’s Proposal deviates significantly from the recommendations in *Science and Decisions* where the Academies wrote,

[D]efaults need to be maintained for the steps in risk assessment that require inferences or to fill common data gaps. Criteria are needed for judging whether, in specific cases, data are adequate to support a different inference from the default (or whether data are sufficient to justify departure from a default).⁴⁵⁶

The Academies further recommended that 1) “EPA should continue and expand use of the best, most current science to support or revise its default assumptions,” 2) “work toward the development of explicitly stated defaults to take place of implicit or missing defaults,” and 3) that “departure [from defaults] should occur only when the evidence of the plausibility of alternatives is clearly superior to the evidence of the value of the default.”⁴⁵⁷ These recommendations underscore and reaffirm the role of defaults, and make clear that deviations

⁴⁵² National Academies, *Science and Decisions: Advancing Risk Assessment* 129-30 (2009).

⁴⁵³ National Academies, *Science and Decisions: Advancing Risk Assessment* 131 (2009).

⁴⁵⁴ National Academies, *Science and Decisions: Advancing Risk Assessment* 180 (2009).

⁴⁵⁵ Proposed Rule, 83 Fed. Reg. at 18770.

⁴⁵⁶ National Academies, *Science and Decisions: Advancing Risk Assessment* 207 (2009).

⁴⁵⁷ *Id.*

from defaults are to be considered carefully, on a case-by-case basis, and only when adequately justified.

3. The Proposal arbitrarily promotes studies that include a variety of dose-response models.

EPA's Proposal promotes the use of studies that explore a variety of dose-response models. Use of dose-response models to estimate pollutant or chemical risk should generally address issues such as goodness-of-fit, confidence bounds around predicted risks, biological plausibility, and sensitivity of the prediction to untested assumptions.⁴⁵⁸

However, giving higher weight to studies that use a wide range of models just because they use a wide range models is wholly inappropriate, arbitrary, and without scientific or public health justification. In fact, it creates a perverse incentive to apply multiple models to data without regard to appropriateness of fit and underlying assumptions (among other key considerations), and importantly, without regard to public health and ecological protection. It is worth noting that nowhere in the Proposal has the agency articulated how this requirement would further its primary mission and purpose of protecting human health and the environment.

There are numerous dose-response analyses that could be applied to any data set. Any analysis of the data assumes an underlying statistical distribution of the data, models for mean response, variance structures, shapes, and other data fit considerations that are subject to choice in the formal analysis. Scientists have historically used a reduced set of science-based, empirically supported models for specific types of data that have obtained widespread acceptance. EPA's specification of various types of modeling approaches the agency should consider ignores this reality.

4. The proposed rule provides no justification for codifying scientific approaches into regulation.

The proposed rule's provisions addressing dose-response models are inappropriate for the numerous reasons discussed in this section. They also unnecessarily and inappropriately memorialize highly complex and technical scientific issues into regulation—a generally frowned approach given the inherently evolving nature of science. These issues are more appropriately dealt with in guidance, a more flexible vehicle better equipped for adapting to new scientific understanding and in this way supporting use of best available science.

V. EPA Fails to Adequately Consider Costs and Benefits of the Proposal.

It is arbitrary and capricious to “‘entirely fail[] to consider an important aspect of the problem’ when deciding whether regulation is appropriate.” *Michigan v. EPA*, 135 S. Ct. 2699, 2707 (2015) (quoting *State Farm*, 463 U.S. at 43). As in *Michigan*, failure to consider the costs and benefits of a regulation where there is no statutory bar to doing so is arbitrary and capricious.

⁴⁵⁸ Nat'l Research Council, *Health Risks from Dioxin and Related Compounds: Evaluation of the EPA Reassessment* (2006), <https://www.nap.edu/catalog/11688/health-risks-from-dioxin-and-related-compounds-evaluation-of-the>.

The proposed rule entirely fails to comply with the requirements of non-arbitrary-and-capricious rulemaking because it fails to disclose, much less analyze or consider, any of the costs of the rule; barely discusses and does not analyze or quantify the benefits; does not provide any *reasoned* explanation of why the benefits of the rule justify its costs; and does not consider potential alternatives. The Proposal’s discussion of costs and benefits is a scant two paragraphs⁴⁵⁹ (and was apparently not included at all in the version sent to the Office of Management and Budget).⁴⁶⁰ The proposed rule begins by conclusorily asserting that “EPA believes the benefits of this proposed rule justify the costs.”⁴⁶¹ It then briefly discusses the perceived benefits, incorrectly suggesting that the National Academy of Sciences shares EPA’s view by citing to a publication that discusses both *risks* and opportunities of expanding access to research data, and does not discuss *at all* the costs and benefits of *ignoring* relevant science in regulatory decisionmaking.⁴⁶² It then merely states that the “action should be implemented in a cost-effective manner,” citing vaguely to “recent activities of the scientific community and other federal agencies” without any concrete examples or analysis.⁴⁶³ The preamble’s discussion emphasizes that the Proposal does not compel EPA to make information available where it concludes that doing so is not possible, but omits that if compliance is not possible, EPA will not consider the study, which has its own costs. It then concludes by citing the working paper of the Mercatus Center⁴⁶⁴ that baldly asserts that improvements in reproducibility “can be thought of as increasing the net benefits of regulation because they would avoid situations in which costs or benefits are wrongly estimated to occur or in which regulatory costs are imposed without corresponding benefits.”⁴⁶⁵ Setting aside the lack of substantiation for this assertion, it entirely omits situations in which costs and benefits are wrongly estimated because the relevant science is not used—and the costs that would be imposed on society if EPA inadequately protects communities from harmful pollution or toxic exposures.

Indeed, the Proposal *nowhere* discusses its significant costs in either quantitative or qualitative terms, costs that have actually been examined by independent organizations, and that are susceptible to analysis. If the Proposal is truly “designed to provide a mechanism to increase access to” data “in a manner consistent with statutory requirements for protection of privacy and confidentiality of research participants,” 83 Fed. Reg. at 18,770, then it will have significant costs. And if, as it appears, the Proposal’s true “mechanism” is excluding science from regulatory decisionmaking, its costs will be even greater in the form of insufficiently protective regulations.

⁴⁵⁹ Proposed Rule, 83 Fed. Reg. at 18,772.

⁴⁶⁰ *Compare*, EO 12866 Proposal 2080-AA14 OIRA Conclusion Document (Docket ID. No. EPA-HQ-OA-2018-0259-0006) *with* EO 12866 Proposal 2080-AA14 OIRA Review Start Document (Docket ID. No. EPA-HQ-OA-2018-0259-0007).

⁴⁶¹ Proposed Rule, 83 Fed. Reg. at 18,772.

⁴⁶² *Id.*

⁴⁶³ *Id.*

⁴⁶⁴ For a proposal allegedly aimed at increasing transparency, it is notable that EPA does not disclose that Charles Koch—an outspoken opponent of public health protections who stands to gain financially from deregulation—is a board member of the Mercatus Center. Mercatus Center, *Charles Koch*, <https://www.mercatus.org/charles-koch> (last accessed: Aug. 1, 2018).

⁴⁶⁵ Proposed Rule, 83 Fed. Reg. at 18,772.

If it were not possible to quantify and monetize any of the costs, which is not the case here as discussed below, EPA would still be required under E.O. 12866 and the requirements of rational rulemaking to identify and discuss the qualitative costs of this Proposal. It is inherently irrational for an agency to take an action without any consideration of any costs, disadvantages or negative effects of that action. The qualitative costs of this Proposal include the costs to researchers of actions they must undertake to protect the confidentiality of patient and subject data, as well as to compile and make public their raw data, and the potential loss of subjects (and attendant damage to research efforts and results) due to confidentiality concerns. There are also various costs to the agency of administering the regulation, which include contacting researchers, gathering data, ensuring that patient confidentiality and confidential business information are not disclosed. Additional costs could also be incurred through conducting any additional peer reviews required by proposed section 30.7 and any additional analyses imposed by proposed section 30.6's requirement that "EPA shall clearly explain the scientific basis for each model assumption used and present analyses showing the sensitivity of the modeled results to alternative assumptions." Most importantly, there are potentially huge costs of regulating without using the relevant science merely because the underlying raw data is not publicly available. If studies supporting a stronger standard are excluded and EPA can therefore only justify a weaker requirement that leaves large numbers of people at risk of health effects from a pollutant, pesticide, or chemical, then this Proposal could impose enormous costs for each insufficiently protective regulation.⁴⁶⁶ Yet the Proposal fails even to mention these costs, let alone discuss their scope and significance.

In addition, many of these costs can be quantified and monetized, but EPA has neither attempted to do so nor explained why it could not. For example, EPA has extensive information available to it on what the agency would need to do to implement this Proposal and how much those activities would cost. In fact, EPA already gathered much of this data and provided it to the Congressional Budget Office for use in estimating the costs of a similar (though not identical) proposal from Congress, the HONEST Act. With respect to the Congressional proposal, CBO concluded, just with respect to the costs to EPA, that "based on information from the EPA and other federal agencies, as well as organizations and researchers in the scientific community that publish in peer-reviewed journals," EPA "could spend between a few million dollars per year to more than one hundred million dollars per year ... to ensure that data and other information underlying studies are publicly available in a format sufficient to allow others to substantially reproduce the results of studies."⁴⁶⁷ In the 2017 estimate, CBO concluded that "[i]f the EPA continued to rely on as many scientific studies as it has used in recent years ... then CBO

⁴⁶⁶ In footnote 3 of the Proposal, Proposed Rule, 83 Fed. Reg. at 18,769, EPA suggests that the studies underlying the NAAQS for particulate matter, at issue in the case cited—*Am. Trucking Ass'ns v. EPA*, 283 F.3d 355, 358 (D.C. Cir. 2002)—are an example of data the agency would be "preclude[d]" from using in the future. The benefits of these NAAQS included up to \$75,100 million in annual benefits from avoided cases of mortality in 2010 alone for a partial attainment scenario. National Research Council (US) Committee, *Estimating the Health-Risk-Reduction Benefits of Proposed Air Pollution Regulations*, 43

National Academies Press (2002), <https://www.ncbi.nlm.nih.gov/books/NBK221028/>.

⁴⁶⁷ Congressional Budget Cost Estimate for H.R. 1430, Honest and Open New EPA Science Treatment (HONEST) Act of 2017 (Mar. 29, 2017) ("2017 CBO Estimate"); see also Congressional Budget Office Cost Estimate, S. 544, Secret Science Reform Act of 2015 (June 5, 2015) (estimating that another similar congressional proposal would cost up to \$250 million per year).

estimates that the agency would need to spend at least \$100 million dollars per year to upgrade the format and availability of those studies' data," "on average, \$10,000 per scientific study."⁴⁶⁸ Such costs would cover the costs of "obtaining all the underlying data used in a study, reviewing the data to address any confidentiality concerns, formatting the data for public access, providing access to the computer codes and models used in the study's analysis, and providing descriptions and documentation on how to access the data."⁴⁶⁹ Notably, this does not include the cost to researchers to engage in this effort. As Deputy Assistant Administrator Nancy Beck noted, during the development of the Proposal, requiring "a huge amount of data to be submitted to the agency" would "be incredibly burdensome" and "not practical."⁴⁷⁰

Even the Mercatus working paper—apparently the only thing EPA relied upon in discussing the costs and benefits of the Proposal, 83 Fed. Reg. 18,772 n. 24, notes, with respect to the HONEST Act, that "[t]he cost of providing access to data has been one of the primary concerns about requiring access to data used by the federal government."⁴⁷¹ Far from concluding, as the Proposal suggests, an increase in net benefits from greater reproducibility, the Mercatus working paper simply explained a figure the authors were suggesting could be calculated (the point where net benefits would be positive); the authors do not themselves calculate the benefits, and admit that their "estimates of the benefits of public access to data supporting federal regulatory decisions fall short of proving that the benefits outweigh the associated costs."⁴⁷² And while the Mercatus working paper disagrees with CBO's cost estimates, it does not argue that that requiring access to data is cost-less; indeed, it discusses the "costly activities and services that need to be performed," including activities related to "data collection and data accessibility."⁴⁷³ According to that working paper, data collection requires "correspond[ing] with researchers and publishers to obtain the data, review[ing] the data for confidentiality concerns, format[ing] the data for public access, publicly post[ing] the computer code and models used in each study's analysis, and provid[ing] descriptions and documentation on how to obtain the data."⁴⁷⁴ Data accessibility requires "computer processing services to construct and maintain data bases to store study-related information."⁴⁷⁵ While the actual calculations put forward by the Mercatus working paper appear faulty (for example, it entirely omits the cost to researchers to compile and make their data public, does not include the costs of ensuring patient privacy is protected,⁴⁷⁶ and makes assumptions about the similarity of a chemical manufacturer collecting its own studies and EPA collecting and disseminating information of other researchers), the working paper at least acknowledges that there are costs, something EPA's Proposal completely ignores.

⁴⁶⁸ 2017 CBO Estimate at 3.

⁴⁶⁹ *Id.*

⁴⁷⁰ Email from Nancy Beck to Richard Yamada (Jan. 31, 2018 2:51 PM).

⁴⁷¹ Mercatus Working Paper 19.

⁴⁷² *Id.* at 27-29.

⁴⁷³ *Id.* at 20.

⁴⁷⁴ *Id.*

⁴⁷⁵ *Id.* at 20-21 (quoting CBO, "Cost Estimate, S. 544, Secret Science Reform Act of 2015," June 5, 2015).

⁴⁷⁶ For example, this may require special archiving and access arrangements to limit data sharing, such as those in NIH data sharing plans, which NIH requires only for studies that receive more than \$500,000 in federal funding in a year. NIH, NIH Data Sharing Policy and Implementation Guidance, https://grants.nih.gov/grants/policy/data_sharing/data_sharing_guidance.htm (last accessed Aug. 16, 2018).

Nor does the proposed rule disclose the cost—highlighted on the very first page of a National Academy of Sciences (NAS) report on data access—that “perceived risks to privacy and confidentiality reduce survey participation,” a cost that the NAS explains is “borne out by research.”⁴⁷⁷ NAS explains that this “threatens the research enterprise itself, because concerns about privacy and confidentiality are among the reasons often given by potential respondents for refusing to participate in surveys, and those concerns have been shown to affect behavior as well.”⁴⁷⁸ The NAS panel emphasized: “Any confidentiality breach that became known would be likely to heighten such concerns and, correspondingly, reduce survey response rates. Efforts to increase researchers’ access to data must, therefore, take into account the need to avoid increasing the actual and perceived risks of confidentiality breaches.”⁴⁷⁹ The Proposal does not so much as discuss this potential cost.

This confidentiality risk has a further cost: it affects the quality of the data collected. As the NAS explained:

The reason for confidentiality pledges and for stringent procedures to prevent disclosure is that they improve the quality of data collected from individuals, households, and firms. It is essential that respondents believe they can provide accurate, complete information without any fear that the information will be disclosed inappropriately. Indeed, if the information was disclosed, harm might come to an individual respondent.⁴⁸⁰

The Proposal’s only acknowledgment of this complex problem and cost is its statement that “EPA believes that concerns about access to confidential or private information can, in many cases, be addressed through the application of solutions commonly in use across some parts of the Federal government.”⁴⁸¹ Remarkably, EPA does not cite a single example of these common solutions, citing only vaguely to “examples from the U.S. Department of Health and Human Services, National Institute of Standards and Technology, U.S. Department of Education, and the U.S. Census Bureau” and some hyperlinks not in the Proposal added to the docket almost a month into the comment period.⁴⁸² Accordingly, not only does the Proposal include no analysis of these alleged solutions and their costs and benefits, it does not even explain what the solutions are that EPA believes address this concern.

And if EPA complies with the regulation *not* by spending the money to make data publicly available, and if the research community does not bear those costs itself, *see* 83 Fed. Reg. at 18,770-71 (“Nothing in the proposed rule compels the disclosure of any confidential or private information in a manner that violates applicable legal and ethical protections.”), then it appears that EPA would simply ignore studies that do not comply with the regulation. *See* 83 Fed. Reg. at 18,769 n. 3 (“EPA is proposing to exercise its discretionary authority to establish a

⁴⁷⁷ National Research Council, *Expanding Access to Research Data: Reconciling Risks and Opportunities*, vii (National Academies Press (2005)).

⁴⁷⁸ *Id.* at 51; *see also id.* at 52-54 (describing the research supporting this risk).

⁴⁷⁹ *Id.* at 51.

⁴⁸⁰ *Id.*

⁴⁸¹ 83 Fed. Reg. at 18,770.

⁴⁸² *Id.*

policy that would preclude it from using such data in future regulatory actions.”). That course of action has its own significant costs, and EPA provides no analysis in the Proposal of the magnitude of studies that it has previously relied upon that it could no longer rely upon in regulating. *See* 2017 CBO Estimate (“EPA officials have explained to CBO that the agency would implement H.R. 1430 with minimal funding and generally would not disseminate information for the scientific studies that it uses to support covered actions. That approach to implementing the legislation would significantly reduce the number of studies that the agency relies on when issuing or proposing covered actions....”). As the SAB noted in its May 12, 2018 letter, “[t]he proposed rule does not include any assessment of the impact of data restrictions on existing or future regulatory programs. Without access to the restricted data, regulatory programs could become more or less stringent than they otherwise would be, with consequences for both regulatory costs and benefits.”⁴⁸³

Likewise, EPA has included only a cursory mention of the expected qualitative benefits of the Proposal, with no discussion of the anticipated likelihood, scope, or impact of the suggested benefits, let alone any effort to quantify them, much less monetize them. EPA simply assumes that the Proposal will “improve the data and scientific quality of the Agency’s actions and facilitate expanded data sharing an exploration of key data sets” without any analysis or evidence. In fact, as we have explained, the likely outcome of the Proposal is that it will degrade the data and scientific quality of the Agency’s actions by ignoring relevant science simply because the underlying data is not publicly available. Moreover, EPA’s finding is not consistent with the conclusions of the National Academies, as the Proposal suggests. As also explained above, the NAS report highlighted both the risks and benefits of making data publicly available and nowhere concluded that there were benefits to excluding data from the agency’s regulatory decisions simply because the underlying data was not publicly available. Nor does the agency analyze how likely its Proposal is to actually facilitate expanded data sharing, and its main aim appears to be excluding science as it does not actually provide any funding, mechanisms, or best practices for sharing data.

It is more than ironic that EPA claims—without any data or analysis—that its Proposal will increase the net benefits of other regulations while it does nothing to actually consider the costs and benefits of the Proposal itself. Moreover, there is no reason to think that excluding relevant science merely because the underlying data is not publicly available would increase the net benefits of a regulation. For example, it appears that under the proposed rule EPA would exclude a peer-reviewed, published study whose conclusion had been reproduced based upon numerous different datasets (and whose underlying data, though not publicly available, had been reevaluated by outside experts), while including a study that had had no peer review, was not published, had no corroborating studies, and had not actually been replicated or reproduced, merely because the underlying data was made publicly available. That is simply not a recipe for more accurate decisionmaking.

The proposed rule also violates the APA and other statutes’ requirements for reasoned decisionmaking by failing to consider any alternative approaches, much less their costs, here. This is particularly irrational in this context where it appears that many of the benefits sought by

⁴⁸³ Memorandum from Alison Cullen, Chair, SAB Work Group on EPA Planned Actions for SAB Consideration of the Underlying Science to Members of the Chartered SAB and SAB Liaisons 3 (May 18, 2018).

EPA could be largely achieved with much less burdensome and costly approaches. A critical element of reasoned decision making is consideration of alternatives which are congruent with agencies' statutory responsibilities and objectives. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 48, 50 (1983) (safety agency acted arbitrarily in failing to consider alternative safety measures after rejecting passive restraints). EPA failed to consider other methods to ensure scientific robustness at the agency. For example, the SAB letter notes that "[t]he proposed rule fails to mention that there are various ways to assess the validity of prior epidemiologic studies without public access to data and analytic methods."⁴⁸⁴ The Proposal does not consider any alternatives to ensuring that studies are reliable even where the underlying data cannot be made public because of privacy or other concerns.

Furthermore, by failing to consider costs and benefits, the Proposal contravenes Executive Order 12866. Executive Order 12866 requires agencies to assess the costs and benefits of proposed regulations and propose or adopt a regulation only upon a reasoned determination that the benefits justify the costs.⁴⁸⁵ For "significant regulatory actions," like the proposed rule, 83 Fed. Reg. at 18,772, the agency must provide:

- (i) An assessment, including the underlying analysis, of benefits anticipated from the regulatory action (such as, but not limited to, the promotion of the efficient functioning of the economy and private markets, the enhancement of health and safety, the protection of the natural environment, and the elimination or reduction of discrimination or bias) together with, to the extent feasible, a quantification of those benefits;
- (ii) An assessment, including the underlying analysis, of costs anticipated from the regulatory action (such as, but not limited to, the direct cost both to the government in administering the regulation and to businesses and others in complying with the regulation, and any adverse effects on the efficient functioning of the economy, private markets (including productivity, employment, and competitiveness), health, safety, and the natural environment), together with, to the extent feasible, a quantification of those costs; and
- (iii) An assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, identified by the agencies or the public (including improving the current regulation and reasonably viable nonregulatory actions), and an explanation why the planned regulatory action is preferable to the identified potential alternatives.⁴⁸⁶

⁴⁸⁴ *Id.* at 4 (pointing to the Health Effects Institute re-analysis of the Harvard Six Cities and American Cancer Society epidemiological studies).

⁴⁸⁵ Exec. Order 12866 § 1(b)(6)-(7) (Oct. 4, 1993).

⁴⁸⁶ Exec. Order 12866 § 6(a)(3)(C).

The agency must also make these assessments and analyses “available to the public.”⁴⁸⁷ Executive Order 13563 reaffirms these principles and requirements, explaining that agencies “must take into account benefits and costs, both quantitative and qualitative.”⁴⁸⁸

Agencies are further encouraged to weigh the costs and benefits of developing higher information quality in OMB’s Information Quality Guidelines.⁴⁸⁹ Costs that the Guidelines encourage agencies to consider include “costs attributable to agency processing effort, respondent burden, maintenance of needed privacy, and assurances of suitable confidentiality.”⁴⁹⁰ EPA’s existing information quality guidelines track the OMB Guidelines closely. EPA’s disregard of the Guidelines’ recommended weighing costs and benefits further contributes to the arbitrariness of EPA’s failure to consider the costs of the Proposal.

The Proposal’s failure to analyze and disclose costs and benefits cannot be cured in a final regulation. Should EPA not abandon this misguided Proposal, it must re-propose it after first analyzing its costs (both to public health, to researchers, and to the agency itself) and benefits, and providing the requisite opportunity for public comment on its analysis. As discussed further below in Section VIII.D, the public cannot meaningfully comment on the proposed rule without understanding the actual costs and benefits of the Proposal, the alternatives EPA considered, and the analyses underlying EPA’s assessments.

VI. EPA Fails to Comply with the Paperwork Reduction Act.

EPA and the White House Office of Management and Budget (OMB) must scrutinize the Proposal for its information collection burden, as that concept is defined under the Paperwork Reduction Act (PRA).⁴⁹¹ The only reference to the PRA in the Proposal is EPA’s denial that this action “contain[s] any information collection activities” or “impose[s] an information collection burden.”⁴⁹² But if finalized, the Proposal would significantly increase that burden in the rulemakings to which it applies. EPA and OMB cannot rationally ignore such an entirely foreseeable impact when considering this Proposal.

The PRA institutes procedural safeguards to “minimize the paperwork burden for individuals, small business, educational and nonprofit institutions,” and others.⁴⁹³ It requires that, prior to initiating a “collection of information,” agencies must “provide 60-day notice in the Federal Register . . . to solicit comment to,” inter alia, “evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency,” “evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information,”

⁴⁸⁷ Exec. Order 12,866 § 6(a)(3)(E)(i).

⁴⁸⁸ Exec. Order 13563 § 1(a) (Jan. 18, 2011).

⁴⁸⁹ OMB, *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies; Republication*, 67 Fed. Reg. 8452, 8453 (Feb. 22, 2002).

⁴⁹⁰ OMB, *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies; Republication*, 67 Fed. Reg. 8452, 8453 (Feb. 22, 2002).

⁴⁹¹ See 44 U.S.C. § 3502(2), (3) (defining “burden” and “collection of information”).

⁴⁹² See 83 Fed. Reg. at 18,772.

⁴⁹³ 44 U.S.C. § 3501(1).

and “minimize the burden of the collection of the information on those who are to respond.”⁴⁹⁴ After evaluating public comments, agencies must submit the proposed collection of information to OMB for additional review and publish a notice in the Federal Register setting forth “an estimate of the burden that shall result from the collection of information” and “notice that comments may be submitted to the agency and [OMB].”⁴⁹⁵ Any such collection of information is subject to OMB approval.⁴⁹⁶ OMB is required to determine “whether the collection of information . . . is necessary for the proper performance of the functions of the agency.”⁴⁹⁷ A negative determination precludes the agency from initiating the collection of information.⁴⁹⁸

The requirements that EPA would impose through this Proposal qualify as collections of information under the PRA. The statute defines “collection of information” to include “the obtaining [or] causing to be obtained . . . of facts or opinions by or for an agency, regardless of form or format, calling for . . . answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons”⁴⁹⁹ OMB regulations emphasize the breadth of this definition, specifying that “[a] Collection of information may be in any form or format, including . . . reporting or recordkeeping requirements; . . . policy statements; . . . rules or regulations; . . . oral communications;” and others.⁵⁰⁰ “Any recordkeeping, reporting, or disclosure requirement contained in a rule of general applicability is deemed to involve ten or more persons.”⁵⁰¹ The definition of “collection of information” is agnostic as to whether disclosure is “mandatory, voluntary, or required to obtain or retain a benefit,” and to whether disclosure is to an agency or “members of the public or the public at large.”⁵⁰²

The Proposal would impose a burden that falls squarely within the definition of “collection of information.” In order to use scientific research, the agency would “obtain[] or caus[e] to be obtained . . . facts.” Assuming the requirements are applied consistently, the “questions posed,” or “reporting or recordkeeping requirements imposed,” would be “identical.” As the requirements are “contained in a rule of general applicability”—i.e., the instant Proposal—they are “deemed to involve ten or more persons.” It makes no difference whether the agency seeks the information through a questionnaire, telephone call, or some other format. Nor does it matter whether the agency directly mandates that entities provide the information, or provides that entities must “voluntary[ly]” provide the information in order for research to be eligible for consideration in important rulemakings.

While EPA has refrained from detailing the mechanics by which entities would provide the information, the agency expressly contemplates that the burden of providing such information would fall at least partly to members of the public whom the PRA exists to

⁴⁹⁴ 44 U.S.C. § 3506(c)(2)(i), (ii), (iv).

⁴⁹⁵ *Id.* § 3507(a)(1)(D)(ii)(V), (VI).

⁴⁹⁶ *See id.* § 3507(a)(2).

⁴⁹⁷ *Id.* § 3508.

⁴⁹⁸ *Id.*

⁴⁹⁹ 44 U.S.C. § 3502(3)(A)(i).

⁵⁰⁰ 5 C.F.R. § 1320.3(c)(1).

⁵⁰¹ *Id.* § 1320.3(c)(4)(i).

⁵⁰² *Id.* § 1320.3(c), (c)(2).

protect.⁵⁰³ For example, proposed regulation 40 C.F.R. § 30.5 provides that, “[w]here data is controlled by third parties, EPA shall work with those parties to endeavor to make the data available in a manner that complies with this section.” Moreover, the agency specifically “solicits comment on how to incorporate stronger data and model access requirements in the terms and conditions of cooperative agreements and grants.”⁵⁰⁴ As noted above, the PRA is implicated when collection of information is “required to obtain or retain a benefit,”⁵⁰⁵ and OMB guidance has identified grants as a “Federal benefit” for purposes of the PRA.⁵⁰⁶

EPA cannot evade the PRA requirements by narrowly asserting that “this action” imposes no information collection burden and ignoring the action’s entirely foreseeable future impacts. The proposal expressly “is intended to apply prospectively,” suggesting that it “prospectively” requires burdensome collections of information in future rulemakings. EPA must not ignore the PRA in this rulemaking, only to claim in future rulemakings that this rule moots or constrains the PRA’s application by compelling certain collections of information.

In the alternative, if EPA genuinely believes that this Proposal would not burden the public with new collections of information, then EPA’s stated basis for this rulemaking is exposed as a farce. EPA claims that the Proposal would “ensure” that certain data “are publicly available” and expresses specific concern for science “developed outside the agency.”⁵⁰⁷ Collection of information, including from researchers employed outside of the federal government, is central to the purpose—and essential to the implementation—of the Proposal. Providing this information would inevitably impose a burden on researchers. If the agency does not actually intend to collect information under this Proposal, it underscores that EPA’s true purpose is not to increase transparency, but rather to thwart the development and maintenance of vital public health protections on the grounds that the agency lacks the information it would need to support them.

At a minimum, EPA must acknowledge and describe the information collection burden that this Proposal would impose so that OMB and the public can conduct a proper evaluation and provide responsive comments.

VII. The Circumstances Surrounding the Proposed Rule Indicate that it Was Based on a Desire to Suppress Vital Public Health Science for the Benefit of Certain Regulated Industries.

The circumstances surrounding the development of this proposed rule underscore that it is not intended to “strengthen the transparency of EPA regulatory science.”⁵⁰⁸ Far from furthering EPA’s mission of protecting human health and the environment based on the best available science, the Proposal is EPA’s effort to implement failed congressional legislation that

⁵⁰³ *Cf. id.* § 1320.3(k) (defining “person” for purposes of the PRA).

⁵⁰⁴ 83 Fed. Reg. at 18,771.

⁵⁰⁵ 5 C.F.R. § 1320.3(c).

⁵⁰⁶ See Memorandum from Cass R. Sunstein, Administrator, Office of Information and Regulatory Affairs, re: Information Collection Under the Paperwork Reduction Act 3 (Apr. 7, 2010), *available at* www.whitehouse.gov/sites/whitehouse.gov/files/omb/assets/infoereg/PRAPrimer_04072010.pdf.

⁵⁰⁷ 83 Fed. Reg. at 18,768, 18770.

⁵⁰⁸ 83 Fed. Reg. 18,768.

was intended to suppress rigorous science for the benefit of private industry and at the expense of public health.

EPA's Proposal is largely based upon the HONEST Act of 2017, an unenacted House bill that aimed at undermining climate and regulatory science. Available information about the Proposal's evolution indicates that regulated industries had a disproportionate role in its development. In addition, the Proposal mirrors advocacy tactics employed by the tobacco industry in the 1990's in order to suppress scientific research demonstrating the adverse health effects of cigarettes and second-hand smoke. Finally, the Proposal follows a host of instances in which the Agency, under former EPA Administrator Scott Pruitt, suppressed science and transparency—underscoring the bad faith nature of the purported justifications for this rule.

A. The Proposed Rule is an Attempt by EPA to Implement an Unenacted Congressional Bill, The HONEST Act.

EPA's Proposal is an outgrowth of a failed congressional bill, the HONEST Act. The bill was vigorously supported by Congress members with strong ties to the precise industries that would have benefited from its enactment. Internal and external EPA communications illustrate that the HONEST Act served as a precursor to EPA's Proposal. The intertwined history of the HONEST Act and EPA's Proposal cast doubt on the Agency's proffered rationale.

The HONEST Act

The HONEST Act⁵⁰⁹ is a House bill introduced in 2017 by sponsor Representative Lamar Smith (R-TX), and is the latest manifestation of various bills aimed at undermining EPA regulation through limitations on the types of scientific research the Agency may use.⁵¹⁰ The HONEST Act and these related bills were introduced and passed in the House three times, but each time, failed to progress in the Senate.⁵¹¹

Like the current Proposal, the HONEST Act was touted by its proponents as an effort to enhance the transparency and credibility of regulatory science at EPA. But the HONEST Act—like the Proposal—would in fact have had the effect of limiting the scope and quality of science underlying EPA actions. Indeed the HONEST Act was widely criticized and opposed by scientists, scientific organizations, medical organizations and other scientific authorities for precisely this reason. For example, eight public health and medical associations including the American Lung Association, American Public Health Association, National Medical Association, and Physicians for Social Responsibility issued an open letter to Congress in spring 2017 opposing the HONEST Act because it “would limit the kinds of scientific data EPA can use

⁵⁰⁹ HONEST Act, H.R. 1430, 115th Cong. (2017).

⁵¹⁰ See Secret Science Reform Act of 2014, H.R. 4012, 113th Cong. (2014); Secret Science Reform Act of 2015, H.R. 1030, 114th Cong. (2015); H.R. 1430; HONEST Act, S. 1794, 115th Cong. (2017).

⁵¹¹ On March 2017, Representative Smith introduced the HONEST Act in the 115th Congress. On March 29, 2017, the bill passed the House without amendment. Most recently, Senator Mike Rounds (R-SD) introduced a Senate version of the HONEST Act on September 12, 2017. As with past versions of the bill, the Senate referred the Bill to the Committee on Environment and Public Works, but took no further action.

as it develops policy to protect the American public from environmental exposures and permit violation of patient confidentiality.”⁵¹² The American Association for the Advancement of Science and twenty-two other leading scientific organizations and research universities likewise sent a letter to House Majority Whip Kevin McCarthy in March 2017 opposing the bill and warning that it could lead to a “situation where the EPA would be prevented from using the best available science and disseminating public information in a timely fashion.”⁵¹³ As we have noted elsewhere in these comments, the Congressional Budget Office – after consulting with EPA staff – likewise concluded that the HONEST Act would “significantly reduce the number of studies that the agency relies on when issuing or proposing covered actions.”⁵¹⁴

That the HONEST Act would suppress rather than promote good science at EPA is not surprising, given that the sponsors of the HONEST Act have a history of rejecting established climate science and strong ties to industries that would benefit from limiting the role of science in EPA rulemakings. Representative Lamar Smith is widely known as an opponent of mainstream climate science and public health and environmental safeguards.⁵¹⁵ In a July 24, 2017 opinion piece, Representative Smith lauded the benefits of increased atmospheric carbon dioxide: “A higher concentration of carbon dioxide in our atmosphere would aid photosynthesis, which in turn contributes to increased plant growth.”⁵¹⁶ Smith and the sponsor of the Senate version, Mike Rounds, also receive substantial contributions from the same industries that will benefit from the proposal.⁵¹⁷

⁵¹² Letter from Alliance of Nurses for Health Environments, American Lung Association, American Public Health Association, American Thoracic Society, Asthma and Allergy Foundation of America, Health Care Without Harm, National Medical Association, and Physicians for Social Responsibility to U.S. House (Mar. 27, 2017), <http://www.lung.org/assets/documents/advocacy-archive/letter-to-us-house-opposing-2.pdf>.

⁵¹³ Letter from American Association for the Advancement of Science et al. to Rep. Kevin McCarthy (Mar. 28, 2017), <https://mcimprodaas.s3.amazonaws.com/s3fs-public/HR%201430%20HONEST%20Act%20Multisociety%20Letter%20of%20Concern.pdf>.

⁵¹⁴ CBO, H.R. 1430, Honest and Open New EPA Science Treatment (HONEST) Act of 2017 at 2 (Mar. 29, 2017), <https://www.cbo.gov/system/files?file=115th-congress-2017-2018/costestimate/hr1430.pdf>.

⁵¹⁵ See, e.g., Rep. Lamar Smith, *Climate Change: Seven Indisputable Facts*, The Hill (Sept. 8, 2017, 5:46 PM), <http://thehill.com/opinion/op-ed/252989-climate-change-seven-indisputable-facts> (“Like all climate alarmists, the president wants Americans to believe there is no uncertainty about climate change.... But the truth is there are more questions about climate change than there are answers. For instance, even the most advanced climate models all failed to predict the lack of warming the Earth has experienced over the last 18 years.”); Lamar Smith, *The Climate Change Religion*, The Wall Street Journal: Opinion | Commentary (Apr. 23, 2015, 7:35 PM), <https://www.wsj.com/articles/the-climate-change-religion-1429832149>, (“When assessing climate change, we should focus on good science, not politically correct science.”); Lamar Smith, *Smith: EPA Hides Truth about Climate Regulations*, Media Center: Press Releases (Aug. 13, 2014), <https://lamarsmith.house.gov/media-center/press-releases/smith-epa-hides-truth-about-climate-regulations>.

⁵¹⁶ Lamar Smith, *Don’t Believe the Hysteria over Carbon*, The Daily Signal Energy: Commentary (July 24, 2017), <https://www.dailysignal.com/2017/07/24/dont-believe-hysteria-carbon-dioxide/>.

⁵¹⁷ Throughout his congressional career, Representative Smith received over \$787,047 in contributions from the oil and gas sector. Center for Responsive Politics, *Rep. Lamar Smith – Texas District 21: Summary*, Open Secrets: Congress, <https://www.opensecrets.org/members-of-congress/summary?cid=N00001811&cycle=CAREER&type=I> (last visited June 6, 2018). From 2011 to 2018, Senator Rounds received over \$215,000 from oil and gas companies alone. Center for Responsive Politics, *Sen. Mike Rounds – South Dakota: Summary*, Open Secrets: Congress, <https://www.opensecrets.org/members-of-congress/summary?cid=N00035187&cycle=CAREER&type=I> (last visited June 14, 2018).

Representative Smith also has ties to EPA staff who drafted the proposal, underscoring the close connection between his failed legislation and this proposed rule. Dr. Richard Yamada, former professional staff member on Smith's House Committee on Science, Space & Technology now serves as the Deputy Assistant Administrator for EPA's Office of Research and Development.⁵¹⁸ At EPA, Dr. Yamada has participated in the drafting and development of the Agency's version of the proposal.⁵¹⁹

The HONEST Act as Predecessor for the Proposal

As this section details, it is clear that the HONEST Act is a direct predecessor of this proposed rule and that both initiatives share the same purpose: to undermine EPA's use of rigorous science in crafting health and environmental protections. The language used in the proposal shares strong similarities with the HONEST Act. Furthermore, internal and external communications from EPA leadership demonstrate the proposal's origins in the HONEST Act.

While lengthier than the congressional HONEST Act, EPA's proposal contains parallel language to the bill. One can compare examples from the text of the 2017 HONEST Act as passed in the House, to the text of the proposal from the Final Federal Register Notice:

The HONEST Act of 2017

An Act: To prohibit the [EPA] from proposing, finalizing, or disseminating regulations or assessments based upon science that is not transparent or reproducible....

The Administrator shall not proposed, finalize, or disseminate a covered action unless all scientific and technical information relied on to support such covered action is—(A) the best available science; (B) specifically identified; and (C) publicly available online in a manner that is sufficient for independent analysis and substantial reproduction of search results....⁵²⁰

Strengthening Transparency in Regulatory Science Proposal

EPA shall clearly identify all studies (or other regulatory science) relied upon when it takes any final action. EPA should make all studies available to the public to the extent practicable . . . When promulgating significant regulatory actions, the Agency shall ensure that dose response data and models underlying pivotal regulatory science are publicly available in a manner sufficient for independent validation.⁵²¹

⁵¹⁸ EPA, *Dr. Richard Yamada*, EPA Research, <https://www.epa.gov/research/dr-richard-yamada>. (last updated Jan. 12, 2018).

⁵¹⁹ Email from Richard Yamada, Deputy Assistant Adm'r, Office of Research and Dev., to Drew Feeley, Policy Counsel, Office of Policy; Brittany Bolen, Acting Assoc. Adm'r, Office of Policy; Clint Woods, Deputy Assistant Adm'r, Office of Air and Radiation; Justin Schwab, Deputy Gen. Counsel, Office of Gen. Counsel; Erik Baptist, Senior Deputy Gen. Counsel, Office of Gen. Counsel; and Nancy Beck, Deputy Assistant Adm'r, Office of Chem. Safety and Pollution Prevention (Jan. 29, 2019, 10:58 PM), <https://drive.google.com/file/d/1peMXjBhq6lUYGGNBWbSjpOu1Zh-qLl4p/>.

⁵²⁰ H.R. 1430 § 2(b)(1).

⁵²¹ Strengthening Transparency in Regulatory Science, 83 Fed. Reg. 18,768, 18,773 (Apr. 30, 2018) (proposed 40 C.F.R. §§ 30.4, 30.5).

The best available science must serve as the foundation of EPA's regulatory actions.⁵²²

Responsive records released to the Union of Concerned Scientists ("UCS") make evident that the HONEST Act served a predecessor to the proposal. Administrator Pruitt's schedule reveals that he met with Representative Smith on January 9, 2018, less than four months before the Federal Register announcement of the proposal.⁵²³ Emails from Pruitt and his staff, dated just over a week after that meeting, indicate that Smith was working on a "pitch that EPA internally implement the HONEST Act."⁵²⁴ Subsequent emails sent between Pruitt's EPA staff in February 2018 demonstrate that EPA officials promptly began drafting the proposal.⁵²⁵

Before Smith's internal EPA 'pitch,' Agency leadership commented favorably on the HONEST Act of 2017. Although EPA initially estimated that implementation of the act would cost over \$250 million per year,⁵²⁶ that estimate was never reported to the Congressional Budget Office ("CBO"). As CBO's cost estimate determination indicates, EPA political leadership diverged from the earlier estimate and instead assured CBO that the bill could be implemented "with minimal funding."⁵²⁷ Several news sources have reported that the Administrator's Office of the EPA became involved in communications with CBO, and decided to respond to CBO directly with the assurance the bill could be implemented at 'no cost.'⁵²⁸

Finally, in an exclusive interview with the Daily Caller shortly before the proposal's publication, former Administrator Pruitt promised:

⁵²² *Id.* at 18,769.

⁵²³ EPA, *Calendar for Scott Pruitt, Administrator*, Senior Leaders Calendars, <https://archive.epa.gov/epa/senior-leaders-calendars/calendar-scott-pruitt-former-administrator.html> (last visited Aug. 3, 2018) (search starting point field for "Smith," then see entry for Jan. 9, 2018).

⁵²⁴ Email from Aaron Ringel, Deputy Assoc. Adm'r, Office of Intergovernmental Affairs, to Troy Lyons, Assoc. Adm'r, Office of Congressional and Intergovernmental Relations; David Fotouhi, Deputy Gen. Counsel, Office of Gen. Counsel; Mandy Gunasekara, Principal Deputy Assistant Adm'r, Office of Air and Radiation; and Richard Yamada, Deputy Assistant Adm'r, Office of Research and Dev. (Jan. 16, 2018, 2:28 PM)(on file with Union of Concerned Scientists), <https://drive.google.com/file/d/15Z6RKok51uqwkGAmhK3rseTOEJhFo8Sj/>.

⁵²⁵ See, e.g., Email from Richard Yamada, Deputy Assistant Adm'r, Office of Research and Dev., to Nancy Beck, Deputy Assistant Adm'r, Office of Chem. Safety and Pollution Prevention (Jan. 29, 2018, 6:07 PM)(on file with Union of Concerned Scientists), https://drive.google.com/file/d/1DvwXyJzZIPstQx3tVL-jW_Yjv-S7VD2H/; Email from Richard Yamada, Deputy Assistant Adm'r, Office of Research and Dev., to Drew Feeley, Policy Counsel, Office of Policy; Brittany Bolen, Acting Assoc. Adm'r, Office of Policy; Clint Woods, Deputy Assistant Adm'r, Office of Air and Radiation; Justin Schwab, Deputy Gen. Counsel, Office of Gen. Counsel; Erik Baptist, Senior Deputy Gen. Counsel, Office of Gen. Counsel; and Nancy Beck, Deputy Assistant Adm'r, Office of Chem. Safety and Pollution Prevention (Jan. 29, 2019, 10:58 PM), <https://drive.google.com/file/d/1peMXjBhq6IUyGGBNBWbSjpOu1Zh-qLl4p/>.

⁵²⁶ EPA, Comments on CBO Questions for EPA regarding H.R. xxxx, the HONEST Act of 2017 (n.d.) (on file with Bloomberg Bureau of National Affairs), <http://src.bna.com/nAj>.

⁵²⁷ CBO, Cost Estimate: H.R. 1430, Honest and Open New EPA Science Treatment (HONEST) Act of 2017 1 (2017), <https://www.cbo.gov/system/files/115th-congress-2017-2018/costestimate/hr1430.pdf>.

⁵²⁸ E.g., Scott Tong, *Critics Say HONEST Act undercuts EPA's use of science*, Marketplace: Sustainability (Apr. 10, 2017, 1:08 PM), <https://www.marketplace.org/2017/04/10/sustainability/honest-act-seen-critics-undercutting-epa-s-use-science>.

If we use a third party to engage in scientific review or inquiry, and that's the basis of rulemaking, you and every American citizen across the country deserve to know what's the data, what's the methodology that was used to reach that conclusion that was the underpinning of what — rules that were adopted by this agency.⁵²⁹

The Daily Caller directly linked the proposal to the HONEST Act, “Pruitt’s pending science transparency policy mirrors Smith’s HONEST Act, which passed the House in March 2017.”⁵³⁰

Spokeswoman for Chairman Smith’s House Committee on Science, Space, and Technology, Thea McDonald, also told the Daily Caller: “[t]he chairman has long worked toward a more open and transparent rule-making process at EPA, and he looks forward to any announcement from Administrator Pruitt that would achieve that goal.”⁵³¹

1. Available information on the development of the proposal illustrate its industry origins.

The history of the proposal’s internal development indicates that certain representatives of regulated industries had a nearly exclusive role in its promulgation, and that industry concerns were given special solicitude by EPA’s senior political leadership. Meanwhile, the scientific community and the EPA’s own Science Advisory Board were neither involved in the evolution of the proposal nor notified of its initiation until after its official publication in the Federal Register, further suggesting that this proposal is not grounded in a genuine concern for advancing science at EPA and is, in fact, at odds with EPA’s mission of protecting human health and the environment.

Nancy Beck, key decision maker and EPA’s current Deputy Assistant Administrator of the Office of Chemical Safety and Pollution Prevention, previously served as the Senior Director, Regulatory & Technical Affairs for the American Chemistry Council.⁵³² While employed by the ACC, Beck submitted a written statement in general support of the HONEST Act.⁵³³

In internal EPA emails released pursuant to Union of Concerned Scientists’ Freedom of Information Act (“FOIA”) request, Beck expressed concerns that repeated those of industry. Her concerns that certain language in the proposal might compromise industry confidential business information (“CBP”) or alter individual party adjudications were met with assurances by Deputy Assistant Administrator for the Office of Research and Development, Richard Yamada, that the

⁵²⁹ Michael Bastach, *Exclusive: Scott Pruitt Will End EPA’s Use of ‘Secret Science’ to Justify Regulations*, The Daily Caller (Mar. 20, 2018, 1:06 AM), <http://dailycaller.com/2018/03/19/epa-scott-pruitt-secret-science/>.

⁵³⁰ *Id.*

⁵³¹ *Id.*

⁵³² Nancy Beck, LinkedIn, <https://www.linkedin.com/in/nancybbeck/> (last visited June 6, 2018).

⁵³³ *Written Statement of Nancy B. Beck Before the U.S. Senate Committee on Homeland Security and Governmental Affairs, Subcommittee on Regulatory Affairs and Federal Management Regarding a Hearing on the Agency Use of Science in the Rulemaking Process: Proposals for Improving Transparency and Accountability*, American Chemistry Council 1 (Mar. 9, 2017), <https://www.hsgac.senate.gov/imo/media/doc/BECK%20TESTIMONY.pdf>.

agency would “thread” the proposal “real tight.”⁵³⁴ Concerns about protecting CBI, expressed in Beck’s emails, echo her statement in support of the HONEST Act to the House Subcommittee on Regulatory Affairs and Federal Management while she was employed by the ACC.⁵³⁵

The proposal’s justifications regarding the private-sector burden of regulatory costs reiterates concerns and suggestions about EPA’s policy for evaluating science that the Agency received from industry itself. In emails to EPA leadership from May 2014, the National Association of Manufacturers (“NAM”) specifically identified dozens of EPA regulations that were “affecting its members,” many of which were chemical, air, and water regulations which were based upon the types of research and studies that would be excluded under EPA’s proposed rule.⁵³⁶

In response to EPA’s 2017 proposed rule, Procedures for Prioritization of Chemicals for Risk Evaluations, NAM made recommendations that EPA ensure that TSCA prioritization relied upon “the best available science” in a process that requires “a heightened level of transparency.”⁵³⁷ NAM also provided the EPA with materials that called for reform of EPA’s “process for evaluating science to improve transparency and better involve the public.”⁵³⁸ This parallels NAM’s 2014 letter to the House in support of that year’s version of Rep. Smith’s HONEST Act.⁵³⁹

The American Petroleum Institute’s (“API”) Senior Director of Regulatory and Scientific Affairs wrote to the EPA: “[t]he science and data used to support a regulation should be reviewed to determine if they are still valid based on scientific integrity, consistent with EPA’s Principles of Scientific Integrity and Policy (2012), with meaningful disclosure of all potential areas of bias, guarding against manipulation or misinterpretation.”⁵⁴⁰

API also issued a press release on that same day, May 15, 2017, in which the organization summarized its conversations with EPA: “API today urged the EPA to adopt a

⁵³⁴ Email from Richard Yamada, Deputy Assistant Adm’r, Office of Research and Dev., to Nancy Beck, Deputy Assistant Adm’r, Office of Chem. Safety and Pollution Prevention; Erik Baptist, Senior Deputy Gen. Counsel, Office of Gen. Counsel; and Justin Schwab, Deputy Gen. Counsel, Office of Gen. Counsel (Jan. 31, 2018, 7:54 PM)(on file with Union of Concerned Scientists), <https://drive.google.com/file/d/1VIUuz2wDTT7c7oxBAU3gSP8IMfipieO5/>.

⁵³⁵ American Chemistry Council, *supra* note 34, at 7.

⁵³⁶ Letter from the Nat’l Ass’n of Mfs. to Regulatory Reform Officer and Associate Administrator, Samantha K. Dravis (May 15, 2017) in Maxine Joselow, *Emails: EPA all ears as industry pitched ‘secret science’*, E&E News: Regulations (May 18, 2018), <https://www.eenews.net/greenwire/2018/05/17/stories/1060081997>, at 169-88.

⁵³⁷ *Id.* at 184.

⁵³⁸ *EPA Meeting Briefing Paper*, Nat’l Ass’n of Mfs. (n.d.), in Joselow, at 772-6.

⁵³⁹ Letter from the Nat’l Ass’n of Mfs. to U.S. House of Representatives (Nov. 19, 2014) in Nat’l Ass’n of Mfs., *Key Manufacturing Votes: 113th Congress*, Advocacy: Congressional Voting Record, [http://www.nam.org/Advocacy/Key-Manufacturing-Votes/113th-Congress/House/HR-4012--the-Secret-Science-Reform-Act-of-2014-sponsored-by-Representative-Dave-Schweikert-\(R-AZ\)/?taxonomyid=211](http://www.nam.org/Advocacy/Key-Manufacturing-Votes/113th-Congress/House/HR-4012--the-Secret-Science-Reform-Act-of-2014-sponsored-by-Representative-Dave-Schweikert-(R-AZ)/?taxonomyid=211). (last visited June 6, 2018).

⁵⁴⁰ Letter from the Am. Petroleum Inst. to Regulatory Reform Officer and Associate Administrator, Samantha K. Dravis (May 15, 2017) in Joselow, at 1140.

regulatory system that enhances safety and protects the environment while prioritizing the production and refining of American natural gas and oil.”⁵⁴¹

In contrast, EPA’s Science Advisory Board (“SAB”) leadership was not notified of the rulemaking activity until it was published in the Federal Register, in contravention of Agency practices for communicating major actions such as the proposed rule.⁵⁴² EPA also failed to provide the SAB with a description of the proposal.⁵⁴³

Despite the SAB’s Congressionally-mandated role to formally review and comment on EPA actions of this nature,⁵⁴⁴ the SAB and scientific community were not consulted in the development of the rule.⁵⁴⁵ Indeed, SAB leadership questioned the scientific support behind the proposal: “[a]lthough the proposed rule cites several valuable publications that support enhanced transparency, the precise design of the rule appears to have been developed without a public process for soliciting input from the scientific community.”⁵⁴⁶

SAB leadership took note of the HONEST Act’s connection to the proposal, stating the rule was “highly controversial” as indicated by the fact that “a similar legislative effort in the House has been stalled in Congress for several years.”⁵⁴⁷

B. EPA’s Proposed Rule Mirrors Policies That the Tobacco Industry Advocated for in the 1990’s to Suppress Unfavorable Science.

Both this proposed rule and the HONEST Act bear close similarities to policies promoted by the tobacco industry in the 1990’s to suppress unfavorable science—further confirming that the proposed rule would degrade the quality of science at EPA and undermine public health. Before EPA’s proposed rule and the HONEST Act, Philip Morris (today, Altria) and public-relations firm APCO partnered to establish The Advancement of Sound Science Coalition (“TASSC”) in order to “inform the market of the problem with unsound science” that demonstrated adverse health effects of tobacco and second-hand smoke.⁵⁴⁸ TASSC led a worldwide publicity campaign in the 1990s to promote “Good Epidemiological Practices” that

⁵⁴¹ Reid Porter, *API: Regulatory System Should Promote Technological Innovations and Industry Best Practices*, Am. Petroleum Inst.: News (May 15, 2017), <http://www.api.org/news-policy-and-issues/news/2017/05/15/regulatory-system-should-promote-technol>. (last visited June 6, 2018).

⁵⁴² Memorandum from Chair of the SAB Work Group on EPA Planned Actions for SAB Consideration of the Underlying Science, Alison Cullen, to Members of the Chartered SAB and SAB Liaisons (May 12, 2018), [https://yosemite.epa.gov/sab/sabproduct.nsf/E21FFAE956B548258525828C00808BB7/\\$File/WkGrp_memo_2080-AA14_final_05132018.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/E21FFAE956B548258525828C00808BB7/$File/WkGrp_memo_2080-AA14_final_05132018.pdf).

⁵⁴³ *Id.*

⁵⁴⁴ Environmental Research, Development, and Demonstration Authorization Act of 1978, 42 U.S.C. § 4365 (1978).

⁵⁴⁵ Memorandum from Chair of the SAB Work Group on EPA Planned Actions for SAB Consideration of the Underlying Science, Alison Cullen, to Members of the Chartered SAB and SAB Liaisons (May 12, 2018), [https://yosemite.epa.gov/sab/sabproduct.nsf/E21FFAE956B548258525828C00808BB7/\\$File/WkGrp_memo_2080-AA14_final_05132018.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/E21FFAE956B548258525828C00808BB7/$File/WkGrp_memo_2080-AA14_final_05132018.pdf).

⁵⁴⁶ *Id.*

⁵⁴⁷ *Id.*

⁵⁴⁸ See APCO Assocs., Revised Plan for the Public Launching of TASSC (Through 1993) (Oct. 15, 1993) (internal document) (on file with UCSF, available online through Truth Tobacco Industry Documents portal).

aimed at undermining U.S. and international regulatory efforts based on epidemiologic studies of passive smoking and lung cancer.⁵⁴⁹

During the same period, Philip Morris made it a strategic priority to pursue legislation and policies to require public disclosure of epidemiological data. A May 1997 planning document advocated for using “existing political and business coalitions” that opposed clean air regulations to promote “legislative solutions to ensure that public policy is based on sound science” and “require epidemiological studies to meet a minimum set of criteria and/or require researchers to make public the underlying data before these studies can be used as a basis for regulations at the state or federal level.”⁵⁵⁰ In 1998, Powell Tate – a lobbying firm that represented R.J. Reynolds – organized a “secret science” working group focused on “requiring the disclosure of taxpayer-funded analytical data upon which federal and state rules and regulations are based, as well as the analytic data underlying health and safety studies funded by the government”⁵⁵¹

Although TASSC no longer exists, its executive director, Steve Milloy, continues the organization’s “sound science” rhetoric against other types of regulation through his website, JunkScience.com.⁵⁵² In fact, Milloy has personally taken credit for EPA’s proposal and was one of a select few invited to Pruitt’s public announcement of the proposal earlier this year.⁵⁵³ After the proposed rule was announced, Milloy told reporters, “I look at this as one of my proudest achievements. The reason this is anywhere is because of Steve Milloy.”⁵⁵⁴

C. EPA, Under the Trump Administration, Has a History Of Suppressing Science and Transparency, Undermining the Purported Justifications for the Proposal.

A FOIA request submitted by E&E News uncovered a document emailed by former EPA official David Schnare laying out a strategy to overturn the 2009 Greenhouse Gas Endangerment Finding.⁵⁵⁵ In the document, one of the steps contemplated as part of the reconsideration included EPA only relying “on information, data and studies where the original data upon which assessment is based is available to the public. . . . EPA would not rely on any study whose authors refuse to

⁵⁴⁹ Elisa K. Ong and Stanton A. Glantz, *Constructing “Sound Science” and “Good Epidemiology”: Tobacco, Lawyers, and Public Relations Firms*, 91 Am. J. of Public Health 1749, 1753 (2001).

⁵⁵⁰ Annamaria Baba et al., *Legislating “Sound Science”: the Role of the Tobacco Industry*, 95 Am. J. of Public Health S20, S22 (2005).

⁵⁵¹ Memorandum from Leslie Gianelli, Powell Tate, to “Secret Science” Work Group (Apr. 10, 1998), available at <https://www.industrydocumentslibrary.ucsf.edu/tobacco/docs/#id=klyc0069>.

⁵⁵² Emily Atkin, *The EPA is Acting Like Big Tobacco*, The New Republic (Apr. 26, 2018), available at <https://newrepublic.com/article/148126/epa-acting-like-big-tobacco>.

⁵⁵³ Robin Bravender, *Pruitt to unveil ‘secret science’ effort today—sources*, E&E News: EPA (Apr. 24, 2018), <https://www.eenews.net/stories/1060079891>.

⁵⁵⁴ Robin Bravender, *Trump team wanted to kill agency authority on CO2—emails*, E&E News (June 1, 2018), <https://www.eenews.net/stories/1060083175>.

⁵⁵⁵ Document entitled GHG Endangerment Finding Redux, https://www.eenews.net/assets/2018/06/01/document_cw_13.pdf.

provide the underlying data, including computer code used to evaluate and analyze the data.”⁵⁵⁶ This is just one example among numerous others that this proceeding is not intended to increase transparency, but rather aimed at weakening EPA standards that the current Administration disapproves of, despite their grounding in robust scientific evidence.

EPA’s non-transparent approach to this rulemaking, as well as other Agency actions, underscore that the proposal was not offered in good faith. The Agency has removed thousands of webpages from its website, limited public and press access to Agency events, and withheld key data underlying rulemakings and proceedings. These practices cast doubt on EPA’s proffered justifications of transparency and accountability.

In EPA’s stay of the Oil and Natural Gas Sector: Emissions Standards for New, Reconstructed, and Modified Sources, EPA failed to disclose directly relevant evidence for the basis of revision of the standards consisting of industry compliance reports.⁵⁵⁷ Despite the fact that these compliance reports were in the agency’s possession and comprised of public documents containing factual data that should have been available for public inspection, EPA has to date still not released all of the compliance reports in its possession.

In August 2017, EDF received information pursuant a FOIA request revealing that more than 1,900 climate-related webpages and files on EPA’s website were removed or modified.⁵⁵⁸ Many of the removed and modified pages were related to climate change science and impacts, such as “Climate Impact on Health Through Life Stages,” “Climate Change Science,” and “Methane and Black Carbon Impacts on the Arctic: Communicating the Science.”⁵⁵⁹

In January 2018, EDF received additional responsive records to another FOIA request demonstrating that former Administrator Pruitt directed the removal of many climate change science, impacts, and resources pages as well as all material related to the Clean Power Plan on EPA.gov.⁵⁶⁰

⁵⁵⁶ Document entitled GHG Endangerment Finding Redux, https://www.eenews.net/assets/2018/06/01/document_cw_13.pdf.

⁵⁵⁷ Comments of Clean Air Council, Clean Air Task Force, Center for Biological Diversity, Earthjustice, Earthworks, Environmental Defense Fund, Environmental Integrity Project, Environmental Law and Policy Center, Natural Resources Defense Council, Sierra Club, and National Parks Conservation Association on Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources: Stay of Certain Requirements and Oil and Natural Gas Sector Emission Standards for New, Reconstructed, and Modified Sources: Three Month Stay of Certain Requirements Docket No. EPA-HQ-OAR-2010-0505 and Docket No. EPA-HQ-OAR-2017-0346 (Dec. 8, 2017).

⁵⁵⁸ *Environmental Defense Fund Obtains Information on Over 1,900 Climate-Related Items Removed from or Modified on EPA Website*, EDF: Press release archive (Aug. 11, 2017), <https://www.edf.org/media/environmental-defense-fund-obtains-information-over-1900-climate-related-items-removed-or>.

⁵⁵⁹ *Id.*

⁵⁶⁰ E-mail from Lincoln Ferguson, Senior Advisor, Office of Public Affairs, to Amy Graham, Advisor, Office of Public Affairs; John Konkus, Deputy Associate Administrator, Office of Public Affairs; JP Freier, Associate Administrator, Office of Public Affairs; Liz Bowman, Acting Associate Administrator, Office of Public Affairs; and Jahan Wilcox, Strategic Communications Advisor, Office of Public Affairs (Apr. 5, 2017, 4:15 PM) in EDF, *Newly Released Records Refer to Pruitt’s Personal Involvement in Removal of Climate Information from EPA Website*, EDF: Press release archive (Jan. 29, 2018), <https://www.edf.org/sites/default/files/2018.01.05-partial-production.pdf>.

At the same time, EPA was soliciting comments on its proposal to repeal the Clean Power Plan. The removal of webpages related to climate and Clean Power Plan topics from the EPA website restricted the public's ability to formulate informed comments throughout the rulemaking process.⁵⁶¹ Thus, the public lacked the same "access to data and influential scientific information used to inform federal regulation"⁵⁶² which EPA claims to observe in its proposal.

The Administration has not rigorously pursued its purported goal of transparency in other contexts by limiting public and press access to Agency events and withholding key data underlying several recent rulemaking proceedings.

At the event where former Administrator Pruitt announced the proposal, reporters were not invited to attend.⁵⁶³ Documents received in response to a Sierra Club FOIA request to the EPA reveal that the Administrator had requested press access and advertisement to the public be limited for other events.

For his speaking engagement at a Federalist Society event in March 2017, Pruitt's scheduling director asked that organizers not advertise to press directly and directed organizers to tell media that the event "is not open to press and is off the record."⁵⁶⁴ Emails also demonstrate that the Agency worked with a public relations firm to devise a plan to promote positive comments and censor negative comments on media from the Administrator's facility visits.⁵⁶⁵

EPA additionally failed to provide the public with access to data in key rulemakings and proceedings. For example, in EPA's rulemaking to repeal emissions requirements for glider vehicles, engines, and kits, commenced in November 2017, the Agency failed to release the underlying reports and data before the public comment period closed.⁵⁶⁶ At this date, EPA still has not released data used in a key study cited in the Agency's proposal.

In the words of the proposal, EPA acted in contravention of its goals of "better informing the public," "enhancing the public's ability to understand and meaningfully participate in the

⁵⁶¹ Environmental Data & Governance Initiative on EPA's Proposal, *Repeal of Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units*, 82 Fed. Reg. 48,035 (Apr. 26, 2018), available at https://envirodatagov.org/edgi_cpp_proposed_rule_comments_042618/.

⁵⁶² 83 Fed. Reg. 18,768, 18,768 (Apr. 30, 2018).

⁵⁶³ Miranda Green, *Pruitt signs proposed rule to erase 'secret science' from EPA*, The Hill (Apr. 24, 2018, 2:40 PM), <http://thehill.com/policy/energy-environment/384636-pruitt-signs-proposed-rule-to-erase-secret-science-from-agency>.

⁵⁶⁴ Email from Juli Nix, Director of Conferences, Federalist Society, to Millan Hupp, Director of Scheduling and Advance, EPA (Mar. 17, 2017, 12:30 PM)(on file with Sierra Club), <https://www.documentcloud.org/documents/4453164-Pruitt-Sierra-Club-NYT-Foia.html#document/p29/a422141>.

⁵⁶⁵ Email from Gus Wagner, Partner and Creative Dir., ARC Media, forwarded to Barry Hart, CEO, Nat'l Rural Electric Coop. Ass'n; Amy Graham, Dir. of Comm'n, EPA; Tate Bennett, Assoc. Adm'r, Office of Public Engagement and Envtl. Educ.; Joe Wilkinson, Sr. Vice Pres., Assoc. Electric Coop. (Apr. 18, 2017).

⁵⁶⁶ EDF Supplemental Comment on EPA's Proposed Rule, *Repeal of Emission Requirements for Glider Vehicles, Glider Engines, and Glider Kits*, 82 Fed. Reg. 53,442 (Mar. 11, 2018), <https://www.edf.org/sites/default/files/content/EDF%20Third%20Supplemental%20Comment%20re%20TTU%20Study%203.11.18.pdf>.

regulatory process,” and “ensur[ing] that its decision-making is marked by independence, transparency, clarity, and reproducibility” as it proceeded through rulemakings that “will affect the public” and where “the public is likely to bear the cost of compliance.”⁵⁶⁷

VIII. The Proposal Violates Procedural Requirements of the APA, CAA, and Other Statutes and Executive Orders

The proposed rule fails to meet even the most basic procedural and substantive obligations. The Administrative Procedure Act (APA) requires that the “opportunity for comment must be a meaningful opportunity,” and “[t]hat means enough time with enough information to comment and for the agency to consider and respond to the comments.” *Prometheus Radio Project v. FCC*, 652 F.3d 431, 450 (3d Cir. 2011) (internal citation and quotation marks omitted). *See also Am. Hosp. Ass’n v. Bowen*, 834 F.2d 1037, 1044-45 (D.C. Cir. 1987) (noting the “obvious importance of the [APA’s] policy goals of maximum participation and full information.”). For its part, the Clean Air Act (CAA) “requires a much more detailed notice of proposed rulemaking than does the APA.” *Union Oil Co. of Cal. v. EPA*, 821 F.2d 678, 682 (D.C. Cir. 1987); *see Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 550 (D.C. Cir. 1983) (“[T]he additional notice requirements in § 307(d)(3) suggest that Congress intended agency notice under the Clean Air Act to be more, not less, extensive than under the APA.”). Executive Order 13563 underscores these obligations requiring that to promote “open exchange of information and perspectives among State, local, and tribal officials, experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole,” agencies “shall endeavor to provide the public with an opportunity to participate in the regulatory process.”⁵⁶⁸

Moreover, notice has to be provided by the agency; it cannot be bootstrapped from the public comments.⁵⁶⁹ The reasons are evident: there is no requirement for parties to monitor all of the thousands or tens of thousands of submitted comments in order to guess the issues on which to comment.⁵⁷⁰ A contrary rule “would turn notice into an elaborate treasure hunt, in which interested parties, assisted by high-priced guides (called ‘lawyers’), must search the record for the buried treasure of a possibly relevant comment.”⁵⁷¹

Drafting these comments has entailed a great deal of guesswork. The comments of EDF or any other commenter on a particular issue thus should not be taken to mean that EPA provided sufficient notice of that issue.

The proposed rule lacks essential elements needed to understand it, rendering the opportunity for comment meaningless. The Proposal contains vague and contradictory statements about its actual substance and effect, fails entirely to analyze and disclose its costs

⁵⁶⁷ 83 Fed. Reg. 18,768, 18,768-9 (Apr. 30, 2018).

⁵⁶⁸ Exec. Order 13563 § 2.

⁵⁶⁹ *Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 547 (D.C. Cir. 1983); *Shell Oil Co. v. EPA*, 950 F.2d 741, 760-61 (D.C. Cir. 1991); *CSX Trans. v. Surface Transp. Bd.* 584 F.3d 1076, 1082 (D.C. Cir. 2009); *City of Waukesha v. EPA*, 320 F.3d 228, 234 (D.C. Cir. 2003).

⁵⁷⁰ *Am. Fed’n of Labor v. Donovan*, 757 F.2d 330, 340 (D.C. Cir. 1985); *Fertilizer Inst. v. EPA*, 935 F.2d 1303, 1312 (D.C. Cir. 1991).

⁵⁷¹ *Small Refiner Lead Phase Down*, 705 F.2d at 550.

and benefits, and is littered with vague references to entire websites and executive branch departments. The cursory reasoning and wholly inadequate record offered in support of the proposed rule prevents stakeholders from engaging with the agency on its rationale for the proposed action and its costs and benefits, or offering contrary evidence. Finally, EPA has not provided any basis whatsoever to warrant the gross inadequacies of the proposed rule and the process to consider it. With such a deeply deficient basis for action, the only legally viable course is to withdraw the Proposal.

A. The Proposed Rule is a Binding, Legislative Rule and Subject to the Requirements of the APA

The Administrative Procedure Act, the Clean Air Act, and other federal statutes proscribe procedures that must be followed in agency rulemaking, and which EPA has failed to meet in its Proposal. This proposed rule does not fit into any of the exceptions the APA provides for the procedural requirements of rulemaking—it is neither an interpretive rule, general statement of policy, or a rule of agency organization, procedure or practice.⁵⁷²

The proposed rule does not purport to clarify or explain an already existing statute or rule, and thus is not an interpretive rule.⁵⁷³ The proposed rule is not a general statement of policy, because it establishes a standard of conduct, which has the force of law. It uses mandatory language indicating a requirement: “When promulgating significant regulatory actions, the Agency *shall* ensure that dose response data and models underlying pivotal regulatory science are publicly available in a manner sufficient for independent validation.”⁵⁷⁴ Unlike a general statement of policy, which “does not establish a ‘binding norm,’ . . . [and] is not finally determinative of the issues or rights to which it is addressed,” EPA here makes no qualifications that it has any leeway to not follow the Proposal’s new requirements in all future regulatory actions.⁵⁷⁵ The provision allowing the EPA Administrator to grant exceptions in a limited number of cases does not turn this rule into a general statement of policy because it also binds the Administrator’s discretion, allowing deviation from the policy only when they make specific findings.⁵⁷⁶ EPA has not indicated that “in subsequent proceedings it will thoroughly consider not only the policy’s applicability to the facts of a given case but also the underlying validity of the policy itself,” but seems poised to apply the policy in all instances—granting exceptions only in limited circumstances where compliance is deemed impracticable.⁵⁷⁷ It nowhere indicates that EPA may reassess in each case whether following this rule is the best means to achieve scientific integrity as it undertakes regulatory action. The Proposal has other indications of a binding rule, including that EPA intends to codify it in the Code of Federal Regulations, and EPA has itself characterized the Proposal as a binding rule.⁵⁷⁸

⁵⁷² 5 U.S.C. § 553.

⁵⁷³ *Guardian Fed. Sav. & Loan Asso. v. Fed. Sav. & Loan Ins. Corp.*, 589 F.2d 658, 665 (D.C. Cir. 1978).

⁵⁷⁴ Proposed Rule, 83 Fed. Reg. at 18,773 (emphasis added); *Pac. Gas & Elec. Co. v. Fed. Power Com.*, 506 F.2d 33, 38-39 (D.C. Cir. 1974).

⁵⁷⁵ *Pac. Gas & Elec. Co. v. Fed. Power Com.*, 506 F.2d 33, 38 (D.C. Cir. 1974).

⁵⁷⁶ Proposed Rule, 83 Fed. Reg. at 18,774.

⁵⁷⁷ *Pac. Gas & Elec. Co. v. Fed. Power Com.*, 506 F.2d 33, 39 (D.C. Cir. 1974).

⁵⁷⁸ Robinson Meyer, *Scott Pruitt’s New Rule Could Completely Transform the EPA*, The Atlantic (Apr. 24, 2018), <https://www.theatlantic.com/science/archive/2018/04/how-the-epas-new-secret-science-rule/558878/> (as

This rule is also not a rule of agency organization, procedure or practice, for purposes of the APA. Agency actions in this category are those “that do not themselves alter the rights or interests of parties, although it may alter the manner in which the parties present themselves or their viewpoints to the agency.”⁵⁷⁹ An agency action that “trenches on substantial private rights and interests” does not fall under this exemption.⁵⁸⁰ By restricting the scientific studies on which EPA may base final significant regulatory actions, EPA severely limits parties from relying on excluded studies in advocating for particular safeguards. In the preamble, EPA makes clear that the rule is about “EPA’s regulatory actions” and underlying conclusions.⁵⁸¹ Because the rule substantively impacts agency conclusions and regulations, it impacts private rights and interests. The rule does not allow private individuals to submit for consideration (or renders such submittal a nullity) studies that they would have been permitted to prior to the proposed rule, thus impacting the substantive standards that EPA is able to justify setting—which has implications for the regulated community as well as for public health. The Proposal “encodes a substantive value judgment or puts a stamp of approval or disapproval on a given type of behavior” by requiring regulatory actions to be supported only by certain scientific information deemed acceptable by the proposed rule.⁵⁸²

In *CropLife Am. v. E.P.A.*, the Court held that a similar rule promulgated by EPA, barring third-party human studies from agency consideration during pesticide registrations was a binding regulation because it used “clear and unequivocal language” reflecting “an obvious change in established agency practice” that created a “binding norm.”⁵⁸³ The Court stated: “EPA’s stated rule is binding on petitioners, who are now barred from relying on third-party human studies (even in cases where such studies formerly were approved), and is binding on the agency because EPA has made it clear that it simply ‘will not consider’ human studies.”⁵⁸⁴ Similarly, the Proposal appears to bind EPA to not consider scientific information it could consider before, unless it falls under certain narrow, ambiguously defined exceptions, and binds the public and organizations such as EDF who can no longer submit studies to EPA that EPA would previously have been required to consider as part of the rulemaking process.

B. The Proposal is Subject to the Procedural Requirements of the Clean Air Act.

Administrator Pruitt signed the Proposal, he stated: “This is not a policy. This is not a memo. This is a proposed rule.”).

⁵⁷⁹ *Batterton v. Marshall*, 648 F.2d 694, 707 (D.C. Cir. 1980).

⁵⁸⁰ *Batterton v. Marshall*, 648 F.2d 694, 708 (D.C. Cir. 1980).

⁵⁸¹ 83 Fed. Reg. 18,769.

⁵⁸² *Am. Hosp. Asso. v. Bowen*, 834 F.2d 1037, 1047 (D.C. Cir. 1987). *See also Pharm. Mfrs. Asso. v. Finch*, 307 F. Supp. 858, 865 (D. Del. 1970) (finding that a regulation promulgating new criteria for clinical investigations that will meet the standards of evidence necessary to demonstrate the effectiveness of drug products, and excluding certain kinds of clinical investigations, was not merely a procedural rule, because they “did effect a material narrowing of the range of evidence which previously had been considered relevant in evaluating a drug’s efficacy. Because of the important clarification of acceptable testing standards effected by the September regulations and because of the substantial impact of these regulations on the drug industry. . . .”)

⁵⁸³ 329 F.3d 876, 881 (D.C. Cir. 2003).

⁵⁸⁴ *Id.*

Section 307(d) applies to “such. . . actions as the Administrator may determine.”⁵⁸⁵ EPA claims to take this action under “authority of the statutes it administers. . . including Clean Air Act sections 103, 301(a).”⁵⁸⁶ By issuing this Proposal through notice and comment procedures, Administrator Pruitt appears to have determined that 307(d) procedures apply.

Even without that invocation, the proposed rule is subject to these procedural requirements because it materially impacts many of the actions delineated in 307(d)(1) to which the CAA rulemaking procedures explicitly apply. The Proposal applies to “significant regulatory actions,” which many of these actions are. The CAA requires science-based decision-making that the Proposal will materially affect. For example, by restricting the science EPA may rely on in regulatory actions, the Proposal materially impacts residual risk determinations for hazardous air pollutants (§ 307(d)(1)(C)), standards for mobile source air toxics (§ 307(d)(1)(K)), and residual risk standards for municipal solid waste combustors (§ 307(d)(1)(D)).⁵⁸⁷

This proposed rule directly affects EPA’s setting and review of National Ambient Air Quality Standards (NAAQS),⁵⁸⁸ the promulgation or revision of which is subject to the CAA rulemaking requirements.⁵⁸⁹ Section 108(a) of the Clean Air Act requires the Administrator to set air quality criteria for air pollutants that “reflect the latest scientific knowledge.” This Proposal amends the science EPA can consider for air quality criteria. Under CAA section 109 EPA must use the air quality criteria to set primary and secondary NAAQS and periodically review them—which EPA is currently doing for Particulate Matter.⁵⁹⁰ In the Proposal, EPA cites *Am. Trucking Ass’ns v. EPA*, 283 F.3d 355, 358 (D.C. Cir. 2002) as an example of an instance where EPA relied on a scientific study where the underlying data was not publicly available. EPA states that under the Proposal use of such science would be “preclude[d]”.⁵⁹¹ In *Am. Trucking Ass’ns* the Court upheld EPA’s use of key studies underlying the NAAQS for PM. Under the Proposal, EPA would not have been permitted to use those studies, and it is unclear how the Proposal will affect EPA’s reliance on these studies as it undertakes its review. This demonstrates how this Proposal would have an immediate impact on EPA NAAQS-setting under the CAA. EPA is thus subject to the CAA 307(d) procedural requirements for this Proposal.

C. EPA Has Failed to Provide a Properly Developed Docket and Record as Required by the APA and CAA and Has Thereby Violated the Notice Requirements of these Statutes

EPA has failed to provide a properly developed record in support of the proposed rule. EPA has not identified sufficient supporting evidence in the Proposal or in its docket and has failed to provide adequate notice of the supporting evidence for the public to respond to

⁵⁸⁵ 42 U.S.C.S. § 7607(d)(1)(V).

⁵⁸⁶ 83 Fed. Reg. at 18,769.

⁵⁸⁷ 83 Fed. Reg. at 18,773.

⁵⁸⁸ CAA Section 108(a).

⁵⁸⁹ CAA Section 307(d)(1)(A).

⁵⁹⁰ See *Release of the Final Integrated Review Plan for the National Ambient Air Quality*, 81 Fed. Reg. 87,933 (Dec. 6, 2016).

⁵⁹¹ 83 Fed. Reg. at 18,769 n. 3.

meaningfully, as the Administrative Procedure Act, the Clean Air Act, and other substantive statutes require.

Under the APA, agencies must base their actions on examination of the facts, “the agency must examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’”⁵⁹² The factual determination underlying the agency decision must be based on substantial evidence and will be set aside “if the agency ‘relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.’”⁵⁹³

Rulemaking under the Clean Air Act is subject to the same general requirements of statutory conformity and reasoned decision-making derived from the APA and basic principles of administrative law. Clean Air Act rules cannot be “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right,” or “without observance of procedure required by law.”

As noted in Appendix A and below in Section VIII.D EPA’s citations for support in the Proposal are vague and uninformative, and even where the particular citation can be identified and located, it is often not clear how EPA thinks the citation supports the Proposal. This does not meet the standards of the APA and CAA.

Additionally, EPA has failed to meet the docket requirements of the CAA. CAA section 307(d)(3) requires that publication of the proposed rule in the Federal Register include a summary of the factual data on which the proposed rule is based, the methodology used in obtaining the data and in analyzing the data, and the major legal interpretations and policy consideration underlying the proposed rule. It also requires the agency to place “[a]ll data, information, and documents. . . on which the proposed rule relies” in the rulemaking docket on the date of publication of the proposed rule.⁵⁹⁴ The undifferentiated citation of articles and policies, most of which contradict the Proposal or otherwise offer no support for it, fails abjectly to satisfy these requirements.⁵⁹⁵ Any document that becomes available after the proposed rule

⁵⁹² *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43–44, (1983).

⁵⁹³ *Cablevision Sys. Corp. v. FCC*, 597 F.3d 1306, 1310 (D.C. Cir. 2010).

⁵⁹⁴ CAA Section 307(d)(3).

⁵⁹⁵ See *Kennecott v. EPA*, 684 F.2d 1007, 1018 (D.C. Cir. 1982) (“Section 307(d)(3) requires that notice of proposed . . . regulations be accompanied by a statement of their basis and purpose, including the factual data on which the proposed regulations are based, the methodology used in obtaining and analyzing the data, and the major legal interpretations and policy considerations underlying the proposed regulations. . . . Though EPA states in its preamble to the final regulations that its current eligibility test is based upon a closure policy adopted by EPA before 1977, and that it has used financial tests similar to the present closure test under the agency’s existing policy, no documents embodying those tests or demonstrating the methodology used before 1977 were ever placed in the docket. The only document in the docket purporting to explain that a closure test was ever employed by EPA was a memorandum in which EPA economist Hale sets forth his recollection that such a test had been used before 1977 to determine whether smelters would be permitted to rely upon dispersion techniques to meet the ambient standards. That memo, dated August 17, 1979, was placed in the docket on March 12, 1980, approximately eleven months after

has been published and that is of central relevance to the rulemaking must also be placed in the docket as soon as possible after its availability.⁵⁹⁶ The agency must allow enough time for participants in the rulemaking to respond to those documents with comments.⁵⁹⁷

As of the date of the publication of the Proposal, the docket at regulations.gov contained only the following 12 documents: (1) OIRA Review Start Document (Apr. 17, 2018); (2) OIRA Review Conclusion Document (Apr. 23, 2018); (3) White House Memorandum on Scientific Integrity (Mar. 9, 2009); (4) *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies*; Republication, 67 Fed. Reg. 8,452 (Feb. 22, 2002); (5) Exec. Order 13,777, *Enforcing the Regulatory Reform Agenda*, 82 Fed. Reg. 12,285 (Feb. 24, 2017); (6) EPA, *Plan to Increase Access to Results of EPA-Funded Scientific Research* (Nov. 29, 2016); (7) OMB Memorandum M-05-03 on Issuance of OMB's "Final Information Quality Bulletin for Peer Review" (Dec. 16, 2018); (8) EPA, *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency* (Oct. 2002); (9) Exec. Order 13,563, *Improving Regulation and Regulatory Review*, 76 Fed. Reg. 3,821 (Jan. 18, 2011); (10) Exec. Order 16,093, *Promoting Energy Independence and Economic Growth*, 82 Fed. Reg. 16,093 (Mar. 28, 2017); (11) OMB Memorandum M-13-13: Open Data Policy-Managing Information as an Asset (May 9, 2013); (12) Commission on Evidence-Based Policymaking, *The Promise of Evidence-Based Policymaking* (Sep. 2017).

This clearly is not enough to meet the APA's or CAA's requirements. Aside from the drafts of the proposed rule submitted to OIRA, each of these documents was a pre-existing memorandum, policy document, or executive order that contains no specific analysis—factual, legal, policy or otherwise—that pertains to the impacts of or at all justifies *this* proposed rule. While EPA in the proposed rule cites to some of these documents as purportedly being consistent with these prior policies, *see, e.g.*, 83 Fed. Reg. at 18,769-70, as is discussed in Section II and in Appendix A, these policies do not in fact provide any basis for the Proposal. The record that EPA provides clearly fails to support its proposed action. Some of the factual data, legal interpretations, and policy considerations that EPA has not sufficiently provided evidence for include: the number of scientific studies that would be precluded from consideration under the Proposal; whether there are fields of research where the Proposal would result in insufficient scientific information available for EPA to meet its statutory duties; how EPA will address the substantial privacy concerns implicated by the Proposal; how application of this Proposal will impact substantive agency actions; what the costs of implementing this Proposal are if EPA intends to not just exclude studies from consideration where too costly to provide access, etc.

EPA, for instance, includes Executive Order 13,563 in the docket to support its statement that "[t]he best available science must serve as the foundation of EPA's regulatory actions."⁵⁹⁸ While Executive Order 13,563 makes that statement, it does not support EPA's Proposal, which

the close of the public comment period, and reveals neither the actual tests nor the methodology used by EPA. The failure of EPA to observe the procedures mandated by §§ 307(d)(3) and 307(d)(6) was thus arbitrary and capricious.")

⁵⁹⁶ CAA Section 307(d)(4).

⁵⁹⁷ *Sierra Club v. Costle*, 657 F.2d 298, 352 (D.C. Cir. 1981); *Union Oil Co. v. EPA*, 821 F.2d 678, 683 (D.C. Cir. 1987).

⁵⁹⁸ 83 Fed. Reg. at 18,769 n. 1.

as explained above, hinders EPA's use of the best available science. EPA provides no evidence or explanation in the docket or Proposal for why EPA believes this policy would further that goal. The executive order only states that agencies should make available to the public the scientific or technological *findings or conclusions* on which rules rely, as opposed to underlying raw data that EPA has targeted with this Proposal. Meanwhile, EPA blatantly violates the executive order's provisions requiring agencies to weigh costs and benefits; to write regulations that are easy to understand; and to provide the scientific and technical findings underlying the rule for the public to comment on.

Section 307(d)(3) of the CAA requires that "[a]ll data, information, and documents ... on which the proposed rule relies shall be included in the docket on the date of publication of the proposed rule." Many items that EPA cites to in the Proposal as providing a basis for the proposed rule do not appear in the docket. For example, EPA states: "The proposed rule takes into consideration the policies or recommendations of third party organizations who advocated for open science."⁵⁹⁹ In a footnote, EPA provides: "These include policies and recommendations from: The Administrative Conference of the United States' Science in the Administrative Process Project; National Academies' reports on *Improving Access to and Confidentiality of Research Data*, *Expanding Access to Research Data*, and *Access to Research Data in the 21st Century*; the Health Effects Institute; Center for Open Science; members of the Risk Assessment Specialty Section of the Society of Toxicology, the Dose Response Section of the Society for Risk Analysis, and the International Society for Regulatory Toxicology and Pharmacology; and the Bipartisan Policy Center's Science for Policy Project."⁶⁰⁰ Many of these policies and recommendations did not appear in the docket on the date of publication of the Proposal and still do not appear in the docket—a clear violation of the CAA—nor are the specific documents or reports even identified or properly cited so that they may be tracked down. This is evidently prejudicial to commenters—it undermines commenters ability to submit meaningful feedback when the agency is hiding the ball in this manner.

These policies and recommendations are not easily identifiable on their own either, even after significant internet research. This is also true of footnote 16, where EPA lists a number of agencies to support its claim that the federal government is already implementing solutions to data disclosure.⁶⁰¹ EPA cites, for example, the National Institute of Standards of Technology. NIST has numerous policy documents on protecting privacy concerns and keeping data secure as well as its own internal policies on releasing data. It is hard to see how any are relevant here, but without a particular cite the public is denied even a chance to respond to whatever EPA is trying to use as support—or must respond to *everything* that might be being referenced, creating a burdensome task. Throughout these comments, as we attempt to respond to EPA's Proposal, we have been very practically limited by our inability, even after much research and consideration, to be fully certain we have identified the appropriate policies to respond to. This presents a situation that the CAA's docket requirement was exactly formulated to prevent.

⁵⁹⁹ 83 Fed. Reg. at 18,770.

⁶⁰⁰ 83 Fed. Reg. at 18,770 n. 10.

⁶⁰¹ 83 Fed. Reg. at 18,770 n. 16.

On May 25, 2018, EPA added a memorandum to the docket for this rulemaking.⁶⁰² This memorandum contains hyperlinks apparently intended to accompany various citations in the footnotes of the Proposal. This document does not cure the former procedural defect, as the CAA requires information the proposed rule relies on to be placed in the docket on the day the proposed rule is published.⁶⁰³ Further, these hyperlinks still link ambiguously to various documents and agency websites without providing any information about what specifically EPA intends to cite or how the cited information is being used or considered by EPA. Additionally, simply adding such a document to the docket does not provide adequate notice to the public. Someone who had access only to the proposed rule and was not carefully monitoring the docket would have no indication or notice of this new document.

Either EPA is failing to comply with the CAA's requirements by failing to include in the docket factual data, legal interpretations, and policy considerations that support the Proposal, or these supporting items do not exist, deeming this rulemaking completely arbitrary—in either case the Proposal fails to meet the standards of the APA and CAA. Under the CAA the rulemaking docket “must provide the entire basis for the final rule and the exclusive record for judicial review,” this docket clearly cannot support a final rule.⁶⁰⁴

D. The Proposal is too Vague for Meaningful Comment.

Section 553 of the APA, 5 U.S.C. § 553(b)(3), requires that an agency proposing a rule “provide sufficient factual detail and rationale for the rule to permit interested parties to comment meaningfully.”⁶⁰⁵ The Clean Air Act requires even more, that the Federal Register notice be accompanied by a statement of basis and purpose that includes a summary of the factual data on which the proposed rule is based, the methodology used in obtaining the data and in analyzing the data; and the major legal interpretations and policy considerations underlying the proposed rule.⁶⁰⁶ As discussed above, all data, information, and documents on which the proposed rule relies must be included in the docket on the date of publication of the proposed rule.⁶⁰⁷

These core requirements are “designed (1) to ensure that agency regulations are tested via exposure to diverse public comment, (2) to ensure fairness to affected parties, and (3) to give affected parties an opportunity to develop evidence in the record to support their objections to the rule and thereby enhance the quality of judicial review.”⁶⁰⁸ In addition, “a chance to comment ... [enables] the agency [to] maintain[] a flexible and open-minded attitude towards its

⁶⁰² EPA Memorandum RE: Omitted Hyperlinks for Footnotes in the Proposed Rule (May 25, 2018), EPA-HQ-OA-2018-0259-0812.

⁶⁰³ Section 307(d)(3).

⁶⁰⁴ *Union Oil Co. of California v. EPA*, 821 F.2d 678, 681-82 (D.C. Cir. 1987).

⁶⁰⁵ *United States Telecom Assn. v. FCC*, 825 F.3d 674, 700 (D.C. Cir. 2016) (quoting *Honeywell Intl., Inc. v. EPA*, 372 F.3d 441, 445 (D.C. Cir. 2004) (internal quotation marks omitted)).

⁶⁰⁶ 42 U.S.C. § 7607(d)(3).

⁶⁰⁷ 42 U.S.C. § 7607(d)(3).

⁶⁰⁸ *Int'l Union, United Mine Workers of Am. v. Mine Safety and Health Admin.*, 407 F.3d 1250, 1259 (D.C. Cir. 2005).

own rules,”⁶⁰⁹ and “avoid[s] the inherently arbitrary nature of unpublished ad hoc determinations.”⁶¹⁰ The “notice required by the APA ... must disclose in detail the thinking that has animated the form of a proposed rule and the data upon which that rule is based [A]n agency proposing informal rulemaking has an obligation to make its views known to the public in a concrete and focused form so as to make criticism or formulation of alternatives possible.” *Home Box Office, Inc. v. FCC*, 567 F.2d 9, 35-36 (D.C. Cir. 1977); *see also Horsehead Res. Dev. Co., Inc. v. Browner*, 16 F.3d 1246, 1268 (D.C. Cir. 1994) (“[A]n agency must describe the range of alternatives being considered with reasonable specificity. Otherwise, interested parties will not know what to comment on, and notice will not lead to better-informed agency decision-making.”) (internal citations and quotation marks omitted).

The failure to include critical documents relevant to the proposed rule in the docket, as required by the Clean Air Act, itself constitutes a notice violation because “absence of those documents, or of comparable materials. . . makes impossible any meaningful comment on the merits of EPA’s assertions.”⁶¹¹ By failing to provide a more developed docket, EPA is frustrating the terms and purposes of these statute’s notice requirements. These procedures are in place to form a “specific” proposal that can serve as a “focus for comments,” *Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 548-49 (D.C. Cir. 1983); *see Home Box Office, Inc. v. FCC*, 567 F.2d 9, 36 (D.C. Cir. 1977) (agency must “make its views known . . . in a concrete and focused form so as to make criticism or formulation of alternatives possible”). Because EPA has not provided supporting evidence, has not included key items it points to as major considerations underlying the Proposal, and has generally presented a vague and unspecified proposed rule and docket, EDF and the public are hindered in our ability to provide specific comment focused on the underpinnings of the Proposal, because we do not know and can only guess as to what they are.⁶¹²

Even the text of EPA’s proposed rule and the statement of basis and purpose fails to provide the requisite notice to allow meaningful comment. At the most fundamental level, it contains vague and contradictory statements about the actual effect of the Proposal. The Proposal generally appears to make its requirements mandatory—i.e., failure to make information publicly available will preclude the agency from relying on the study at all. *See* 83 Fed. Reg. at 18,769 n. 3 (“EPA is proposing to exercise its discretionary authority to establish a policy that would preclude it from using such data in future regulatory actions.”); *id.* at 18,771 (“the regulatory text would impose requirements”); *see also id.* at 18,769 (“EPA *will* ensure that the data and models underlying the science is publicly available...”) (emphasis added) and proposed section 30.5 (“When promulgating significant regulatory actions, the Agency shall ensure that does response data and models underlying pivotal regulatory science are publicly available in a manner sufficient for independent validation”). In a few places, however, the Proposal makes it sound as if its aims are more aspirational. *See id.* at 18,770 (“Where *available and appropriate*, EPA will use peer-reviewed information, standardized test methods, consistent data evaluation procedures,

⁶⁰⁹ *McLouth Steel Prods. Corp. v. Thomas*, 838 F.2d 1317, 1325 (D.C. Cir. 1988) (internal citation and quotation marks omitted).

⁶¹⁰ *United States v. Reynolds*, 710 F.3d 498, 519-20 (3d Cir. 2013).

⁶¹¹ *Kennecott Corp. v. EPA*, 684 F.2d 1007, 1018 (D.C. Cir. 1982).

⁶¹² “Without a readily accessible statement of the agency’s rationale, interested parties [could not] comment meaningfully during the rulemaking process.” *Ne. Md. Waste Disposal Auth. v. EPA*, 358 F.3d 936, 949 (D.C. Cir. 2004).

and good laboratory practices to ensure transparent, understandable, and reproducible scientific assessments.”) (emphasis added); *id.* at 18,772 (“The proposed rule directs EPA to make *all reasonable efforts* to” make data publicly available, but “does not compel the Agency to make that information available where it concludes after all such reasonable efforts that doing so in way [sic] that complies with the law and appropriate protections is not possible.”) (emphasis added); *see also id.* at 18,768 (“EPA *should* ensure that the data underlying those are publicly available...”) (emphasis added). The difference between a *requirement precluding* use of science and making *all best efforts* to make data publicly available is enormous.

To the extent EPA intends to propose a rule that would *preclude* use of science, as it appears the Proposal would do, the proposed rule is further flawed because it contains no analysis of how that would affect regulations. How many studies does EPA typically rely on in promulgating regulations? What percentage of these would meet EPA’s new requirements? For those that do not, how many could not meet these requirements for patient privacy, confidential business information, or other reasons? How would EPA set standards if it must rely on many fewer studies? Would EPA be precautionary in the face of less evidence? Would EPA delay promulgating regulations in order to comply with this new mandate? How does this mandate interact with statutory deadlines or statutory requirements that EPA look at a wide range of science? None of these very basic questions are addressed in the proposed rule and without answering them, it is impossible for the public to assess the import and likely consequences of the Proposal. Even more basically, the agency gives no notice as to the Proposal’s impacts, its costs, its benefits, why it applies only to regulatory requirements but not to any regulatory actions (like licensing or permitting) that confer a benefit, substantive and procedural criteria for adjudicating waivers, or even the legal theory under which the Proposal issues—the plaintive solicitation for comment as to “additional or alternative sources” of authority, 83 Fed. Reg. at 18771, does not suffice.

To the extent the Proposal is intended to solicit comment on how EPA may make reasonable efforts to make data publicly available it is also unlawfully vague. The proposed rule includes numerous footnotes referencing entire websites or even Departments of the Executive Branch. For example, the Proposal claims that “EPA believes that concerns about access to confidential or private information can, in many cases, be addressed through the application of solutions commonly used across some parts of the Federal government.”⁶¹³ To support this proposition, EPA remarkably cites (without any further elaboration or explanation in the proposal itself) to “examples from the U.S. Department of Health and Human Services, National Institute of Standards and Technology, U.S. Department of Education, and the U.S. Census Bureau.”⁶¹⁴ *See Small Lead Refiner Phase Down*, 705 F. 2d at 548 (requirement that comments are to raise issues with “reasonable specificity” applies equally to the agency giving notice). For example, it is not possible to identify whether the sources referenced support EPA’s claim that there are approaches available to address the serious privacy issues raised by the Proposal—without providing the specific policies and recommendations, a public commenter has no way of knowing whether they are consistent or why EPA believes them to be consistent. It is impossible to respond in a meaningful way without significant guesswork.

⁶¹³ Proposed Rule, 83 Fed. Reg. at 18,770.

⁶¹⁴ *Id.* at 18,770 n. 16.

Similarly, in footnote 10, where EPA lists a number of organizations whose “policies and recommendations” the Proposal allegedly took under consideration—no explanation is provided.⁶¹⁵ In addition, in the proposed rule EPA fails to adequately define key terms like “validation”, “independence”, “reproducibility”, “replication,” and “uncertainty,” while also citing a “replication crisis” in science. It is important that these terms are defined clearly as these terms are not defined consistently across the scientific community nor governments—which has implications for the scope and purview of the proposed rule.

This amount of information is wholly insufficient to allow a public commenter to provide meaningful comments about these issues.

Courts have been reluctant to find that important information appearing solely in the footnote of a rulemaking document satisfied the notice requirement of the APA, holding that “an agency may not turn the provision of notice into a bureaucratic game of hide and seek.”⁶¹⁶ Referencing a key document without further discussion in the rulemaking document itself, and without incorporating it by reference or publishing it in the Federal Register, also does not satisfy the notice requirements of the APA.⁶¹⁷ Subsequent publication of the document may not be enough to cure a defect of notice where an important issue is “belied by the obscurity of the footnote intended to give notice” and further agency procedure is required to provide the public with “the opportunity to comment on a significant part of the agency’s decisionmaking process as required by section 553.”⁶¹⁸ Thus, the undifferentiated citations in the footnotes of the Proposal do not give adequate notice for public comment.⁶¹⁹

E. EPA Must Comply With Other Requirements of the Clean Air Act

As discussed above, the Proposal impacts EPA’s process for setting NAAQs in material ways by amending the scientific information that can be used as air quality criteria. Under the CAA air quality criteria cannot be amended without review by the Clean Air Science Advisory Committee (CASAC).⁶²⁰ Thus, EPA must submit this proposal to CASAC for review, consider

⁶¹⁵ 83 Fed. Reg. at 18,770. n. 10 (“These include policies and recommendations from: The Administrative Conference of the United States’ Science in the Administrative process Project; National Academies’ reports on *Improving Access to and Confidentiality of Research Data*, *Expanding Access to Research Data*, and *Access to Research Data in the 21st Century*; the Health Effects Institute; Center for Open Science; members of the Risk Assessment Specialty Section of the Society of Toxicology, the Dose Response Section of the Society for Risk Analysis, and the International Society for Regulatory Toxicology and Pharmacology; and the Bipartisan Policy Center’s Science for Policy Project.”)

⁶¹⁶ *MCI Telecommunications Corp. v. FCC*, 57 F.3d 1136, 1142 (D.C. Cir. 1995).

⁶¹⁷ *PPG Indus., Inc. v. Costle*, 659 F.2d 1239, 1249-50 (D.C. Cir. 1981).

⁶¹⁸ *PPG Indus., Inc. v. Costle*, 659 F.2d 1239, 1250 (D.C. Cir. 1981).

⁶¹⁹ See, e.g., *Chamber of Commerce v. SEC*, 443 F. 3d 890, 899 (D.C. Cir. 2006); *Jackson v. Des Moines Mun. Housing Agency*, No. 4:07-cv-00438-HDV, 2008 U.S. Dist. LEXIS 125003, at *8-9 (S.D. Iowa June 4, 2008); *Billington v. Underwood*, 613 F.2d 91, 94 (5th Cir. 1980) (“Such a statement must be sufficiently specific for it to enable an applicant to prepare rebuttal evidence to introduce at his hearing appearance.”); *Edgecomb v. Housing Auth.*, 824 F.Supp. at 312, 314-15 (1993); *Driver v. Housing Auth.*, 713 N.W.2d 670,673 (Wis. Ct. App. 2006); *Owner-Operator Independent Drivers Ass’n, Inc. v. Federal Motor Carrier Safety Admin.*, 494 F.3d 188, 209 (D.C. Cir. 2007) (“It is certainly true that a notice can be “too general to be adequate.”).

⁶²⁰ CAA § 109(d)(2)(B).

their recommendations, and provide reasonable explanation for deviation from those recommendations.⁶²¹

F. EPA Failed to Submit the Proposal to the SAB or to Consult with the Scientific and Technical Community

There is no indication that EPA consulted with the scientific and technical community—or even its own Science Advisory Board—before proposing to require that the underlying data and models be made publicly available for all pivotal regulatory science regardless of ethical, feasibility, or confidentiality constraints. As detailed in a June 28, 2018 letter from the chair of the SAB, the SAB learned of the rule only through a press event, federal register notice, and news articles.⁶²² The letter further explained that the proposed rule “was not identified as a major action in either of the Spring 2017 or Fall 2017 semi-annual Regulatory Agendas,” and that SAB members “had no information regarding the timeline for finalizing the rule”⁶²³ The letter also points out that “the precise design of the proposed rule appears to have been developed without a public process for soliciting input specifically from the scientific community,” even though the proposed rule raises important scientific questions.⁶²⁴

Not surprisingly, the SAB concluded in its May 31, 2018 meeting that the Proposal merits SAB review because it “deals with issues of scientific practice and proposes constraints to the use of scientific studies in particular contexts.”⁶²⁵ Moreover, the SAB chair’s June 28 letter raises a number of questions that echo the concerns we have detailed in our comments, including the feasibility of providing access to data and methods for already-completed studies; “legitimate confidentiality and privacy interests” that would counsel against providing “complete public access”; the costs and effort associated with implementing the Proposal; the relationship between the Proposal and previous EPA efforts to encourage transparency; and the need to consider “the multiple existing methods to assess the validity of prior epidemiologic studies” that “do not provide public access to data and analytic methods.”⁶²⁶

EPA’s failure to consult with the SAB is contrary to statute and to EPA’s well-established practice. EPA must submit its Proposal to the SAB pursuant to the requirements of 42 U.S.C. § 4365(c)(1) (the Environmental Research Development Demonstration Authorization Act or “ERDAA”), which requires the Administrator to submit to the SAB any proposed criteria document, standard, limitation, or regulation, together with relevant scientific and technical information in the possession of the (EPA) on which the proposed action is based at the time it provides that proposal to another agency of the government for formal review. The SAB must

⁶²¹ CAA § 109(d)(2)(B); 307(d)(3).

⁶²² Letter from Dr. Michael Honeycutt, Chair, Science Advisory Board, to Scott Pruitt, EPA Administrator (June 28, 2018), [https://yosemite.epa.gov/sab/sabproduct.nsf/LookupWebReportsLastMonthBOARD/4ECB44CA28936083852582BB004ADE54/\\$File/EPA-SAB-18-003+Unsigned.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/LookupWebReportsLastMonthBOARD/4ECB44CA28936083852582BB004ADE54/$File/EPA-SAB-18-003+Unsigned.pdf).

⁶²³ *Id.*

⁶²⁴ *Id.*

⁶²⁵ *Id.*

⁶²⁶ *Id.*

then review and comment on the proposal.⁶²⁷ While the Administrator need not receive the SAB's final approval, the Administrator must consider the SAB's advice and comments.⁶²⁸

As the SAB chair's letter notes, EPA's "usual process" is to inform the SAB about the publication of the agency's semi-annual regulatory agenda and provide descriptions of actions that are contained in the agenda, including "available information regarding the science that is informing these agency actions."⁶²⁹ That procedure was not followed here. In its evident zeal in the name of purported "transparency," EPA has ignored major statutory and regulatory requirements that provide *actual* transparency to the Clean Air Act's scientific review process.⁶³⁰ Should EPA decide to move forward with this Proposal, it must first allow the SAB to complete its review and take into account the SAB's recommendations in any final rule.

G. EPA's Proposal Fails to Meet the Procedural Requirements of FIFRA

The Proposal lists FIFRA section 25 as an authority for the rulemaking.⁶³¹ The agency, however, has already failed to follow several required procedures for issuing a valid regulation under this section of FIFRA. FIFRA section 25 requires the agency to seek comments from the Secretary of Agriculture on all draft proposed regulations 60 days prior to signing a proposed regulation for publication,⁶³² and 30 days prior to publication for a final rule. If the Secretary of Agriculture provides comments, the Administrator must also respond in writing as part of the proposed rulemaking package.⁶³³ FIFRA additionally requires EPA to publish a notice in the Federal Register simultaneously with the transmission of the proposed rule to USDA.⁶³⁴ And the statute requires the agency to submit a copy of the proposed rule for comment to the Scientific Advisory Panel ("SAP"),⁶³⁵ as well as a copy to the Agriculture Committees in the House and Senate *any time* the agency is required to consult with the Secretary of Agriculture.⁶³⁶ This means that EPA here should have provided both committees and the SAP with a copy of the proposed regulation at least 60 days prior to publication of the Proposal in the Federal Register.

⁶²⁷ 42 U.S.C. §4365(c)(2).

⁶²⁸ See H. Rep. No. 95-722 (95th Cong. 1st Sess. (1977) (Conference Report).

⁶²⁹ Letter from Dr. Michael Honeycutt, Chair, Science Advisory Board, to Scott Pruitt, EPA Administrator (June 28, 2018).

⁶³⁰ See Memorandum "Identifying EPA Planned Actions for Science Advisory Board Consideration of the Underlying Science" from Michael Goo, Assistant Administrator for Policy, Glenn Paulsen, EPA Science Advisor, and Vanessa Vu, Science Advisory Board Office Director (Dec. 27, 2012); Memorandum from James Mihelcic, Chair, SAB Work Group on EPA Planned Actions for SAB Consideration of the Underlying Science to Members of the Chartered SAB and SAB Liaisons (Nov. 12, 2013) (explaining SAB Work Group process, where EPA sent to the SAB "short descriptions of major planned actions that were not yet proposed" and the SAB Work Group determined which of the actions merited their consideration in a public forum).

⁶³¹ 83 Fed. Reg. 18769.

⁶³² 7 U.S.C. 136w(a)(2)(A).

⁶³³ 7 U.S.C. 136w(a)(2)(B).

⁶³⁴ 7 U.S.C. 136w(a)(2)(D).

⁶³⁵ 7 U.S.C. 136w(d)(1).

⁶³⁶ 7 U.S.C. 136w(a)(3).

The agency did not comply with any of these requirements, and does not indicate that it will in any final rule. The Proposal is therefore unlawful.⁶³⁷

To be sure, in some instances the Administrator and Secretary may together agree to waive some of the consultation requirements among themselves,⁶³⁸ but there is no indication that Administrator Pruitt did that with this Proposal. And even if the Administrator and Secretary later agree to waive the consultation requirement section 25(a)(2)(A) and (B), that waiver would not alter EPA's obligation to provide the SAP and the House and Senate Committees with a copy of the regulation. Nor would it change the fact that the Administrator illegally issued the Proposal without consulting the Secretary of Agriculture. A very serious consequence of these procedural mistakes is to deprive the agency of a full understanding of how the proposed rulemaking might affect the regulation of pesticides and thereby affect agriculture, human health, and the environment.⁶³⁹ Therefore, the only lawful path forward here is for the Agency to withdraw the Proposal, consult with the entities required by FIFRA, and then subsequently re-notice the Proposal.

H. EPA's Proposal Fails to Meet the Procedural Requirements of the Safe Drinking Water Act, 42 U.S.C. § 300f Et Seq.

EPA cites the Safe Drinking Water Act as an authority for the Proposal, but has failed to comply with the procedural requirements of the statute. The SDWA provides authority to promulgate regulations at 42 U.S.C. 300g-1(d). Though EPA does not cite this particular section, it is the only provision of the SDWA that provides EPA with rulemaking authority. The SDWA requires the Administrator to consult with the Secretary of Health and Human Services and the National Drinking Water Advisory Council in proposing and promulgating regulations under this section. EPA has not met these requirements here, and as such cannot claim to be using SDWA authority to promulgate this rule.

I. EPA Unlawfully Failed to Consult with Other Agencies as Required by TSCA.

When promulgating the Proposal, EPA unlawfully failed to consult with other entities as required by TSCA. For example, consider the sole statutory authority EPA cites under TSCA—§ 10.

To the extent EPA acts under TSCA § 10, TSCA § 10 repeatedly directs EPA to consult, cooperate, and/or coordinate with the Secretary of Health and Human Services, and sometimes other agencies as well.⁶⁴⁰ EPA has not identified any specific provision of TSCA § 10 that authorizes the proposed rule, and as noted above, no provision does. But if EPA acts under TSCA § 10, then EPA needs to comply with the requirements of whichever provision EPA

⁶³⁷ If finalized, the proposal will also have to be transmitted to the Secretary of the Senate and Clerk of the House of Representatives. See 7 U.S.C. 136w(a)(4). The rule does not become effective until 60 days after this rule or regulation is transmitted.

⁶³⁸ 7 U.S.C. 136w(a)(2)(C).

⁶³⁹ See also, Section II.D.8.

⁶⁴⁰ 15 U.S.C. § 2609(a), (b)(2)(A), (b)(2)(B), (c), (d), (e), (g).

considers relevant. Most of the provisions of TSCA § 10 expressly require that EPA consult, coordinate, or cooperate with, at least, the Secretary of Health and Human Services (section 10(a), 10(b)(2)(A), 10(b)(2)(B), 10(c), 10(d), 10(e), 10(g)). For example, the provision that mentions “research and development results” states that EPA shall act “in consultation with the Secretary of Health and Human Services and other heads of appropriate departments and agencies.”⁶⁴¹ EPA does not appear to have complied with any of the procedural requirements of TSCA § 10.

J. EPA Has Failed to Consult with the Science Advisory Committee on Chemicals

As discussed above, this proposed rule has severe implications for the implementation of TSCA. The Science Advisory Committee on Chemicals’ purpose is “to provide independent advice and expert consultation, at the request of the Administrator, with respect to the scientific and technical aspects of issues relating to the implementation of this subchapter.”⁶⁴² This rulemaking specifically involves “the scientific and technical aspects of issues relating to the implementation of [this Act],” yet there is no indication that the Administrator has consulted with the committee.⁶⁴³ Congress specifically created this Committee to consult on these types of issues, and thus EPA is abusing its discretion to not consult with this Committee about a proposal that will so radically affect the scientific and technical aspects of issues relating to the implementation of TSCA.

K. EPA Has Failed to Provide Documents in Response to EDF’s FOIA Requests

EDF currently has two Freedom of Information Act Requests directly related to the substance of this rulemaking pending at EPA, for which we have received *no* responsive documents thus far, despite the passage of the statutory deadlines for a response. The first request (No. EPA-HQ-2018-005636) was submitted on March 20, with a determination from EPA statutorily due by April 19—which has not been provided. EDF submitted a second request (No. EPA-HQ-2018-007397) on May 4. Given the lack of transparency and information around the basis for this rule, its impacts, and its true motivations, EDF and the public cannot provide informed comment on this rule without the public records that have been requested. For EPA to close the public comment period on this Proposal before all relevant records are released to the public is arbitrary and prevents our ability to meaningfully comment.

L. The OIRA Review Process for the Proposal Was Too Rushed to be Meaningful and EPA Has Not Sufficiently Coordinated with Other Federal Agencies

EPA did not provide enough time for the Office of Information and Regulatory Affairs (“OIRA”) to meaningfully review the Proposal. Executive Order 12,866 requires agencies to

⁶⁴¹ 15 U.S.C. § 2609(g).

⁶⁴² 15 U.S.C. § 2625(o)(2).

⁶⁴³ 15 U.S.C. § 2625(o)(2).

submit all significant regulatory actions to OIRA.⁶⁴⁴ This submission must contain “an assessment of the potential costs and benefits of the regulatory action” in addition to other analyses.⁶⁴⁵ Executive Order 12,866 provides OIRA 90 days to review and return the draft regulatory action to the agency.⁶⁴⁶ As indicated above, the Proposal gives scant consideration to the costs of the proposed action. The April 17, 2018 draft sent to OIRA for review contained *no* mention of cost and benefits of the Proposal at all.⁶⁴⁷ It appears that OMB drafted the two paragraphs on costs that appear in the Proposal as published in the federal register.⁶⁴⁸

EPA transmitted the Proposal to OIRA on April 19, and OIRA’s website indicates that its review concluded on April 23.⁶⁴⁹ This is not nearly sufficient time for White House review of this far-reaching Proposal that raises important inter-agency issues. Further, media outlets report that there were discrepancies in the date when OIRA concluded its review of the proposed rule, suggesting that the date was backdated from April 25 to April 23 only after Administrator Pruitt signed the proposed rule on April 24.⁶⁵⁰ The public record also shows OIRA convened no Executive Order 12,866 meetings in regards to this rule. EDF requested such a meeting on the morning of April 24; our request was not granted, even though the Proposal was still listed as under OIRA review.

The rushed process is particularly concerning given the proposed rule’s complex cross-agency impacts. A letter from a group of Democratic senators to OIRA raising these concerns highlighted that, on average, OIRA review of EPA rules takes 55 days.⁶⁵¹ Given how bare-bones EPA’s proposed rule was, lacking many of the elements required by Executive Order 12,866, it seems that OIRA should have required even more time to review the Proposal. Because this rule affects EPA’s regulatory actions across program areas and statutes and interacts with the work of other agencies, as discussed more in Section II.D.8, adequate OIRA review was required to ensure consistency across the federal government. Certain other agencies base their standards on standards set by EPA. For example, FDA and EPA work together to promulgate advice on fish consumption, based on the reference dose calculated by EPA. The Proposal could thus have an impact on FDA’s ability to promulgate advice on fish consumption sufficient to protect human health.⁶⁵² Thus, EPA’s disregard of scientific evidence as it sets these standards will directly impact the sufficiency of standards set by these agencies.

⁶⁴⁴ Exec. Order 12,866, *Regulatory Planning and Review*, 58 Fed. Reg. 51,735 (Sept. 30, 1993).

⁶⁴⁵ *Id.*

⁶⁴⁶ *Id.*

⁶⁴⁷ EO 12866 Proposal 2080-AA14 OIRA Review Start Document (Apr. 17, 2018), ID EPA-HQ-OA-2018-0259-0007.

⁶⁴⁸ Compare EO 12866 Proposal 2080-AA14 OIRA Review Start Document (Apr. 17, 2018), ID EPA-HQ-OA-2018-0259-0007 with EO 12866 Proposal 2080-AA14 OIRA Conclusion Document (Apr. 23, 2018), ID EPA-HQ-OA-2018-0259-0006.

⁶⁴⁹ OIRA, *OIRA Conclusion of EO 12866 Regulatory Review for Strengthening Transparency and Validity in Regulatory Science*, <https://www.reginfo.gov/public/do/eoDetails?rrid=128014> (last accessed Aug. 16, 2018).

⁶⁵⁰ See Sean Reilly, *OMB backdates completion date for ‘secret science’ review*, E&E News (Apr. 27, 2018), <https://www.eenews.net/greenwire/2018/04/27/stories/1060080331>.

⁶⁵¹ Letter from Senators Hassan, Carper, McCaskill, Markey, Harris, and Whitehouse to Neomi Rao, Administrator, OIRA (May 9, 2018), <https://www.hassan.senate.gov/imo/media/doc/RaoEPALetterFinal.pdf>.

⁶⁵² FDA, *Technical Information on Development of Fish Consumption Advice - FDA/EPA Advice on What Pregnant Women and Parents Should Know about Eating Fish*,

As noted above, EPA failed to consult with other federal agencies before proposing this rule. EPA also violated its own data access plan, which says EPA “will consider how, when, and whether to apply the EPA policy to research that is subject to public access policies from other agencies” as it recognizes that “duplicative or conflicting requirements might result when research is subject to public access policies from multiple federal agencies”.⁶⁵³ There is no evidence that EPA considered these issues or that EPA followed its own policy to “coordinate with other agencies and the private sector” as it implements new data access policies.⁶⁵⁴

The usual procedures appear to have been set aside for this proposed rule, and EPA has provided no explanation for why shortened review procedures were necessary. It was initially reported that this Proposal was categorized as a “tier 3” measure, subject to the lowest amount of scrutiny in EPA’s own internal review process, and developed largely by political appointees with no input from career staff, despite having characteristics of a “tier 1” measure, subject to the highest level of scrutiny.⁶⁵⁵ These characteristics include being precedent-setting; controversial; having cross-Agency, cross-media, and inter-agency impacts and controversies; and raising external interest, all of which are present here. Though the agency appears to have now raised it to “tier 1” status, the Proposal that is now available for public comment was subject only to these initial hasty procedures, calling into question its validity.⁶⁵⁶

EPA must withdraw the Proposal and release it only under the full, proper procedures.

<https://www.fda.gov/Food/FoodborneIllnessContaminants/Metals/ucm531136.htm> (last accessed Aug. 1, 2018).

⁶⁵³ EPA, *Plan to Increase Access to Results of EPA-Funded Scientific Research* at 8 (Nov. 29, 2016), <https://www.epa.gov/sites/production/files/2016-12/documents/epascientificresearchtransparencyplan.pdf>.

⁶⁵⁴ *Id.* at 15.

⁶⁵⁵ Inside EPA, *EPA Science Plan Skirted Usual Process, Raising Finalization, Legal Doubts* (May 14, 2018), <https://insideepa.com/daily-news/epa-science-plan-skirted-usual-process-raising-finalization-legal-doubts>.

⁶⁵⁶ Inside EPA, *EPA Strengthens Internal Review Of Science Rule As SAB Seeks Scrutiny* (June 1, 2018), <https://insideepa.com/daily-news/epa-strengthens-internal-review-science-rule-sab-seeks-scrutiny>.

Appendix A. Analysis of Sources Cited to in the Proposal

This appendix provides an analysis of the sources EPA cites in the proposed rule, showing ultimately that EPA has provided no sources or authorities that support or provide a reasoned basis for the proposed rule and that many of the sources raise key implementation concerns that EPA fails at all to address—rendering the proposal arbitrary and capricious.

Footnote 1: See Exec. Order No. 13563, 76 Fed. Reg. 3821 (Jan. 21, 2011). “Our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation. It must be based on the best available science.”

Exec. Order No. 13563 requires agencies to utilize the “best available science” in regulatory actions.⁶⁵⁷ This requirement is further encoded in numerous statutes and policies that EPA implements. EPA states in the proposed rule that: “The best available science must serve as the foundation of EPA’s regulatory actions.”⁶⁵⁸ However, as the comments raise more thoroughly, by arbitrarily restricting the scientific studies EPA will consider, this proposed rule will *hinder* EPA’s use of the best available science and therefore violates the command of Exec. Order No. 13563 and other versions of these requirements.

Furthermore, this executive order requires agencies to “ensure the objectivity of any scientific and technological information and processes used to support the agency’s regulatory actions” consistent with the President’s Memorandum for the Heads of Executive Departments and Agencies, “Scientific Integrity” (March 9, 2009). As the comments note, however, the proposed rule along with the provision allowing the Administrator to grant discretionary exemptions will harm the objectivity of scientific and technological information and processes at EPA by paving the way for politics, rather than objective scientific criteria, to dictate which scientific studies are considered.

Footnote 2: See Memorandum for the Heads of Executive Department[sic] and Agencies on Scientific Integrity (Mar. 9, 2009). “If scientific and technological information is developed and used by the Federal Government, it should ordinarily be made available to the public. To the extent permitted by law, there should be transparency in the preparation, identification, and use of scientific and technological information in policymaking.”

EPA claims about the proposal that “[b]y better informing the public, the Agency in[sic] enhancing the public’s ability to understand and meaningfully participate in the regulatory process.” EPA then cites to the Memorandum for the Heads of Executive Departments and Agencies on Scientific Integrity.⁶⁵⁹ Not only does the proposal conflict with this memorandum, but it will make it more difficult for the public to meaningfully participate in the regulatory process.

⁶⁵⁷ Exec. Order No. 13563, 76 Fed. Reg. 3821 (Jan. 21, 2011).

⁶⁵⁸ 83 Fed. Reg. at 18,769.

⁶⁵⁹ 83 Fed. Reg. at 18,769 n. 2.

The memorandum sets out a number of actions for agencies to take to ensure scientific integrity.⁶⁶⁰ Just *one* of these factors involves making scientific and technological information publicly available, notably specifying, “*Except for information that is properly restricted from disclosure* under procedures established in accordance with statute, regulation, Executive Order, or Presidential Memorandum, each agency should make available to the public the scientific or technological *findings or conclusions* considered or relied on in policy decisions.”⁶⁶¹ The memorandum thus supports only making scientific findings and conclusions publicly available, not the data underlying those findings and conclusions. Further, it correctly notes that some information is properly restricted from disclosure. It does not say that the inability to disclose such information should prevent it from being considered by agencies. The memorandum thus provides *no* support for the notion that agencies should be barred from relying on studies where the underlying data cannot be disclosed. The memorandum’s narrow approach to public disclosure should not be taken to support EPA’s proposal but rather counsels against the proposal’s mandate that all underlying data be made publicly available.

EPA’s proposal fundamentally conflicts with the heart of the memorandum—that “[t]he public must be able to trust the science and scientific process informing public policy decisions.”⁶⁶² To earn this trust, the memorandum declares: “Political officials should not suppress or alter scientific or technological findings and conclusions.”⁶⁶³ By discarding scientific studies where underlying data cannot be made publicly available, this proposal will result in scientific findings being suppressed. By allowing the Administrator to grant exemptions to this policy based on their discretion with no public record or explanation, the proposal allows for the Administrator to pick and choose based on their preference the science informing the agency’s actions, eroding the public’s trust in the science informing public policy decisions.

The memorandum provides a number of ways in which agencies can ensure scientific integrity which the proposal does not consider including: hiring candidates for science and technology position based on their “knowledge, credentials, experience, and integrity,” having in place appropriate rules and procedures to ensure integrity of the scientific process, establishing scientific processes such as peer review and accurately reflecting scientific and technological information, establishing procedures to identify when scientific integrity may be compromised, including establishing whistleblower protections.⁶⁶⁴ EPA does not explain why any of these pathways would not serve as a better means of ensuring scientific integrity.

Footnote 3: EPA has the authority to establish policies governing its reliance on science in the administration of its regulatory functions. Historically, EPA has not consistently observed the policies underlying this proposal, and courts have at times upheld EPA’s use

⁶⁶⁰ Memorandum for the Heads of Executive Departments and Agencies on Scientific Integrity (Mar. 9, 2009), 74 Fed. Reg. 10671 (Mar. 11, 2009).

⁶⁶¹ Memorandum for the Heads of Executive Departments and Agencies on Scientific Integrity (Mar. 9, 2009), 74 Fed. Reg. 10671 (Mar. 11, 2009) (emphasis added).

⁶⁶² Memorandum for the Heads of Executive Departments and Agencies on Scientific Integrity (Mar. 9, 2009), 74 Fed. Reg. 10671 (Mar. 11, 2009).

⁶⁶³ Memorandum for the Heads of Executive Departments and Agencies on Scientific Integrity (Mar. 9, 2009), 74 Fed. Reg. 10671 (Mar. 11, 2009).

⁶⁶⁴ Memorandum for the Heads of Executive Departments and Agencies on Scientific Integrity (Mar. 9, 2009), 74 Fed. Reg. 10671 (Mar. 11, 2009).

non-public data in support of its regulatory actions. See *Coalition of Battery Recyclers Ass’n v. EPA*, 604 F.3d 613, 623 (D.C. Cir. 2010); *American Trucking Ass’ns v. EPA*, 283 F.3d 355, 372 (D.C. Cir. 2002). EPA is proposing to exercise its discretionary authority to establish a policy that would preclude it from using such data in future regulatory actions.

In footnote 3 of the proposal, EPA notes that “courts have at times upheld EPA’s use [sic] non-public data in support of its regulatory actions” and cites to *Coalition of Battery Recyclers Ass’n v. EPA*, 604 F.3d 613, 623 (D.C. Cir. 2010) and *American Trucking Ass’ns v. EPA*, 283 F.3d 355, 372 (D.C. Cir. 2002).⁶⁶⁵ These cases indeed held that EPA’s prior, long-standing position of relying on scientific studies even when the underlying data could not be made publicly available was reasonable. It is well-established that agencies must acknowledge changes in position and “show that there are good reasons for the new policy.”⁶⁶⁶ This footnote, the only mention of EPA’s previous policy, does not sufficiently acknowledge or explain why EPA is now changing its position.

In *American Trucking Ass’ns v. EPA* the Court held that the Clean Air Act did not require EPA to make public underlying data where EPA relied on the study itself and not the raw data underlying the study.⁶⁶⁷ The Court stated that such a requirement “would be impractical and unnecessary.”⁶⁶⁸ They agreed with EPA’s then statement that:

If EPA and other governmental agencies could not rely on published studies without conducting an independent analysis of the enormous volume of raw data underlying them, then much plainly relevant scientific information would become unavailable to EPA for use in setting standards to protect public health and the environment.... Such data are often the property of scientific investigators and are often not readily available because of ... proprietary interests ... or because of [confidentiality] arrangements [with study participants].⁶⁶⁹

In *Coalition of Battery Recyclers Ass’n v. EPA*, the Court cited *American Trucking Ass’ns v. EPA* and held, again, that EPA was permitted to rely on studies without making the underlying data public.⁶⁷⁰ They noted, “raw data often is unavailable due to proprietary interests of a study’s scientific investigators or confidentiality agreements with study participants.”⁶⁷¹ These court cases thus not only upheld EPA’s prior practice as permissible, but went on to agree that EPA’s prior practice was preferable and necessary in light of these other policy concerns.

EPA provides no response to this history, saying only: “Historically, EPA has not consistently observed the policies underlying this proposal. . . .”⁶⁷² EPA fails explicitly to

⁶⁶⁵ 83 Fed. Reg. at 18, 769.

⁶⁶⁶ *FCC v. Fox Television Stations, Inc.* 556 U.S. 502, 515 (2009).

⁶⁶⁷ 283 F.3d 355, 372 (D.C. Cir. 2002).

⁶⁶⁸ *Id.* at 372 (quoting Particulate Matter NAAQS, 62 Fed. Reg. at 38,689.)

⁶⁶⁹ *Id.*

⁶⁷⁰ 604 F.3d 613, 623 (D.C. Cir. 2010).

⁶⁷¹ *Id.* at 315.

⁶⁷² 83 Fed. Reg. at 18, 769.

recognize that this proposal changes its past policy and provides no justification in light of the compelling opposing points that both EPA and the Courts previously recognized as deterring this approach.

Footnote 4: Exec. Order No. 13777, 82 Fed. Reg. 12285 (Mar. 1, 2017). Regulatory reform efforts shall attempt to identify “those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard for reproducibility.”

EPA claims that the proposal is consistent with Exec. Order No. 13777.⁶⁷³ This executive order provides no support for the proposal, and in fact is targeted at eliminating regulations including those that are “unnecessary” and “ineffective,” which, as our comments detail, the proposal clearly would be.⁶⁷⁴

This executive order creates a Regulatory Reform Task Force and calls for them to identify for repeal, replacement, or modification regulations that among other criteria are inconsistent with the requirements of section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note), or the guidance issued pursuant to that provision, in particular those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard for reproducibility.⁶⁷⁵

As described in detail in our comments and below, contrary to the inference drawn here in Exec. Order No. 13777, the Data Quality Act and OMB’s guidelines issued pursuant to it *do not* require research data and models to be made publicly available for reproducibility purposes in order for agencies to rely on the scientific findings and conclusions produced using that data.

Executive orders cannot override the statutory requirements that EPA use the best available science or the laws governing administrative procedure including the APA. The proposal’s “consistency” with this executive order then cannot serve as a legal basis for EPA to adopt an arbitrary and capricious policy that contravenes these best available science requirements reflected in the statutes EPA administers.

Additionally, Exec. Order No. 13777 by its terms requires only the identification of regulations that rely in whole or in part on data not publicly available, it says nothing about precluding agencies from relying on such studies and does not and cannot require agencies to adopt such practices. However, if the proposed rule is to be “consistent” with the executive order then it must also follow section 3(e):

In performing the evaluation described in subsection (d) of this section, each Regulatory Reform Task Force shall seek input and other assistance, as permitted by law, from entities significantly affected by Federal regulations, including State, local, and tribal

⁶⁷³ 83 Fed. Reg. at 18, 769.

⁶⁷⁴ Exec. Order No. 13777, 82 Fed. Reg. 12285, 12286 (Mar. 1, 2017).

⁶⁷⁵ Exec. Order No. 13777, 82 Fed. Reg. 12285, 12286 (Mar. 1, 2017).

governments, small businesses, consumers, non-governmental organizations, and trade associations.⁶⁷⁶

There is no evidence that EPA consulted with the many stakeholders impacted by this policy, including the medical or scientific research communities, which have been largely opposed to this policy.

Footnote 5: Exec. Order No. 13783, 82 Fed. Reg. 16093 (Mar. 31, 2017). “It is also the policy of the United States that necessary and appropriate environmental regulations comply with the law, are of greater benefit than cost, when permissible, achieve environmental improvements for the American people, and are developed through transparent processes that employ the best available peer-reviewed science and economics.”

EPA claims the proposal is consistent with Exec. Order No. 13783.⁶⁷⁷ However, Exec. Order No. 13783 calls for agencies to consider salient information that the proposal has patently ignored. Exec. Order No. 13783 calls for agencies to consider the costs and benefits “that are based on the best available science and economics” to ensure sound regulatory decision-making.⁶⁷⁸ The proposal provides no analysis of the costs and benefits of implementing this new policy, despite there likely being high costs to making research data public with little evidence of significant benefits achieved from this policy alone.

Further, by arbitrarily excluding scientific information that EPA may use in its regulatory analyses, the proposal conflicts with the executive order’s command to employ the best available science and economics.⁶⁷⁹

Footnote 6: February 22, 2002 (67 F.R 8453) OMB’s Guidelines Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information (2002)
<https://www.federalregister.gov/documents/2002/02/22/R2-59/guidelines-for-ensuring-and-maximizing-the-quality-objectivity-utility-and-integrity-of-information>.

EPA wrongly claims that the proposal is “consistent with. . . the focus on transparency in OMB’s *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Information Disseminated by Federal Agencies*.”⁶⁸⁰ To say that OMB’s Guidelines have a “focus on transparency” that is furthered by EPA’s proposal is a gross oversimplification. EPA here appears to suggest that transparency is the highest objective to be achieved, divorced from any consideration of whether transparency hinders or furthers any other goals. The OMB Guidelines, while imposing high standards of quality, objectivity, utility, and integrity of information disseminated by Federal Agencies, recognize the need to implement controls “flexibly, and in a

⁶⁷⁶ Exec. Order No. 13777, 82 Fed. Reg. 12285, 12286 (Mar. 1, 2017).

⁶⁷⁷ 83 Fed. Reg. at 18,769.

⁶⁷⁸ Exec. Order No. 13783, 82 Fed. Reg. 16093, 16095 (Mar. 31, 2017).

⁶⁷⁹ Exec. Order No. 13783, 82 Fed. Reg. 16093 (Mar. 31, 2017).

⁶⁸⁰ 83 Fed. Reg. at 18,769-70.

manner appropriate to the nature. . . of the information to be disseminated.”⁶⁸¹ They suggest thinking about transparency strategically to further the aims of good government, unlike the proposal, which conflates transparency and quality without consideration of other factors.

As part of ensuring “objectivity” of information these guidelines encourage agencies which disseminate influential scientific, financial, or statistical information, “to include a high degree of transparency about data and methods to facilitate the reproducibility of such information by qualified third parties.”⁶⁸² However, they emphasize the need to treat certain data differently, due to privacy and confidentiality concerns.⁶⁸³ While they recommend agencies “identify the sources of the disseminated information” they note that this is “to the extent possible, consistent with confidentiality protections.”⁶⁸⁴ Importantly, they take great pains to urge agencies *not* to subject all data to a reproducibility requirement where this could hamper agencies.⁶⁸⁵ They require agencies, instead, to consult with “the relevant scientific and technical communities” to identify data that “can practicable [sic] be subjected to a reproducibility requirement, given ethical, feasibility, or confidentiality constraints.”⁶⁸⁶ There is no indication that EPA consulted with the scientific and technical community, with EPA’s own Science Advisory Board raising concerns about the proposal and finding that “[t]his action merits further review by the SAB.”⁶⁸⁷ The Guidelines make clear:

Making the data and methods publicly available will assist in determining whether analytic results are reproducible. However, the objectivity standard does not override other compelling interests such as privacy, trade secrets, intellectual property, and other confidentiality protections.⁶⁸⁸

In direct conflict with the reasoning underlying EPA’s proposal, the Guidelines specifically provide that it is possible to verify the objectivity of information that cannot be made publicly available through other types of “robustness checks.”⁶⁸⁹ As an example, they point to the Harvard Six Cities Study, where underlying data could not be made publicly available due to confidentiality concerns, but the raw data was released instead to researchers at the Health Effects Institute, bound to the same confidentiality requirements as the original researchers, who were able to replicate its results.⁶⁹⁰ In contrast, EPA’s proposal would not allow for the consideration of this study.⁶⁹¹

⁶⁸¹ OMB’s *Guidelines Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information*, 67 Fed. Reg. 8452, 8453 (Feb. 22, 2002).

⁶⁸² 67 Fed. Reg. 8452, 8460.

⁶⁸³ *Id.*

⁶⁸⁴ 67 Fed. Reg. 8452, 8459.

⁶⁸⁵ 67 Fed. Reg. 8452, 8460 (“With regard to original and supporting data related thereto, agency guidelines shall not require that all disseminated data be subjected to a reproducibility requirement.”)

⁶⁸⁶ *Id.*

⁶⁸⁷ Memorandum from SAB Work Group on EPA Planned Actions for SAB Consideration of the Underlying Science (May 12, 2018).

⁶⁸⁸ 67 Fed. Reg. 8452, 8460.

⁶⁸⁹ *Id.*

⁶⁹⁰ 67 Fed. Reg. 8452, 8456.

⁶⁹¹ 83 Fed. Reg. at 18769 n. 3 (citing to a case challenging EPA’s reliance on this study and saying the rule “would preclude it from using such data in future regulatory actions.”)

The guidelines also recommend agencies recognize that information quality comes at a cost, and that agencies should weigh the costs and benefits, which EPA has not done in the proposal.⁶⁹²

Thus, the proposal completely turns away from OMB's guidelines where OMB "urges caution in the treatment of original and supporting data because it may often be impractical or even impermissible or unethical to apply the reproducibility standard to such data."⁶⁹³ As the comments discuss further, the proposal rule thus unlawfully conflicts with this flexible approach that prioritizes agencies' ability to use science as set out by OMB under the Information Quality Act.

Footnote 7: Memorandum for the Heads of Executive Departments and Agencies on Open Data Policy—Managing Information as an Asset (<https://project-open-data.cio.gov/policy-memo/>). "Specifically, this Memorandum requires agencies to collect or create information in a way that supports downstream information processing and dissemination activities. This includes using machine-readable and open formats, data standards, and common core and extensible metadata for all new information creation and collection efforts. It also includes agencies ensuring information stewardship through the use of open licenses and review of information for privacy, confidentiality, security, or other restrictions to release."

EPA claims the proposal is consistent with OMB's memorandum on Open Data Policy.⁶⁹⁴ This is incorrect, however, as the memorandum supports downstream information processing and dissemination—not through complete public disclosure without regard to privacy or security—but through instituting a framework of data collection, formatting, and storage that allows for public dissemination, *if possible*.⁶⁹⁵ Recognizing that not all data can be publicly disclosed, and that such data is still useful, the memorandum declares: "Whether or not particular information can be made public, agencies can apply this framework to all information resources to promote efficiency and produce value."⁶⁹⁶

The proposal is thus inconsistent with the memorandum, which stresses the importance of information stewardship and "review of information for privacy, confidentiality, security, or other restrictions to release."⁶⁹⁷ When information cannot be released, the memorandum does not suggest agencies ignore the information or not rely on it for regulatory purposes. It focuses on prescribing agency practices to maximize the downstream usability of data that *can* be made publicly available, including through "using machine-readable and open formats, data standards, and common core and extensible metadata for all new information creation and collection efforts"⁶⁹⁸ as well as "building or modernizing information systems in a way that maximizes interoperability and information accessibility, maintains internal and external data asset

⁶⁹² 67 Fed. Reg. 8452, 8452-53.

⁶⁹³ 67 Fed. Reg. 8452, 8456.

⁶⁹⁴ 83 Fed. Reg. at 18,769-70.

⁶⁹⁵ Memorandum for the Heads of Executive Departments and Agencies on Open Data Policy—Managing Information as an Asset, M-13-13 (May 9, 2013).

⁶⁹⁶ *Id.* at 1.

⁶⁹⁷ *Id.* at 2.

⁶⁹⁸ *Id.* at 1-2.

inventories, enhances information safeguards, and clarifies information management responsibilities.”⁶⁹⁹ Thus, while the memorandum centers on how agencies can marginally increase the utility of information they possess for use by the public, the proposal turns this on its head by advocating for discard of otherwise high quality scientific information if the data underlying such information cannot be made publicly available.

OMB stresses that to achieve “open data,” agencies should adopt a presumption in favor of openness that is importantly limited by countervailing privacy, confidentiality, security, or other valid restrictions.⁷⁰⁰ Thus, agencies are expected to “exercise judgment before publicly distributing data residing in an existing system by weighing the value of openness against the cost of making those data public.”⁷⁰¹ The proposal does not at all weigh the costs, to the agency or to the public, of requiring all underlying data to be made publicly available.

While requiring agencies to adopt measures to strengthen privacy protections and data security, the memorandum recognizes serious limitation to data disclosure that EPA completely fails to consider. For example, the memorandum mandates that agencies take into consideration the “mosaic effect,”⁷⁰² which EPA does not at all acknowledge—all while making superficial and unsupported statements about how privacy concerns can be easily addressed.⁷⁰³ The memorandum recognizes and stresses the challenge of responding to this threat, which requires undertaking a “risk-based analysis, often utilizing statistical methods whose parameters can change over time, depending on the nature of the information, the availability of other information, and the technology in place that could facilitate the process of identification.”⁷⁰⁴ OMB importantly notes this analysis “may affect the amount, type, form, and detail of data released by agencies.”⁷⁰⁵ Because it ignores these concerns, EPA’s proposal is arbitrary and capricious.

Footnote 8: Plan to Increase Access to Results of EPA-Funded Scientific Research; EPA Open Government Plan 4.0; Open Data Implementation Plan; EPA’s Scientific Integrity

⁶⁹⁹ *Id.* at 2.

⁷⁰⁰ *Id.* at 5.

⁷⁰¹ *Id.* at 6.

⁷⁰² OMB explains: “The mosaic effect occurs when the information in an individual dataset, in isolation, may not pose a risk of identifying an individual (or threatening some other important interest such as security), but when combined with other available information, could pose such risk. Before disclosing potential PIT or other potentially sensitive information, agencies must consider other publicly available data—in any medium and from any source—to determine whether some combination of existing data and the data intended to be publicly released could allow for the identification of an individual or pose another security concern.” Memorandum for the Heads of Executive Departments and Agencies on Open Data Policy—Managing Information as an Asset, M-13-13 at 4-5 (May 9, 2013).

⁷⁰³ Memorandum for the Heads of Executive Departments and Agencies on Open Data Policy—Managing Information as an Asset, M-13-13 at 9-10 (May 9, 2013). *See, e.g.*, 83 Fed. Reg. at 18,770 (“EPA believes that concerns about access to confidential or private information can, in many cases, be addressed. . . .”)

⁷⁰⁴ Memorandum for the Heads of Executive Departments and Agencies on Open Data Policy—Managing Information as an Asset, M-13-13 at 9-10 (May 9, 2013).

⁷⁰⁵ Memorandum for the Heads of Executive Departments and Agencies on Open Data Policy—Managing Information as an Asset, M-13-13 at 10 (May 9, 2013).

Policy; Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency.

Rather than acknowledge the drastic change in EPA policy this proposal would implement, EPA contrarily claims that the proposal simply “builds upon prior EPA actions.”⁷⁰⁶ None of the sources EPA cites here call into question the validity of scientific research for which underlying data and models cannot be made public. Indeed, they consistently recognize the legitimate limitation on data disclosure while also acknowledging the need for the agency to rely on information for which underlying data may not be released without compromising important privacy and confidentiality concerns.

I. Plan to Increase Access to Results of EPA-Funded Scientific Research, <https://www.epa.gov/sites/production/files/2016-12/documents/epascientificresearchtransperancyplan.pdf>

Contrary to EPA’s claim that the proposal “builds upon” prior EPA policy, it is actually a radical shift away from the view EPA takes in its *Plan to Increase Access to Results of EPA-Funded Scientific Research*, which notes even though “some research data cannot be made fully available to the public but instead may need to be made available in more limited ways,” this availability “does not affect the validity of the scientific conclusions from peer-reviewed research publications.”⁷⁰⁷ The *Plan to Increase Access to Results of EPA-Funded Scientific Research* thus dictates the view EPA has consistently espoused in the past, that it may make data available when it can without compromising other critical values, but that it will not exclude information from its consideration when it cannot. Yet EPA denies, rather than acknowledging and explaining, its new decision to reverse its past stance.

The *Plan* requires EPA to make publications resulting from EPA-funded research publicly accessible on NIH’s PubMed Central (PMC).⁷⁰⁸ It aims to “maximize access, by the general public and without charge, to digitally formatted data resulting from EPA funded research, *while protecting confidentiality and personal privacy, recognizing proprietary interests, business confidential information and intellectual property rights, and preserving the balance between the relative benefits and costs of long-term preservation and access.*”⁷⁰⁹ It recognizes important exceptions for when “the research data cannot be released due to one or more constraints, such as requirements to protect confidentiality, personal privacy, proprietary interest, or property rights.”⁷¹⁰ It specifically declares: “The validity of scientific conclusions drawn from research publications or their associated research data, or EPA’s ability to consider those conclusions and data in its actions, does not depend on compliance with this Plan.”⁷¹¹

⁷⁰⁶ 83 Fed. Reg. at 18,770.

⁷⁰⁷ EPA, *Plan to Increase Access to Results of EPA-Funded Scientific Research* 4-5 (Nov. 29, 2016), <https://www.epa.gov/sites/production/files/2016-12/documents/epascientificresearchtransperancyplan.pdf>

⁷⁰⁸ *Id.* at 8.

⁷⁰⁹ *Id.* at 11 (emphasis added).

⁷¹⁰ *Id.*

⁷¹¹ *Id.* at 6.

The *Plan* acknowledges making more limited releases of data “e.g., establishing data use agreements with researchers that respect necessary protections,” that fall short of full public disclosure.⁷¹² Unlike the proposal, which fails to account for the costs of implementation, the plan also acknowledges the need to “balance between the value of providing long-term access and its associated costs.”⁷¹³

The *Plan* thus further enshrines the view that this rule is unnecessary—where EPA has access to data and can release it without compromising other interests, it already does so. It further supports the notion that this type of disclosure is not necessary, and will not help, to ensure EPA’s reliance on valid scientific conclusion. EPA must fully explain its decision to deviate from this prior-held stance.

II. EPA Open Government Plan 4.0, https://www.epa.gov/sites/production/files/2016-09/documents/2016epaopengovplan4_0draft091516update1.pdf

EPA’s *Open Government Plan 4.0* also acknowledges that not all data is releasable to the public, even as it aims to “increase publicly accessible EPA data to support citizens’ participation in government and promote transparency and accountability of Agency operations.”⁷¹⁴ EPA states in the *Plan*: “By providing *releasable* information in open and machine-readable formats, EPA enables the public and other organizations to better leverage the rich wealth of information available.”⁷¹⁵ Further, in the *Plan* EPA notes the stringent requirements it has in place on the “collection, access, use, dissemination, and storage of personally identifiable information (PII) and Privacy Act information to prevent unwarranted invasions of personal privacy.”⁷¹⁶

Rather than suggesting that EPA release underlying data to the public in order to rely on scientific information, the *Plan* only speaks to utilizing a careful approach—with due regard for privacy and limitations to data release—to making EPA data more accessible to the public where possible.

III. Open Data Implementation Plan, https://www.epa.gov/sites/production/files/2015-05/documents/opendatapolicyimplementationplan_030415_finalb.pdf

EPA’s own Open Data Policy, which implements the requirements of White House “Open Data Policy – Managing Information as an Asset” Memorandum M-13-13, notes that it is important to develop “policies and processes to ensure that only appropriate data are released to

⁷¹² *Id.* at 4.

⁷¹³ *Id.*

⁷¹⁴ EPA, *Open Government Plan 4.0* 4 (Sep. 2016), https://www.epa.gov/sites/production/files/2016-09/documents/2016epaopengovplan4_0draft091516update1.pdf.

⁷¹⁵ EPA, *Open Government Plan 4.0* 4 (Sep. 2016), https://www.epa.gov/sites/production/files/2016-09/documents/2016epaopengovplan4_0draft091516update1.pdf (emphasis added).

⁷¹⁶ EPA, *Open Government Plan 4.0* 23 (Sep. 2016), https://www.epa.gov/sites/production/files/2016-09/documents/2016epaopengovplan4_0draft091516update1.pdf.

the public and made available online.”⁷¹⁷ To do so, EPA uses different “access levels” for different data sets, (public, restricted public, and non-public) and notes that it may not be able to publicize data due to “law, regulation or policy, which address privacy, confidentiality, security or other valid restrictions.”⁷¹⁸

Thus, while the Open Data Policy applies a multi-level, nuanced approach to data disclosure, the Proposal completely does away with this by applying a blanket requirement to make all underlying data and models publicly available. The Open Data Policy this conflicts with, rather than supports, the Proposal.

IV. EPA’s Scientific Integrity Policy, https://www.epa.gov/sites/production/files/2014-02/documents/scientific_integrity_policy_2012.pdf

Contrary to EPA’s claim, the Proposal turns away from EPA’s Scientific Integrity Policy, which stresses “a firm commitment to evidence,” endorses use of “the best available science” and “[r]equire[s] reviews. . . regarding the content of a scientific product to be based only on scientific quality considerations.”⁷¹⁹ The Proposal, on the other hand, inhibits use of sound scientific information and evidence by arbitrarily excluding science from EPA’s consideration for reasons unrelated to its quality.⁷²⁰

While the policy “[r]ecognizes the value of independent validation of scientific methods”⁷²¹ and facilitating “the free flow of scientific information” by making information available “including access to data and non-proprietary models underlying Agency policy decisions,”⁷²² this is a flexible standard and an ideal to aspire to, not to take priority over other competing interests—such as use of the best available science. This measure is meant to “facilitate[] the free flow of scientific information” and “expand and promote access to scientific information.”⁷²³ The Proposal, however, limits the free flow of scientific information and restricts access to scientific information by restricting EPA’s consideration of scientific studies.

As discussed in our comments, this Administration has blatantly violated key aspects of the policy by silencing scientists and the limiting the dissemination of scientific information, directly undoing “EPA’s longstanding commitment to the timely and unfiltered dissemination of its scientific information – uncompromised by political or other interference” and goal to communicate scientific findings openly and actively to the public.⁷²⁴ The Scientific Integrity Policy is meant to uphold scientific ideals—and prevent arbitrary, politicized decisions about which science to utilize—and the Proposal is thus in strong conflict with it.

⁷¹⁷ EPA, *Open Data Policy Implementation Plan 4* (Feb. 2015), https://www.epa.gov/sites/production/files/2015-05/documents/opendatapolicyimplementationplan_030415_finalb.pdf.

⁷¹⁸ EPA, *Open Data Policy Implementation Plan 4* (Feb. 2015), https://www.epa.gov/sites/production/files/2015-05/documents/opendatapolicyimplementationplan_030415_finalb.pdf.

⁷¹⁹ EPA, *Scientific Integrity Policy 4*, https://www.epa.gov/sites/production/files/2014-02/documents/scientific_integrity_policy_2012.pdf.

⁷²⁰ *Id.* at 3-4.

⁷²¹ *Id.* at 4.

⁷²² *Id.*

⁷²³ *Id.*

⁷²⁴ *Id.* at 5.

V. Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency, <https://www.epa.gov/quality/guidelines-ensuring-and-maximizing-quality-objectivity-utility-and-integrity-information>

EPA's Proposal also does not "build upon" its *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency*. The *Guidelines* note that it may not be possible for underlying data and models to be subject to same degree of disclosure as analytic results, and highlight other methods of ensuring the quality of scientific research where disclosure is not possible.

The *Guidelines* start by noting, "[t]he mission of the EPA is to protect human health and safeguard the natural environment upon which life depends" and "[t]he collection, use, and dissemination of information of known and appropriate quality are integral to ensuring that EPA achieves its mission."⁷²⁵ They thus highlight that the controls on data quality exist to allow EPA to meet its mission—unlike the Proposal, which makes no mention of EPA's mission or how the Proposal would further that mission. Because the Proposal restricts EPA's ability to rely on the best available science, it obscures EPA in achieving its mission to set safeguards that are protective of human health and the environment, and thus such a statement could not truthfully be made.

While the *Guidelines* seek to maximize the quality of influential information by facilitating the reproducibility of the information—they note:

In addition, if access to data and methods cannot occur due to compelling interests such as privacy, trade secrets, intellectual property, and other confidentiality protections, EPA should, to the extent practicable, apply especially rigorous robustness checks to analytic results and carefully document all checks that were undertaken. Original and supporting data may not be subject to the high and specific degree of transparency provided for analytic results; however, EPA should apply, to the extent practicable, relevant Agency policies and procedures to achieve reproducibility, given ethical, feasibility, and confidentiality constraints.⁷²⁶

EPA's *Guidelines* detail EPA's long-standing position, that it may validate research studies even when data cannot be made publicly available—unlike the Proposal, which apparently assumes disclosure of underlying data and models is necessary to ensure scientific validity. The *Guidelines* discuss existing programs, such as EPA's Quality System and EPA's Peer Review

⁷²⁵ EPA, *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency* 5 (Oct. 2002), <https://www.epa.gov/quality/guidelines-ensuring-and-maximizing-quality-objectivity-utility-and-integrity-information>.

⁷²⁶ *Id.* at 21.

Policy⁷²⁷ that are in place to assure the high quality of EPA information disseminates. EPA does not explain in the Proposal why these other checks are now insufficient.

Footnote 9: For example, see related policies from the National Science Foundation, National Institute of Science and Technology, the National Institutes of Health; and the US Census Bureau, which provides secure access to data from several agencies in an environment that protects against unauthorized disclosure (<https://www.census.gov/fsrdc>).

EPA purports that the Proposal builds upon “the experience of other federal agencies in this space” but the citations reveal that is simply not the case.⁷²⁸ To support this statement, EPA provides only a hyperlink to a U.S. Census Bureau website along with vague references to entire executive branch agencies, with no explanation or discussion of which of their policies EPA believes the Proposal is building upon. Without a more specific citation, it is impossible to know which policies EPA is referencing or to respond to them meaningfully.

EPA cites to the U.S. Census Bureau’s Federal Statistical Research Data Centers as an example of use of secure facilities that allow the Census Bureau to provide controlled access to authorized researchers to use restricted-use microdata for statistical purposes only. In order to gain access, researchers must obtain Census Bureau Special Sworn Status by passing a moderate risk background check and swearing to protect respondent confidentiality for life. While this “solution” meets the U.S. Census Bureau’s needs by allowing access to confidential information only to researchers whose proposals meet certain criteria, who go through a vetting process, and who agree to protect the information, this is done at a cost—which EPA has not accounted for—and would not satisfy EPA’s requirement to make data and models “publicly available.” Thus, this example provides no support for the Proposal.

Footnote 10: These include policies and recommendations from: the Administrative Conference of the United States’ Science in the Administrative Process Project; National Academies’ reports on Improving Access to and Confidentiality of Research Data, Expanding Access to Research Data, and Access to Research Data in the 21st Century; the Health Effects Institute; Center for Open Science; members of the Risk Assessment Specialty Section of the Society of Toxicology, the Dose Response Section of the Society for Risk Analysis, and the International Society for Regulatory Toxicology and Pharmacology; and the Bipartisan Policy Center’s Science for Policy Project.

In footnote 10, EPA lists a number of organizations whose recommendations and policies the Proposal allegedly took into consideration. In fact, since the Proposal was published, many of these organizations have issued statements opposing the Proposal and contesting EPA’s claim that their policies and recommendations endorse the Proposal. In this footnote, EPA provided no hyperlinks or specific citations for which recommendations and policies it was referencing, making it impossible to understand why EPA believed these organizations supported the Proposal or to respond to them.

⁷²⁷ *Id.* at 10-13.

⁷²⁸ 83 Fed. Reg. at 18,770.

I. The Administrative Conference of the United States' Science in the Administrative Process Project

EPA cites to the Administrative Conference of the United States' Science in the Administrative Process Project—*Recommendation 2013-3: Science in the Administrative Process*. Wendy Wagner, sole author of ACUS's final report *Science in Regulation: A Study of Agency Decisionmaking Approaches* and who served on the panel that produced the recommendations strongly opposed the notion that the Proposal builds upon these recommendations, saying: "They don't adopt any of our recommendations, and they go in a direction that's completely opposite, completely different. . . . They don't adopt any of the recommendations of *any* of the sources they cite. I'm not sure why they cited them."⁷²⁹

While ACUS recommends agencies increase transparency of how they rely on scientific information and strive to make data underlying scientific information publicly available, nowhere do they suggest that agencies should not consider or rely on studies where underlying data and models cannot be made publicly available, or that these circumstances make scientific information less valid. They instead suggest that information be made publicly available for assessment and reproducibility purposes "[c]onsistent with the limitations in the Information Quality Act (IQA) guidelines issued by the Office of Management and Budget and its own IQA guidelines."⁷³⁰ They acknowledge valid limitations such as legal protections for privacy, trade secrets, and confidential business information.⁷³¹ Thus, they recommend data be made public only "[t]o the extent practicable and permitted by law and applicable policies."⁷³² Unlike the Proposal, the recommendation acknowledges that agencies may still use information where underlying data cannot be publicly disclosed, and suggest agencies "note that fact and explain why they used the results if they chose to do so."⁷³³ It thus provides a much more nuanced policy recommendation than that outlined in the Proposal—which suggests EPA either find a way to make underlying data and models public, despite the numerous potential obstacles and concerns in doing so, or completely disregard the research study.

II. National Academies Improving Access to and Confidentiality of Research Data

Rather than containing any particular recommendations or policy proposals, this report discusses a number of issues pertaining to data disclosure and privacy protection, the tradeoffs "between increasing data access on the one hand and improving data security and confidentiality

⁷²⁹ Robinson Meyer, *Scott Pruitt's New Rule Could Completely Transform the EPA*, The Atlantic (Apr. 25, 2018), <https://www.theatlantic.com/science/archive/2018/04/how-the-epas-new-secret-science-rule/558878/>.

⁷³⁰ *Administrative Conference Recommendation 2013-3: Science in the Administrative Process*, 78 Fed. Reg. 41,352, 41,358 (July 10, 2013).

⁷³¹ *Administrative Conference Recommendation 2013-3: Science in the Administrative Process*, 78 Fed. Reg. 41,352, 41,356 (July 10, 2013).

⁷³² *Administrative Conference Recommendation 2013-3: Science in the Administrative Process*, 78 Fed. Reg. 41,352, 41,357 (July 10, 2013).

⁷³³ *Administrative Conference Recommendation 2013-3: Science in the Administrative Process*, 78 Fed. Reg. 41,352, 41,358 (July 10, 2013).

on the other,”⁷³⁴ and “alternative approaches to limiting disclosure risk while facilitating data access the benefits and limitation of various approaches to these issues.”⁷³⁵ Thus, rather than calling on agencies to rely only on scientific studies where the underlying data and models are made public, the report in fact discusses challenges and obstacles to achieving greater data disclosure, for which the Proposal provides no substantive or meaningful explanation.

The report discusses why exercising caution with respect to disclosing confidential personal information is so important, because if such information is exposed it could lead to

being arrested for a crime, being denied eligibility for welfare or Medicaid, being charged with tax evasion, losing a job or an election, failing to qualify for a mortgage, or having trouble getting into college. Disclosure of a history of alcoholism, mental illness, venereal disease, or illegitimacy can result in embarrassment and loss of reputation. Less directly, research results based on personal data can cause harm by affecting perceptions about a group to which a person belongs.⁷³⁶

The report reveals very legitimate reasons why researchers and study participants would be reluctant to allow underlying data to be made publicly available—and these reasons in no way compromise the validity of the scientific conclusions based upon this data.

The report also discusses the nuances of selecting methods to protect privacy while making underlying data publicly available. For example, while EPA casually makes claims that controlled access is an example of a solution in place across federal agencies⁷³⁷—this report points out the drawbacks of such an approach:

The use of restricted access arrangements, which has been deemed necessary to provide adequate protection for confidential information about individuals and businesses, results in increased costs to conduct research. Custodians of the data files need additional resources to process applications, operate inspection systems, staff research data centers, and inspect outputs to ensure that disclosure does not occur. Researchers require resources to prepare applications for access, to provide appropriate physical security for the data, or to visit a secure site.⁷³⁸

The report also discusses the difficulty of funding such centers—noting that while the costs are currently covered by a combination of federal agency budgets and user fees, including grants from the National Science Foundation and National Institute on Aging, federal funding may no longer be able to support such efforts.⁷³⁹ EPA’s cursory mention to use of restricted access facilities as a potential solution to the concerns implicated by the Proposal fail to mention or address any of these challenges.

⁷³⁴ The National Academies, *Improving Access to and Confidentiality of Research Data: Report of a Workshop*, National Academies Press 2-3 (2000).

⁷³⁵ *Id.* at 3.

⁷³⁶ *Id.* at 19.

⁷³⁷ 83 Fed. Reg. at 18,771.

⁷³⁸ *Id.* at 48.

⁷³⁹ *Id.*

III. National Academies Expanding Access to Research Data: Reconciling Risks and Opportunities

EPA's Proposal in no way takes into consideration the recommendations of the National Academies report *Expanding Access to Research Data: Reconciling Risks and Opportunities*. This report considers competing approaches to increase use of research data while protecting confidentiality, and concludes that "no one way is optimal for all data users or all purposes" and, importantly, that "the nation's statistical and research agencies must provide both unrestricted access to anonymized public-use files and restricted access to detailed, individually identifiable confidential data for researchers under carefully specified conditions."⁷⁴⁰ In other words, the report finds that making data publicly available without restriction while respecting confidentiality concerns is not currently feasible or compatible with the missions of federal agencies.

Furthermore, the report mainly concerns itself with how agencies might increase access to data in their control and possession to allow for more research in social issues and provide a better basis for more informed policy decisions—it does not discuss whether federal agencies should make data publicly available in order to allow for independent validation of scientific research they rely on for regulatory purposes and thus cannot be a basis for the Proposal.⁷⁴¹ While the report discusses that one of the benefits of data sharing is that it allows for "verification, refutation, or refinement of original results," nowhere does the report suggest that agencies should rely only on research studies that make data publicly available or that such verification is necessary to validate a research study.⁷⁴² Indeed, it details a discussion on this topic that presents competing views on requirements to make research data available to the public to allow for replication. John Bailer raised concerns that researchers would be deterred from doing certain kinds of work if they feared it would be subject to "hostile scrutiny" and that competitors could seize data for their interests.⁷⁴³ Others disagreed with this position.⁷⁴⁴ However, EPA failed to engage any of these considerations or at all justify its decision to implement a policy that could have severe negative implications. None of the researchers stated agencies should disregard the study if underlying data could not be made public.

The "recommendations" made by the report do not endorse EPA's proposal. The report provides 15 recommendations in Chapter 5.⁷⁴⁵ Recommendations 1-4 concern documentation and data access and call on agencies to better document how the data they make available is used; to use a variety of modes to provide access to data they produce or fund using a combination of restricted access to confidential data and unrestricted access to appropriately altered public-use data; to support research to guide more efficient allocation of resources among different data access modes; and to involve users in planning modes of access to their data.⁷⁴⁶

⁷⁴⁰ The National Academies, *Expanding Access to Research Data: Reconciling Risks and Opportunities*, National Academies Press 2 (2005).

⁷⁴¹ *Id.* at 7.

⁷⁴² *Id.* at 39.

⁷⁴³ *Id.* at 105-06.

⁷⁴⁴ *See id.* at 107.

⁷⁴⁵ *Id.* at 63.

⁷⁴⁶ *Id.* at 66-69.

In this Proposal, EPA does nothing to better document use of data that it makes public, has only called for a requirement to make research data and models “publicly available” rather than recognizing that a variety of modes and levels of access may be necessary, and does nothing to support more research into methods of making data more widely available without compromising confidentiality—indeed blithely assuming that such means are already available and sufficient—and also has not indicated that there has been any widespread call for EPA to make such data available or pointed to any comments of users of this data in this process.

Recommendations 5-8 concern public use data and call on agencies to support research on techniques to provide useful innovative public-use data that minimizes the risk of disclosure; streamlined procedures to allow researchers access to public-use microdata through existing and new data archives; a warning on all public-use data that they are provided for statistical purposes only and that any attempt to identify an individual is a violation, and requiring users to attest to having read the warning; and restricting access to public-use data to those who agree to abide by confidentiality protections, subject to meaningful penalties.⁷⁴⁷

EPA’s proposal once again ignores these recommendations that call for greater research and a measured approach to making data more widely available. The Proposal provides no ideas or methods or support for research that would help strengthen confidentiality protections while making data more available.

Recommendations 9-13 concern research data centers, remote access, and licensing agreements and call on the Census Bureau to (1) broaden the interpretation of the criteria for assessing the benefits of access to data; (2) maintain the continuous review cycle; and (3) take account of prior scientific review of research proposals by established peer review processes when awarding access to research data centers; for more research on cost effective means of providing secure access to confidential data by remote access; increasing use of licensing agreements for access to confidential data; working with data users to develop flexible, consistent standards for licensing agreements and implementation procedures for access to confidential data; and including auditing procedures and legal penalties in licensing agreements for willful misuse of confidential data.⁷⁴⁸

EPA’s proposal does not increase any research into use of remote data centers or licensing agreements, simply making passing references to these modes as potential solutions with no discussion or explanation—and ignoring the recommendations here suggesting that more work is needed to realize their potential.

Recommendations 14-15 concern maintaining the public’s trust and call on agencies to give certain basic information about confidentiality and data access to everyone asked to participate in statistical surveys; and to support continuing research on the views of data providers and the public about research benefits and risks.⁷⁴⁹

⁷⁴⁷ *Id.* at 69-74.

⁷⁴⁸ *Id.* at 74-80.

⁷⁴⁹ *Id.* at 80-81.

EPA's proposal does not involve anything that increases the public knowledge about confidentiality protections or their views on research benefits and risks.

Recommendations 16-19 concern training, monitoring, and education to complement other protections on data. They call on data collection agencies to provide employees with continually updated written guidelines on confidentiality protection and training in confidentiality practices and data management and to institute procedures for monitoring violations of confidentiality protections practices and confidentiality breaches. They also call on educational and professional organizations to provide training in ethical issues for all those involved in the design, collection, distribution, and use of data obtained under pledges of confidentiality and for the development of strong codes of ethical conduct that reflect the need to protect confidentiality.⁷⁵⁰

EPA's proposal also contains no provisions on increasing training, monitoring, or education, within the agency or among researchers to allow for more careful handling of confidential data.

Thus, EPA's Proposal completely ignores the careful research and thinking the National Academies and researchers have done on what is needed from federal agencies in order to make data more publicly available, and how to do so in a responsible manner. It does not implement any of the recommendations in the report, and in no way builds upon this work.

IV. National Academies Access to Research Data in the 21st Century: An Ongoing Dialogue Among Interested Parties: Report of Workshop

EPA cites to the National Academies' *Access to Research Data in the 21st Century: An Ongoing Dialogue Among Interested Parties: Report of Workshop* as one for which it took into consideration "policies or recommendations," despite the fact that this report comes with the explicit limitation that:

The goal of the workshop was not to reach conclusions or recommendations; nor could it address other pressing issues beyond the regulatory process, such as protection of intellectual property, the influence of broader access on scientific competition, the potential for increased administrative burdens and changes in the research process, and the challenge of providing data access in an increasingly electronic world.⁷⁵¹

Thus, this report stresses the many unanswered, challenging policy questions that must be addressed as agencies contemplate how to make data publicly available. These are the questions EPA should have addressed in its Proposal, but did not.

⁷⁵⁰ *Id.* at 81-84.

⁷⁵¹ Science, Technology, and Law Panel; Policy and Global Affairs; National Research Council, *Access to Research Data in the 21st Century: An Ongoing Dialogue Among Interested Parties: Report of Workshop*, The National Academies Press ix (2002).

The Report offers a look into the scientific review process that also calls into question the underlying assumption in EPA's proposal—that making data publicly available is necessary to ensure the validity of a scientific finding. The report notes that scientific claims “are not ‘binary’” they instead “fall in the category of being uncertain to various degrees.”⁷⁵² The reliability of a particular scientific finding can be assessed using various mechanisms, starting with an examination of the strength of the design, methods, and statistical results.⁷⁵³ Then “one asks whether there is consistency within the data (pertaining to mechanisms of effect or related outcomes) and with other studies and scientific theories.”⁷⁵⁴ Finally, “the robustness of the findings is evaluated through the use of different analytical approaches.”⁷⁵⁵

The report describes how studies may be validated through a range of approaches.⁷⁵⁶ While it notes that in some cases it is possible to exactly replicate the original study, this is not always the case, especially in large epidemiological studies where “repeating a study is seldom either possible or desirable.”⁷⁵⁷ Then “replication” can take a variety of forms, not all of which require access to underlying data, including:

- Additional analyses done on the data set by the original or collaborating Investigators;
- New results generated from older data sets;
- New studies addressing the same hypothesis;
- Independent analysis of the same data set by different people;
- Monitoring of the results of actions taken on the basis of the findings.⁷⁵⁸

Another form of replication the report describes is

meta-analysis, which is a systematic strategy for comprehensively describing and summarizing a body of research evidence from two or more studies. The goal is to produce a quantitative synthesis of the evidence presented in multiple studies that relate to a research question. In a typical meta-analysis, all the data used have been published in the public domain and are easy to inspect and analyze.⁷⁵⁹

The report specifically mentions the Harvard Six Cities Study as an example of a study where data could not be made publicly available, but which was verified to allow the agency to justifiably rely on it to set important air standards.⁷⁶⁰ Thus, unlike the Proposal the report acknowledges the many different pathways that exist for researchers to assess other studies, and does not suggest that allowing the general public access to underlying data and models is necessary.

⁷⁵² *Id.* at 5.

⁷⁵³ *Id.* at 7.

⁷⁵⁴ *Id.*

⁷⁵⁵ *Id.*

⁷⁵⁶ *Id.*

⁷⁵⁷ *Id.*

⁷⁵⁸ *Id.* at 7-8.

⁷⁵⁹ *Id.* at 8.

⁷⁶⁰ *Id.* at 8-12.

One of the panels of the workshop discussed the Shelby Amendment, and public access to data underlying agency regulation. A bench scientist expressed concerns that, though the idea of sharing data was a good idea, because any person could request information for any reason, this mechanism could be used to harass scientists whose work was found objectionable.⁷⁶¹ A representative of NIH similarly stated that while sharing data with other researchers was good scientific practice, allowing for indiscriminate public access to data serves “little purpose for those without the skills to reanalyze it.”⁷⁶² Additionally, access through FOIA does not allow for limitations to be put on the use of the data, which is typically available in other data-sharing modes.⁷⁶³ A representative from EPA raised issues including:

The Shelby Amendment. . . raises several questions for the EPA about rule making as a legal and deliberative process. At what point should the agency disclose what type of regulation is going to be considered or issued? The timing of the release can influence its reception. Should the agency use contracts to support the research needed for regulations? Contracting, as opposed to grants that support more flexible work, might narrow the type of information the agency receives and could possibly limit the scope of the science underlying the regulation.⁷⁶⁴

These questions and concerns are highly relevant to the Proposal as well, yet EPA provides no indication that it has given them any consideration.

Finally, a representative from NRDC pointed to other mechanisms that are already in place to ensure agencies rely on high quality data. For example, under the Administrative Procedure Act, agencies must respond to any comments that raise questions about a scientific studies design, performance, or conclusion.⁷⁶⁵ Courts can determine whether an agency was reasonable in its decision to refuse to accept the findings of a study because it could not access underlying data or refuses a request from a study participant.⁷⁶⁶ EPA does not explain why these existing mechanisms are not sufficient to ensure the integrity of the science it relies on.

V. The Health Effects Institute

In the original federal register notice, EPA provided no specificity as to which Health Effects policy EPA was referring to or why it supported the Proposal. Such a vague and unspecified reference does not meet the notice requirements of the APA and other statutes, and makes it impossible to respond.

VI. Center for Open Science

⁷⁶¹ *Id.* at 14.

⁷⁶² *Id.* at 15.

⁷⁶³ *Id.*

⁷⁶⁴ *Id.* at 16.

⁷⁶⁵ *Id.* at 17.

⁷⁶⁶ *Id.*

In the original federal register notice, EPA provided no specificity as to which Center for Open Science policy EPA was referring to or why it supported the Proposal. Such a vague and unspecified reference does not meet the notice requirements of the APA and other statutes, and makes it impossible to respond.

VII. Members of the Risk Assessment Specialty Section of the Society of Toxicology, the Dose Response Section of the Society for Risk Analysis, and the International Society for Regulatory Toxicology and Pharmacology

In the original federal register notice, EPA provided no specificity as to which policy of the Members of the Risk Assessment Specialty Section of the Society of Toxicology, the Dose Response Section of the Society for Risk Analysis, and the International Society for Regulatory Toxicology and Pharmacology EPA was referring to or why it supported the Proposal. Such a vague and unspecified reference does not meet the notice requirements of the APA and other statutes, and makes it impossible to respond.

VIII. Bipartisan Policy Center's Science for Policy Project

In the original federal register notice, EPA provided no specificity as to which Bipartisan Policy Center's Science for Policy Project policy EPA was referring to or why it supported the Proposal. Such a vague and unspecified reference does not meet the notice requirements of the APA and other statutes, and makes it impossible to respond.

Footnote 11: For example, see related policies from the Proceedings of the National Academy of Sciences, PLOS ONE, Science, and Nature

EPA claims that the Proposal takes into consideration policies adopted by scientific journals, but does not specify which "related policies" from these journals.⁷⁶⁷ While some of these journals have adopted certain policies encouraging or requiring researchers to share underlying data for the studies they publish, they all allow for exceptions when data cannot be released for compelling reasons, such as confidentiality protections.

Furthermore, the editors of these journals have issued a joint statement opposing the Proposal and noting that their policies do not endorse such an approach by EPA. They note that some data sets cannot be shared publicly, and that there are still other methods available to verify scientific findings. The statement also strongly condemns the notion of excluding scientific information from consideration when underlying data cannot be made publicly available:

It does not strengthen policies based on scientific evidence to limit the scientific evidence that can inform them; rather, it is paramount that the full suite of relevant science vetted through peer review, which includes ever more rigorous features, inform the landscape of decision making. Excluding relevant studies simply because they do not meet rigid transparency standards will adversely affect decision-making processes.⁷⁶⁸

⁷⁶⁷ 83 Fed. Reg. at 18,770.

⁷⁶⁸ Jeremy Berg et. al., *Joint statement on EPA proposed rule and public availability of data*, Science (Apr. 30, 2018), <http://science.sciencemag.org/content/early/2018/04/30/science.aau0116>.

Thus, EPA cannot claim that the Proposal is in any way supported by the data sharing policies of these scientific journals.

Footnote 12: See: <https://www.nature.com/articles/s41562-016-0021>;
<http://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.0020124>;
<http://science.sciencemag.org/content/343/6168/229.long>;
<https://www.economist.com/news/leaders/21588069-scientific-research-has-changed-world-now-it-needs-change-itself-how-science-goes-wrong>.;
<http://stm.sciencemag.org/content/8/341/341ps12.full>.

EPA claims that the Proposal is informed by the policies of scientific journals in response to the “replication crisis.”⁷⁶⁹ EPA provides no explanation or evidence to support the fact that such a “crisis” is occurring or that EPA’s Proposal would do anything to address the crisis. The sources EPA cites for this proposition speak to a concern about scientific studies being reproducible or replicable due to a number of different conditions related to poor scientific practices. While some of the articles speak about making data more available as an ideal to aspire to, none of them support the idea that a research study whose underlying data has not been made publicly available should, for that reason alone, be considered invalid. Further, many of these articles speak to how current scientific norms do not result in underlying data being available, which is a huge barrier to EPA’s Proposal that EPA does not at all address.

I. Marcus R. Munafó et. al, *A Manifesto for Reproducible Science*, 1 Nature Human Behavior 1 (2017)

Far from suggesting that agencies rely only on scientific studies if the underlying data is made public, or even that making underlying data public is necessary to ensure validity of scientific conclusions, the article discusses at a high level a number of systemic and cultural challenges to reproducible science. By ignoring the nuances of this article and presenting it without any explanation as support for its Proposal, EPA runs into the problem the article specifically cautions against, warning: “Some solutions may be ineffective or even harmful to the efficiency and reliability of science, even if conceptually they appear sensible.”⁷⁷⁰

This article does not endorse the existence of a “replication crisis” and in fact says, “[w]hether ‘crisis’ is the appropriate term to describe the current state or trajectory of science is debatable.”⁷⁷¹ Instead it notes a very different problem than the one EPA appears to target with the Proposal. It points broadly to an issue of there being “substantial room for improvement with regard to research practices to maximize the efficiency of the research community’s use of the public’s financial investment in research.”⁷⁷²

⁷⁶⁹ 83 Fed. Reg. at 18,770.

⁷⁷⁰ Marcus R. Munafó et. al, *A Manifesto for Reproducible Science*, 1 Nature Human Behavior 1, 7 (2017).

⁷⁷¹ *Id.* at 1.

⁷⁷² *Id.* at 1.

This article makes clear that open data requirements are just *one* of many solutions and steps to take towards increasing efficiency of use of resources and robustness of scientific findings—and never suggests that a lack of publicly available underlying data should automatically disqualify a research finding from consideration. It discusses a number of other improvements including protecting against cognitive biases through blinding, improving methodological training, implementing methodological support, encouraging collaboration and team science, promoting study pre-registration, improving quality of reporting, diversifying peer review, and changing incentives to promote efficient and effective research instead of just innovative outcomes.

While the article recognizes transparency as a “scientific ideal”⁷⁷³ it notes many challenges that currently exist to achieving this ideal, which EPA does not at all address. The article notes, “In reality, science often lacks openness: many published articles are not available to people without a personal or institutional subscription, and most data, materials and code supporting research outcomes are not made accessible, for example, in a public repository.”⁷⁷⁴ It further finds “substantial barriers to meeting these ideals, including vested financial interests (particularly in scholarly publishing) and few incentives for researchers to pursue open practices.” Nowhere does the article suggest that the many scientific studies for which data is not available due to prevailing scientific norms and practices be completely discarded. These challenges suggest that many studies EPA wishes to rely on may not be able to meet the rigid requirements of EPA’s proposal severely restricting the science EPA can use, degrading the quality of its decision-making.

Marcus R. Munafó, lead author on this paper, has since published a piece specifically dismissing science policy approaches that overemphasize the importance of replication.⁷⁷⁵ It states that the overemphasis on replicability is detrimental to science—that “[i]f a study is skewed and replications recapitulate that approach, findings will be consistently incorrect or biased.”⁷⁷⁶ Instead, the author suggests that “an essential protection against flawed ideas is triangulation” or “the strategic use of multiple approaches to address one question.”⁷⁷⁷ This involves looking at a broad base of different scientific studies and does not require underlying data to be made publicly available, not individual studies based on whether or not they can be replicated.⁷⁷⁸ By excluding scientific studies from EPA’s consideration, the Proposal overemphasizes the value of replication to the detriment of being able to evaluate a study in the context of many other studies examining the same issue through a variety of methods. The Proposal may well lead to reliance on less robust science and is thus arbitrary.

⁷⁷³ *Id.* at 5.

⁷⁷⁴ *Id.*

⁷⁷⁵ Marcus R. Munafó & George Davey Smith, *Robust research needs many lines of evidence*, *Nature* (Jan. 23, 2018), <https://www.nature.com/articles/d41586-018-01023-3#ref-CR3>.

⁷⁷⁶ *Id.*

⁷⁷⁷ *Id.*

⁷⁷⁸ *Id.*

II. John P.A. Ioannidis, *Why Most Published Research is False*, 2 PLoS Medicine 0696 (2005)

The article suggests “the high rate of nonreplication (lack of confirmation) of research discoveries is a consequence of the convenient, yet ill-founded strategy of claiming conclusive research findings solely on the basis of a single study assessed by formal statistical significance, typically for a p -value less than 0.05.”⁷⁷⁹ It looks at a number of different contributors to false positive findings and discusses solutions to this problem. Importantly, it stresses the need to focus on large studies, consider the totality of the evidence, and improve understanding of pre-study odds.⁷⁸⁰ These solutions each involve considering more evidence and more scientific studies to contextualize any one given study. Nowhere does the article suggest requiring underlying data be made public or fewer studies be considered. EPA’s proposal contrarily emphasizes data disclosure above all other practices for ensuring scientific integrity—and will result in fewer studies being considered to shed light on the scientific truth.

The author of this article has specifically criticized EPA’s Proposal, saying that, if it is finalized, “science will be practically eliminated from all decision-making processes” and “[r]egulation would then depend uniquely on opinion and whim.”⁷⁸¹ The author highlights the inherent problem in EPA’s Proposal, that “most of the raw data from past studies are not publicly available” and that indeed “[i]n a random sample of the biomedical literature (2000–2014) none of 268 papers shared all of their raw data. . . [and] [o]nly one shared a full research protocol.”⁷⁸² EPA has not addressed this major issue that suggests the Proposal would bar EPA from relying on massive amounts of scientific research. The article notes that reproducibility issues vary across the disciplines and that in many areas in which EPA operates, a solid and large foundation of scientific research has produced credible and widely-affirmed findings, including “in fields such as air pollution and climate change.”⁷⁸³ Even in these other fields, however, it firmly states that “simply ignoring science that has not yet attained such standards, is a nightmare.”⁷⁸⁴

III. Marcia McNutt, *Reproducibility*, 343 Science 229 (2014), <http://science.sciencemag.org/content/343/6168/229.long>

EPA cites an announcement by Science that, in response to reports “that a troubling proportion of peer-reviewed preclinical studies are not reproducible,”⁷⁸⁵ Science is adopting new policies requiring authors making submissions to the journal to disclose “whether there was a pre-experimental plan for data handling (such as how to deal with outliers), whether they conducted a sample size estimation to ensure a sufficient signal-to-noise ratio, whether samples were treated randomly, and whether the experimenter was blind to the conduct of the

⁷⁷⁹ John P.A. Ioannidis, *Why Most Published Research is False*, 2 PLoS Medicine 0696 (2005).

⁷⁸⁰ *Id.* at 0700-0701

⁷⁸¹ John P.A. Ioannidis, *All science should inform policy and regulation*, 15 PLOS Med 1, 2 (May 3, 2018), <http://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.1002576>.

⁷⁸² *Id.* at 1.

⁷⁸³ *Id.* at 2.

⁷⁸⁴ *Id.* at 2.

⁷⁸⁵ Marcia McNutt, *Reproducibility*, 343 Science 229 (2014), <http://science.sciencemag.org/content/343/6168/229.long>.

experiment.”⁷⁸⁶ While the article considers steps to increase reproducibility of science, it notes that data availability is not a necessary or sufficient step to ensure credibility of research findings, and that “ultimate responsibility lies with authors to be completely open with their methods, all of their findings, and the possible pitfalls that could invalidate their conclusions.”⁷⁸⁷ EPA’s Proposal ignores the ability to assess studies through these other important indicators to assure their validity.

VI. *How Science Goes Wrong*, Economist (Oct. 21, 2013), <https://www.economist.com/news/leaders/21588069-scientific-research-has-changed-world-now-it-needs-change-itself-how-science-goes-wrong>

This article opposes the view that verification of a study depends solely on the underlying data being made publicly available. While it identifies that much scientific research is unable to be replicated, the solution it proposes include tightening standards, particularly in statistics, registering research protocols in advance and monitoring them, and: “[w]here possible, trial data also should be open for other researchers to inspect and test.”⁷⁸⁸ Thus, even to the extent it discusses data availability, it suggests data should be open for other *researchers*, as opposed to the public, and recognizes this may not always be possible.⁷⁸⁹

VII. Steve N. Goodman, *What does research reproducibility mean?*, 8 Science Translational Medicine 1 (2016), <http://stm.sciencemag.org/content/8/341/341ps12.full>

Rather than saying anything about agencies relying only on scientific studies where underlying data is made public, this article discusses the importance of clearly defining key terms in the discussion about scientific reproducibility, noting that there is a lack of standardized definitions of terms such as “reproducibility, replicability, reliability, robustness, and generalizability.”⁷⁹⁰ This raises a key issue of vagueness in EPA’s proposal—EPA does not provide definition for key terms such as “independently validate” or “reproducible” and confusing mentions a “replication crisis” while citing to articles that speak to a “reproducibility crisis.”

While providing definitions for these various terms, the article notes that there terms all represent various methods of attempting to verify studies to ensure “scientific claims based on scientific results are true” and cautions against “treating reproducibility as an end in itself—rather than as an imperfect surrogate for scientific truth.”⁷⁹¹ Instead, it promoted the view of looking across studies to “assess their cumulative evidential weight.”⁷⁹² EPA Proposal thus directly contradicts the suggestions of this article.

⁷⁸⁶ *Id.*

⁷⁸⁷ *Id.*

⁷⁸⁸ *How Science Goes Wrong*, Economist (Oct. 21, 2013), <https://www.economist.com/news/leaders/21588069-scientific-research-has-changed-world-now-it-needs-change-itself-how-science-goes-wrong>.

⁷⁸⁹ *Id.*

⁷⁹⁰ Steve N. Goodman, *What does research reproducibility mean?*, 8 Science Translational Medicine 1 (2016), <http://stm.sciencemag.org/content/8/341/341ps12.full>.

⁷⁹¹ *Id.*

⁷⁹² *Id.* at 3.

Footnote 13: EPA has not consistently followed previous EPA policy (e.g, EPA’s Scientific Integrity Guidance, referenced above) that encouraged the use of non-proprietary data and models.

While EPA in a footnotes suggests that EPA has not consistently followed EPA’s EPA’s Scientific Integrity Policy encouraging the use of non-proprietary data and models, it misses the fact that EPA’s policy was not written as an absolute standard, but was intended to be a flexible one. The policy states only that “the use of non-proprietary data and models are encouraged, when feasible, to increase transparency.”⁷⁹³ EPA must thus explain and justify its deviation from its prior flexible approach that the Proposal now imposes.

Footnote 14: <https://www.whitehouse.gov/wp-content/uploads/2017/11/2005-M-05-03-Issuance-of-OMBs-Final-Information-Quality-Bulletin-for-Peer-Review-December-16-2004.pdf>

The Proposal appears to issue a requirement for independent peer review of all *pivotal regulatory science* used to justify *regulatory decisions*, consistent with the requirements of the OMB Final Information Quality Bulletin for Peer Review. EPA cites to OMB’s Final Information Quality Bulletin for Peer Review, explaining existing peer review requirements that nowhere does EPA suggest are not already being complied with.

As discussed in our comments, there is some vagueness as to whether the Proposal maintains, expands, or narrows these already existing requirements. OMB’s bulletin underwent a rigorous stakeholder process including response to comments on multiple drafts from stakeholders, a federal agency workshop at NAS, outreach to major scientific organizations and societies, a formal interagency review.⁷⁹⁴ EPA’s Proposal has not gone through nearly the same level of review, or as our comments detail, even met the minimum legal requirements for consultation and review. OMB’s guidance further provides that agencies should consider the “tradeoffs between depth of peer review and timeliness”⁷⁹⁵ This includes considering a benefit-cost framework for peer review that takes into account “the direct costs of the peer review activity and those stemming from potential delay in government and private actions that can result from peer review.”⁷⁹⁶ As our comments detail, EPA has not provided any meaningful benefit-cost analysis of the Proposal. Thus, it would be improper and in conflict with OMB’s guidance for EPA to be expanding the peer review requirements through this Proposal.

Footnote 15: February 22, 2002 (67 FR 8453) OMB’s Guidelines Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information (2002)

⁷⁹³ EPA, *Scientific Integrity Policy* at 4.

⁷⁹⁴ *Final Information Quality Bulletin for Peer Review*, 70 Fed. Reg. 2664 (Jan. 14, 2005).

⁷⁹⁵ *Id.* at 2,668.

⁷⁹⁶ *Id.* at 2,668

<https://www.federalregister.gov/documents/2002/02/22/R2-59/guidelines-for-ensuring-and-maximizing-the-quality-objectivity-utility-and-integrity-of-information>.

As discussed above in the Section on footnote 6, EPA’s attempt to align its proposal with OMB’s guidelines is misguided.

Footnote 16: See examples from the U.S. Department of Health and Human Services, National Institute of Standards and Technology, U.S. Department of Education, and the U.S. Census Bureau.

In the original Proposal EPA provided no specific “examples” and this vague cite provided very little direction about what EPA was referencing here—making it impossible to review these examples or respond to them.

Footnote 17: <https://www.hhs.gov/hipaa/for-professionals/privacy/special-topics/de-identification/index.html>.

EPA states that other agencies have tools to de-identify information private information, but fails to recognize that these methods are not transferable to EPA’s context.⁷⁹⁷ EPA links to guidance on de-identification requirements under HIPAA. This guidance provides two methods for de-identifying data: (1) expert determination method, where an expert determines that, after application of statistical and scientific principals and methods, the risk is very small that the information alone or with other available information could be used to identify the subject; and (2) the safe harbor method, requiring that a number of identifiers are removed. The first method requires case-by-case work and EPA has provided no information regarding how EPA could implement it or how much it might cost and thus the feasibility of requiring researchers or EPA to de-identify data this way is questionable. The second method requires removal of much information useful for research that may be necessary to be able to independently validate the research, so it is unclear that it would satisfy the Proposal’s demands. Furthermore, the safe harbor method has been shown to provide potentially insufficient privacy protections.⁷⁹⁸

Footnote 18: <https://www.nap.edu/catalog/11434/expanding-access-to-research-data-reconciling-risks-and-opportunities>.

In this footnote, EPA cites to a report by the National Academies for the proposition that “The National Academies have noted that simple data masking, coding, and de-identification techniques have been developed over the last half century. . . .”⁷⁹⁹ This incorrectly makes it seem as though the National Academies have identified simple techniques to de-identify data for public release without compromising personal privacy. A full review of the report reveals the

⁷⁹⁷ 83 Fed. Reg. at 18,771.

⁷⁹⁸ Latanya Sweeney, Ji Su Yon, Laura Perovich, Katherine E Boronow, Phil Brown, and Julia Green Brody, *Re-identification Risks in HIPAA Safe Harbor Data: A Study of Data From One Environmental Health Study*, Technology Science (August 28, 2017).

⁷⁹⁹ 83 Fed. Reg. at 18,771; National Research Council, *Expanding Access to Research Data: Reconciling Risks and Opportunities*, National Academies Press (2005).

opposite is true, that The National Academies in fact recognize that complex, evolving, and yet undeveloped techniques are needed to resolve these concerns. It offers recommendations that are intended to *improve upon* existing techniques, indicating that this area is under constant change and many advances are left to be made.⁸⁰⁰ Further, the report notes this improvement requires “strong partnership between the research community and statistical and research agencies in the design of innovative research on disclosure avoidance techniques and data access modalities and in the implementation of the advances that result from such research.”⁸⁰¹ The Proposal takes no steps towards advancing design of new techniques or providing resources to undertake all that needs to be done to make the Proposal remotely feasible.

Further, the Report notes that a changing landscape is making it increasingly difficult to apply past techniques to sufficiently protect data from identification, saying: “Initially, relatively simple data masking techniques, such as top coding income amounts. . . were used to generate restricted data products [,] [d]uring the last decade the increasing risks of confidentiality breaches have led researchers to develop increasingly sophisticated methodologies for restricted data products.”⁸⁰² They state, “more research is clearly needed to assess the relative ability of different masking methods, and of synthetic data, to reduce the risk of disclosure while preserving data utility.”⁸⁰³ EPA does not acknowledge these newly emerging concerns.

The National Academies recognize the current limitations of producing restricted data that sufficiently limits identifiability to allow it to be made publicly available in a useful form. They note that “well-informed policy making” requires “[r]esearch using detailed confidential data” that cannot be made public—which the Proposal fails to acknowledge to the detriment of the quality of EPA’s policy decisions.⁸⁰⁴ Just because certain information cannot be made public for legitimate reasons does not mean the government should refuse to use it to inform policy. And much of the data useful for environmental and health research is particularly sensitive—the report notes there is increased vulnerability in “[d]ata with geographic detail, such as census block data” and longitudinal data obtained in panel surveys, which is often salient in environmental research.⁸⁰⁵ In the meantime, the National Academies state that more work is needed to allow “[h]igh-quality public-use files” that still assure “the inferential validity of the data while safeguarding their confidentiality.”⁸⁰⁶

They also point to broader implications of not implementing sufficient privacy protections that EPA does not consider at all may result from the Proposal. The quality of data collected is likely to suffer as “[i]t is essential that respondents believe they can provide accurate, complete information without any fear that the information will be disclosed inappropriately.”⁸⁰⁷ Essentially, the report leaves as an open question “decisions about how much disclosure risk is acceptable in order to achieve the benefits of greater access to research data involve weighing the

⁸⁰⁰ *Id.* at 35.

⁸⁰¹ *Id.* at 35.

⁸⁰² *Id.* at 27

⁸⁰³ *Id.* at 28.

⁸⁰⁴ *Id.* at 2.

⁸⁰⁵ *Id.* at 22.

⁸⁰⁶ *Id.* at 2.

⁸⁰⁷ *Id.* at 51.

potential harm posed by disclosure against the benefits potentially foregone.”⁸⁰⁸ Thus, EPA wrongfully points to this report as supporting the notion that simple techniques exist to address privacy concerns. The report recommends only more research to reduce risks and increase data utility along with consultation with data users and providers about these issues—which the Proposal does not implement and thus the report does not support the Proposal.⁸⁰⁹

Footnote 19: <https://www.cep.gov/content/dam/cep/report/cep-final-report.pdf>; <https://www.nap.edu/catalog/24652/innovations-in-federal-statistics-combining-data-sources-while-protecting-privacy>; <https://www.nap.edu/catalog/24893/federal-statistics-multiple-data-sources-and-privacy-protection-next-steps>.

EPA claims that “the National Academies and the Bipartisan Commission on Evidence Based Policy have discussed the challenges and opportunities for facilitating to secure access to confidential data for non-government analysts.”⁸¹⁰ The proposal does not explain how these examples are relevant, as there is no indication that secure access to underlying data would meet the requirements of making underlying data “publicly available.” Further, even if it were relevant, a review of the sources cited reveal that they do discuss many challenges in this space—which the Proposal does not at all address—and provide no support for the Proposal.

I. Commission on Evidence-Based Policymaking, The Promise of Evidence-Based Policymaking (2017)

This report centers on how to enhance infrastructure to increase the access and use of data between federal agencies to support government policy-making, rather than increase public access to data to non-governmental analysts for purposes of independently validating regulatory science.⁸¹¹ Further, its focus is to help efforts to make *more* data available for government purposes to better inform policies. The Proposal on the other hand seeks to make data available to validate individual studies while ultimately making *less* data available for EPA to consider as it creates policies.

To the extent the report does speak to making more data *publicly* available, it envisions an entirely new framework to provide adequate privacy protections. Chapter Three of the report discusses increasing threats to privacy as “the amount of information about individuals that is publicly available has grown and the technology that can permit unauthorized re-identification has improved.”⁸¹² It notes that forming solutions to this problem while preserving the quality of data is difficult, and that a challenge is “ensuring that enhanced statistical disclosure methods do not change the data in ways that increase the difficulty of reproducing research results.” It thus specifically notes that protecting confidentiality can be in tension with allowing data to be used for reproducibility purposes.

⁸⁰⁸ *Id.* at 62.

⁸⁰⁹ *Id.*

⁸¹⁰ 83 Fed. Reg. at 18,771.

⁸¹¹ Commission on Evidence-Based Policymaking, *The Promise of Evidence-Based Policymaking* (2017).

⁸¹² *Id.* at 54-55.

The report recommends: (1) amending federal statutes to require Federal departments to conduct a comprehensive risk assessment on de-identified confidential data intended for public release and release de-identified confidential data subject to the Privacy Act and CIPSEA only after a disclosure review board approves the release and publicly provides the risk assessment and a description of steps taken to mitigate risk; (2) federal departments to adopt state-of-the-art database, cryptography, privacy-preserving, and privacy-enhancing technologies for confidential data used for evidence building; (3) federal departments assign a senior official the responsibility for coordinating access to and stewardship of the department's data resources; (4) new legislation ensuring that data acquired under a pledge of confidentiality are kept confidential and used exclusively for statistical purposes.⁸¹³ The Proposal does not discuss or contribute to any of these efforts.

Chapter Four recognizes that some data cannot be made publicly available without sacrificing the utility of the evidence and thus sets forth recommendations for creating a new National Secure Database Service to allow researchers to access “detailed data that cannot be made publicly available, and only for exclusively statistical purposes.”⁸¹⁴ This report thus implicitly recognizes the value of using confidential data to “securely generate evidence about government policies and programs.”⁸¹⁵ While transparency is a crucial goal, using data that cannot be made publicly available can help inform government policies in important ways.

The Report details the many obstacles to making data publicly available, and ultimately concludes that much more work is needed in this area, none of which is being furthered by EPA's Proposal.

II. NAS, *Innovations in Federal Statistics: Combining Data Sources While Protecting Privacy* (2017)

This report provides recommendations to increase sharing and use of data by the federal government and between agencies.⁸¹⁶ It places maintaining privacy and confidentiality at the forefront. The report provides a discussion of the benefits and challenges to allowing external researchers to access data held by government agencies. This assumes that agency has access to data in the first place—which may not be the case with the studies EPA wishes to rely on that would be barred by its Proposal.

The report notes multiple risks to privacy and confidentiality from data breaches, identity theft, and the threat from the ability to combine multiple data sources to re-identify anonymized data as more and more data is made publicly available.⁸¹⁷ The solutions that the report proposes to minimize these risks include: data minimization, restricted data, restricted access (including licensing agreements, federal statistical research data centers, nongovernment data enclaves).⁸¹⁸

⁸¹³ *Id.* at 47.

⁸¹⁴ *Id.* at 66.

⁸¹⁵ *Id.* at 68.

⁸¹⁶ NAS, *Innovations in Federal Statistics: Combining Data Sources While Protecting Privacy*, National Academies Press (2017).

⁸¹⁷ *Id.* at 76-79.

⁸¹⁸ *Id.* at 82-88.

The Proposal does not allow for data minimization since it is aimed at making public complete underlying data that is likely to involve salient personally identifiable information for an unlimited amount of time.⁸¹⁹ Data restriction involves “removing explicit identifiers and applying a variety of statistical disclosure limitation methods to the dataset to reduce the risk of disclosure.”⁸²⁰ However, because these techniques “decrease the precision of the variables in the dataset and. . . introduce errors” it is unclear that they would preserve data for independent validation while also sufficiently protecting privacy.⁸²¹ Restricted access involves using “administrative procedures and technology to restrict who can access the dataset and what kinds of analyses can be done with the data to reduce the risk of disclosure.”⁸²² This specifically limits access to data from the general public, which seemingly would not meet the requirements of EPA’s proposal. Thus, EPA has not addressed how it would meet any of the challenges raised in this document.

III. NAS, Federal Statistics, Multiple Data Sources, and Privacy Protection: Next Steps (2017)

This report is not directly relevant as it discusses ways to combine diverse data sources from government and private sector sources and the privacy issues that arise from combining multiple data sets.⁸²³ The purpose of the report is to help “federal statistical agencies examine and evaluate data from alternative sources and then combine them as appropriate to provide the country with more timely, actionable, and useful information for policy makers, businesses, and individuals.”⁸²⁴ EPA’s proposal will in fact restrict the information that EPA can use.

The report notes that the “privacy status of data is dynamic over time, that datasets that are not individually identifiable today may in the future become individually identifiable” with the availability of new techniques and auxiliary data.⁸²⁵ It notes that as data sets are linked, these privacy threats increase.⁸²⁶ The Proposal does not discuss or address threats to privacy from data linkages.

The panel highlighted a number of threats to privacy and data security, including from security threats and inferential disclosure, and concluded “there is awareness of weaknesses of current statistical disclosure limitation methods, but the feasibility for federal statistical agencies of implementing new technologies, such as differential privacy, has not been clearly demonstrated.”⁸²⁷ Finally, they state:

⁸¹⁹ *Id.* at 82-83.

⁸²⁰ *Id.* at 83.

⁸²¹ *Id.*

⁸²² *Id.* at 85.

⁸²³ NAS, *Federal Statistics, Multiple Data Sources, and Privacy Protection: Next Steps*, National Academies Press (2017).

⁸²⁴ *Id.* at 2.

⁸²⁵ *Id.* at 71.

⁸²⁶ *Id.* at 72.

⁸²⁷ *Id.* at 105.

Overall, much work, interaction, and collaboration will be needed across the various disciplines and stakeholders as agencies seek to move forward to provide stronger privacy protection for the data they either collect from respondents or acquire access to from other administrative and private-sector sources for statistical purposes. It will be critical for there to be robust discussions of the implications of this approach for all stakeholders and these discussions will need to be informed by concrete examples to help everyone understand how use of these technologies will affect them.⁸²⁸

The report notes that in order to provide greater access to data much more research and resources are needed. The Proposal identifies no such resources or processes needed to develop needed methods and techniques to allow for greater data disclosure.

Footnote 20: For example, see policies or recommendations of publishers Taylor & Francis, Elsevier, PLOS, and Springer Nature

EPA cites to “policies or recommendation” of several journals that require data be deposited in public data repositories as an example of the Proposal’s requirement of data availability.⁸²⁹ EPA provided only a list of journals with no reference to any specific policies making it difficult to respond fully to this statement.

Each of these journals, however, has exceptions to its data availability requirements when there are valid reasons preventing authors from making their data publicly available via a public data repository. Further, the editors of these journals released a joint statement that explains why their policies with regards to data availability should not be used to support a policy by a federal agency that would in fact restrict the scientific studies it could rely on.⁸³⁰ Given the vastly different contexts and aims of federal agencies and scientific journals when it comes to making data publicly available, journal policies should not inform EPA’s direction. None of these journals claims that lack of data availability in itself calls into question the validity of a scientific conclusion based on that data—and thus these policies do not support the Proposal.

Footnote 21: For example: <https://osp.od.nih.gov/scientific-sharing/requesting-access-to-controlled-access-data-maintained-in-nih-designated-data-repositories-e-g-dbgap/>; <https://www.census.gov/fsrdc>

As examples of controlled access to data in federal research data centers, EPA cites to the National Institutes of Health’s policy for requesting access to controlled-access data maintained in NIH-designated data repositories and the U.S. Census Bureau’s website on Federal Statistical Research Data Centers, secure facilities providing authorized access to restricted-use microdata for statistical purposes only. NIH requires researches to be a tenure-track professor, senior

⁸²⁸ *Id.* at 106.

⁸²⁹ 83 Fed. Reg. at 18,771.

⁸³⁰ Jeremy Berg et. al., *Joint statement on EPA proposed rule and public availability of data*, Science (Apr. 30, 2018), <http://science.sciencemag.org/content/early/2018/04/30/science.aau0116>.

scientist, or equivalent and go through required procedures prior to gaining access.⁸³¹ The U.S. Census Bureau requires researchers to obtain Census Bureau Special Sworn Status, which requires passing a moderate risk background check and swearing to protect respondent confidentiality for life, with significant financial and legal penalties under Title 13 and Title 26 for failure to do so.⁸³²

It is unclear how these policies are informing EPA's proposal. EPA's proposal would require data to be made "publicly available," and these forms of restricted access specifically do not make data publicly available. They require significant resources and infrastructure and careful thought about who will be permitted to access such data and under what conditions—none of which EPA has provided any discussion of in the Proposal.

Footnote 22: These recommendations are consistent with those of Lutter and Zorn (2016). [https:// www.mercatus.org/system/files/Mercatus-Lutter-Public-Access-Data-v3.pdf](https://www.mercatus.org/system/files/Mercatus-Lutter-Public-Access-Data-v3.pdf).we re.

EPA cites to a working paper by Randall Lutter and David Zorn as supporting the proposition that "EPA should collaborate with other federal agencies to identify strategies to protect confidential and private information in any circumstance in which it is making information publicly available. These strategies should be cost-effective and may also include: Requiring applications for access; restricting access to data for the purposes of replication, validation, and sensitivity evaluation; establishing physical controls on data storage; online training for researchers; and nondisclosure agreements."⁸³³

Lutter and Zorn reference these strategies as ones agencies could use to minimize the risks to personally identifiable information when agencies make data publicly available.⁸³⁴ However, EPA's proposed regulations do not discuss or propose implementation of any of these strategies. The Proposal would result in a rule that mandates only that data be made "publicly available" without any possibility for more restricted release. As the comments discuss, EPA has further not consulted with other federal agencies on this Proposal.

Lutter and Zorn additionally do not argue that agencies should immediately disregard studies where data cannot be made publicly available, and provide alternative procedures agencies should utilize in those cases when still relying on studies.⁸³⁵ In a separate statement on the HONEST Act, which contains similar requirements as the Proposal, Lutter and Zorn stated that the legislation "should also allow agencies to regulate in instances where they do not possess data."⁸³⁶ While these additional procedures they recommend agencies follow could still be overly

⁸³¹ NIH, *Requesting Access to Controlled-Access Data Maintained in NIH-Designated Data Repositories (e.g., dbGaP)*, <https://osp.od.nih.gov/scientific-sharing/requesting-access-to-controlled-access-data-maintained-in-nih-designated-data-repositories-e-g-dbgap/> (last accessed Aug. 10, 2018).

⁸³² U.S. Census Bureau, *Secure Research Environment*, https://www.census.gov/about/adrm/fsrdc/about/secure_rdc.html (last accessed Aug. 10, 2018).

⁸³³ 83 Fed. Reg. at 18,771.

⁸³⁴ Randall Lutter & David Zorn, *On the Benefits and Costs of Public Access to Data Used to Support Federal Policy Making*, Mercatus Working Paper 31 (Sept. 2016).

⁸³⁵ *Id.* at 32-33.

⁸³⁶ Randall Lutter and David Zorn, *The Data That Our Government Uses Must be Transparent*, SmartRegs (Mar. 13, 2017), <https://smartregs.org/the-data-that-our-government-uses-must-be-transparent-caa16b3dc19d>.

burdensome and barriers to EPA promulgating important safeguards, it is important to note that even they see the dangers in a rule that would force the agency to disregard studies when underlying data could not be made public.

Footnote 23: <https://www.nap.edu/catalog/11434/expanding-access-to-research-data-reconciling-risks-and-opportunities>.

The Proposal claims “The benefits EPA ensuring that dose response data and models underlying pivotal regulatory science are publicly available in a manner sufficient for independent validation are that it will improve the data and scientific quality of the Agency’s actions and facilitate expanded data sharing and exploration of key data sets.”⁸³⁷ EPA cites to a National Academies report. This report does speak to many benefits of making data available to researchers, including helping to maintain and improve data quality,⁸³⁸ promoting new research and exploration of new questions using existing data,⁸³⁹ and allowing for verification, refutation, or refinement of original results.⁸⁴⁰

However, the report simply considers the benefits of making data publicly available in a broad sense, it does not consider the issue in the Proposal—which is that new data is not necessarily being made publicly available that was not before, and at the same time EPA’s consideration of scientific research is being limited. Thus, it does not consider the costs to government policy-making that come from EPA’s refusing to consider scientific research where underlying data is not publicly available. Since it is questionable whether the Proposal will result in any new data being made available to the public, and certain that it will result in EPA’s ignoring valid scientific findings, it is unlikely that this Proposal will “improve the data and scientific quality of the Agency’s actions” as EPA claims.

Footnote 24: <https://www.mercatus.org/system/files/Mercatus-Lutter-Public-Access-Data-v3.pdf>.

EPA cites to a paper by Randall Lutter and David Zorn for its analysis that “an increase in existing net benefits from greater reproducibility, which, if it occurred, would cover the costs of obtaining the data and making the data available.”⁸⁴¹ However, there are important limitation to this analysis that seriously call this conclusion into question.

First, the statement that EPA cites to is taken out of context. The entire sentence is: “More specifically, we can calculate an increase in existing net benefits from greater reproducibility, which, if it occurred, would cover the costs of obtaining the data and making the data available.”⁸⁴² This statement is *not* a conclusion that the benefits of making publicly

⁸³⁷ 83 Fed. Reg. at 18,772.

⁸³⁸ The National Academies, *Expanding Access to Research Data: Reconciling Risks and Opportunities*, National Academies Press 48 (2005).

⁸³⁹ *Id.* at 38.

⁸⁴⁰ *Id.* at 39.

⁸⁴¹ Randall Lutter & David Zorn, *On the Benefits and Costs of Public Access to Data Used to Support Federal Policy Making*, Mercatus Working Paper (Sept. 2016).

⁸⁴² *Id.* at 27.

available data underlying research that federal agencies use to promulgate significant public policies would outweigh the costs. It is describing the figure that Lutter and Zorn go on to calculate—the threshold level of increase in net benefits required by this policy to equal the costs of implementation. They find that “an improvement in net benefits of 0.02 to 2.08 percent would imply that the net benefits of requiring data access are positive.”⁸⁴³ They themselves note that this estimate “fall[s] short of proving that the benefits outweigh the associated costs.”⁸⁴⁴

Their analysis itself is suspect because it differs greatly from the cost estimate provided by the Congressional Budget Office for H.R. 1430, Honest and Open New EPA Science Treatment Act of 2017. The CBO estimated that, if the agency were to choose to rely only on studies that met the Act’s requirements from the outset, implementing this legislation would cost about \$5 million from 2018-2022.⁸⁴⁵ They assumed it would cost \$10,000 per study to make data available to enable use of studies.⁸⁴⁶ They estimated costs of at least \$100 million per year if EPA were to continue to rely on as many studies to support its actions as it has done in recent years.⁸⁴⁷ An older cost estimate from CBO on a prior version of the HONEST Act estimated that it would cost “about \$250 million a year for the next few years.”⁸⁴⁸ This assumed that EPA would spend from \$10,000 to \$30,000 per study to make the data available and that EPA would reduce the number of studies it relies on by about one-half.⁸⁴⁹

Zutter and Lorn calculated an alternative amount for the costs to EPA of this legislation. They find that “the total cost to the EPA for data collection and public accessibility would be \$2,558 per study, or about 26 percent of the \$10,000 per study cost estimated by CBO.”⁸⁵⁰ They used estimates that EPA reported under the Paperwork Reduction Act for time that entities in the chemical industry would need to spend to comply with EPA’s Health and Safety Data Reporting Rule (40 C.F.R. 716).⁸⁵¹ While they purport that the requirements of that rule are similar to the activities that EPA would undertake to comply with the HONEST Act and similar legislation, they provide no further basis for this.⁸⁵² Given the great discrepancy between their and CBO’s estimates, it is unclear that their estimate sufficiently accounts for the numerous costs associated with EPA locating underlying research data not currently in its possession and upgrading it to enable it to be made publicly available.

They also rely on questionable assumptions in their calculation. They assume that “given modern technology, by the time research has been published, almost all relevant underlying data

⁸⁴³ *Id.*

⁸⁴⁴ *Id.* at 29.

⁸⁴⁵ Congressional Budget Office, *Cost Estimate: H.R. 1430, Honest and Open New EPA Science Treatment (HONEST) Act of 2017* (Mar. 29, 2017), <https://www.cbo.gov/system/files/115th-congress-2017-2018/costestimate/hr1430.pdf>.

⁸⁴⁶ *Id.* at 3.

⁸⁴⁷ *Id.* at 3.

⁸⁴⁸ Congressional Budget Office, *Cost Estimate: H.R. 1030 Secret Science Reform Act of 2015* (Mar. 11, 2015), <https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/costestimate/hr1030.pdf>.

⁸⁴⁹ *Id.* at 3.

⁸⁵⁰ Randall Lutter & David Zorn, *On the Benefits and Costs of Public Access to Data Used to Support Federal Policy Making*, Mercatus Working Paper 23 (Sept. 2016).

⁸⁵¹ *Id.* at 21.

⁸⁵² *Id.*

and computer code and models will be in electronic format” so time spend photocopying studies will be reduced.⁸⁵³ This does not consider that EPA may want to rely on older studies where all relevant information is not available in electronic, easily accessible formats. They provide unsupported estimates for activities that EPA would need to undertake to comply with HONEST Act-like legislation that has no corresponding requirement in EPA’s Health and Safety Data Reporting Rule—such as estimating 10 hours for EPA to format unformatted data for public access.⁸⁵⁴

They additionally produce their own estimate for the number of studies that EPA relies on each year, looking at materials posted in dockets on regulations.gov and coming to a total of 18,000 pieces of scientific research per year.⁸⁵⁵ CBO estimated 50,000 scientific studies per year.⁸⁵⁶ Assuming that EPA continued to rely on all 18,000 studies per year, Zutter and Lorn came to total implementation costs of about \$46 million per year, far below the estimate by CBO assuming EPA still relied on at least half of the studies it does currently. Thus, one should view this cost estimate with suspicion, and there is no reason it should be relied on over CBO’s cost estimates and does not suffice for EPA providing its own cost benefit analysis.

May 25, 2018 Memorandum

On May 25, 2018, EPA provided a memorandum that provided additional hyperlinks for some of the sources cited in the footnotes.⁸⁵⁷

Footnote 9

- **National Science Foundation:** <https://www.nsf.gov/bfa/dias/policy/dmp.jsp>
- **National Institute of Science and Technology:** <https://www.nist.gov/open>
- **National Institutes of Health:** <https://grants.nih.gov/policy/sharing.htm>

The hyperlinks that EPA provides fail to point to any relevant policies that support EPA’s Proposal. First, EPA links to the National Science Foundation’s policies requiring investigators who receive NSF grants to share research data with other researchers.⁸⁵⁸ Importantly, they are only to release privileged or confidential information “in a form that protects the privacy of individuals and subjects involved” and NSF may make adjustments or exceptions when needed

⁸⁵³ *Id.* at 22.

⁸⁵⁴ *Id.*

⁸⁵⁵ *Id.* at 24.

⁸⁵⁶ Congressional Budget Office Cost Estimate: H.R. 1430, Honest and Open New EPA Science Treatment (HONEST) Act of 2017 (Mar. 29, 2017), <https://www.cbo.gov/system/files/115th-congress-2017-2018/costestimate/hr1430.pdf>. 3

⁸⁵⁷ May 25, 2018 Memorandum Re: Omitted Hyperlinks for Footnotes in the Proposed Rule (Docket ID No. EPA–HQ–OA–2018–0259)

⁸⁵⁸ NSF, *Disseminating and Sharing of Research Results*, <https://www.nsf.gov/bfa/dias/policy/dmp.jsp> (last accessed Aug. 10, 2018).

“to safeguard the rights of individuals and subjects, the validity of results, or the integrity of collections or to accommodate the legitimate interest of investigators.”⁸⁵⁹

EPA links to the National Institute of Science and Technology policy on sharing data arising from NIST-funded research.⁸⁶⁰ The plan clearly exempts “[p]ersonnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy” from being subject to the data sharing policy.⁸⁶¹

EPA also cites to The National Institutes of Health. The hyperlink links to a webpage consisting of a number of policies dictating sharing of NIH-funded research with no clarification of which policy EPA is referring to or why it is relevant to the Proposal. While NIH policies do in many cases require data from NIG-funded research to be shared publicly—these policies place protection of personal information at the forefront and thus include controls such as controlled access, de-identification of information, data aggregation and allow exceptions when data cannot be made publicly available.

These examples all deal with policies to share data that the agencies have access to and the ability to share—because they deal with federally-funded research. EPA’s Proposal, on the other hand, applies to all data whether or not EPA has the data in its possession or is authorized to release it. They all speak to making data available to increase its utility, not to making data available specifically for the purposes of independent validation of research results, which requires data be available on a more granular level that makes privacy protection more difficult. Further, EPA already has policies in place to make publicly available data that is produced by research it funds. Also, none of these policies address regulating how the agencies themselves rely on or use scientific information. Thus the Proposal in no way “builds upon” the efforts they represent.

Footnote 10

- **Administrative Conference of the United States’ Science in the Administrative Process Project:** <https://www.acus.gov/research-projects/science-administrative-process>
- **Improving Access to and Confidentiality of Research Data:** <https://www.nap.edu/read/9958>
- **Expanding Access to Research Data:** <https://www.nap.edu/catalog/11434/expanding-access-to-research-data-reconciling-risks-and-opportunities>
- **Access to Research Data in the 21st Century:** <https://www.nap.edu/catalog/10302/access-to-research-data-in-the-21st-century-an-ongoing>
- **Health Effects Institute:** https://www.healtheffects.org/system/files/AppendixD-data-access_3.pdf

⁸⁵⁹ NSF, *Chapter XI - Other Post Award Requirements and Considerations*, https://www.nsf.gov/pubs/policydocs/pappg17_1/pappg_11.jsp#XID4 (Jan. 30, 2017).

⁸⁶⁰ NIST, *Public Access to NIST Research*, <https://www.nist.gov/open> (last accessed Aug. 10, 2018).

⁸⁶¹ NIST, *Managing Public Access to Results of Federally Funded Research Policy 1-2* (Jun. 26, 2015), https://www.nist.gov/sites/default/files/documents/2018/06/19/final_p_5700.pdf.

- **Center for Open Science:**
https://osf.io/x2w9h/?_ga=2.15543670.1160736397.1518527893-776332106.1518527893
 - **Members of the Risk Assessment Specialty Section of the Society of Toxicology, the Dose Response Section of the Society for Risk Analysis, and the International Society for Regulatory Toxicology and Pharmacology:**
http://www.isrtp.org/GMU%20WEBINAR_DEC_2013/GMU%20Study%20Document4.pdf
 - **Bipartisan Policy Center's Science for Policy Project:**
<http://bipartisanpolicy.org/wp-content/uploads/sites/default/files/BPC%20Science%20Report%20fnl.pdf>
- I. The Health Effects Institute, https://www.healtheffects.org/system/files/AppendixD-data-access_3.pdf**

EPA provides a link to the HEI Policy On The Provision Of Access To Data Underlying HEI funded Studies. This policy is “to provide access expeditiously to data for studies that it has funded and to provide that data in a manner that facilitates review and verification of the work but also protects the confidentiality of any volunteers who may have participated in the study and respects the intellectual interests of the original investigator of the work.”⁸⁶² It is written to be consistent with OMB Circular A-110, which requires agencies to respond to FOIA requests for data underlying federally supported research used to develop federal agency actions with the force and effect of law. EPA already has policies in place to make public the data underlying research that it funds, and already must comply with OMB Circular A-110, thus, it is unclear how this Proposal builds upon this policy.

Furthermore, the policy specifically excludes “personal and medical information and similar information that is personally identifiable, and the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study” and requires the requestor to pay reasonable costs. In this manner, it further deviates from the Proposal.⁸⁶³

II. Center for Open Science,
https://osf.io/x2w9h/?_ga=2.15543670.1160736397.1518527893-776332106.1518527893

EPA links to the Center for Open Science's 2017-2020 Strategic Plan.⁸⁶⁴ While the strategic plan outlines COS's own mission to “increase openness, integrity, and reproducibility of scholarly research” and to meet its goal of creating “a future scholarly community in which the process, content, and outcomes of research are openly accessible by default” nothing in this

⁸⁶² HEI, *APPENDIX D: HEI POLICY ON THE PROVISION OF ACCESS TO DATA UNDERLYING HEI FUNDED STUDIES*, https://www.healtheffects.org/system/files/AppendixD-data-access_3.pdf (last accessed Aug. 10, 2018).

⁸⁶³ *Id.*

⁸⁶⁴ Center for Open Science, *Strategic Plan*, https://osf.io/x2w9h/?_ga=2.15543670.1160736397.1518527893-776332106.1518527893.

strategic plan suggests anything like EPA's Proposal.⁸⁶⁵ It does not discuss barring use of studies or ensuring access to underlying data—and thus is completely irrelevant to the Proposal.

III. Members of the Risk Assessment Specialty Section of the Society of Toxicology, the Dose Response Section of the Society for Risk Analysis, and the International Society for Regulatory Toxicology and Pharmacology:
http://www.isrtp.org/GMU%20WEBINAR_DEC_2013/GMU%20Study%20Document4.pdf

EPA links to a survey conducted by the Center for Media and Public Affairs and Center for Health and Risk Communication at George Mason University.⁸⁶⁶ They surveyed members of the Risk Assessment Specialty Section of the Society of Toxicology, the Dose Response Section of the Society for Risk Analysis, and the International Society for Regulatory Toxicology and Pharmacology. However, the survey thus does not represent any official recommendation or policy position from these professional organizations, and represent only the views of the members who chose to participate in the survey.

Thus, while the survey found 69 % of those surveyed “regard it as “very important” for assessors to have access to underlying raw data for the most critical studies in order to independently analyze their results,” this should be viewed in the rightful context.⁸⁶⁷ The survey did not ask whether agencies should continue to rely on scientific studies where the underlying data cannot be made public or independently analyzed. The survey question further appears to have only asked whether researchers assessing studies should have access to underlying data to independently analyze results, not whether underlying data should be made *publicly available*.

Further, the Dose Response Section of the Society for Risk Analysis has since submitted a comment to EPA that states this footnote and the claim that EPA makes that the Proposal took into consideration these recommendations and policies is “inaccurate” and that “the ‘Dose-Response Section [sic] of the Society for Risk Analysis’ has never adopted any ‘policies or recommendations’ on this or any other topic.”⁸⁶⁸ They have asked that EPA remove all references to the organization and make clear in the comment response for this rule that “‘third party Organizations’ whose policies and recommendations were considered do not include the Society for Risk Analysis or the Dose-Response Specialty Section.”

The Society for Toxicology similarly have said this survey does not constitute support from the Specialty Section or the SOT as a whole, and requesting “that any and all references to “members of the Risk Assessment Specialty Section of the Society of Toxicology” be removed

⁸⁶⁵ *Id.* at 6.

⁸⁶⁶ George Mason University, *Expert Opinion on Regulatory Risk Assessment* (Dec. 6, 2013), http://www.isrtp.org/GMU%20WEBINAR_DEC_2013/GMU%20Study%20Document4.pdf.

⁸⁶⁷ *Id.* at 2-3.

⁸⁶⁸ Comment from Weihsueh A. Chiu, Chair, Dose-Response Specialty Group, Society for Risk Analysis, Docket ID No. EPA-HQ-OA-2018-0259 (May 24, 2018).

from the Final Rule.”⁸⁶⁹ They also specifically comment that “invalidating data solely on the basis of public availability is inappropriate.”⁸⁷⁰

IV. Bipartisan Policy Center’s Science for Policy Project,
[http://bipartisanpolicy.org/wp-](http://bipartisanpolicy.org/wp-content/uploads/sites/default/files/BPC%20Science%20Report%20fnl.pdf)
[content/uploads/sites/default/files/BPC%20Science%20Report%20fnl.pdf](http://bipartisanpolicy.org/wp-content/uploads/sites/default/files/BPC%20Science%20Report%20fnl.pdf)

EPA provides a hyperlink to the Final Report of the Science for Policy Project *Improving the Use of Science in Regulatory Policy*.⁸⁷¹ This report makes a number of recommendations, none of which endorse the Proposal. In relevant part, Recommendation Three suggests “Agencies and their scientific advisory committees should cast a wide net in reviewing studies relevant to regulatory policy, and should make their methods for filtering and evaluating those studies more transparent.”⁸⁷² They urge agencies to increase availability of data and information on research studies and subject all studies relied on in the formulation of regulation to be subject to the requirements of the Shelby Amendment and OMB Circular A-110 regardless of who funded the study.⁸⁷³ Importantly, those requirements contain important exception for confidentiality and privacy concerns—and thus do not support the Proposal.

This recommendation is also aimed at *increasing* use of science in regulatory policy, and does not suggest that agencies not rely on studies where those data access requirements cannot be met because of other concerns. It also highlights that the use of CBI to prevent access to data appears to be overused and urges agencies to make procedures more stringent to allow only for legitimate claims of CBI—which EPA does not address in its Proposal.⁸⁷⁴

Recommendation Four states: “The federal government, universities, scientific journals and scientists themselves can help improve the use of science in the regulatory process by strengthening peer review, expanding the information available about scientific studies, and setting and enforcing clear standards governing conflict of interest.”⁸⁷⁵ As part of this recommendation, the report “Federal agencies, universities and journals should encourage or require on-line publication of the methods and data underlying published scientific studies.”⁸⁷⁶ However, it once again does not say that agencies should not consider research studies where this is not possible due to privacy or other compelling reasons.

Wendy Wagner, who served on the panel that produced the recommendations has stated: “They don’t adopt any of our recommendations, and they go in a direction that’s completely

⁸⁶⁹ Comment from Leigh Ann Burns Naas, Society of Toxicology, Docket ID No. EPA-HQ-OA-2018-0259 (May 25, 2018) at 1.

⁸⁷⁰ *Id.* at 2

⁸⁷¹ Bipartisan Policy Center, Science for Policy Project, *Improving the Use of Science in Regulatory Policy* (Aug. 5, 2009), <http://bipartisanpolicy.org/wp-content/uploads/sites/default/files/BPC%20Science%20Report%20fnl.pdf>.

⁸⁷² *Id.* at 41.

⁸⁷³ *Id.*

⁸⁷⁴ *Id.* at 43.

⁸⁷⁵ *Id.* at 45.

⁸⁷⁶ *Id.* at 46.

opposite, completely different. . . . They don't adopt any of the recommendations of *any* of the sources they cite. I'm not sure why they cited them."⁸⁷⁷

Footnote 11

- **Proceedings of the National Academy of Sciences:**
<http://www.pnas.org/page/authors/journal-policies#xi>
- **PLOS ONE:** <http://journals.plos.org/plosone/s/data-availability>
- **Science:** <http://www.sciencemag.org/authors/science-journals-editorial-policies>
- **Nature:** <http://www.nature.com/authors/policies/data/data-availability-statements-data-citations.pdf>

While EPA links to journal policies that encourage or require, in some instances, sharing data, they contain exceptions when privacy would be compromised.⁸⁷⁸ The editors of these journals issued a joint statement opposing the Proposal. They note that some data sets cannot be shared publicly, and that there are still other methods available to verify scientific findings. The statement also strongly condemns the notion of excluding scientific information from consideration when underlying data cannot be made publicly available:

It does not strengthen policies based on scientific evidence to limit the scientific evidence that can inform them; rather, it is paramount that the full suite of relevant science vetted through peer review, which includes ever more rigorous features, inform the landscape of decision making. Excluding relevant studies simply because they do not meet rigid transparency standards will adversely affect decision-making processes.⁸⁷⁹

Thus, journal policies encouraging the sharing of underlying data do not support a proposal by a regulatory agency to exclude from consideration studies when the underlying data is not publicly available.

Footnote 16:

- **U.S. Department of Health and Human Services:** <https://www.hhs.gov/hipaa/for-professionals/privacy/special-topics/de-identification/index.html>
- **National Institute of Standards and Technology:**
<https://nvlpubs.nist.gov/nistpubs/ir/2015/NIST.IR.8053.pdf>
- **U.S. Department of Education:**
https://studentprivacy.ed.gov/sites/default/files/resource_document/file/data_deidentification_terms.pdf
- **U.S. Census Bureau:** <https://www.census.gov/about/adrm/linkage/technical-documentation/processing-de-identification.html>

EPA suggests the examples linked to could address concerns about privacy and confidentiality arising from the Proposal. However, the cited sources provide no assurance that

⁸⁷⁷ Robinson Meyer, *Scott Pruitt's New Rule Could Completely Transform the EPA*, The Atlantic (Apr. 25, 2018), <https://www.theatlantic.com/science/archive/2018/04/how-the-epas-new-secret-science-rule/558878/>.

⁸⁷⁸ See discussion below on footnote 20.

⁸⁷⁹ Jeremy Berg et. al., *Joint statement on EPA proposed rule and public availability of data*, Science (Apr. 30, 2018), <http://science.sciencemag.org/content/early/2018/04/30/science.aau0116>.

the Proposal could be implemented to expand disclosure of personal data without serious risks to privacy.

I. U.S. Department of Health and Human Services, <https://www.hhs.gov/hipaa/for-professionals/privacy/special-topics/de-identification/index.html>

EPA first points to guidance on de-identification requirements under HIPAA. This guidance provides two methods for de-identifying data: (1) expert determination method, where an expert determines that, after application of statistical and scientific principals and methods, the risk is very small that the information alone or with other available information could be used to identify the subject; and (2) the safe harbor method, requiring that a number of identifiers are removed. The first method requires case-by-case work and EPA has provided no information regarding how EPA could implement it or how much it might cost and thus the feasibility of requiring researchers or EPA to de-identify data this way is questionable. The second method requires removal of much information useful for research that may be necessary to be able to independently validate the research, so it is unclear that it would satisfy the Proposal's demands. Furthermore, the safe harbor method has been shown to provide potentially insufficient privacy protections.⁸⁸⁰

II. National Institute of Standards and Technology, <https://nvlpubs.nist.gov/nistpubs/ir/2015/NIST.IR.8053.pdf>

EPA links to a NIST document entitled *De-Identification of Personal Information* as a potential solution to address concerns about confidentiality and privacy.⁸⁸¹ This document discusses different techniques and issues with de-identification of personal information. However, the document does not discuss de-identification of personal information specifically for the purposes of making research data publicly available for independently validating scientific studies. The document instead notes that:

The purpose of de-identifying data is to allow some uses of the de-identified data while providing for some privacy protection by shielding the identity of the data subjects. These two goals are antagonistic, in that there is a trade-off between the amount of de-identification and the utility of the resulting data. However, de-identification opens up new uses for the data that were previously prohibited due to privacy concerns. It is thus the role of the data controller, standards bodies, regulators, lawmakers and courts to determine the appropriate level of security, and thereby the acceptable trade-off between de-identification and utility.⁸⁸²

EPA completely fails to note this obstacle, that as data is stripped of identifiable material it also loses utility to researchers. EPA cites to broad privacy protection techniques without explaining

⁸⁸⁰ Latanya Sweeney, Ji Su Yon, Laura Perovich, Katherine E Boronow, Phil Brown, and Julia Green Brody, *Re-identification Risks in HIPAA Safe Harbor Data: A Study of Data From One Environmental Health Study*, Technology Science (August 28, 2017).

⁸⁸¹ Simson L. Garfinkel, *De-Identification of Personal Information* (NISTIR 8053), NIST (Oct. 2015), <https://nvlpubs.nist.gov/nistpubs/ir/2015/NIST.IR.8053.pdf>.

⁸⁸² *Id.* at 11-12.

whether they could be applied to protect privacy while still allowing enough utility in the data set to allow for independent validation as required by the Proposal.

The document notes many of the challenges to protecting privacy including that: “de-identification approaches based on suppressing or generalizing specific fields in a database cannot provide absolute privacy guarantees, because there is always a chance that the remaining data can be re-identified using an auxiliary dataset.”⁸⁸³ The harms of data linkages and increasing difficulty to preserve privacy as more and more information about individuals is made available is another challenge that EPA has not addressed.

III. U.S. Department of Education,

https://studentprivacy.ed.gov/sites/default/files/resource_document/file/data_deidentification_terms.pdf

EPA links to a document of the Privacy Technical Assistance Center, *Data De-identification: An Overview of Basic Terms*, which provides a high-level overview of key terms and practices to help educational agencies and institutions comply with the Family Educational Rights and Privacy Act (FERPA).⁸⁸⁴ EPA has not explained why the requirements of FERPA are applicable here. This document is concerned with data disclosure that occurs “when schools, districts, or states publish reports on student achievement or share students’ data with external researchers” not to make information publicly available for independent validation.⁸⁸⁵ Thus its unclear that methods used to de-identify but preserve data for those purposes would be adequate in this context.

For example, one of the methods that the U.S. Department of Education uses for disclosure avoidance for tabular data is to not release information for any cell that has a size below some minimum, which essentially means not disclosing information where there are small numbers in a certain cell.⁸⁸⁶ This could obviously lead to a loss of information that would prevent a de-identified data set from being used to independently validate research findings.

IV. U.S. Census Bureau,

<https://www.census.gov/about/adrm/linkage/technical-documentation/processing-de-identification.html>

EPA provides a link to a website titled *Data Ingest and Linkage* that details the U.S. Census Bureau’s approach to linking data across many records held by the Bureau, permitting more detailed information to be linked back to one individual to allow for analysis and research. The website links to a working paper that describes the method by which the Bureau assigns a unique person identifier to records it holds that enables it to link records together to create the

⁸⁸³ *Id.* at 5.

⁸⁸⁴ U.S. Department of Education, Privacy Technical Assistance Center, *Data De-identification: An Overview of Basic Terms* (Oct. 2012), https://studentprivacy.ed.gov/sites/default/files/resource_document/file/data_deidentification_terms.pdf.

⁸⁸⁵ *Id.*

⁸⁸⁶ *Id.* at 4.

final file.⁸⁸⁷ It is totally unclear how this process on linking together records is a solution that EPA could implement to protect privacy of individuals when disclosing data as it concerns how to identify data to specific people—not how to make data available while protecting their privacy.

Footnote 20:

- Taylor & Francis: <https://authorservices.taylorandfrancis.com/data-repositories/>
- Elsevier: <https://www.elsevier.com/authors/author-services/research-data>
- PLOS: <http://journals.plos.org/plosone/s/data-availability>
- Springer Nature: <https://www.springernature.com/gp/authors/research-data-policy/repositories>

EPA cites to “policies or recommendation” of several journals that require data be deposited in public data repositories as an example of the Proposal’s requirement of data availability.⁸⁸⁸ While these journals have policies that encourage authors to deposit data in public data repositories, they all have important exceptions in cases where this is not feasible or ethical.

The hyperlink for Taylor & Francis links to a page that provides information about how to find public data repositories to submit data to in order to comply with journal sharing policies. However, Taylor & Francis’ basic data sharing policy “which applies across many of [their] journals” does not *require* data be submitted to a public data repository, but “encourages authors to share and make data open where this does not violate protection of human subjects or other valid subject privacy concerns.”⁸⁸⁹ Thus, this policy is flexible and allows exceptions for when privacy concerns are at stake.

The hyperlink for Elsevier links to a page providing general information about data sharing. While the web page notes that researchers “are increasingly encouraged, or even mandated, to make. . . research data available, accessible, discoverable and usable,” it also provides important qualifications.⁸⁹⁰ It notes, “there are times when the data is simply not available to post or there are good reasons why it shouldn’t be shared.”⁸⁹¹ In these cases, authors are encouraged to provide a data statement explaining why the data cannot be shared.

The hyperlink for PLOS links to a page describing PLOS’s data availability policies. It explains, “PLOS journals require authors to make all data underlying the findings described in their manuscript fully available without restriction, with rare exception.”⁸⁹² The policy recommends deposition of the data into a public repository, however, it recognizes that there are

⁸⁸⁷ Deborah Wagner & Mary Layne, *The Person Identification Validation System (PVS): Applying the Center for Administrative Records Research and Applications’ (CARRA) Record Linkage Software*, CARRA Working Paper Series, Working Paper # 2014-01, U.S. Census Bureau (July 1, 2014).

⁸⁸⁸ 83 Fed. Reg. at 18,771.

⁸⁸⁹ Taylor & Francis Author Services, *Understanding our data sharing policies*, <https://authorservices.taylorandfrancis.com/understanding-our-data-sharing-policies/> (last accessed Aug. 10, 2018).

⁸⁹⁰ Elsevier, *Sharing research data*, <https://www.elsevier.com/authors/author-services/research-data> (last accessed Aug. 10, 2018).

⁸⁹¹ *Id.*

⁸⁹² PLOS One, *Data Availability*, <http://journals.plos.org/plosone/s/data-availability> (last accessed Aug. 10, 2018).

instances when this may not be ethical or legal, for instance because the “underlying data pose privacy or legal concerns e.g., where data might reveal the identity or location of participants.”⁸⁹³ In these instances, it allows an exception to this policy.

The hyperlink for Springer Nature links to a page listing recommended repositories. While Springer Nature’s data policies support data sharing via public data repositories, it notes, “reasonable restrictions on data availability are permitted to protect human privacy, biosafety or respect reasonable terms of use for data obtained under license from third parties.”⁸⁹⁴

⁸⁹³ *Id.*

⁸⁹⁴ Springer Nature, *Research Data Policies FAQs*, <https://www.springernature.com/gp/authors/research-data-policy/faqs/12327154> (last accessed Aug. 10, 2018).

Appendix B. Provisions of Federal Environmental Statutes Requiring EPA to Consult With Other Federal Agencies in Implementing Key Programs

Consultation Provisions in Clean Air Act

Section	Section Title	Consultation Requirement
§118(c)	President's Air Quality Advisory Board and Advisory Committees	(c) Prior to- (1) issuing criteria for an air pollutant under section 108(a)(2) (2) publishing any list under section 111(b)(1)(A) or 112(b)(1)(A), (3) publishing any standard under section 111 or section 112, or (4) publishing any regulation under section 202(a), The administrator shall, to the maximum extent practicable within the time provided, consult with appropriate advisory committees, independent experts, and Federal departments and agencies.
§103	Research, Investigation, Training, and other Activities	Consult with other Federal agencies to coordinate research and avoid duplication of activities
§108(a)	Air Quality Criteria and Control Techniques	Consult with Federal agencies to issue information on air pollution control techniques
§108(c)	Air Quality Criteria and Control Techniques	"[A]fter consultation with the Secretary of Transportation... update the June 1978 Transportation-Air Quality Planning Guidelines and publish guidance on the development and implementation of transportation and other measures necessary to demonstrate and maintain attainment of national ambient air quality standards."
§108(f)(1)	Air Quality Criteria and Control Techniques	Consult with Secretary of Transportation to provide information "regarding the formulation and emission reduction potential of transportation control measures related to criteria pollutants and their precursors."
§112(d)(9)	Hazardous Air Pollutants	Allows Administrator not to list radionuclide emissions if Administrator determines, after consultation with Nuclear Regulatory Commission (NRC), that NRC regulations already provide an adequate margin of safety.
§122	Listing of Certain Unregulated Pollutants	Consult with NRC before listing any nuclear or nuclear by-product material
§169A	Visibility Protections for Federal Class 1 Areas	Consultation with Department of Interior and Federal Land Managers for regional haze determinations
§231(a)(2)(B)(i)	Aircraft Emission Standards	Consult with Federal Aviation Administration on aircraft engine emission standards
§250 (d)	General Provisions	Consult with Department of Energy (DOE) and Department of Transportation (DOT) in carrying out Administrator's duties under the this part (Clean Fuel Vehicles)
§404(f)(1)(A)	Energy Conservation and Renewable Energy	Consult with Secretary of Energy to determine Qualified Energy Conservation Measure

§507(b)(3)(A)	Small Business Stationary Source Technical and Environmental Compliance Assistance Program	Consult with SBA Administrator to determine which category of small business sources could be exempted
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Consultation Provisions in Clean Water Act

Section	Section Title	Text
§304(c)	Information and Guidelines	Consult with appropriate Federal and State agencies to issue information on pollution-reducing procedures and operating methods to implement standards of performance under §306.
§304(d)(1)-(2)	Information and Guidelines	Consult with appropriate Federal and State agencies to publish the amount of reduction attainable through secondary treatment and information on alternative waste treatment management techniques.
§304(e)	Information and Guidelines	Consult with appropriate Federal and State agencies to publish supplemental regulations to control plant site runoff, leaks/spillage, sludge/waste disposal, and drainage
§304(f)	Information and Guidelines	Consult with Federal and State agencies to issue guidelines for evaluating nonpoint sources and methods to control pollution from those sources.
§307(a)(7)	Toxic Pretreatment Effluent Standards	Consult with Federal departments and agencies prior to publishing regulations pursuant to this section
§404(d)(1)	Disposal of Sewage Sludge	Administrator must consult with Federal agencies on regulations providing guidelines for the disposal of sludge and the utilization of sludge for various purposes.
§118(a)	Lake Tahoe Study	Coordinate with Secretary of Agriculture and other Federal agencies regarding adequacy and need for extending Federal oversight of Lake Tahoe
§311(d)(2)(M)	Oil and Hazardous Substance Liability	Consultation with FWS and NOAA for a fish and wildlife response plan
§312(e)	Marine Sanitation Devices	“Before the standards and regulations under this section are promulgated, the Administrator and the Secretary of the department in which the Coast Guard is operating shall consult with the Secretary of State; the Secretary of Health, Education, and Welfare; the Secretary of Defense; the Secretary of the Treasury; the Secretary of Commerce; other interested Federal agencies....”

Consultation Provisions in Federal Insecticide, Fungicide, and Rodenticide Act

Section	Section Title	Text
136w(a)(2)(A)	Authority of the Administrator: Procedure: Proposed regulations	<p>(A) Proposed Regulations:</p> <p>At least 60 days prior to signing any proposed regulation for publication in the Federal Register, the Administrator shall provide the Secretary of Agriculture with a copy of such regulation. If the Secretary comments in writing to</p>

		<p>the Administrator regarding any such regulation within 30 days after receiving it, the Administrator shall publish in the Federal Register (with the proposed regulation) the comments of the Secretary and the response of the Administrator with regard to the Secretary's comments. If the Secretary does not comment in writing to the Administrator regarding the regulation within 30 days after receiving it, the Administrator may sign such regulation for publication in the Federal Register any time after such 30-day period notwithstanding the foregoing 60-day time requirement.</p>
136w(a)(2)(B)	Authority of the Administrator: Final Regulations	<p>At least 30 days prior to signing any regulation in final form for publication in the Federal Register, the Administrator shall provide the Secretary of Agriculture with a copy of such regulation. If the Secretary comments in writing to the Administrator regarding any such final regulation within 15 days after receiving it, the Administrator shall publish in the Federal Register (with the final regulation) the comments of the Secretary, if requested by the Secretary, and the response of the Administrator concerning the Secretary's comments. If the Secretary does not comment in writing to the Administrator regarding the regulation within 15 days after receiving it, the Administrator may sign such regulation for publication in the Federal Register at any time after such 15-day period notwithstanding the foregoing 30-day time requirement. In taking any final action under this subsection, the Administrator shall include among those factors to be taken into account the effect of the regulation on production and prices of agricultural commodities, retail food prices, and otherwise on the agricultural economy, and the Administrator shall publish in the Federal Register an analysis of such effect</p>
136w(a)(3)	Authority of the Administrator: Procedure: Congressional Committees	<p>At such time as the Administrator is required under paragraph (2) of this subsection to provide the Secretary of Agriculture with a copy of proposed regulations and a copy of the final form of regulations, the Administrator shall also furnish a copy of such regulations to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.</p>
136w(a)(4)	Authority of the Administrator	<p>Simultaneously with the promulgation of any rule or regulation under this subchapter, the Administrator shall transmit a copy thereof to the Secretary of the Senate and the Clerk of the House of Representatives. The rule or regulation shall not become effective until the passage of 60 calendar days after the rule or regulation is so transmitted.</p>

136w-3	Identification of Pests; cooperation with Department of Agriculture	The Administrator, in coordination with the Secretary of Agriculture, shall identify those pests that must be brought under control. The Administrator shall also coordinate and cooperate with the Secretary of Agriculture's research and implementation programs to develop and improve the safe use and effectiveness of chemical, biological, and alternative methods to combat and control pests that reduce the quality and economical production and distribution of agricultural products to domestic and foreign consumers.
136(r)(a)	Research and Monitoring: Research	The Administrator shall undertake research including research by grant or contract with other Federal agencies, universities, or others as may be necessary to carry out the purposes of this subchapter, and the Administrator shall conduct research into integrated pest management in coordination with the Secretary of Agriculture. The Administrator shall also take care to ensure that such research does not duplicate research being undertaken by any other Federal agency.
136a-1(n)(2)-(3)	Reregistration of registered pesticides: Authorization of funds to develop public health data	<p>(2) Consultation. In the case of a pesticide registered for use in public health programs for vector control or for other uses the Administrator determines to be human health protection uses, the Administrator shall, upon timely request by the registrant or any other interested person, or on the Administrator's own initiative may, consult with the Secretary [of Health and Human Services] prior to taking final action to suspend registration under section 3(c)(2)(B)(iv) or cancel a registration under section 4, 6(e), or 6(f). In consultation with the Secretary, the Administrator shall prescribe the form and content of requests under this section.</p> <p>(3) Benefits to support family. The Administrator, after consulting with the Secretary, shall make a determination whether the potential benefits of continued use of the pesticide for public health or health protection purposes are of such significance as to warrant a commitment by the Secretary to conduct or to arrange for the conduct of the studies required by the Administrator to support continued registration under section or reregistration under section 4</p>
7 USCS 136(l)(2)	Definitions: Minor Use	(2) the Administrator, in consultation with the Secretary of Agriculture, determines that, based on information provided by an applicant for registration or a registrant, the use does not provide sufficient economic incentive to support the initial registration or continuing registration of a pesticide for such use and--

136i(a)(1)	Use of restricted use pesticides; applicators	Requires the Administrator to consult with Governor of each state to conduct a program for the certification of use of specific pesticides.
136a(c)(1)(F)(ii)	Registration of Pesticides: Procedure for registration	The period of exclusive data use provided under clause (i) shall be extended 1 additional year for each 3 minor uses registered after the date of enactment of this clause [enacted Aug. 3, 1996] and within 7 years of the commencement of the exclusive use period, up to a total of 3 additional years for all minor uses registered by the Administrator if the Administrator, in consultation with the Secretary of Agriculture, determines that, based on information provided by an applicant for registration or a registrant, that--(I) there are insufficient efficacious alternative registered pesticides available for the use; (II) the alternatives to the minor use pesticide pose greater risks to the environment or human health; (III) the minor use pesticide plays or will play a significant part in managing pest resistance; or (IV) the minor use pesticide plays or will play a significant part in an integrated pest management program.
136t(b)	Delegation and Cooperation	(b) Cooperation. The Administrator shall cooperate with the Department of Agriculture, any other Federal agency, and any appropriate agency of any State or any political subdivision thereof, in carrying out the provisions of this Act and in securing uniformity of regulations.
136o(e)	Imports and Exports	Secretary of the Treasury shall prescribe regulations for this section in consultation with the Administrator.
136p	Exemption of Federal and State Agencies	The Administrator may, at the Administrator's discretion, exempt any Federal or State agency from any provision of this Act if the Administrator determines that emergency conditions exist which require such exemption. The Administrator, in determining whether or not such emergency conditions exist, shall consult with the Secretary of Agriculture and the Governor of any State concerned if they request such determination.
136w-7	Department of Agriculture Minor Use Program	(A) Grant authority. The Secretary, in consultation with the Administrator, shall establish a program to make grants for the development of data to support minor use pesticide registrations and reregistrations. The amount of any such grant shall not exceed 1/2 of the cost of the project for which the grant is made.
136i-1(a)(1)	Pesticide Recordkeeping	The Secretary of Agriculture, in consultation with the Administrator of the Environmental Protection Agency, shall require certified applicators of restricted use pesticides
136i-2(c)	Collection of Pesticide Use Information	Coordination. The Secretary of Agriculture shall, as appropriate, coordinate with the Administrator of the Environmental Protection Agency in the design of the

		surveys and make available to the Administrator the aggregate results of the surveys to assist the Administrator.
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Consultation provisions under the Toxic Substances Control Act

Section	Title	Text
2609(a)	Research, Development, collection, dissemination, and utilization of data	(a) Authority. The Administrator shall, in consultation and cooperation with the Secretary of Health and Human Services and with other heads of appropriate departments and agencies, conduct such research, development, and monitoring as is necessary to carry out the purposes of this Act. The Administrator may enter into contracts and may make grants for research, development, and monitoring under this subsection. Contracts may be entered into under this subsection without regard to sections 3648 and 3709 of the Revised Statutes
2609(b)(1), (2)	Research, development, collection, dissemination, and utilization of information: Information Systems	Administrator shall Consult and cooperate with Secretary of HHS and other heads of appropriate departments and agencies, to establish an efficient system for retrieval of toxicological and other scientific information which could be useful
2609(c)	Research, development, collection, dissemination, and utilization of information: Screening Techniques	Administrator shall coordinate with Assistant Secretary for HHS to develop screening techniques
2609(d)	Research, development, collection, dissemination, and utilization of information: Monitoring	Administrator shall, in consultation and cooperation with the Secretary of Health and Human Services, establish and be responsible for research aimed at the development, in cooperation with local, State, and Federal agencies, of monitoring techniques and instruments which may be used in the detection of toxic chemical substances and mixtures and which are reliable, economical, and capable of being implemented under a wide variety of conditions
2609(e)	Research, development, collection, dissemination, and utilization of information: Basic Research	The Administrator shall, in consultation and cooperation with the Secretary of Health and Human Services, establish research programs to develop the fundamental scientific basis of the screening and monitoring techniques described in subsections (c) and (d), the bounds of the reliability of such techniques, and the opportunities for their improvement.
2609(g)	Research, development, collection, dissemination, and utilization of information: Exchange of research and development results	The Administrator shall, in consultation with the Secretary of Health and Human Services and other heads of appropriate departments and agencies, establish and coordinate a system for exchange among Federal, State, and local authorities of research and development results respecting toxic chemical substances and mixtures, including a system to facilitate and promote the development of standard information format and analysis and consistent testing procedures.

2608(d)	Coordination	“Coordination. In administering this Act [15 USCS §§ 2601 et seq.], the Administrator shall consult and coordinate with the Secretary of Health and Human Services and the heads of any other appropriate Federal executive department or agency, any relevant independent regulatory agency, and any other appropriate instrumentality of the Federal Government for the purpose of achieving the maximum enforcement of this Act . . .”
2608(e)	Exposure Information	If the Administrator obtains information related to exposures or releases of a chemical substance or mixture that may be prevented or reduced under another Federal law, including a law not administered by the Administrator, the Administrator shall make such information available to the relevant Federal agency or office of the Environmental Protection Agency.
2604(f)(5)	Manufacturing and Processing Notices: Protection Against Unreasonable Risks	Consult with Assistant Secretary of Labor prior to adopting any restriction of chemical substance for workplace exposures
2604(h)(2)(B)(ii)	Manufacturing and Processing Notices: Exemptions	Consult with AG of the Federal Trade Commission about exempting persons from information requirements.

Consultation Provisions in the Safe Drinking Water Act

Section	Title	Text
300g-1 (b)(1)(D)	Standards: Listing of Contaminants for Consideration, Urgent Threats to Public Health	The Administrator may promulgate an interim national primary drinking water regulation for a contaminant without making a determination for the contaminant under paragraph (4)(C), or completing the analysis under paragraph (3)(C), to address an urgent threat to public health as determined by the Administrator after consultation with and written response to any comments provided by the Secretary of Health and Human Services, acting through the director of the Centers for Disease Control and Prevention or the director of the National Institutes of Health.
300g-1(d)	Regulations:	Regulations; public hearings; administrative consultations. Regulations under this section shall be prescribed in accordance with section 553 of title 5, United States Code (relating to rule-making), except that the Administrator shall provide opportunity for public hearing prior to promulgation of such regulations. In proposing and promulgating regulations under this section, the Administrator shall consult with the Secretary and the National Drinking Water Advisory Council.
300j-12(i)(2)	Funds: Indian Tribes: Use of Funds	(2) Use of funds. Funds reserved pursuant to paragraph (1) shall be used to address the most significant threats to public health associated with public water systems that serve Indian Tribes, as determined by the Administrator in consultation with the Director of the Indian Health Service and Indian Tribes.
300j-13(a)(5)	Source Water Quality Assessment	Demonstration project. The Administrator shall, as soon as practicable, conduct a demonstration project, in consultation with other Federal agencies, to demonstrate the most effective and protective means of

		assessing and protecting source waters serving large metropolitan areas and located on Federal lands.
300j-5(b)	National Drinking Water Advisory Council	(b) Functions. The Council shall advise, consult with, and make recommendations to, the Administrator on matters relating to activities, functions, and policies of the Agency under this <u>title [42 USCS §§ 300f et seq.]</u> .
300j-3d	Water Supply Cost Savings	(a) Drinking water technology clearinghouse. The Administrator, in consultation with the Secretary of Agriculture, shall— (1) develop a technology clearinghouse for information on the cost-effectiveness of innovative and alternative drinking water delivery systems, including wells and well systems; and (2) disseminate such information to the public and to communities and not-for-profit organizations seeking Federal funding for drinking water delivery systems serving 500 or fewer persons.
300i-3(a)	Contaminant Prevention, Detection and Response	In general. The Administrator, in consultation with the Centers for Disease Control and, after consultation with appropriate departments and agencies of the Federal Government and with State and local governments, shall review (or enter into contracts or cooperative agreements to provide for a review of) current and future methods to prevent, detect and respond to the intentional introduction of chemical, biological or radiological contaminants into community water systems and source water for community water systems, including each of the following:
300j-19(b)(2)(A)	Algal Toxin Risk Assessment and Management	(b) Information coordination. In carrying out this section the Administrator shall-- (2) as appropriate, consult with-- • (A) other Federal agencies that-- ○ (i) examine or analyze cyanobacteria or algal toxins; or ○ (ii) address public health concerns related to harmful algal blooms;

Consultation Provisions in the Comprehensive Environmental Response, Compensation, and Liability Act

Section	Section Title	Consultation Requirement
§311(a)(1)	Research, Development, and Demonstration	The Secretary of Health and Human Services...in consultation with the Administrator, shall establish and support a basic research and training program...consisting of the following (A) Basic research (including epidemiologic and ecologic studies) which may include each of the following: (i) Advanced techniques for the detection, assessment, and evaluation of the effects on human health of hazardous substances. (ii) Methods to assess the risks to human health presented by hazardous substances. (iii) Methods and technologies to detect hazardous substances in the environment and basic biological, chemical, and physical methods to reduce the amount and toxicity of hazardous substances. (B) Training, which may include each of the following:

		<p>(i) Short courses and continuing education for State and local health and environment agency personnel and other personnel engaged in the handling of hazardous substances, in the management of facilities at which hazardous substances are located, and in the evaluation of the hazards to human health presented by such facilities.</p> <p>(ii) Graduate or advanced training in environmental and occupational health and safety and in the public health and engineering aspects of hazardous waste control.</p> <p>(iii) Graduate training in the geosciences, including hydrogeology, geological engineering, geophysics, geochemistry, and related fields necessary to meet professional personnel needs in the public and private (a) sectors and to effectuate the purposes of this Act.</p>
§311(a)(2)	Research, Development, and Demonstration	The Director of the National Institute for Environmental Health Sciences shall cooperate fully with the relevant Federal agencies referred to in subparagraph (A) of paragraph (5) in carrying out the purposes of this section.
§311(a)(5)	Research, Development, and Demonstration	<p>To assist in the implementation of this subsection and to aid in the coordination of research and demonstration and training activities funded from the Fund under this section, the Secretary shall appoint an advisory council (hereinafter in this subsection referred to as the “Advisory Council”) which shall consist of representatives of the following:</p> <p>(A) The relevant Federal agencies.</p> <p>(B) The chemical industry.</p> <p>(C) The toxic waste management industry.</p> <p>(D) Institutions of higher education.</p> <p>(E) State and local health and environmental agencies.</p> <p>(F) The general public.</p>
§311(a)(6)	Research, Development, and Demonstration	Within nine months after the date of the enactment of this subsection, the Secretary, acting through the Director of the National Institute for Environmental Health Sciences, shall issue a plan for the implementation of paragraph (1). The plan shall include priorities for actions under paragraph (1) and include research and training relevant to scientific and technological issues resulting from site specific hazardous substance response experience. The Secretary shall, to the maximum extent practicable, take appropriate steps to coordinate program activities under this plan with the activities of other Federal agencies in order to avoid duplication of effort. The plan shall be consistent with the need for the development of new technologies for meeting the goals of response actions in accordance with the provisions of this Act. The Advisory Council shall be provided an opportunity to review and comment on the plan and priorities and assist appropriate coordination among the relevant Federal agencies referred to in subparagraph (A) of paragraph (5).
§311(c)	Research, Development, and Demonstration	<p>HAZARDOUS SUBSTANCE RESEARCH.—The Administrator may conduct and support, through grants, cooperative agreements, and contracts, research with respect to the detection, assessment, and evaluation of the effects on and risks to human health of hazardous substances and detection of hazardous substances in the environment. The Administrator shall coordinate such research with the Secretary of Health and Human Services, acting through the advisory council established under this section, in order to avoid duplication of effort.</p>

§104(i)(4)	Response Authorities	The Administrator of the ATSDR shall provide consultations upon request on health issues relating to exposure to hazardous or toxic substances, on the basis of available information, to the Administrator of EPA
§104(i)(5)(A)	Response Authorities	For each hazardous substance listed pursuant to paragraph (2), the Administrator of ATSDR (in consultation with the Administrator of EPA and other agencies and programs of the Public Health Service) shall assess whether adequate information on the health effects of such substance is available. For any such substance for which adequate information is not available (or under development), the Administrator of ATSDR, in cooperation with the Director of the National Toxicology Program, shall assure the initiation of a program of research designed to determine the health effects (and techniques for development of methods to determine such health effects) of such substance.
§104(i)(6)(C)	Response Authorities	In determining the priority in which to conduct health assessments under this subsection, the Administrator of ATSDR, in consultation with the Administrator of EPA, shall give priority to those facilities at which there is documented evidence of the release of hazardous substances, at which the potential risk to human health appears highest, and for which in the judgment of the Administrator of ATSDR existing health assessment data are inadequate to assess the potential risk to human health as provided in subparagraph (F). In determining the priorities for conducting health assessments
§107(c)	Abatement Action	Within one hundred and eighty days after enactment of this Act, the Administrator of the Environmental Protection Agency shall, after consultation with the Attorney General, establish and publish guidelines for using the imminent hazard, enforcement, and emergency response authorities of this section and other existing statutes administered by the Administrator of the Environmental Protection Agency to effectuate the responsibilities and powers created by this Act.
§120(e)(1)	Federal Facilities	Not later than 6 months after the inclusion of any facility on the National Priorities List, the department, agency, or instrumentality which owns or operates such facility shall, in consultation with the Administrator and appropriate State authorities, commence a remedial investigation and feasibility study for such facility.
§120(e)(6)	Federal Facilities	Administrator, after consultation with other departments, may determine that remedial efforts should be done by another potentially responsible party and may enter into a settlement agreement with such party.

Consultation Provisions in the Resource Conservation and Recovery Act

Section	Section Title	Consultation Requirement
§2002(a)(1)	Authorities of Administrator	In carrying out this Act, the Administrator is authorized to— (1) prescribe, in consultation with Federal, State, and regional authorities, such regulations as are necessary to carry out his functions under this Act;
§1008(a)	Solid Waste Management Information and Guidelines	Administrator shall consult with Federal agencies, among others, to develop and publish guidelines for solid waste management.

§2001	Office of Solid Waste and Interagency Coordinating Committee	Establishing an Interagency Coordinating Committee for RCRA between EPA, Department of Energy, Department of Commerce, and all other Federal agencies. Includes coordinating research and projects.
§2002(a)(2)-(6)	Authorities of Administrator	<p>(2) consult with or exchange information with other Federal agencies undertaking research, development, demonstration projects, studies, or investigations relating to solid waste;</p> <p>...</p> <p>(5) utilize the information, facilities, personnel and other resources of Federal agencies, including the National Bureau of Standards 1 and the National Bureau of the Census, on a reimbursable basis, to perform research and analyses and conduct studies and investigations related to resource recovery and conservation and to otherwise carry out the Administrator's functions under this Act; and</p> <p>(6) to delegate to the Secretary of Transportation the performance of any inspection or enforcement function under this Act relating to the transportation of hazardous waste where such delegation would avoid unnecessary duplication of activity and would carry out the objectives of this Act and of the Hazardous Materials Transportation Act.</p>
§4002(b)	Federal Guidelines for Plans	Not later than 18 months after enactment, Administrator shall consult with appropriate agencies to promulgate guidelines for the development and implementation of State plans. Such guidelines should be reviewed and revised at least every three years.
§8001(a)	Research, Demonstrations, Training, and Other Activities	<p>The Administrator, alone or after consultation with the [Department of Energy], or [FERC], shall conduct, and encourage, cooperate with, and render financial and other assistance to appropriate public (whether Federal, State, interstate, or local) authorities, agencies, and institutions, private agencies and institutions, and individuals in the conduct of, and promote the coordination of, research, investigations, experiments, training, demonstrations, surveys, public education programs, and studies relating to—</p> <p>(1) any adverse health and welfare effects of the release into the environment of material present in solid waste, and methods to eliminate such effects....</p>
§8001(b)(2)(D)	Research, Demonstrations, Training, and Other Activities	any activities undertaken under provisions of sections 8002 and 8003 as related to energy; as related to energy or synthetic fuels recovery from waste; or as related to energy conservation shall be accomplished through coordination and consultation with the [Department of Energy]

Message

From: Sheppard, Tracy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=63186A03F8E14015BA94B59C699363FC-SHEPPARD, TRACY]
Sent: 5/17/2018 3:13:15 PM
To: Blackburn, Elizabeth [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a080eb90549a453aaa6a357f5257c0b7-Blackburn, Elizabeth]; Sinks, Tom [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=001007b7d256453a8a19b91df704e22c-Sinks, Tom]; Greene, Mary [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9aaa7190f96e4bfca7b06f8be3f35d45-Greene, Mary]; Susanke, Greg [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5fcc7f89d47a479abd2ac7cedc46a224-Susanke, Greg]
CC: Clarke, Robin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=568e817318e242b0a709e0db888a0310-Clarke, Robin]; Bhandari, Pradnya [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=590061335898471baf770048c5a794cf-Bhandari, P]
Subject: RE: Room 1153
Attachments: FRL-9978-31-Science Transparency draft FRN extension and hearing.docx

Here's the revised combined notice. The only thing needed is the timing for the hearing.

Tracy L. Sheppard, Attorney-Advisor,
US EPA, Office of General Counsel
Sheppard.Tracy@epa.gov
(202) 564-1305 office

Personal Matters / Ex. 6

CONFIDENTIAL communication for internal deliberations only; may contain deliberative, attorney-client, attorney work product, or otherwise privileged material; do not distribute outside EPA or DOJ.

From: Blackburn, Elizabeth
Sent: Thursday, May 17, 2018 11:00 AM
To: Sheppard, Tracy <Sheppard.Tracy@epa.gov>; Sinks, Tom <Sinks.Tom@epa.gov>; Greene, Mary <greene.mary@epa.gov>; Susanke, Greg <Susanke.Greg@epa.gov>
Cc: Clarke, Robin <Clarke.Robin@epa.gov>; Bhandari, Pradnya <Bhandari.Pradnya@epa.gov>
Subject: RE: Room 1153

The room can only be reserved from 7 am to 7 pm FYI

Liz Blackburn
Chief of Staff
EPA Office of Research and Development
202-564-2192
Mobile: **Personal Matters / Ex. 6**

From: Sheppard, Tracy
Sent: Thursday, May 17, 2018 10:57 AM
To: Sinks, Tom <Sinks.Tom@epa.gov>; Blackburn, Elizabeth <Blackburn.Elizabeth@epa.gov>; Greene, Mary <greene.mary@epa.gov>; Susanke, Greg <Susanke.Greg@epa.gov>
Cc: Clarke, Robin <Clarke.Robin@epa.gov>; Bhandari, Pradnya <Bhandari.Pradnya@epa.gov>
Subject: RE: Room 1153

Has a decision been made about the start and end times for the hearing? Right now, I have place holders of 9am for the start and 8pm for the end.

Tracy L. Sheppard, Attorney-Advisor,
US EPA, Office of General Counsel
Sheppard.Tracy@epa.gov
(202) 564-1305 office

Personal Matters / Ex. 6

CONFIDENTIAL communication for internal deliberations only; may contain deliberative, attorney-client, attorney work product, or otherwise privileged material; do not distribute outside EPA or DOJ.

From: Sinks, Tom
Sent: Thursday, May 17, 2018 10:37 AM
To: Sheppard, Tracy <Sheppard.Tracy@epa.gov>; Blackburn, Elizabeth <Blackburn.Elizabeth@epa.gov>; Greene, Mary <greene.mary@epa.gov>; Susanke, Greg <Susanne.Greg@epa.gov>
Cc: Clarke, Robin <Clarke.Robin@epa.gov>; Bhandari, Pradnya <Bhandari.Pradnya@epa.gov>
Subject: RE: Room 1153

Greg was about to push the button. I've aksed him to hold and to call you ASAP

From: Sheppard, Tracy
Sent: Thursday, May 17, 2018 10:32 AM
To: Sinks, Tom <Sinks.Tom@epa.gov>; Blackburn, Elizabeth <Blackburn.Elizabeth@epa.gov>; Greene, Mary <greene.mary@epa.gov>
Cc: Clarke, Robin <Clarke.Robin@epa.gov>; Bhandari, Pradnya <Bhandari.Pradnya@epa.gov>
Subject: RE: Room 1153

Greg's been plugging away on the FR notice for the comment period extension. I assume we're pulling that back and doing a combined notice now, right?

Tracy L. Sheppard, Attorney-Advisor,
US EPA, Office of General Counsel
Sheppard.Tracy@epa.gov
(202) 564-1305 office
Personal Matters / Ex. 6

CONFIDENTIAL communication for internal deliberations only; may contain deliberative, attorney-client, attorney work product, or otherwise privileged material; do not distribute outside EPA or DOJ.

From: Sinks, Tom
Sent: Thursday, May 17, 2018 10:28 AM
To: Blackburn, Elizabeth <Blackburn.Elizabeth@epa.gov>; Greene, Mary <greene.mary@epa.gov>; Sheppard, Tracy <Sheppard.Tracy@epa.gov>
Cc: Clarke, Robin <Clarke.Robin@epa.gov>; Bhandari, Pradnya <Bhandari.Pradnya@epa.gov>
Subject: RE: Room 1153

Excellent. Pradnya - if possible we'd like to get into the map room the afternoon of the 16th for set-up.

From: Blackburn, Elizabeth

Sent: Thursday, May 17, 2018 10:17 AM

To: Sinks, Tom <Sinks.Tom@epa.gov>; Greene, Mary <greenes.mary@epa.gov>

Cc: Clarke, Robin <Clarke.Robin@epa.gov>; Bhandari, Pradnya <Bhandari.Pradnya@epa.gov>

Subject: Room 1153

Hi Tom and Mary

We got OCIR to release the map room (1153) and Pradnya is reserving now. She's copying you on the reservation of the room. Tracy Sheppard indicated that we had to have the room for the FR. So now we do. I assume you'll take it from here.

Thanks

Liz

Liz Blackburn

Chief of Staff

EPA Office of Research and Development

202-564-2192

Mobile: Personal Matters / Ex. 6

Message

From: Mazza, Carl [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=0EF03C34ECA4E219C037BE57464ECF9-CMAZZA]
Sent: 7/24/2018 5:10:06 PM
To: Doa, Maria [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=99e502a905374b0b890db9b22e18d92e-MDoa02]; Hauchman, Fred [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f8bf9785f32048ccad5f60b25a72017d-Hauchman, Fred]; Sinks, Tom [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=001007b7d256453a8a19b91df704e22c-Sinks, Tom]; Lubetsky, Jonathan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e125d09a658e48119789ccae5712b4a5-JLUBETSK]; Shoaff, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ac16fb09cf2c44adb34a7405dc331532-JShoaff]
Subject: Issues related to Data Sharing
Attachments: HEI Oral Comments Proposed Transparency in Regulatory Science Rule July 17 2018.pdf; HEI Response to Kadeli Letter on Data Sharing August 27, 2013.pdf

Two very useful items on issues arising in the transparency proposal.....per my request to HEI.

One...you folks have no doubt seen or heard...HEI's brief comments at the public meeting.

The other, an HEI letter to Lek Kadeli from 2013 on many of the same issues (still relatively brief and readable), that was written no doubt in the context public access to data issue that was actively being considered at that time.

Carl

Message

From: Brennan, Thomas [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=78CAA4C8D91743C887C1BB5DC8CDB369-THOMAS BRENNAN]
Sent: 5/29/2018 7:52:32 PM
To: Sinks, Tom [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=001007b7d256453a8a19b91df704e22c-Sinks, Tom]
CC: Carpenter, Thomas [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c286cf1692fa46dc9636a7c49c0925b8-Carpenter, Thomas]
Subject: FW: SAB Review of the Regulatory Agenda Materials for the May 31 meeting
Attachments: WkGrp_memo_2080-AA14_final_05132018.pdf; SABWkGrpSpring2017Att+ABC.pdf; WG_Memo_Fall17_RegRevAttsABC.pdf; Best Practices for EPA Engagement with the Science Advisory Board March 2015.pdf; draft+SAB+meeting+agenda_5_16_18.pdf; POINTS OF CONTACT FOR TECHNICAL RESPONSE.docx

Hi Tom,

Just a quick note to confirm that you will be at our Board meeting Thursday to represent the Agency and answer questions/help the discussion on the Proposed Rule: Strengthening Transparency in Regulatory Science RIN (2080-AA14) . This will be an important part of the agenda and meeting and I appreciate your support during this discussion.

Feel free to contact me or Tom C if you wish to discuss further or have any questions about the meeting.

Regards,

Tom Brennan
Acting Director, Science Advisory Board Staff Office
US Environmental Protection Agency

Desk # 202 564 6953
Mobile # 703 581 9300

From: Carpenter, Thomas
Sent: Tuesday, May 29, 2018 3:46 PM
To: Brennan, Thomas <Brennan.Thomas@epa.gov>
Subject: FW: SAB Review of the Regulatory Agenda Materials for the May 31 meeting

Tom –

Thanks for reaching out about point s of contact for planned actions for the SAB to discuss at this week's meeting.

I wanted to be clear that Discussions of Proposed Rule: Strengthening Transparency in Regulatory Science RIN (2080-AA14) is on the agenda and will be discussed late on Thursday. I think it is a good opportunity to share that the comment period was extended to August 17 and there will be a public hearing on the rule in July. Please note that the Board initiated this memorandum this action was published as part of the Spring 2018 Regulatory Agenda. I confirmed with Caryn Muellerleile that the identification of major planned actions in the Spring 2018 is not yet complete but assume this action would be included for the SAB to screen.

Best
Tom

From: Carpenter, Thomas

Sent: Wednesday, May 23, 2018 6:27 PM

To: Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>; Shoaff, John <Shoaff.John@epa.gov>; Hockstad, Leif <Hockstad.Leif@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Cogliano, Gerain <Cogliano.Gerain@epa.gov>; Chun, Melissa <Chun.Melissa@epa.gov>; McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; McGartland, Al <McGartland.Al@epa.gov>; Kopits, Elizabeth <Kopits.Elizabeth@epa.gov>; Munis, Ken <Munis.Ken@epa.gov>; Munis, Ken <Munis.Ken@epa.gov>; Sinks, Tom <Sinks.Tom@epa.gov>; Burneson, Eric <Burneson.Eric@epa.gov>; Barone, Stan <Barone.Stan@epa.gov>; Morris, Jeff <Morris.Jeff@epa.gov>; Mosby, Jackie <Mosby.Jackie@epa.gov>

Cc: Brennan, Thomas <Brennan.Thomas@epa.gov>; Johnston, Khanna <Johnston.Khanna@epa.gov>

Subject: FW: SAB Review of the Regulatory Agenda Materials for the May 31 meeting

Greetings

I attached a list of the planned actions the SAB will be discussing next week. I noted the staffers that will be the point of contact for planned actions in case the SAB members raise questions during the meeting.

The SAB and Work Group Chairs intend to address the Spring agenda first and move to the Fall. The Board will discuss the planned action by work recommendation category for each agenda, that is the "does not merit further review", then "Deferred for more information", and then actions that merit further review."

20 public commenters have registered and we are working on the agenda to start the discussion on planned actions about 2:30 rather than 3:15. We will begin with public commenters.

If you have any questions please don't hesitate to reach out.

From: Carpenter, Thomas

Sent: Friday, May 18, 2018 4:49 PM

To: Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>; Shoaff, John <Shoaff.John@epa.gov>; Hockstad, Leif <Hockstad.Leif@epa.gov>; Evalenko, Sandy <Evalenko.Sandy@epa.gov>; Cogliano, Gerain <Cogliano.Gerain@epa.gov>; Chun, Melissa <Chun.Melissa@epa.gov>

Cc: McDavit, Michael W. <Mcdavit.Michael@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; McGartland, Al <McGartland.Al@epa.gov>; Kopits, Elizabeth <Kopits.Elizabeth@epa.gov>; Munis, Ken <Munis.Ken@epa.gov>; Sinks, Tom <Sinks.Tom@epa.gov>; Burneson, Eric <Burneson.Eric@epa.gov>; Barone, Stan <Barone.Stan@epa.gov>; Henry, Tala <Henry.Tala@epa.gov>; Morris, Jeff <Morris.Jeff@epa.gov>; Mosby, Jackie <Mosby.Jackie@epa.gov>

Subject: SAB Review of the Regulatory Agenda Materials for the May 31 meeting

Dear Colleague,

Attached are links to the Memoranda from an SAB Work Group on the planned actions in the regulatory agendas posted on the SAB website. The SAB will be discussing the Work Group's recommendations and determining whether the SAB wishes to provide advice or comment on the planned actions on May 31, 2018 at 3:15pm. The memoranda and a draft agenda are attached for your convenience. Also attached is the "best practices" memorandum outlining participation in discussion on planned actions with the SAB.

To facilitate the discussion please let me know the point person from your office for the planned actions, and how they will attend (via phone or in person). The meeting is at Washington Plaza at Thomas Circle

Best

Tom

Thomas Carpenter

Designated Federal Officer / Sr. Biologist
US EPA Science Advisory Board, MC 1400R
1200 Pennsylvania Avenue, NW
Washington DC 20460
ph 202 564 4885 Fax 202 565 2098

Meeting Materials

Category

Committee-Developed or Provided Background Material

Committee-Developed or Provided Background Material

Committee-Developed or Provided Background Material

Meeting Material

Preparations for Chartered Science Advisory Board (SAB)
Discussions of EPA Planned Agency Actions and their Supporting
Science in the Fall 2017 Regulatory Agenda. (PDF, 80 pp.,
912,375 bytes)

Preparations for Chartered Science Advisory Board (SAB)
Discussions of EPA Planned Agency Actions and their Supporting
Science in the Spring 2017 Regulatory Agenda. (PDF, 74 pp.,
878,581 bytes)

Preparations for Chartered Science Advisory Board (SAB)
Discussions of Proposed Rule: Strengthening Transparency in
Regulatory Science RIN (2080-AA14). (PDF, 5 pp., 88,410 bytes)

Message

From: Sinks, Tom [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=001007B7D256453A8A19B91DF704E22C-SINKS, TOM]
Sent: 5/15/2018 3:16:28 PM
To: Teichman, Kevin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=20074f3f79c444a4b324cfbb890c7f56-Teichman, Kevin]
Subject: FW: Meeting Material Request approved for the Web site
Attachments: WkGrp_memo_2080-AA14_final_05132018.pdf

From: Carpenter, Thomas
Sent: Tuesday, May 15, 2018 9:52 AM
To: Sinks, Tom <Sinks.Tom@epa.gov>
Subject: RE: Meeting Material Request approved for the Web site

Sorry – sent the secondary info to you. Attached is the memorandum. Direct link is provided incase you need to forward that . I will look for a time today.

[https://yosemite.epa.gov/sab/sabproduct.nsf/E21FFAE956B548258525828C00808BB7/\\$File/WkGrp_memo_2080-AA14_final_05132018.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/E21FFAE956B548258525828C00808BB7/$File/WkGrp_memo_2080-AA14_final_05132018.pdf)

Tom

From: Sinks, Tom
Sent: Monday, May 14, 2018 1:52 PM
To: Carpenter, Thomas <Carpenter.Thomas@epa.gov>
Subject: RE: Meeting Material Request approved for the Web site

Thanks – went to the site and didn't see anything that specified the NPRM

From: Carpenter, Thomas
Sent: Sunday, May 13, 2018 7:32 PM
To: Brennan, Thomas <Brennan.Thomas@epa.gov>; Sinks, Tom <Sinks.Tom@epa.gov>
Subject: FW: Meeting Material Request approved for the Web site

Tom:
I posted the SAB Work Group Memorandum to the Board regarding Strengthening Transparency in Regulatory Science RIN (2080-AA14). It is available at the link below. I will be back in the office Tuesday (5/15).

Tom

From: Thomas Carpenter [mailto:Carpenter.Thomas@epamail.epa.gov]
Sent: Sunday, May 13, 2018 7:24 PM
Subject: Meeting Material Request approved for the Web site

The ***Preparations for Chartered Science Advisory Board (SAB) Discussions of Proposed Rule: Strengthening Transparency in Regulatory Science RIN (2080-AA14)*** Meeting Material, for the Chartered Science Advisory Board Meeting, for 5/31/2018 to 6/1/2018, has been posted to the SAB Web site at this location:

<https://yosemite.epa.gov/sab/sabproduct.nsf/0/7D239353BCECF85B852582600058B716?OpenDocument&Date=5/31/2018>

The ***Preparations for Chartered Science Advisory Board (SAB) Discussions of Proposed Rule: Strengthening Transparency in Regulatory Science RIN (2080-AA14)*** Meeting Material, is also available in the product database:

[Click here to open the Meeting and view the Meeting Material under Meeting Materials](#)

Message

From: Sinks, Tom [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=001007B7D256453A8A19B91DF704E22C-SINKS, TOM]
Sent: 2/22/2018 1:00:27 PM
To: Shoaff, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ac16fb09cf2c44adb34a7405dc331532-JShoaff]; Teichman, Kevin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=20074f3f79c444a4b324cfbb890c7f56-Teichman, Kevin]
Subject: RE: Data access

I'm available 202 564 3099 until 9am when I have a call with Kevin. Maybe you can conference us in together.

From: Shoaff, John
Sent: Wednesday, February 21, 2018 5:34 PM
To: Teichman, Kevin <Teichman.Kevin@epa.gov>; Sinks, Tom <Sinks.Tom@epa.gov>
Subject: Data access

Kevin, Tom,

Hoping to pick your brains in the AM, before 9:00 if possible, on potential OA interest in this if aware. Maybe something in follow up to Honest Act? I'll give you a call. Thanks.

John

Sent from my iPhone

Message

From: Sinks, Tom [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=001007B7D256453A8A19B91DF704E22C-SINKS, TOM]
Sent: 4/24/2018 8:04:05 PM
To: Muellerleile, Caryn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b86f484dca634a46ba81be8009ffc290-CMueller]
Subject: FW: SIGNED: Strengthening Transparency in Regulatory Science
Attachments: Strengthening Transparency in Regulatory Science 04-24-2018.pdf

Personal Matters / Ex. 6

From: Orme-Zavaleta, Jennifer
Sent: Tuesday, April 24, 2018 4:01 PM
To: Sinks, Tom <Sinks.Tom@epa.gov>; Rodan, Bruce <rodan.bruce@epa.gov>; Robbins, Chris <Robbins.Chris@epa.gov>; Blackburn, Elizabeth <Blackburn.Elizabeth@epa.gov>; Hubbard, Carolyn <Hubbard.Carolyn@epa.gov>; Hauchman, Fred <hauchman.fred@epa.gov>; ORD-Exec-Council-Directors <Execcouncildirectors@epa.gov>
Subject: FW: SIGNED: Strengthening Transparency in Regulatory Science

From: Johnson, Laura-S
Sent: Tuesday, April 24, 2018 3:10 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>; Bennett, Tate <Bennett.Tate@epa.gov>; White, Elizabeth <white.elizabeth@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>; Leopold, Matt <Leopold.Matt@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>; Wheeler, Andrew <wheeler.andrew@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Orme-Zavaleta, Jennifer <Orme-Zavaleta.Jennifer@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>
Cc: Wooden-Aguilar, Helena <Wooden-Aguilar.Helena@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>; Hope, Brian <Hope.Brian@epa.gov>; Fonseca, Silvina <Fonseca.Silvina@epa.gov>; Hewitt, James <hewitt.james@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>; Gaines, Cynthia <Gaines.Cynthia@epa.gov>; Nickerson, William <Nickerson.William@epa.gov>; Lovell, Will (William) <lovell.william@epa.gov>; Kime, Robin <Kime.Robin@epa.gov>; Maguire, Kelly <Maguire.Kelly@epa.gov>; Blackburn, Elizabeth <Blackburn.Elizabeth@epa.gov>
Subject: SIGNED: Strengthening Transparency in Regulatory Science

Good afternoon

Today, the Administrator signed the proposed rule "Strengthening Transparency in Regulatory Science."

This proposed regulation is intended to strengthen the transparency of EPA regulatory science. The proposed regulation provides that when EPA develops regulations, including regulations for which the public is likely to bear the cost of compliance, with regard to those scientific studies that are pivotal to the action being taken, EPA should ensure that the data underlying those are publicly available in a manner sufficient for independent validation.

In this notice, EPA solicits comment on this proposal and how it can best be promulgated and implemented in light of existing law and prior Federal policies that already require increasing public access to data and influential scientific information used to inform federal regulation.

Attached is the signed and dated proposed rule. For your convenience, please go to p. 19 for the Administrator's signature.

Please contact me if you have any questions.

Sincerely,
Laura

Laura S. Johnson | U.S. Environmental Protection Agency
Special Assistant, Office of the Administrator | Cell (202) 819-4941
Office (202) 566-1273 | johnson.laura-s@epa.gov

Message

From: Sinks, Tom [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=001007B7D256453A8A19B91DF704E22C-SINKS, TOM]
Sent: 5/18/2018 9:24:38 PM
To: Hawkins, CherylA [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d917bee23e774e0dbb05ce06d694985e-Hawkins, CherylA]
Subject: Re: Request re BYU Professor Pope & Proposed EPA Transparency Rule

Let's discuss Monday

Sent from my iPhone

On May 18, 2018, at 3:01 PM, Hawkins, CherylA <Hawkins.CherylA@epa.gov> wrote:

Now that I've read the email carefully, I don't believe we should respond nor send it to the docket. He is addressing other researchers and it isn't clear why it was sent to Staff_OSA, I assume we were a bcc.

Cheryl A. Hawkins, Ph.D.
US EPA/ORD/Office of the Science Advisor
RRB 41259
(202)564-7307
hawkins.cheryla@epa.gov

From: Staff_OSA
Sent: Friday, May 18, 2018 2:52 PM
To: Sinks, Tom <Sinks.Tom@epa.gov>
Cc: Hawkins, CherylA <Hawkins.CherylA@epa.gov>
Subject: FW: Request re BYU Professor Pope & Proposed EPA Transparency Rule

Hi Tom,

We've received this email and would like your input on how to respond.

Best,

Cheryl & Manisha

From: James E. Enstrom [<mailto:jenstrom@ucla.edu>]
Sent: Thursday, May 17, 2018 1:00 PM
To: 'Michael R. Ransom' <ransom@byu.edu>
Cc: 'Brent W. Webb' <webb@byu.edu>; 'Barry R. Bickmore' <barry_bickmore@byu.edu>; 'Delbert J. Eatough' <delbert@eatough.net>; 'Benjamin D. Horne' <benjamin.horne@imail.org>; 'J. Brent Muhlestein' <brent.muhlestein@imail.org>; 'Kent E. Pinkerton' <kepinkerton@ucdavis.edu>; 'Susan M. Gapstur' <susan.gapstur@cancer.org>; 'Michael J. Thun' <michael.thun@cancer.org>; 'Jonathan M. Samet' <jon.samet@ucdenver.edu>; dgreenbaum@healtheffects.org
Subject: Request re BYU Professor Pope & Proposed EPA Transparency Rule

May 17, 2018

BYU President Kevin J. Worthen
BYU Professor Michael R. Ransom ransom@byu.edu
BYU Professor Brent W. Webb webb@byu.edu
BYU Professor Barry R. Bickmore barry_bickmore@byu.edu
BYU Professor Emeritus Delbert J. Eatough delbert@eatough.net
IMC Epidemiologist Benjamin D. Horne benjamin.horne@imail.org
U Utah Professor J. Brent Muhlestein brent.muhlestein@imail.org
UC Davis Professor Kent E. Pinkerton kepinkerton@ucdavis.edu
ACS VP Epidemiology Susan M. Gapstur susan_gapstur@cancer.org
ACS VP Epidemiology Emeritus Michael J. Thun michael.thun@cancer.org
Former EPA CASAC Chair Jonathan M. Samet jon.samet@ucdenver.edu
nobel laureate greenbaum dgreenbaum@healtheffects.org

Subject: Request re BYU Professor Pope and Proposed EPA Transparency Rule

Dear Colleagues of BYU Professor Clive Arden Pope III,

I am writing regarding the Proposed EPA Rule “Strengthening Transparency in Regulatory Science” (<https://www.federalregister.gov/documents/2018/04/30/2018-09078/strengthening-transparency-in-regulatory-science>). The Summary of this Rule is “This document proposes a regulation intended to strengthen the transparency of EPA regulatory science. The proposed regulation provides that when EPA develops regulations, including regulations for which the public is likely to bear the cost of compliance, with regard to those scientific studies that are pivotal to the action being taken, EPA should ensure that the data underlying those are publicly available in a manner sufficient for independent validation.”

This rule is necessary in large part because Professor Pope and the American Cancer Society (ACS) have conducted ‘secret science’ epidemiologic research on fine particulate matter (PM2.5) and mortality that has been used by EPA to establish and tighten the 1997 PM2.5 National Ambient Air Quality Standard (NAAQS). My March 28, 2017 *Dose-Response* article “Fine Particulate Matter and Total Mortality in the Cancer Prevention Study Cohort Reanalysis” (<http://journals.sagepub.com/doi/full/10.1177/1559325817693345>), based on my independent reanalysis of the 1982 ACS Cancer Prevention Study (CPS II) data, found that Professor Pope’s research is seriously flawed and does not support a scientific and public health basis for the PM2.5 NAAQS. My reanalysis clearly demonstrates the importance of access to underlying data and shows the need for the EPA Transparency Rule.

Since you have been involved in some way with Professor Pope’s PM2.5 health effects research, please email me as soon as possible your YES or NO answer to the following four questions:

- 1) <!--[if !supportLists]--><!--[endif]-->Do you support the Proposed EPA Rule “Strengthening Transparency in Regulatory Science”?
- 2) <!--[if !supportLists]--><!--[endif]-->Is there extensive valid evidence that contradicts Professor Pope’s evidence relating PM2.5 to premature deaths?
- 3) <!--[if !supportLists]--><!--[endif]-->Should Professor Pope be held fully accountable for the validity of his research relating PM2.5 to premature deaths?
- 4) <!--[if !supportLists]--><!--[endif]-->Should Americans, particularly Californians, be relieved of PM2.5 regulations that are based on a scientifically invalid relationship of PM2.5 to premature deaths?

Please let me know if you need clarification of these questions or this request. Until you respond to the contrary, I will assume that your answers to all four questions are NO.

Thank you very much for your consideration of this important request.

Sincerely yours,

James E. Enstrom, PhD, MPH, FFACE
UCLA and Scientific Integrity Institute
<http://www.scientificintegrityinstitute.org/>
jenstrom@ucla.edu
(310) 472-4274

Message

From: Sinks, Tom [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=001007B7D256453A8A19B91DF704E22C-SINKS, TOM]
Sent: 7/19/2018 4:18:11 PM
To: Mazza, Carl [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0ef03c34ecaf4e219c037be57464ecf9-CMazza]
CC: Teichman, Kevin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=20074f3f79c444a4b324cfbb890c7f56-Teichman, Kevin]; Shoaff, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ac16fb09cf2c44adb34a7405dc331532-JShoaff]
Subject: RE: Public access to EPA funded scientific research and protecting personal identifying information

Happy to discuss with john.

From: Mazza, Carl
Sent: Thursday, July 19, 2018 12:10 PM
To: Sinks, Tom <Sinks.Tom@epa.gov>
Cc: Teichman, Kevin <Teichman.Kevin@epa.gov>; Shoaff, John <Shoaff.John@epa.gov>
Subject: RE: Public access to EPA funded scientific research and protecting personal identifying information

Deliberative Process / Ex. 5

From: Sinks, Tom
Sent: Thursday, July 19, 2018 12:02 PM
To: Mazza, Carl <Mazza.Carl@epa.gov>
Cc: Teichman, Kevin <Teichman.Kevin@epa.gov>
Subject: RE: Public access to EPA funded scientific research and protecting personal identifying information

Carl – I would NOT want the SAB to do this. OSA/HSRRO has a program responsibility to do it. The proposed rule could disappear tomorrow and we still need to do it.

From: Mazza, Carl
Sent: Thursday, July 19, 2018 11:36 AM
To: Sinks, Tom <Sinks.Tom@epa.gov>
Cc: Teichman, Kevin <Teichman.Kevin@epa.gov>
Subject: RE: Public access to EPA funded scientific research and protecting personal identifying information

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Sinks, Tom

Sent: Thursday, July 19, 2018 9:38 AM

To: STPC Members <STPC_Members@epa.gov>

Cc: Science and Technology Policy Council Staff <STPC_Staff@epa.gov>; STPC_SSP <STPC_SSP@epa.gov>; Teichman, Kevin <Teichman.Kevin@epa.gov>; Nelson, Daniel K. <Nelson.Daniel@epa.gov>; Greene, Mary <greene.mary@epa.gov>; Sinks, Tom <Sinks.Tom@epa.gov>; Doa, Maria <Doa.Maria@epa.gov>; Burden, Susan <Burden.Susan@epa.gov>; Orme-Zavaleta, Jennifer <Orme-Zavaleta.Jennifer@epa.gov>

Subject: Public access to EPA funded scientific research and protecting personal identifying information

Dear STPC members:

The Office of the Science Advisor (OSA) establishes Agency wide guidance and policies for increasing access to EPA-funded research. OSA also houses the Program in Human Research Ethics and Oversight. Together these responsibilities promote public access to EPA-funded research data and protect the confidentiality of PII for human subjects included in EPA-funded research. Whereas a variety of approaches exist for protecting PII, EPA has not systematically reviewed these approaches, determined the infrastructure needed to support them, or considered a risk-based approach for protecting differing types and/or sources of PII. OSA has developed a Scope of Work for a contractor to help us focus more attention onto to this issue. Jennifer Orme-Zavaleta asked me to share this with you for awareness and to make sure there were no significant concerns about pursuing this issue. Additional input, by July 26th, is welcome.

Thomas Sinks, Ph.D.

Director, Office of the Science Advisor

Environmental Protection Agency

1200 Pennsylvania Ave NW

Room 41251 RRB, MC 8105 R

Washington DC, 20460

office: (202) 564-3099 n [REDACTED]

email: sinks.tom@epa.gov

Message

From: Sinks, Tom [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=001007B7D256453A8A19B91DF704E22C-SINKS, TOM]
Sent: 7/10/2018 3:21:37 PM
To: Benforado, Jay [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e3adeee7efce4889992919103f16e006-Benforado, Jay]; Grifo, Francesca [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8c4870bfab004fa0ac47bc8659d9903b-Grifo, Fran]
Subject: FW: ORD Senior Management Internal Weekly report - week of July 9, 2018

From: Blackburn, Elizabeth
Sent: Tuesday, July 10, 2018 9:39 AM
To: ORD-Exec-Council-Directors <Execcouncildirectors@epa.gov>; ORD-Mgmt-Council <ORDMgmtCouncil@epa.gov>; ORD-IOAA-Front Office Support <ORDIOAASUPPORT@epa.gov>; Maguire, Megan <Maguire.Megan@epa.gov>; Linkins, Samantha <Linkins.Samantha@epa.gov>; Matney, Rachel <Matney.Rachel@epa.gov>; Gillespie, Andrew <Gillespie.Andrew@epa.gov>; Guiseppe-Elie, Annette <Guiseppe-Elie.Annette@epa.gov>
Subject: ORD Senior Management Internal Weekly report - week of July 9, 2018

ITEMS REQUIRING SIGNATURE OR APPROVAL

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

LOCATION OF PRINCIPALS THIS WEEK

	Mon 7/9	Tues 7/10	Wed 7/11	Thurs 7/12	Fri 7/13
Jennifer	CINCI	CINCI	DC	DC	RTP

Chris	CINCI	CINCI	CINCI	RTP	CDO
Bruce	CINCI	CINCI	CINCI	DC	DC
MER	CINCI	CINCI	CINCI	CINCI	DC
Richard	CINCI	CINCI	CINCI	CINCI	CDO

LOCATION OF L/C/O DIRECTORS AND NPDS THIS WEEK

	Mon 7/9	Tues 7/10	Wed 7/11	Thurs 7/12	Fri 7/13
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Alan Vette	RTP	CINCI	CINCI	RTP	RTP
Cindy Sonich-Mullin	CINCI	CINCI	CINCI	CINCI	CINCI
Fred Hauchman	DC (AM) CINCI (PM)	CINCI	CINCI	DC	DC

Greg Sayles	CINCI	CINCI	CINCI	CINCI	CINCI
Jeff Frithsen	CINCI	CINCI	CINCI	DC	AWL
Jerry Blancato	CINCI	CINCI	CINCI	RTP	RTP

John Steenbock	CINCI	CINCI	CINCI	CINCI	CINCI
Mike Slimak	RTP	CINCI	CINCI	RTP	RTP
Rusty Thomas	RTP	CINCI	CINCI	RTP	RTP

Steve Silzer	DC	CINCI	CINCI	CINCI	CDO Deb Heckman Acting (202) 564-7274
Suzanne VanDrunick	DC (AM) CINCI (PM)	CINCI	CINCI	AWL	CDO Joe Williams Acting (580) 436-8608
Tina Bahadori	CINCI	CINCI	CINCI	CINCI	DC

Tim Watkins	CINCI	CINCI	CINCI	CINCI	CDO Jay Garland Acting (513) 569-7334
Tom Sinks	Leave Mary Greene (202) 564- 9949	Travel - Cincinnati Anand Mudambi (202) 564- 2817	Travel - Cincinnati Anand Mudambi (202) 564- 2817	DC	DC
Wayne Cascio	CINCI	CINCI	CINCI	CINCI	CDO Kay Holt Acting (919) 541-0633

LOCATION OF OTHER EC MEMBERS THIS WEEK

	Mon 7/9	Tues 7/10	Wed 7/11	Thurs 7/12	Fri 7/13
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Liz Blackburn	CINCI	CINCI	CINCI (AM)	DC	DC
Carolyn Hubbard	DC	CINCI	CINCI	AL Dayna Gibbons acting 202-564-7983	AL Dayna Gibbons acting 202-564-7983
Lou D'Amico	Cinci	Cinci	Cinci	DC	DC

Liz Blackburn
 Chief of Staff
 EPA Office of Research and Development
 202-564-2192
 Mobile: Personal Matters / Ex. 6

Message

From: Sinks, Tom [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=001007B7D256453A8A19B91DF704E22C-SINKS, TOM]
Sent: 4/25/2018 12:01:26 PM
To: Interagency Working Group on Open Science [IWGOS@LISTSERV.NSF.GOV]
CC: Thead, Erin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c2043cb510ff45feafac4e8625a9515e-Thead, Erin]; Sinks, Tom [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=001007b7d256453a8a19b91df704e22c-Sinks, Tom]
Subject: Public Access to Data and Transparency in Regulatory Science
Attachments: Strengthening Transparency in Regulatory Science 04-24-2018.pdf

Yesterday Administrator Pruitt signed this NPRM which should be posted in the Federal Register today or tomorrow. It is open for comment, I believe for 30 days. If possible, I'd like to ask the chairs for time on tomorrow's agenda to discuss this proposed rule and its connection to our work on open access to research data.

Thanks

Thomas Sinks, Ph.D.
Director, Office of the Science Advisor
Environmental Protection Agency
1200 Pennsylvania Ave NW
Room 41251 RRB, MC 8105 R
Washington DC, 20460
office: (202) 564-3099
email: sinks.tom@epa.gov

Personal Matters / Ex. 6

Message

From: Sinks, Tom [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=001007B7D256453A8A19B91DF704E22C-SINKS, TOM]
Sent: 4/25/2018 12:35:16 PM
To: Linda.Birnbaum@nih.hhs.gov; miller.aubrey@nih.hhs.gov; John.Bucher@nih.hhs.gov; Mary.Wolfe@nih.hhs.gov
CC: Sinks, Tom [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=001007b7d256453a8a19b91df704e22c-Sinks, Tom]
Subject: Public access to data and regulatory science
Attachments: Strengthening Transparency in Regulatory Science 04-24-2018.pdf

NIEHS Colleagues:

Yesterday Administrator Pruitt signed this Proposed Rule opening the door for public comment. I believe it important for NIEHS to be aware of it because so much of your intramural and extramural research is used by EPA in rulemaking. The new NIH policy that established automatic Certificates of Confidentiality on all ongoing and or future research containing PII may also have implications for this rule. Please feel free to consider commenting and distributing this proposed rule.

Thomas Sinks, Ph.D.
Director, Office of the Science Advisor
Environmental Protection Agency
1200 Pennsylvania Ave NW
Room 41251 RRB, MC 8105 R
Washington DC, 20460
office: (202) 564-3099 Personal Matters / Ex. 6
email: sinks.tom@epa.gov

Message

From: Kurose, James [Personal Matters / Ex. 6]
Sent: 4/25/2018 12:30:25 PM
To: Sinks, Tom [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=001007b7d256453a8a19b91df704e22c-Sinks, Tom]
CC: Sheehan, Jerry (NIH/NLM) [E] [Personal Matters / Ex. 6]; Knezek, Patricia M. (HQ-DH000)[Federal Government Detailee] [Personal Matters / Ex. 6]; Paltoo, Dina (NIH/OD) [E] [Personal Matters / Ex. 6]
Subject: FW: Public Access to Data and Transparency in Regulatory Science
Attachments: Strengthening Transparency in Regulatory Science 04-24-2018.pdf

Hi Tom,

I read about this in the paper this morning, and would love to hear more about it.

Jim

From: Interagency Working Group on Open Science [Personal Matters / Ex. 6] on behalf of "Sinks, Tom" <Sinks.Tom@EPA.GOV>
Reply-To: Interagency Working Group on Open Science [Personal Matters / Ex. 6]
Date: Wednesday, April 25, 2018 at 8:04 AM
To: [Personal Matters / Ex. 6] [Personal Matters / Ex. 6]
Subject: Public Access to Data and Transparency in Regulatory Science

sinks.tom@epa.gov

Message

From: Shoaff, John [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC16FB09CF2C44ADB34A7405DC331532-JSHOAFF]
Sent: 6/1/2018 12:17:50 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]; Lewis, Josh [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b22d1d3bb3f84436a524f76ab6c79d7e-JOLEWIS]; Tsirigotis, Peter [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d19c179f3ccb4fadb48e3ae85563f132-PTSIRIGO]; Koerber, Mike [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9c513901d4fd49f9ab101a6f7a7a863e-Koerber, Mike]; Culligan, Kevin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ab7ef4a59614fd4b4485668c42818c7-KCULLIGA]; Dunham, Sarah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a9444681441e4521ad92ae7d42919223-SDUNHAM]; Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]; Charmley, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fb1828fb00af42ffb68b9e0a71626d95-Charmley, William]; Millett, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c067caa6c93544f78c26ab08cc567d27-Millett, John]; DeLuca, Isabel [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0b021c30cbee4637a7c7ca683e5e044a-IDELUCA]; Hockstad, Leif [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5a4fb1f8930645efa34fdfa7485bc6da-LHOCKSTA]; Lubetsky, Jonathan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e125d09a658e48119789ccae5712b4a5-JLUBETSK]
Subject: FYI - Compilation of SAB Mtg Trade Press Articles as of 8 AM

InsideEPA

Daily News

SAB Votes To Review EPA's Science, Emissions Rules In Sign Of 'Rebuke'

May 31, 2018

EPA advisers have voted to review the science underlying agency rules aimed at rolling back a suite of Obama administration's greenhouse gas and emissions regulations, as well as a controversial proposal to require that major rules be based on publicly available science, decisions that environmentalists say amount to a "sharp rebuke" of Administrator Scott Pruitt's deregulatory agenda.

At a May 31 meeting, EPA's Science Advisory Board (SAB) voted to endorse a series of recommendations from SAB workgroups urging the full board to consider the science behind pending EPA plans to scale back light-duty vehicle GHG standards, the agency's proposal to scrap production limits on high-emitting glider trucks, EPA's plan to reconsider new source performance standards for oil and gas operations, EPA's planned repeal of the Clean Power Plan, the agency's retreat from GHG requirements for new and modified power plants, and EPA's science data rule.

The planned reviews, which impose a new level of scrutiny on key prongs in the Trump administration's deregulatory agenda, mark what may be the first instance of SAB oversight of agency regulations since the practice was instituted by the Obama administration.

And they comes despite suggestions by some current advisers that SAB consider deferring on issues including the power plant rules amid promises of clearer EPA communication with the board.

And in the case of the light-duty vehicle regulations, the move turned aside suggestions that SAB might want to defer a review until EPA and the Transportation Department issue a proposal in the coming weeks.

"We can say it merits review, and then at a later date, if we decide there is not much to review, we can sunset that review instead of deferring," one SAB member said.

While the board voted to review the rules, SAB members did not rule out sunseting their review if more information becomes available that allays their concerns.

Nevertheless, the move is significant because the meeting marked SAB's first gathering since Pruitt removed a host of board members who had received agency grant funds and replaced them with state and industry officials – including a new chair, Michael Honeycutt – who were widely viewed as being more supportive of the administrator's deregulatory agenda.

As such, the board's decision is already winning praise from environmentalists. "The leadership of the board was chosen by Pruitt himself, so their decision today is a sharp rebuke of his leadership and this dangerous [science rule] proposal," Ana Unruh Cohen, managing director of government affairs at the Natural Resources Defense Council, said in a statement.

"Pruitt's decisions fly in the face of science, the law, and the desires of the American people, and he will continue to be met with resistance in the courts, in the streets, and among his own advisers," John Coequyt, Sierra Club's global climate policy director, said in a separate statement.

Such statements underscore environmentalists' broader concerns with Pruitt's deregulatory agenda and his efforts to craft science to justify it, including his selection of science advisers as well as the proposed science rule, which they fear will undercut the use of studies containing private health data that the agency has long used to justify strict air quality and other rules.

SAB Frustration

Several SAB members expressed signs of frustration on the quality of EPA communication to date on its planned rules as well as the science underlying those rules.

"We make a request to EPA for information and we get really hardly anything in return," SAB member Chris Frey of North Carolina University said at one point, echoing others present that this does not necessarily mean the science behind EPA's regulations is flawed but that SAB wants to err on the side of examining the issues.

"My general sense is in any of these recommendations for review is, if there comes a point where EPA is responsive and has identified the science products that they are going to develop or use, and has convinced the [SAB] that they have already obtained or are implementing an appropriate review process, then I think we can step out of it," Frey said.

But prior statements from the SAB workgroups recommending review – as well as statements by SAB officials at the meeting – also made clear that they harbor significant concerns.

The move to review the agency's repeal of rules on high-emitting glider trucks, for example, which combine a new chassis with used engines, comes after an SAB workgroup in its recommendations blasted the apparent science underlying the rule as "dubious."

Similarly, the workgroup that recommended review of the science data rule strongly criticized the plan, charging it will undermine rules' integrity and was developed without adequate review.

"The proposed rule does not include any assessment of the impact of data restrictions on existing or future regulatory programs. Without access to the restricted data, regulatory programs could become more or less stringent than they otherwise would be, with consequences for both regulatory costs and benefits," the workgroup said.

SAB also discussed, but ultimately decided to spurn, proposals to hold off on reviewing several of the stationary source GHG rules, despite remarks from EPA officials present downplaying the extent to which the agency will need to rely on novel science.

For example, EPA's Kevin Culligan walked the panel through EPA's view that the agency was not using novel "influential" science information that would require such review.

With respect to EPA's new power plant rule, for example, Culligan said the main issue in play in that rule is a previous determination on whether carbon capture and storage (CCS) represents the best system of emissions reduction for new coal plants – an issue that he characterized as mostly a policy decision.

"Ultimately the way we look at it is, while there is science information that goes into it, the question . . . is really a policy decision," Culligan, said, citing policy issues including the appropriateness of requiring CCS in areas of the country where it may not be viable due to lack of sequestration opportunities.

But such views failed to win over the SAB.

And the vote in support of reviewing the science rule was widely assumed to be inevitable – even by SAB chair Honeycutt.

"Does anyone think we should not review this?" he said during the discussion of the science rule. "This might be the quickest decision ever." – *Doug Obey* (dobey@iwpnews.com)

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184208

SAB Chair Honeycutt Dodges Tough Questions On EPA Science Policies

May 31, 2018

Michael Honeycutt, the new chair of EPA's Science Advisory Board (SAB), dodged tough questions from reporters on EPA's "secret science" policy, review of major EPA rulemakings and related issues at the first panel meeting since his appointment, but he reaffirmed his skepticism of the Obama administration's decision to tighten the ozone ambient air standard.

Speaking to reporters on the sidelines of the May 31 meeting in Washington, D.C., Honeycutt -- appointed by EPA Administrator Scott Pruitt to head the independent committee -- faced pointed questions over his views on several controversial policy issues, but largely demurred with his answers.

Honeycutt is toxicology director at the Texas Commission on Environmental Quality (TCEQ), the state's environmental regulator, and is known for his doubts over Obama-era air quality regulations and the science underpinning them.

Reporters asked Honeycutt, for example, if SAB should be consulted on Pruitt's proposed science policy that precludes the agency from relying on studies to set regulations when the underlying data are not publicly available. Democratic lawmakers and others say EPA should have consulted various science advisors at the outset, and fear the policy will be used to bar use of science that could otherwise help justify stricter regulations.

SAB work groups have also called for the full panel to review several key rulemakings through which the Trump administration is aiming to undo Obama-era rules on greenhouse gases emissions from power plants, the oil and gas sector, and trucks and cars.

"It is not for me to say right now" whether SAB should review the science policy, Honeycutt told reporters, noting that the issue was still under discussion by the panel. "We have guidelines for what constitutes significant science" worthy of review. "We follow process."

While he declined to answer questions, he later voted to approve workgroup recommendation that the full SAB review the proposed science rule, as well as the various GHG measures.

Asked about another Pruitt policy that prohibits scientists serving on SAB and other advisory panels from receiving EPA funds, but allows those funded by industry to serve, Honeycutt said, "that is not for me to speak to. That is really not my call."

On his views regarding fine particulate matter (PM2.5) pollution's health impacts, he said, "it depends on who you talk to." There are some studies that show associations with health effects, and those that don't, he said. "You have to look at data as a whole. You don't necessarily look at individual studies by themselves."

He denied having claimed that PM2.5 could under some circumstances be beneficial to health. "I haven't said that," he said.

PM2.5 is widely regarded as the most harmful air pollutant in terms of damage to public health, and reductions in PM2.5 drive much of the estimated benefits of many EPA air rules. EPA has stated its goal to complete review of the 2010 Obama PM2.5 standard of 12 micrograms per cubic meter by 2020 -- but that process has only just begun.

'Different Viewpoints'

Asked about Pruitt's prior criticisms that there is a cultural problem at EPA, with too little representation of industry viewpoints and Midwestern or Southern states, Honeycutt demurred. "There are a lot of different viewpoints in science," he said. "We are here to give advice to the administrator."

But on one issue, Honeycutt was clear. He has long criticized EPA's ozone national ambient air quality standard (NAAQS) of 70 parts per billion (ppb) as too tough. EPA tightened the standard in 2015 down from the 75 ppb limit set in 2008 by the George W. Bush EPA. "I think lowering the standard from 75 ppb to 70 ppb won't get you much" in terms of health benefits, he said. "We think 75 ppb is still protective."

This view contrasts with that of EPA's top air experts on the Clean Air Scientific Advisory Committee (CASAC), which advises EPA on how to set the NAAQS. CASAC twice unanimously recommended that EPA set the ozone standard at a level between 60 ppb and 70 ppb. EPA has committed itself to completing a review of the ozone standard in 2020, and is still weighing a reconsideration of the standard. -- *Stuart Parker* (sparker@iwpnews.com)

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EENEWS/CLIMATE WIRE

EPA

Advisory board to review Pruitt's science overhaul

[Scott Waldman](#), E&E News reporter

Published: Friday, June 1, 2018

EPA's Science Advisory Board is ideologically divided over many science-based decisions made by the agency in the last year, but you might not know it from the board's first meeting after it was significantly reworked by Administrator Scott Pruitt.

At its first meeting after an eight-month hiatus, the SAB had a cordial first dive into policies that would have dramatic effects on vehicle emissions, the science used in regulations and the ability of super-polluting trucks to evade clean air rules.

There were no fireworks at the public meeting, which was mostly attended by journalists, advocacy groups and EPA employees.

However, at the end of the five-hour meeting in a room with little air conditioning on a muggy day in Washington, D.C., board members did disagree, very politely, over whether to defer some regulatory reviews and about the merits of a proposed rule to limit the science used by the agency to craft regulations.

The latter issue, which the group voted to review, has received extensive blowback, including 120,000 public comments in just a month, according to EPA.

"There is a real lack of clarity in how you would unroll this and actually apply it," said Alison Cullen, a professor at the University of Washington and a member of the board.

Stanley Young, a statistician and frequent critic of well-established air pollution studies that have been extensively peer-reviewed and replicated, said he supports the science rule. He suggested air pollution researchers behind groundbreaking studies may be guilty of misconduct.

"This is a sticky issue. It's been well-discussed in the literature, and there are examples where, I would say, mischief has been done," Young said at the meeting.

In the end, the board agree to move forward with its review of the science on a number of EPA actions, including those related to greenhouse gas emissions and science transparency.

Despite the somnolent tone to the proceedings, the Science Advisory Board has experienced a sea change since it last met in person. Gone are a number of academic researchers, leaders in their fields of expertise. Their replacements include researchers allied with and funded by industry, whose work is used to fight against public health regulations. Some are longtime critics of EPA.

At yesterday's meeting at the Washington Plaza Hotel in D.C., 17 new members were at the table, which had a decidedly stronger industry presence.

At the head was the new chairman of the SAB, Michael Honeycutt, who previously served as head toxicologist for the Texas Commission of Environmental Quality and who has said there is evidence that air pollution "makes you live longer."

Among the others at the table were the statistician Young, who has produced work funded by the American Petroleum Institute that says EPA's air regulations are based on faulty science; Kimberly White of the industry group American Chemistry Council; and Robert Phalen, who heads the Air Pollution Health Effects Laboratory at the University of California, Irvine, and has said "modern air is a little too clean for optimum health."

During a discussion of air pollution regulations, industry-affiliated researchers expressed concern about EPA actions. White expressed concern over an "overestimation of risk" at the agency.

Don van der Vaart, a Pruitt appointee who questions mainstream climate science and is the former secretary of the North Carolina Department of Environmental Quality, questioned air emissions data, saying, "Emissions data is always wrong; the question is, how wrong, and can you do anything about it?"

Young asked whether companies subject to more stringent pollution regulations would have the ability to dispute them and said the review of some research would depend on one's perspective about whether carbon dioxide and air pollution are bad.

In September, the SAB requested that Pruitt join its meeting. He was not in attendance.

About two dozen people spoke during the meeting's public comment period, almost all in opposition to the science overhaul plan and the proposed rollback of vehicle fuel efficiency standards.

"The core science/policy problem with EPA's proposal is that it elevates what it calls 'transparency' above all other attributes of a published study as a criterion for assessing its value," said John Bachmann, a former EPA official who worked in the agency's air office in North Carolina. He is not a member of the board. "Thus, a study that has been replicated many times may be excluded from consideration, while one that uses an inferior database that is publicly available would be considered."

One theme that fired up some board members was their complaint that they're not getting enough scientific information from EPA to back up its decisions.

Christopher Frey, an engineering professor at North Carolina State University, said an SAB working group asked the agency for more information but was rebuffed. He said the board should send a "nastygram" to the agency, because it has typically been deficient in providing information for review, not just during Pruitt's tenure but stretching back into the Obama administration, as well.

"We make a request to EPA for information, and we get hardly anything in return," he said.

Jeanne VanBriesen, director of the Center for Water Quality in Urban Environmental Systems at Carnegie Mellon University, said the board's work has been significantly affected by the lack of response from the agency. She said reviewing the science behind the rulemaking would "light a fire" under EPA officials and that deferring would unnecessarily delay actions for months.

"We mean something when we defer," she said. "We mean there isn't information to have been reviewed. There is information to be reviewed here; we were not provided it, that's a very different case."

Bloomberg Environment

News

Climate Rollbacks, Science Rule to Get EPA Science Advisers Review

Posted May 31, 2018, 7:38 PM

By [Abbey Smith](#)

- Science Advisory Board votes nearly unanimously to review EPA revisions to five Obama-era climate rules
- Panel also will scrutinize EPA efforts to restrict agency science

EPA Administrator Scott Pruitt's plans to revise five Obama-era climate regulations—and his efforts to limit the types of science the agency can use—will get the scrutiny of the agency's science advisers, the full panel voted May 31.

The Science Advisory Board, which counsels the Environmental Protection Agency on the science it uses, will move forward with vetting the scientific and technical analysis underpinning the EPA's plans to rewrite several greenhouse gas regulations.

Those include: the agency's review of the Obama administration's carbon limits for new and existing power plants, its reconsideration of methane limits for new oil and gas wells, its plans to rewrite fuel economy standards for passenger cars, and its proposal to eliminate emissions limits for so-called glider trucks.

The panel also voted to take up a review of the EPA's proposal barring the use of scientific research including data that isn't or can't be made public.

The Science Advisory Board voted nearly unanimously that all six proposals merit further review.

It is a crucial step in the process, but the reviews may not all follow the same steps, Thomas Brennan, acting director of the

Science Advisory Board staff office, told reporters on the sidelines of the May 31 meeting.

A work group of several panel members recommended review of the regulations, citing potential technical flaws and gaps in the scientific basis.

Seeking Better Response From Staff

The science advisers will now engage further with EPA staff. Several Science Advisory Board members argued that they didn't receive enough information from the agency about the planned regulations upfront.

"We make a request for information, and we haven't gotten much in return," said Chris Frey, an engineering professor at North Carolina State University and a member of the work group that recommended the rules for review. He and other members of the advisory board stressed the need for better response from EPA staff.

Michael Honeycutt, chairman of the board and toxicology director at the Texas Commission on Environmental Quality, offered at one point to speak with EPA air chief Bill Wehrum to urge him to make staff available to discuss the agency's regulatory rollbacks with the science advisers.

Brennan told reporters that the science panel's reviews are likely to run at different paces. The panel could decide to combine reviews of regulations that deal with the same issues, he added.

For example, several members of the board suggested combining review of the EPA's plans to repeal carbon limits for existing power plants, known as the Clean Power Plan, with efforts to rewrite the companion limits for new power plants.

Advocates Urge Rigor

Nearly two-dozen environmental advocates and scientists urged the science advisers to take up the reviews, sharply criticizing the lack of scientific and technical basis for the EPA's determination to revise Obama-era fuel economy standards and its plans to repeal emissions limits on glider trucks.

Advocates also urged the Science Advisory Board to rigorously examine the EPA's science transparency proposal.

The board needs to "ensure EPA follows the law and uses the best available scientific information as it makes regulatory decisions that will affect the health and welfare of all Americans," David McCabe, a scientist with the Clean Air Task Force, told the panel.

To contact the reporter on this story: Abby Smith in Washington at asmith@bloombergenvironment.com

To contact the editor responsible for this story: Rachael Daigle at rdaigle@bloombergenvironment.com

Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 4/20/2018 7:20:15 PM
To: jjohnston@virginia.edu
Attachments: Data Access Draft - EPA - 4-17-18 - CLEAN.docx

Dr. Johnston,

May be some additional changes to this version - We really appreciate your support!

Clint

Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 4/24/2018 12:49:00 AM
To: clintwoods; **Personal Email / Ex. 6**
Subject: Fwd: EPA NPRM Call Regulatory Science
Attachments: EPA Response to OIRA- Data Access Draft 4-23-18_ OMB response.docx; ATT00001.htm

Begin forwarded message:

From: "Schwab, Margo EOP/OMB" **EOP / Ex. 6**
Date: April 23, 2018 at 8:27:57 PM EDT
To: "'Woods, Clint'" <woods.clint@epa.gov>, "Kim, Jim H. EOP/OMB" **EOP / Ex. 6**
"Palmieri, Rosario A. EOP/OMB" **EOP / Ex. 6**, "Laity, Jim A. EOP/OMB"
EOP / Ex. 6 "Bolen, Brittany" <bolen.brittany@epa.gov>, "Szabo, Aaron L.
EOP/CEQ" **EOP / Ex. 6** "Moran, John S. EOP/WHO" **EOP / Ex. 6**
"Bremberg, Andrew P. EOP/WHO" **EOP / Ex. 6** "Herz, James P. EOP/OMB"
EOP / Ex. 6 "Brooke, Francis J. EOP/OVP" **EOP / Ex. 6**
"jonathan.brightbill@usdoj.gov" **EOP / Ex. 6**, "Beck, Nancy"
<Beck.Nancy@epa.gov>, "Schwab, Justin" <Schwab.Justin@epa.gov>, "Yamada, Richard (Yujiro)"
<yamada.richard@epa.gov>, "David.Gualtieri@usdoj.gov" <David.Gualtieri@usdoj.gov>,
"eric.t.gormsen@usdoj.gov" <eric.t.gormsen@usdoj.gov>, "Neumayr, Mary B. EOP/CEQ"
EOP / Ex. 6, "Hickey, Mike J. EOP/OMB" **EOP / Ex. 6**
"Leopold, Matt" <Leopold.Matt@epa.gov>
Subject: RE: EPA NPRM Call Regulatory Science

We are almost there. **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

From: Woods, Clint <woods.clint@epa.gov>
Sent: Monday, April 23, 2018 5:45 PM
To: Kim, Jim H. EOP/OMB **EOP / Ex. 6**; Palmieri, Rosario A. EOP/OMB

EOP / Ex. 6

; Laity, Jim A. EOP/OMB **EOP / Ex. 6**; Bolen, Brittany
; Szabo, Aaron L. EOP/CEQ **EOP / Ex. 6**; Moran, John S.
EOP/WHO **EOP / Ex. 6**; Bremberg, Andrew P. EOP/WHO
EOP / Ex. 6 Herz, James P. EOP/OMB **EOP / Ex. 6**
Brooke, Francis J. EOP/OVP **EOP / Ex. 6**; jonathan.brightbill@usdoj.gov; Beck,
Nancy <Beck.Nancy@epa.gov>; Schwab, Margo EOP/OMB **EOP / Ex. 6**; Schwab,
Justin <Schwab.Justin@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>;
David.Gualtieri@usdoj.gov; eric.t.gormsen@usdoj.gov; Neumayr, Mary B. EOP/CEQ
EOP / Ex. 6; Hickey, Mike J. EOP/OMB **EOP / Ex. 6**; Leopold,
Matt <Leopold.Matt@epa.gov>

Subject: RE: EPA NPRM Call Regulatory Science

All,

Thanks again for your time and attention on this matter. **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Clint Woods
Deputy Assistant Administrator
Office of Air and Radiation, U.S. EPA
202.564.6562

From: Kim, Jim H. EOP/OMB **EOP / Ex. 6**

Sent: Monday, April 23, 2018 2:16 PM

To: Palmieri, Rosario A. EOP/OMB **EOP / Ex. 6**; Laity, Jim A. EOP/OMB

EOP / Ex. 6; Bolen, Brittany <bolen.brittany@epa.gov>; Szabo, Aaron L. EOP/CEQ

EOP / Ex. 6 Moran, John S. EOP/WHO **EOP / Ex. 6**; Bremberg,

Andrew P. EOP/WHO **EOP / Ex. 6**; Herz, James P. EOP/OMB

EOP / Ex. 6; Brooke, Francis J. EOP/OVP **EOP / Ex. 6**

jonathan.brightbill@usdoj.gov; Beck, Nancy <Beck.Nancy@epa.gov>; Schwab, Margo EOP/OMB

EOP / Ex. 6; Schwab, Justin <Schwab.Justin@epa.gov>; Yamada, Richard (Yujiro)

<yamada.richard@epa.gov>; Woods, Clint <woods.clint@epa.gov>; David.Gualtieri@usdoj.gov;

eric.t.gormsen@usdoj.gov; Neumayr, Mary B. EOP/CEQ **EOP / Ex. 6**; Hickey, Mike

J. EOP/OMB **EOP / Ex. 6**

Subject: RE: EPA NPRM Call Regulatory Science

Dear Interagency Reviewers:

Here are OIRA's suggested revisions consistent with the discussion on this morning's call.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Please let us know

ASAP if you have any further comments

Jim

From: Kim, Jim H. EOP/OMB

Sent: Monday, April 23, 2018 10:59 AM

To: Palmieri, Rosario A. EOP/OMB **EOP / Ex. 6**; Laity, Jim A. EOP/OMB

EOP / Ex. 6; Bolen, Brittany <bolen.brittany@epa.gov>; Szabo, Aaron L. EOP/CEQ

EOP / Ex. 6 Moran, John S. EOP/WHO **EOP / Ex. 6**; Bremberg,

Andrew P. EOP/WHO **EOP / Ex. 6**; Herz, James P. EOP/OMB

EOP / Ex. 6; Brooke, Francis J. EOP/OVP **EOP / Ex. 6**;

jonathan.brightbill@usdoj.gov; Beck, Nancy <Beck.Nancy@epa.gov>; Schwab, Margo EOP/OMB

EOP / Ex. 6

>; 'schwab.justin@epa.gov' <schwab.justin@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; woods.clint@epa.gov; David.Gualtieri@usdoj.gov;

Eric.T.Gormsen@usdoj.gov; Neumayr, Mary B. EOP/CEQ

EOP / Ex. 6

Subject: RE: EPA NPRM Call Regulatory Science

Hi all,

Please find attached some

Deliberative Process / Ex. 5

Thanks,

Jim

-----Original Appointment-----

From: Palmieri, Rosario A. EOP/OMB

Sent: Monday, April 23, 2018 8:58 AM

To: Palmieri, Rosario A. EOP/OMB; Laity, Jim A. EOP/OMB; 'Bolen, Brittany'; Szabo, Aaron L. EOP/CEQ; Moran, John S. EOP/WHO; Bremberg, Andrew P. EOP/WHO; Herz, James P. EOP/OMB; Brooke, Francis J. EOP/OVP; **Personal Matters / Ex. 6**; Beck, Nancy; Schwab, Margo EOP/OMB;

'schwab.justin@epa.gov'; Kim, Jim H. EOP/OMB; Yamada, Richard (Yujiro); woods.clint@epa.gov;

Personal Matters / Ex. 6

; Neumayr, Mary B. EOP/CEQ

Subject: EPA NPRM Call Regulatory Science

When: Monday, April 23, 2018 11:00 AM-12:00 PM (UTC-05:00) Eastern Time (US & Canada).

Where: Dial-In: **Conference phone and code / Ex. 6**

Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 4/20/2018 6:57:20 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]; Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]; Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]; Leopold, Matt [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4e5cdf09a3924dada6d322c6794cc4fa-Leopold, Ma]
Subject: Fwd: EPA - Data Access NPRM - comments
Attachments: Data Access Draft - EPA - 4-17-18 - CLEAN_suggestions_ceq.docx; ATT00001.htm; Data Access Draft - OIRA comments 4-20-18.docx; ATT00002.htm

Taking a look now - We may want to schedule some time w/ OIRA Monday if major concerns are IDed in next hour

Begin forwarded message:

From: "Lewis, Josh" <Lewis.Josh@epa.gov>
Date: April 20, 2018 at 2:53:55 PM EDT
To: "Woods, Clint" <woods.clint@epa.gov>
Subject: FW: EPA - Data Access NPRM - comments

From: Kim, Jim H. EOP/OMB [REDACTED] **EOP / Ex. 6**
Sent: Friday, April 20, 2018 2:43 PM
To: Lewis, Josh <Lewis.Josh@epa.gov>
Cc: Laity, Jim A. EOP/OMB [REDACTED] **EOP / Ex. 6**; Schwab, Margo EOP/OMB [REDACTED] **EOP / Ex. 6**
Subject: EPA - Data Access NPRM - comments

Hi Josh,

Please find attached our comments and CEQ's comments on the Data Access draft. **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Let me know if you have questions.

Thanks,
Jim

James Kim, Ph.D., DABT
Office of Information and Regulatory Affairs
Office of Management and Budget

EOP / Ex. 6

Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 5/30/2018 5:33:03 PM
To: Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beadda2affa44-Harlow, Dav]
Subject: Fwd: Qs for the Record on Examining the Office of Information and Regulatory Affairs' Role in Reviewing Agency Rulemaking
Attachments: HWM162 - OMB QFRs Rao+OGC.DOCX; ATT00001.htm

Deliberative Process / Ex. 5

Begin forwarded message:

From: "Lewis, Josh" <Lewis.Josh@epa.gov>
Date: May 30, 2018 at 1:28:10 PM EDT
To: "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>, "Woods, Clint" <woods.clint@epa.gov>, "Dominguez, Alexander" <dominguez.alexander@epa.gov>
Subject: FW: Qs for the Record on Examining the Office of Information and Regulatory Affairsâ€™ Role in Reviewing Agency Rulemaking

Sending mostly for awareness. These are QfRs from a Neomi Rao hearing. EPA-related Q/As on pp. 1-6 (scientific transparency and gliders). Program offices and OGC have reviewed. You'll see an edit included from David Orlin.

There's still time to provide additional edits, if you see anything you want to add/delete/change.

Josh

From: Gomez, Laura
Sent: Tuesday, May 29, 2018 12:02 PM
To: Grogard, Megan <Grogard.Megan@epa.gov>; Kime, Robin <Kime.Robin@epa.gov>; Linkins, Samantha <Linkins.Samantha@epa.gov>; Hanley, Mary <Hanley.Mary@epa.gov>; Keller, Kaitlin <keller.kaitlin@epa.gov>; Folkemer, Nathaniel <Folkemer.Nathaniel@epa.gov>; Emmerson, Caroline <Emmerson.Caroline@epa.gov>; Jones-Parra, Lisa <jones-parra.lisa@epa.gov>; Mills, Derek <Mills.Derek@epa.gov>; Monson, Mahri <Monson.Mahri@epa.gov>; Dieu, Martin <Dieu.Martin@epa.gov>; Harwood, Jackie <Harwood.Jackie@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Lubetsky, Jonathan <Lubetsky.Jonathan@epa.gov>; Saltman, Tamara <Saltman.Tamara@epa.gov>
Cc: Moody, Christina <Moody.Christina@epa.gov>; Williams, Thea <Williams.Thea@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>
Subject: LRM [HWM-115-162] DUE 05/31 @ 12:00 PM OMB Questions for the Record on Examining the Office of Information and Regulatory Affairs' Role in Reviewing Agency Rulemaking

DEADLINE: 12:00 PM Thursday, May 31, 2018

Attached please find draft QFRs from OMB (Rao) from a Thursday, April 12th hearing entitled "Examining the Office of Information and Regulatory Affairs' Role in Reviewing Agency Rulemaking"

before the HSGAC subcommittee on Regulatory Affairs and Federal Management. OMB testimony for the hearing was cleared under LRM SS-115-113.

Among other topics, the QFRs discuss recent regulatory actions by EPA and OIRA input on those actions; a DOL proposed rule; deregulatory actions related to tax regulations; Executive Order 13771; and race and ethnicity standards for Federal information collections.

Please review the draft 16-page QFRs and respond by the deadline.

Laura E. Gómez Rodríguez
Congressional Liaison Specialist
US Environmental Protection Agency (EPA)
Office of Congressional and Intergovernmental Relations (OCIR)
1200 Pennsylvania Ave., N.W. MC-2650R
Washington DC, 20004
gomez.laura@epa.gov

Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 4/20/2018 12:07:23 PM
To: Burke, Marcella [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5066626ec70846439b8d3f6c35d92be8-Burke, Marc]
CC: Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]; White, Elizabeth [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f8af641a6306479c9026142ef3b02bd7-White, Eliz]
Attachments: emails 4.pdf; emails 3.pdf; emails 2.pdf; emails 1.pdf

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Clint Woods
Deputy Assistant Administrator
Office of Air and Radiation, U.S. EPA
202.564.6562

Gentry, Nathan

From: Gunasekara, Mandy
Sent: Tuesday, January 16, 2018 5:16 PM
To: Ringel, Aaron; Woods, Clint
Cc: Lyons, Troy; Fotouhi, David; Yamada, Richard (Yujiro)
Subject: Re: Circling Back on Administrator Meeting

Sent from my iPhone

On Jan 16, 2018, at 2:27 PM, Ringel, Aaron <ringel.aaron@epa.gov> wrote:

All, see below follow up from Chairman Smith's meeting with the administrator.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

-Aaron

From: Brazauskas, Joseph [<mailto:Joseph.Brazauskas@mail.house.gov>]
Sent: Tuesday, January 16, 2018 1:35 PM
To: Ringel, Aaron <ringel.aaron@epa.gov>
Subject: Circling Back on Administrator Meeting

Aaron,

It was great to see you last week and appreciate the Administrator's time. Chairman Smith is very keen for our staff to get together to discuss further transparent science-based regulations at the EPA. We can meet at your earliest convenience with the appropriate EPA staff to discuss this matter further. When you have identified who is best to handle this matter moving forward please let me know and we can schedule some time to discuss. Hope to hear from you soon. Next week we are not in session so we should have a number of days and times available.

Thank you,
Joe

Joseph A. Brazauskas
Staff Director and Senior Counsel
Subcommittee on Environment
Committee on Science, Space and Technology
Lamar Smith, Chairman
P: (202) 225-6371

Gentry, Nathan

From: Yamada, Richard (Yujiro)
Sent: Tuesday, January 16, 2018 6:10 PM
To: Ringel, Aaron; Lyons, Troy; Fotouhi, David; Gunasekara, Mandy
Subject: RE: Circling Back on Administrator Meeting

Deliberative Process / Ex. 5

From: Ringel, Aaron
Sent: Tuesday, January 16, 2018 2:28 PM
To: Lyons, Troy <lyons.troy@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>
Subject: FW: Circling Back on Administrator Meeting

All, see below follow up from Chairman Smith's meeting with the administrator. **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

-Aaron

From: Brazauskas, Joseph [<mailto:Joseph.Brazauskas@mail.house.gov>]
Sent: Tuesday, January 16, 2018 1:35 PM
To: Ringel, Aaron <ringel.aaron@epa.gov>
Subject: Circling Back on Administrator Meeting

Aaron,

It was great to see you last week and appreciate the Administrator's time. Chairman Smith is very keen for our staff to get together to discuss further transparent science-based regulations at the EPA. We can meet at your earliest convenience with the appropriate EPA staff to discuss this matter further. When you have identified who is best to handle this matter moving forward please let me know and we can schedule some time to discuss. Hope to hear from you soon. Next week we are not in session so we should have a number of days and times available.

Thank you,
Joe

Joseph A. Brazauskas
Staff Director and Senior Counsel
Subcommittee on Environment
Committee on Science, Space and Technology
Lamar Smith, Chairman
P: (202) 225-6371

To: Bolen, Brittany[bolen.brittany@epa.gov]
Cc: Feeley, Drew (Robert)[Feeley.Drew@epa.gov]; Woods, Clint[woods.clint@epa.gov]; Schwab, Justin[Schwab.Justin@epa.gov]; Baptist, Erik[Baptist.Erik@epa.gov]; Beck, Nancy[Beck.Nancy@epa.gov]
From: Yamada, Richard (Yujiro)
Sent: Mon 2/12/2018 4:07:21 PM
Subject: Re: latest version

I can be available for call tomorrow or Weds - let me know what time works - thanks

Sent from my iPhone

On Feb 12, 2018, at 11:04 AM, Bolen, Brittany <bolen.brittany@epa.gov> wrote:

Hi - Can we please schedule a planning meeting/call on this tomorrow or Wednesday?

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Yamada, Richard (Yujiro)
Sent: Thursday, February 8, 2018 1:45 PM
To: Bolen, Brittany <bolen.brittany@epa.gov>
Cc: Feeley, Drew (Robert) <Feeley.Drew@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Baptist, Erik <Baptist.Erik@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>
Subject: Re: latest version

Deliberative Process / Ex. 5

Sent from my iPhone

On Feb 8, 2018, at 10:26 AM, Bolen, Brittany <bolen.brittany@epa.gov> wrote:

Deliberative Process / Ex. 5

Thanks,

Brittany

From: Yamada, Richard (Yujiro)
Sent: Monday, January 29, 2018 5:58 PM
To: Feeley, Drew (Robert) <Feeley.Drew@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Woods, Clint <woods.clint@epa.gov>
Cc: Schwab, Justin <Schwab.Justin@epa.gov>; Baptist, Erik <Baptist.Erik@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>
Subject: latest version

(This email contains deliberative and pre-decisional information)

Deliberative Process / Ex. 5

Richard Yamada
Deputy Assistant Administrator
Office of Research and Development
U.S. Environmental Protection Agency

Phone: 202-564-1727

yamada.richard@epa.gov

ED_001655_00000343-00002

ED_002389_00031559-00003

To: Beck, Nancy[beck.nancy@epa.gov]
Cc: Baptist, Erik[baptist.erik@epa.gov]; Schwab, Justin[schwab.justin@epa.gov]
From: Yamada, Richard (Yujiro)
Sent: Wed 1/31/2018 7:54:14 PM
Subject: RE: For review - Draft EPA Testimony for House Science Hearing

Yes, thanks this is helpful

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Beck, Nancy
Sent: Wednesday, January 31, 2018 2:51 PM
To: Yamada, Richard (Yujiro) <yamada.richard@epa.gov>
Cc: Baptist, Erik <Baptist.Erik@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>
Subject: RE: For review - Draft EPA Testimony for House Science Hearing

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks,

Nancy

Nancy B. Beck, Ph.D., DABT

Deputy Assistant Administrator, OCSPP

P: 202-564-1273

M: 202-731-9910

beck.nancy@epa.gov

From: Yamada, Richard (Yujiro)

Sent: Wednesday, January 31, 2018 2:30 PM

To: Beck, Nancy <Beck.Nancy@epa.gov>

Cc: Baptist, Erik <Baptist.Erik@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>

Subject: RE: For review - Draft EPA Testimony for House Science Hearing

Ex. 5 - Deliberative Process

Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 4/19/2018 1:51:21 PM
To: Edward Calabrese [edwardc@schoolph.umass.edu]
Attachments: Data Access Draft - EPA - 4-17-18 - CLEAN.docx

Thanks!

Clint Woods
Deputy Assistant Administrator
Office of Air and Radiation, U.S. EPA
202.564.6562

Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 6/15/2018 7:33:10 PM
To: Shoaff, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ac16fb09cf2c44adb34a7405dc331532-JShoaff]
Subject: Fwd: letter
Attachments: EDIT 06122018 Draft - SAB Response - Cover Letter 5-30-18 cw updates.docx; ATT00001.htm

Begin forwarded message:

From: "Schwab, Justin" <Schwab.Justin@epa.gov>
Date: June 13, 2018 at 8:27:21 AM EDT
To: "Woods, Clint" <woods.clint@epa.gov>
Subject: letter

Attorney Client / Ex. 5

Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 4/23/2018 12:49:48 PM
To: Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beaddda2affa44-Harlow, Dav]
Subject: Fwd: EPA - Data Access NPRM - comments
Attachments: EPA Response to OIRA Data Access Comments - 4-22-18.docx; ATT00001.htm

FYI

Begin forwarded message:

From: "Woods, Clint" <woods.clint@epa.gov>
Date: April 22, 2018 at 4:15:54 PM EDT
To: "James H Kim" [EOP / Ex. 6] <James.H.Kim@epa.gov>, "James A. Laity" [EOP / Ex. 6] <James.A.Laity@epa.gov>, "Bolen, Brittany" [EOP / Ex. 6] <Bolen.Brittany@epa.gov>, "Schwab, Justin" [EOP / Ex. 6] <Justin.Schwab@epa.gov>, "Lewis, Josh" [EOP / Ex. 6] <Josh.Lewis@epa.gov>
Subject: RE: EPA - Data Access NPRM - comments

Jim, Jim, and Margo,

Thanks so much for the quick turnaround [Deliberative Process / Ex. 5]

[Deliberative Process / Ex. 5]

[Deliberative Process / Ex. 5]

I believe Brittany may have been in touch about scheduling some time tomorrow to discuss further, and I look forward to talking with you about the details.

Clint Woods
Deputy Assistant Administrator
Office of Air and Radiation, U.S. EPA
202.564.6562

From: Lewis, Josh
Sent: Friday, April 20, 2018 4:11 PM
To: Woods, Clint <woods.clint@epa.gov>
Subject: FW: EPA - Data Access NPRM - comments

Josh Lewis
Chief of Staff
EPA/Office of Air and Radiation
Office: 202 564 2095
Cell: 202 329 2291

From: Kim, Jim H. EOP/OMB [EOP / Ex. 6]
Sent: Friday, April 20, 2018 4:07 PM

To: Lewis, Josh <Lewis.Josh@epa.gov>

Cc: Laity, Jim A. EOP/OMB [REDACTED] EOP / Ex. 6; Schwab, Margo EOP/OMB

[REDACTED] EOP / Ex. 6

Subject: RE: EPA - Data Access NPRM - comments

Hi Josh,

Attached and below are comments from OMB's Environment Branch (Jim Herz shop). [REDACTED] Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

[REDACTED] Deliberative Process / Ex. 5

Please feel free to call us if you would like to discuss.

Jim

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Lewis, Josh <Lewis.Josh@epa.gov>

Sent: Friday, April 20, 2018 2:55 PM

To: Kim, Jim H. EOP/OMB [REDACTED] EOP / Ex. 6

Cc: Laity, Jim A. EOP/OMB [REDACTED] EOP / Ex. 6 >; Schwab, Margo EOP/OMB

[REDACTED] EOP / Ex. 6

Subject: RE: EPA - Data Access NPRM - comments

Hi Jim,

Confirming receipt.

Josh Lewis
Chief of Staff
EPA/Office of Air and Radiation
Office: 202 564 2095

From: Kim, Jim H. EOP/OMB [REDACTED] EOP / Ex. 6

Sent: Friday, April 20, 2018 2:43 PM

To: Lewis, Josh <Lewis.Josh@epa.gov>

Cc: Laity, Jim A. EOP/OMB [REDACTED] EOP / Ex. 6 >; Schwab, Margo EOP/OMB

[REDACTED] EOP / Ex. 6

Subject: EPA - Data Access NPRM - comments

Hi Josh,

Please find attached [REDACTED] Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Let me know if you have questions.

Thanks,
Jim

James Kim, Ph.D., DABT
Office of Information and Regulatory Affairs
Office of Management and Budget

EOP / Ex. 6

Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 4/17/2018 10:53:59 PM
To: tcoxdenver@aol.com
Subject: Follow Up
Attachments: Data Access Draft - EPA - 4-17-18 - CLEAN.pdf; NAAQS Review Process Briefing 4-13-18.docx

Dr. Cox,

Thanks so much for your time earlier – Two items of interest attached. Would you mind providing any thoughts you have on data access this week?

Clint

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 6/11/2018 12:26:07 PM
To: Block, Molly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=60d0c681a16441a0b4fa16aa2dd4b9c5-Block, Moll]
Subject: Re: moment to chat?

Thanks!

Deliberative Process / Ex. 5

On Jun 11, 2018, at 8:06 AM, Block, Molly <block.molly@epa.gov> wrote:

Yes, thank you! Her question was on the use of science overall in the Administration. Here's what we sent her on Friday:

"The era of secret science at EPA is coming to an end," said EPA Administrator Scott Pruitt. **"The ability to test, authenticate, and reproduce scientific findings is vital for the integrity of rulemaking process. Americans deserve to assess the legitimacy of the science underpinning EPA decisions that may impact their lives."**

"As part of Administrator Pruitt's October 31st FACA directive, EPA sought a wider range of voices to weigh into the FACA selection processes. EPA was thrilled with the response of over 700 applicants and now has highly-qualified FACA boards that are independent and geographically diverse." EPA spokesman, Jahan Wilcox

BACKGROUND ...

On science transparency ...

- The proposed rule is in line with the scientific community's moves toward increased data sharing to address the "replication crisis," in which a significant proportion of published research may be false or not reproducible. Examples of the current data access provisions for authors publishing in major scientific journals:
 - Science: "All data used in the analysis must be available to any researcher for purposes of reproducing or extending the analysis."
 - Nature: "This policy builds upon our long-standing policy on data availability, which requires that authors make materials, data, code, and associated protocols promptly available to readers without undue qualifications. The preferred way to share large data sets is via public repositories."
 - Proceedings of the National Academy of Sciences: "To allow others to replicate and build on work published in PNAS, authors must make materials, data, and associated protocols, including code and scripts, available to readers."

On NAAQS memo ...

- "A consequence of EPA's non-transparent National Ambient Air Quality Standards (NAAQS) setting process (which the Administrator rectified last month), has been the establishment of some standards near background levels," said **Principal Scientist for Air Improvement Resource, Inc., and former Chairman of EPA's Clean Air Scientific Advisory Committee (1992 – 1996) Dr. George Wolff**. "The policy ramifications of this have not been fully appreciated.

Setting the NAAQS at such low levels has also exacerbated unintended adverse impacts. The contributions to uncontrollable background levels and the nature of these adverse effects need to be better understood to inform policy making decisions. It is not only appropriate that CASAC be an integral part of these discussions, but it is also mandated by an often-overlooked section of the Clean Air Act.”

- “These NAAQS process reforms better separate scientific judgments from policy decisions,” **said former EPA Deputy Administrator (2005 – 2009) Marcus Peacock**. “Setting air quality standards is murky enough without muddying the distinctly different duties of scientists and political appointees in protecting human health and the environment.”

From: Woods, Clint

Sent: Monday, June 11, 2018 6:56 AM

To: Block, Molly <block.molly@epa.gov>

Subject: Re: moment to chat?

Was any of that provided to Coral?

On Jun 7, 2018, at 10:05 PM, Woods, Clint <woods.clint@epa.gov> wrote:

More on NAAQS Memo, let me know if I can help on the others:

The May 9 memorandum outlining a “Back-to-Basics” process for reviewing National Ambient Air Quality (NAAQS) ensures that EPA and its independent science advisors follow a transparent, timely, and efficient process in reviewing and revising public health- and welfare-based NAAQS. These reforms, advancing initiatives set out in President Trump’s April 12 Memorandum on Promoting Domestic Manufacturing and Job Creation – Policies and Procedures Relating to Implementation of Air Quality Standards, include incorporating important policy-relevant context, as required in the Clean Air Act, on issues like background pollution and potential adverse health, welfare, economic, energy, and social effects from strategies to attain and maintain the NAAQS.

Quotes from the accompanying press release

(<https://www.epa.gov/newsreleases/administrator-pruitt-signs-memo-reform-national-ambient-air-quality-standards-review>):

“A consequence of EPA’s non-transparent National Ambient Air Quality Standards (NAAQS) setting process (which the Administrator rectified last month), has been the establishment of some standards near background levels,” **said Principal Scientist for Air Improvement Resource, Inc., and former Chairman of EPA’s Clean Air Scientific Advisory Committee (1992 – 1996) Dr. George Wolff**. “The policy ramifications of this have not been fully appreciated. Setting the NAAQS at such low levels has also exacerbated unintended adverse impacts. The contributions to uncontrollable background levels and the nature of these adverse effects need to be better understood to inform policy making decisions. It is not only appropriate that CASAC be an integral part of these discussions, but it is also mandated by an often-overlooked section of the Clean Air Act.”

“I have been a participant and observer of the NAAQS review process since 1977 including serving as CASAC Chair and on Panels reviewing all of the criteria

pollutants. The process has continued to improve over the decades, however, serious issues still remain. I applaud key principles outlined in the memo,” **said Independent Advisor on Toxicology and Human Health Risk Assessment and former Chairman of EPA's Clean Air Scientific Advisory Committee (1988 – 1992) Dr. Roger O. McClellan.** “It is appropriate to commit to meeting the statutory deadline of completing the review of each NAAQS every five years. Coordinating the Ozone and Particulate Matter reviews so they are completed close to each other, in October 2020 for Ozone and December 2020 for PM, should increase the efficiency and effectiveness of the process. The focus needs to be on the policy relevant information that will inform the policy decisions the CAA requires the Administrator to make.”

“These NAAQS process reforms better separate scientific judgments from policy decisions,” **said former EPA Deputy Administrator (2005 – 2009) Marcus Peacock.** “Setting air quality standards is murky enough without muddying the distinctly different duties of scientists and political appointees in protecting human health and the environment.”

On Jun 7, 2018, at 7:35 PM, Block, Molly <block.molly@epa.gov> wrote:

Clint should have some talkers on the NAAQS memo.

Sent from my iPhone

On Jun 7, 2018, at 7:33 PM, Wilcox, Jahan
<wilcox.jahan@epa.gov> wrote:

Can someone help answer these questions for me.

Begin forwarded message:

From: Coral Davenport
<coral.davenport@nytimes.com>
Date: June 7, 2018 at 5:19:32 PM
EDT
To: "Wilcox, Jahan"
<wilcox.jahan@epa.gov>
Subject: Re: moment to chat?

Awesome, thank you. If someone cld get back to me tonight or tomoro by like 10 am that would be perfect. Story is currently slated to run over the weekend.

Coral Davenport
Energy and Environment
Correspondent
The New York Times
Washington Bureau
1627 I St. NW, Suite 700
Washington, DC 20006
coral.davenport@nytimes.com

O 202-862-0359
C 703-618-0645
Twitter @CoralMDavenport

On Jun 7, 2018, at 5:14 PM, Wilcox,
Jahan <wilcox.jahan@epa.gov>
wrote:

What is your
deadline? I am going
to flag this for our
policy shop and circle
back.

From: Davenport, Coral
[<mailto:coral.davenport@nytimes.com>]

Sent: Thursday, June 7,
2018 3:53 PM

To: Wilcox, Jahan
<wilcox.jahan@epa.gov>
>

Subject: moment to
chat?

Hi, Jahan,

I'm working on a
story looking into
concerns by the
scientific community
that the Trump
administration is
marginalizing and
dismissing science.
The story looks at
examples from across
the federal
government, but
many of them are at
the E.P.A.

What are the
administrator's
responses to the
following questions
on this? Looking for
fresh reax or would
welcome your
pointing me to
specific remarks he's

made on these.
Overall, interested in his remarks on the allegation that he has reduced or ignored the role of science at the agency.

- Scientists are concerned that Mr. Pruitt has made multiple public statements on climate change that are at odds with decades of research on climate change, including research by the E.P.A.'s own scientists. Mr. Pruitt has said that carbon dioxide is not a primary contributor to global warming, and that scientists don't know how much humans contribute to global warming -- both statements that have been contested by the scientific community. What's his response?

- Critics say the proposed new "secret science" rule would ultimately have the impact of reducing the amount of scientific evidence that is used to formulate regulations that affect human health. Does this concern him?

- Can he speak to the criticism that in his efforts to change the Scientific Advisory Board, he has reduced

the role of academic science and replaced it with industry-funded scientists? And that even with its new composition, the SAB has proposed re-examining the scientific basis for some of his proposed rule-makings?

- Critics say Pruitt's NAAQs memo to the CASAC, which would order the committee to take economic impacts of regulations into account, is both an effort to skirt provisions of the Clean Air Act which require the committee to focus on the public health impacts of regulations, and could lead to looser pollution rules that are not based in scientific evidence on the impact of certain pollutants on human health.

Can you send answers to these and give a call to chat about the story?
Best,
Coral

--

Coral Davenport
Energy and
Environment
Correspondent

The New York Times
Washington Bureau
1627 I St. NW, Suite
700
Washington, DC
20006
coral.davenport@nytimes.com
O 202-862-0359
C 703-618-0645
Twitter
@CoralMDavenport

Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 4/17/2018 5:05:50 PM
To: Baugues, Keith [KBaugues@idem.IN.gov]
Subject: RE: Pruitt Memo on Open Science
Attachments: Data Access Draft - EPA - 4-17-18 - CLEAN.pdf

Keith,

Attached is the current draft on the issue we discussed - Please hold this very close. There may be some additional changes forthcoming, but we should be still on for an announcement a week from today. If you or someone from IDEM is still willing to provide a short supportive statement, would it be possible to get that by the end of the week?

Thanks!

Clint Woods
Deputy Assistant Administrator
Office of Air and Radiation, U.S. EPA
202.564.6562

From: Woods, Clint
Sent: Monday, April 16, 2018 12:57 PM
To: 'Baugues, Keith' <KBaugues@idem.IN.gov>
Subject: RE: Pruitt Memo on Open Science

Keith,

Thanks so much, and sorry for the delay! Will follow up, hopefully by the end of the week, with a draft or excerpts for your review.

Clint Woods
Deputy Assistant Administrator
Office of Air and Radiation, U.S. EPA
202.564.6562

From: Baugues, Keith [<mailto:KBaugues@idem.IN.gov>]
Sent: Wednesday, April 11, 2018 6:39 AM
To: Woods, Clint <woods.clint@epa.gov>
Subject: Pruitt Memo on Open Science

Clint:

I got word back that we can provide a comment. Is there a draft of the memo that you can share so that I can provide the governor's office with a little more background?

Thanks

Keith Baugues

Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 4/17/2018 5:04:37 PM
To: George Wolff [gwolff@airimprovement.com]
Subject: RE: Quick Call?
Attachments: Data Access Draft - EPA - 4-17-18 - CLEAN.pdf

Dr. Wolff,

Attached is the current draft on the issue we discussed - Please hold this very close. There may be some additional changes forthcoming, but we should be still on for an announcement a week from today. If you're still willing to provide a short supportive statement, would it be possible to get that by the end of the week?

Thanks!

Clint Woods
Deputy Assistant Administrator
Office of Air and Radiation, U.S. EPA
202.564.6562

From: Woods, Clint
Sent: Wednesday, April 11, 2018 1:05 PM
To: 'George Wolff' <gwolff@airimprovement.com>
Subject: RE: Quick Call?

Thanks so much for the time today – Attached is the CASAC piece I mentioned, and I will follow up on the other front soon.

From: Woods, Clint
Sent: Tuesday, April 10, 2018 6:48 PM
To: 'George Wolff' <gwolff@airimprovement.com>
Subject: RE: Quick Call?

Dr. Wolff,

Thanks so much! If it still works, I will plan to give you a call at 12:30 Eastern.

Clint Woods
Deputy Assistant Administrator
Office of Air and Radiation, U.S. EPA
202.564.6562

From: George Wolff [mailto:gwolff@airimprovement.com]
Sent: Tuesday, April 10, 2018 1:57 PM
To: Woods, Clint <woods.clint@epa.gov>
Subject: RE: Quick Call?

Hi Clint,

Anytime tomorrow (Wednesday after 11 am). My cell phone is **Personal Phone / Ex. 6**

Congratulations on your EPA appointment.

George

George T. Wolff, Ph.D
Principal Scientist
Air Improvement Resource, Inc.

Personal Phone / Ex. 6

gwolff@airimprovement.com

From: Woods, Clint <woods.clint@epa.gov>

Sent: Tuesday, April 10, 2018 12:42 PM

To: gwolff@airimprovement.com

Subject: Quick Call?

Dr. Wolff,

I hope all is well! I know it has been a few years since we had the chance to work together, but I wanted to check to see if you might have some free time this week or next for a quick call to discuss a couple upcoming projects?

Thanks!

Clint Woods
Deputy Assistant Administrator
Office of Air and Radiation, U.S. EPA
202.564.6562

Message

From: Hewitt, James [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=41B19DD598D340BB8032923D902D4BD1-HEWITT, JAM]
Sent: 5/8/2018 2:44:29 PM
To: Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]
Subject: FW: Proposed rule regarding use of scientific research
Attachments: EPAletter0508.pdf

From: Sean Reilly [mailto:sreilly@eenews.net]
Sent: Tuesday, May 8, 2018 10:35 AM
To: Press <Press@epa.gov>
Subject: Proposed rule regarding use of scientific research

Hi folks:

In the attached letter, the Environmental Protection Network, a group that includes former EPA employees, says that the proposed rule must be reviewed by the CASAC because it would amend air quality criteria for lead and particulate matter. If you have any comment on that point, let me know. My deadline is 12:30 this afternoon.

Thanks,
Sean

Sean Reilly
Reporter
E&E News

Personal Phone / Ex. 6

Twitter: @SeanatGreenwire

E&E NEWS

122 C Street, NW, Suite 722, Washington, DC 20001

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EnergyWire, ClimateWire, E&E Daily, Greenwire, E&ENews PM

ENVIRONMENTAL PROTECTION NETWORK

May 7, 2018

Administrator Scott Pruitt
U.S. Environmental Protection Agency (Mail Code 1101A)
U.S. EPA Headquarters, William Jefferson Clinton Building
1200 Pennsylvania Ave. N.W.
Washington, D.C. 20460
Also via email to docket

Re: Request for a Comment Period Extension, a Hearing, and CASAC Review for EPA's Proposal entitled "Strengthening Transparency in Regulatory Science", 83 Fed. Reg. 18768 (April 30, 2018); Docket No. EPA-HQ-OA-2018-0259

Dear Mr. Pruitt,

I am writing on behalf of the Environmental Protection Network, an organization of former EPA employees and others concerned about the future of the agency, to request an extension of time for public comment, the scheduling of a public hearing or hearings, and other actions.

Our reasons are supported by examples drawn from multiple statutes administered by EPA and will be presented as such.

General concerns supporting an extension of time. The proposal is far too complex, with effects too broad and indeterminate, and requests comment on far too many issues, for a thirty-day response period.

First, although the proposal suggests it will apply to eight environmental statutes, it does not identify any statutory or regulatory provisions requiring the use of science such that the rule will affect their implementation (or effectively amend them). Potential commenters will have to locate and pore through each such provision for themselves in order to assess the proposal's likely effect, *before* they can prepare comments addressing it.

Second, the astonishing breadth of the request for comments also requires extending the comment period. The notice requests comments on a host of general questions, with enough variations or alternatives to bring the total to more than fifty. In many cases, the notice simply identifies the potential comment topics, with no analysis, and no indication which approach the final rule will adopt.

Third, any proposal must meet the obligation to include sufficient, specific information to enable commenters to identify, understand, and respond to the supporting evidence advanced by the agency. This obligation is particularly weighty in a proposal with such sweeping, multi-statutory impact and ambitious, potentially unprecedented scope of change. Yet most of the footnotes are so general and unspecific as to be uninformative (see fn. 8-12, 16-21), or are conclusory without supporting evidence (see fn. 13, part fn. 3).

The amorphousness and breadth of the request for comments, combined with the absence of information about the potential statutory and regulatory provisions the proposal will affect, and the lack of specific information

www.EnvironmentalProtectionNetwork.org

info@EnvironmentalProtectionNetwork.org

[202-656-6229](tel:202-656-6229)

and supporting evidence in the footnotes, suggest that the proposal should be withdrawn and reissued as an advanced notice of proposed rulemaking (ANPRM). Failing that, EPA should extend the comment period.

Specific Clean Air Act provisions requiring more process.

EPN requests that EPA schedule a public hearing or hearings under the Clean Air Act (CAA) on this proposal, that it extend the public comment period to accommodate that hearing as the CAA requires, and that it submit the proposal for review by the Clean Air Act Scientific Advisory Committee (CASAC) and re-propose it to the extent CASAC directs any changes.

For the following reasons, these steps are legally required:

1. This proposal amends the air quality criteria, adopted under §108 (b) of the CAA, for particulate matter (PM) and lead. See proposed rule fn. 3 final sentence which states that the proposed rule would “preclude” “future regulatory actions” using the Lanphear study which is part of the criteria for the National Ambient Air Quality Standard (NAAQS) for lead, and the Harvard Six Cities and American Cancer Society II study (Dockery and Pope) which are part of the criteria for the PM NAAQS. Air quality criteria cannot be amended without review by CASAC. See CAA §109 (d)(2)(B). EPA consequently must submit its proposal to CASAC for its review, following all procedural requirements for public meeting and deliberations in doing so. CASAC must then submit its recommendations to the Administrator (see §109 (d)(2)(B) final clause), and the Administrator must consider these recommendations and provide a reasonable explanation for any actions that deviate significantly from those recommendations (CAA section 307 (d)(3)). EPA cannot proceed with this action until these requirements are satisfied.

2. Quite apart from the requirement to seek CASAC review, EPA must hold a public hearing on the proposal. The proposal would amend the substantive standards for decision-making for a host of actions covered by §307 (d). It would do so by making in advance a critical part of the regulatory decision in any covered proceeding, namely the decision which scientific evidence to give weight to, and how much – a decision that has previously been made by detailed review in the rulemaking itself. Under the existing approach, such decisions are made after considering the substantive goals of the particular statutory provision involved, are guided by the attitude toward scientific evidence embodied in that provision, and strive for conformity with any applicable procedural requirement. Accordingly, any attempt to make a part of this decision in advance must meet these same standards.

Among the CAA regulatory decisions subject to §307(d) that would be affected in this manner are the NAAQS (§307 (d)(1)(A)), residual risk determinations for hazardous air pollutants (§307 (d) (1)(C)), standards for mobile source air toxics (§307 (d)(1)(K)), and residual risk standards for municipal solid waste combustors (§307 (d)(1)(D)). Therefore, CAA §§307 (d)(5)(ii) and (iv) require the Administrator to hold a public hearing on his proposal and to keep the record open for an additional thirty days “to provide an opportunity for submission of rebuttal and supplementary information”.

3. EPA must also submit its proposal to the Science Advisory Board pursuant to the requirements of 42 U.S.C. §4365 (c)(1) (the Environmental Research Development Demonstration Authorization Act), which requires the Administrator to submit to the SAB any “proposed criteria document, standard, limitation, or regulation, together with relevant scientific and technical information in the possession of the (EPA) ... on which the proposed action is based” at the time it provides that proposal to another agency of the government for formal

review. The SAB is then to review and comment on the proposal, which the Administrator is to consider, although the Administrator is not required to obtain SAB approval for any final action. See H. Rep. No. 95-722 (95th Cong. 1st Sess. (1977) (Conference Report)).

Further examples of statutory provisions which appear inconsistent with and are not addressed by the proposal

A 30 day comment period is inadequate time to identify and analyze the provisions of multiple statutes administered by EPA with language that will have implications for the actions contemplated by this proposal. Section I.C. of the preamble to this proposal asserts authority for this proposal by identifying, in a very general sense, provisions in several statutes dealing with science and research. The proposal nowhere acknowledges, identifies, or addresses many provisions in these statutes which govern regulatory decision-making and direct how the Administrator is to use science in such decision-making. A couple of illustrative examples drawn from the many relevant provisions raise serious questions as to whether the Administrator has the authority to promulgate such a sweeping, multi-statute rule without addressing the particular, distinctive requirements for regulatory decision-making Congress imposed in each statute. These are issues that would be addressed in an adequate proposal. Because they are not, the proposal in effect tries to shift the burden to commenters to try to make sense of the proposal in the context of statutory language. That is impossible to achieve in 30 days.

Toxic Substances Control Act (TSCA):

While TSCA Section 26 is not identified in the proposal, it includes provisions that raise questions about EPA's authority for and potential application of the proposal. Section 26(h), "Scientific Standards", states that "to the extent that the Administrator makes a decision based on science, the Administrator shall use scientific information, technical procedures, measures, methods, protocols, methodologies, or models, employed in a manner consistent with the best available science." EPA must consider each of these factors "as applicable." The availability of sufficient underlying data to "validate" or "reproduce" study results is *not* among the relevant factors that EPA must consider.

Similarly, section 26(i) addresses WEIGHT OF SCIENTIFIC EVIDENCE directing that:—"The Administrator shall make decisions under sections 4, 5, and 6 based on the weight of the scientific evidence." This requires the Administrator to evaluate the totality of available scientific evidence and make a judgment about its "weight" – not excluding evidence based solely on the availability of data sufficient for its validation.

These subsections indicate, at a minimum, that this proposal to require that "*dose response data and models* underlying *pivotal regulatory science* are publicly available in a manner sufficient for independent validation.... [w]hen promulgating significant regulatory actions" may not be consistent with the scientific standards and methodology for decision-making Congress prescribed for such actions under TSCA Section 26.

Safe Drinking Water Act (SDWA):

Similarly, although unacknowledged in the proposal including its request for comments, SDWA's standard-setting section, §1412 (42 U.S.C. § 300g-1), addresses the use of science in decisionmaking under that authority:

§1412(b)(3)(A) Use of science in decisionmaking.— In carrying out this section, and, to the degree that an Agency action is based on science, the Administrator shall use—

- (i) the best available, peer-reviewed science and supporting studies conducted in accordance with sound and objective scientific practices; and
- (ii) data collected by accepted methods or best available methods (if the reliability of the method and the nature of the decision justifies use of the data).

So long as the data used is otherwise collected, assessed, and presented “in accordance with sound and objective scientific practices,” Congress did not give the Administrator discretion to ignore the “best available, peer-reviewed science and supporting studies” based on any factor relating to the public availability or unavailability of data, as this proposal would seek to compel. Further, the Report of the Senate Committee on Environment and Public Works – whose language in this provision on the use of science was adopted verbatim in P.L. 104-182 – directs that the “Administrator has a duty to seek and rely upon the best available science and information to support.... [m]any of the most important activities including selecting contaminants for regulation, setting standards, designing analytical methods and structuring waivers, variances and exemptions” (Rpt. 104-169, at 28).

These fundamental omissions illustrate the proposal’s inadequacy to identify or address its own implications for the statutory authorities that authorize EPA’s programs. These examples, and many more that could be cited, bolster the imperative to withdraw this proposal and grapple meaningfully with these questions in an ANPRM or better fleshed out proposed rule with greater opportunities for exploration and discussion of them via public hearings. Failing that, the agency should at least extend the comment period to 90 days to enable commenters to compile and submit analyses of these questions that EPA has not examined.

The Environmental Protection Network will continue to inventory other statutes and regulations that will be affected by this rulemaking. But even where there are no requirements for a formal hearing or coordination, this proposed rule would change the regulatory framework for determining standards and requirements with no acknowledgement or identification of inconsistencies or conflicts with existing statutory or regulatory requirements or processes, and no opportunity for the public to comment on the specific changes. That makes it imperative to maximize opportunities for the public to review and comment on the regulatory changes being made in this proposal by extending the comment period.

We look forward to your affirmative response to this request.

Respectfully Submitted,

Ruth Greenspan Bell, President, Board of Directors, Environmental Protection Network
ruthgreenspanbell@gmail.com

Michelle Roos, Deputy Director, Environmental Protection Network
michelleroos.epn@gmail.com

Docket No. EPA-HQ-OA-2018-0259

Message

From: Grantham, Nancy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=12A3C2ED7158417FB0BB1B1B72A8CFB0-GRANTHAM, NANCY]
Sent: 4/26/2018 5:18:47 PM
To: Hubbard, Carolyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2a93ce3245494318b109e87f7d826284-Hubbard, Carolyn]; Letendre, Daisy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b691cccca6264ae09df7054c7f1019cb-Letendre, D]; Germann, Sandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=02275c87f11648a7b660ba3fa54bedf6-Germann, Sandy]; Nickerson, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=148f2c1c05b54f358e29c59b841664aa-Wnicker]
CC: Bowman, Liz [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c3d4d94d3e4b4b1f80904056703ebc80-Bowman, Eli]; Block, Molly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=60d0c681a16441a0b4fa16aa2dd4b9c5-Block, Moll]; Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]; Grantham, Nancy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=12a3c2ed7158417fb0bb1b1b72a8cfb0-Grantham, Nancy]
Subject: FW: SIGNED: Strengthening Transparency in Regulatory Science

All ..see below – while we work out where this will reside on ord and/or op web pages.

Thanks ng

Nancy Grantham
Office of Public Affairs
US Environmental Protection Agency
202-564-6879 (desk)
202-253-7056 (mobile)

From: Orquina, Jessica
Sent: Thursday, April 26, 2018 12:23 PM
To: Grantham, Nancy <Grantham.Nancy@epa.gov>
Subject: RE: SIGNED: Strengthening Transparency in Regulatory Science

Hi Nancy,

Here's a link to the document page: <https://www.epa.gov/newsroom/proposed-rule-strengthening-transparency-regulatory-science>.

We added a link to the document at the bottom of the press release too: <https://www.epa.gov/newsreleases/epa-administrator-pruitt-proposes-rule-strengthen-science-used-epa-regulations>.

Jess

Jessica Ann Orquina, Director
Office of Web Communications
U.S. Environmental Protection Agency
Email: orquina.jessica@epa.gov
Office: 202-564-0446

From: Grantham, Nancy
Sent: Thursday, April 26, 2018 10:54 AM
To: Orquina, Jessica <Orquina.Jessica@epa.gov>
Subject: Fwd: SIGNED: Strengthening Transparency in Regulatory Science

As just discussed

Thx ng

Sent from my iPhone

Begin forwarded message:

From: "Johnson, Laura-S" <Johnson.Laura-S@epa.gov>
To: "Jackson, Ryan" <jackson.ryan@epa.gov>, "Bowman, Liz" <Bowman.Liz@epa.gov>, "Lyons, Troy" <lyons.troy@epa.gov>, "Bennett, Tate" <Bennett.Tate@epa.gov>, "White, Elizabeth" <white.elizabeth@epa.gov>, "Bodine, Susan" <bodine.susan@epa.gov>, "Minoli, Kevin" <Minoli.Kevin@epa.gov>, "Leopold, Matt" <Leopold.Matt@epa.gov>, "Bowman, Liz" <Bowman.Liz@epa.gov>, "Wheeler, Andrew" <wheeler.andrew@epa.gov>, "Bolen, Brittany" <bolen.brittany@epa.gov>, "Orme-Zavaleta, Jennifer" <Orme-Zavaleta.Jennifer@epa.gov>, "Yamada, Richard (Yujiro)" <yamada.richard@epa.gov>
Cc: "Wooden-Aguilar, Helena" <Wooden-Aguilar.Helena@epa.gov>, "Grantham, Nancy" <Grantham.Nancy@epa.gov>, "Richardson, RobinH" <Richardson.RobinH@epa.gov>, "Hope, Brian" <Hope.Brian@epa.gov>, "Fonseca, Silvina" <Fonseca.Silvina@epa.gov>, "Hewitt, James" <hewitt.james@epa.gov>, "Abboud, Michael" <abboud.michael@epa.gov>, "Wilcox, Jahan" <wilcox.jahan@epa.gov>, "Gaines, Cynthia" <Gaines.Cynthia@epa.gov>, "Nickerson, William" <Nickerson.William@epa.gov>, "Lovell, Will (William)" <lovell.william@epa.gov>, "Kime, Robin" <Kime.Robin@epa.gov>, "Maguire, Kelly" <Maguire.Kelly@epa.gov>, "Blackburn, Elizabeth" <Blackburn.Elizabeth@epa.gov>
Subject: SIGNED: Strengthening Transparency in Regulatory Science

Good afternoon

Today, the Administrator signed the proposed rule "Strengthening Transparency in Regulatory Science."

This proposed regulation is intended to strengthen the transparency of EPA regulatory science. The proposed regulation provides that when EPA develops regulations, including regulations for which the public is likely to bear the cost of compliance, with regard to those scientific studies that are pivotal to the action being taken, EPA should ensure that the data underlying those are publicly available in a manner sufficient for independent validation.

In this notice, EPA solicits comment on this proposal and how it can best be promulgated and implemented in light of existing law and prior Federal policies that already require increasing public access to data and influential scientific information used to inform federal regulation.

Attached is the signed and dated proposed rule. For your convenience, please go to p. 19 for the Administrator's signature.

Please contact me if you have any questions.

Sincerely,
Laura

Laura S. Johnson | U.S. Environmental Protection Agency
Special Assistant, Office of the Administrator | Cell (202) 819-4941
Office (202) 566-1273 | johnson.laura-s@epa.gov

Message

From: Lovell, Will (William) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3B150BB6ADE640F68D744FADCB83A73E-LOVELL, WIL]
Sent: 5/18/2018 1:52:00 AM
To: Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]
Subject: RE: Draft press release on comment period extension and hearing
Attachments: extended comments and hearing strengthening transparency draft release 5.17 v2.docx

Thought of a few revisions—see attached

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Lovell, Will (William)
Sent: Thursday, May 17, 2018 9:01 PM
To: Yamada, Richard (Yujiro) <yamada.richard@epa.gov>
Subject: RE: Draft press release on comment period extension and hearing

Thanks, brother.

From: Yamada, Richard (Yujiro)
Sent: Thursday, May 17, 2018 7:40 PM
To: Lovell, Will (William) <lovell.william@epa.gov>
Subject: Fwd: Draft press release on comment period extension and hearing

See below - keeping you in the loop - thanks

Sent from my iPhone

Begin forwarded message:

From: "Maguire, Megan" <Maguire.Megan@epa.gov>
Date: May 17, 2018 at 6:14:03 PM EDT
To: "Orme-Zavaleta, Jennifer" <Orme-Zavaleta.Jennifer@epa.gov>, "Yamada, Richard (Yujiro)" <yamada.richard@epa.gov>, "Sinks, Tom" <Sinks.Tom@epa.gov>
Cc: "Christian, Megan" <Christian.Megan@epa.gov>, "Kuhn, Kevin" <Kuhn.Kevin@epa.gov>, "Hubbard, Carolyn" <Hubbard.Carolyn@epa.gov>
Subject: Draft press release on comment period extension and hearing

Hi Jennifer, Richard & Tom- We drafted a press release based on the FRN about the comment period extension and public hearing for the proposed strengthening transparency in regulatory science rule. It's attached. Please review and let me know if you have edits or questions.

Thanks,
Megan

Megan Maguire
US EPA, Office of Research and Development
RRB 41261
O: (202)564-6636
C: (202)731-9378

Message

From: Abboud, Michael [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B6F5AF791A1842F1ADCC088CBF9ED3CE-ABBOUD, MIC]
Sent: 5/22/2018 8:27:45 PM
To: Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]; Block, Molly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=60d0c681a16441a0b4fa16aa2dd4b9c5-Block, Moll]; Konkus, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=555471b2baa6419e8e141696f4577062-Konkus, Joh]
Subject: RE: some questions

Deliberative Process / Ex. 5

From: Yamada, Richard (Yujiro)
Sent: Tuesday, May 22, 2018 3:22 PM
To: Block, Molly <block.molly@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>; Konkus, John <konkus.john@epa.gov>
Subject: Fwd: some questions

See below - per earlier convo - thanks much

Sent from my iPhone

Begin forwarded message:

From: Scott Waldman <swaldman@eenews.net>
Date: May 22, 2018 at 3:19:30 PM EDT
To: "yamada.richard@EPA.gov" <yamada.richard@EPA.gov>
Subject: some questions

Thanks for speaking with me earlier, Richard. Following up on our conversation, I am wondering if you can answer any of the following questions on the record.

1. What are the challenges in the larger field of science that necessitate the EPA's proposed science transparency rule?
2. How has your work as an academic informed your work at the EPA? What lessons from that experience do you apply to work today, and what are some of the problems you observed during your tenure in academe that you now want to fix?
3. Are you concerned that some of these policies may go too far, i.e. restricting the type of research that can be used in regulations? What are you doing to ensure that doesn't happen?

4. Please describe your outreach with science organizations in crafting policy? Have you brought in AAAS or AGU or other groups to help inform your work?
5. Please include anything else you feel is relevant or important to know.

Thanks very much,

Scott Waldman

Reporter

E&E News/Climatewire

Personal Phone / Ex. 6

@scottpwaldman

Message

From: Hewitt, James [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=41B19DD598D340BB8032923D902D4BD1-HEWITT, JAM]
Sent: 5/7/2018 7:38:52 PM
To: Block, Molly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=60d0c681a16441a0b4fa16aa2dd4b9c5-Block, Moll]; Beach, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6b124299bb6f46a39aa5d84519f25d5d-Beach, Chri]; Ferguson, Lincoln [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=08cd7f82606244de96b61b96681c46de-Ferguson, L]; Wilcox, Jahan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=88fd588e97d3405d869bcae98d391984-Wilcox, Jah]; Daniell, Kelsi [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cd867173479344b3bda202b3004ff830-Daniell, Ke]
CC: Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]
Subject: RE: FOR APPROVAL: "Secret science" and "war on lead"--E&E News

Looping in Richard.

From: Block, Molly
Sent: Monday, May 7, 2018 3:38 PM
To: Beach, Christopher <beach.christopher@epa.gov>; Ferguson, Lincoln <ferguson.lincoln@epa.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>; Hewitt, James <hewitt.james@epa.gov>; Daniell, Kelsi <daniell.kelsi@epa.gov>
Subject: FOR APPROVAL: "Secret science" and "war on lead"--E&E News

Deliberative Process / Ex. 5

From: Ariel Wittenberg [<mailto:awittenberg@eenews.net>]
Sent: Monday, May 7, 2018 3:36 PM
To: Press <Press@epa.gov>
Subject: "Secret science" and "war on lead"--E&E News

Hi everyone,

I am working on an article about EPA's proposed rule about which science the agency can base rulemakings on. I've spoken to a number of public health advocates, researchers and former EPA employees who say that the proposal could severely restrict the kinds of studies EPA uses in regulating lead exposure via water, paint, dust and air. Given Admin. Pruitt's "war on lead," I wanted to ask if you had any comment on this.

My deadline is noon tomorrow.

Thanks,

Ariel

Ariel Wittenberg
E&E News reporter

Personal Phone / Ex. 6

@arielwittenberg

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www.eenews.net | [@EENewsUpdates](https://twitter.com/EENewsUpdates)

Energywire, Climatewire, Greenwire, E&E Daily, E&E News PM, E&ETV

Message

From: Grantham, Nancy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=12A3C2ED7158417FB0BB1B1B72A8CFB0-GRANTHAM, NANCY]
Sent: 4/26/2018 2:29:19 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
CC: Nickerson, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=148f2c1c05b54f358e29c59b841664aa-Wnicker]; Letendre, Daisy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b691cccca6264ae09df7054c7f1019cb-Letendre, D]; Wilcox, Jahan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=88fd588e97d3405d869bcae98d391984-Wilcox, Jah]; Konkus, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=555471b2baa6419e8e141696f4577062-Konkus, Joh]; Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]; Hubbard, Carolyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2a93ce3245494318b109e87f7d826284-Hubbard, Carolyn]
Subject: Re: SIGNED: Strengthening Transparency in Regulatory Science

Thx - looping Carolyn Hubbard in ord comms

Sent from my iPhone

On Apr 26, 2018, at 10:24 AM, Bolen, Brittany <bolen.brittany@epa.gov> wrote:

Hello Nancy - as you may have seen, the point of contact for this proposal is ORD. I do not know the ORD communications staff, but copying Richard here for awareness.

Thank you,

Brittany

From: Grantham, Nancy
Sent: Thursday, April 26, 2018 10:19 AM
To: Bowman, Liz <Bowman.Liz@epa.gov>
Cc: Block, Molly <block.molly@epa.gov>; Letendre, Daisy <letendre.daisy@epa.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>; Konkus, John <konkus.john@epa.gov>; Nickerson, William <Nickerson.William@epa.gov>; Germann, Sandy <Germann.Sandy@epa.gov>
Subject: Re: SIGNED: Strengthening Transparency in Regulatory Science

Op - is there a suggested place on your pages? Thx ng

Sent from my iPhone

On Apr 26, 2018, at 10:15 AM, Bowman, Liz <Bowman.Liz@epa.gov> wrote:

Yes, that would be great. Can we put it on the appropriate place on the website?

From: Grantham, Nancy
Sent: Thursday, April 26, 2018 10:14 AM
To: Block, Molly <block.molly@epa.gov>; Letendre, Daisy <letendre.daisy@epa.gov>;

Bowman, Liz <Bowman.Liz@epa.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>; Konkus, John <konkus.john@epa.gov>

Cc: Nickerson, William <Nickerson.William@epa.gov>; Germann, Sandy <Germann.Sandy@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>

Subject: Fwd: SIGNED: Strengthening Transparency in Regulatory Science

Folks are looking for a link
on line for this - and op is saying we don't have yet - do we want to post this pdf
someplace so we can link Tom it?

Thx ng

Sent from my iPhone

Begin forwarded message:

From: "Johnson, Laura-S" <Johnson.Laura-S@epa.gov>
To: "Jackson, Ryan" <jackson.ryan@epa.gov>, "Bowman, Liz" <Bowman.Liz@epa.gov>, "Lyons, Troy" <lyons.troy@epa.gov>, "Bennett, Tate" <Bennett.Tate@epa.gov>, "White, Elizabeth" <white.elizabeth@epa.gov>, "Bodine, Susan" <bodine.susan@epa.gov>, "Minoli, Kevin" <Minoli.Kevin@epa.gov>, "Leopold, Matt" <Leopold.Matt@epa.gov>, "Bowman, Liz" <Bowman.Liz@epa.gov>, "Wheeler, Andrew" <wheeler.andrew@epa.gov>, "Bolen, Brittany" <bolen.brittany@epa.gov>, "Orme-Zavaleta, Jennifer" <Orme-Zavaleta.Jennifer@epa.gov>, "Yamada, Richard (Yujiro)" <yamada.richard@epa.gov>
Cc: "Wooden-Aguilar, Helena" <Wooden-Aguilar.Helena@epa.gov>, "Grantham, Nancy" <Grantham.Nancy@epa.gov>, "Richardson, RobinH" <Richardson.RobinH@epa.gov>, "Hope, Brian" <Hope.Brian@epa.gov>, "Fonseca, Silvina" <Fonseca.Silvina@epa.gov>, "Hewitt, James" <hewitt.james@epa.gov>, "Abboud, Michael" <abboud.michael@epa.gov>, "Wilcox, Jahan" <wilcox.jahan@epa.gov>, "Gaines, Cynthia" <Gaines.Cynthia@epa.gov>, "Nickerson, William" <Nickerson.William@epa.gov>, "Lovell, Will (William)" <lovell.william@epa.gov>, "Kime, Robin" <Kime.Robin@epa.gov>, "Maguire, Kelly" <Maguire.Kelly@epa.gov>, "Blackburn, Elizabeth" <Blackburn.Elizabeth@epa.gov>

Subject: SIGNED: Strengthening Transparency in Regulatory Science

Good afternoon

Today, the Administrator signed the proposed rule "Strengthening Transparency in Regulatory Science."

This proposed regulation is intended to strengthen the transparency of EPA regulatory science. The proposed regulation provides that when EPA develops regulations, including regulations for which the public is likely to bear the cost of compliance, with regard to those scientific studies that are pivotal to the action being taken, EPA should ensure that the data underlying those are publicly available in a manner sufficient for independent validation.

In this notice, EPA solicits comment on this proposal and how it can best be promulgated and implemented in light of existing law and prior Federal policies that already require increasing public access to data and influential scientific information used to inform federal regulation.

Attached is the signed and dated proposed rule. For your convenience, please go to p. 19 for the Administrator's signature.

Please contact me if you have any questions.

Sincerely,
Laura

Laura S. Johnson | U.S. Environmental Protection Agency
Special Assistant, Office of the Administrator | Cell (202) 819-4941
Office (202) 566-1273 | johnson.laura-s@epa.gov

Message

From: Palich, Christian [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=330AD62E158D43AF93FCBBECE930D21A-PALICH, CHR]
Sent: 8/14/2018 12:37:38 PM
To: Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]
CC: Frye, Tony (Robert) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=58c08abdfc1b4129a10456b78e6fc2e1-Frye, Rober]
Subject: FW: Sound Science Proposed Rule

Hi Richard,

See below from Senator Rounds, any insight on this I can relay to his team? Thanks!

Christian R. Palich
Deputy Associate Administrator
Office of Congressional & Intergovernmental Affairs
U.S Environmental Protection Agency
O: 202.564.4944
C: 202.306.4656
E: Palich.Christian@epa.gov

From: Bliss, Joe (Rounds) [mailto:Joe_Bliss@rounds.senate.gov]
Sent: Monday, August 13, 2018 2:50 PM
To: Palich, Christian <palich.christian@epa.gov>
Cc: Frye, Tony (Robert) <frye.robert@epa.gov>
Subject: Sound Science Proposed Rule

Good afternoon,

As we discussed, I am putting together some options for my boss to consider for a regulatory oversight hearing. One idea I may run by him (for a hearing in September) would be regarding sound science at the EPA (including his bill, the HONEST Act).

Do you know where this proposed rule is in the process toward becoming a finalized rule? I.e., likely to be after September.

<https://www.federalregister.gov/documents/2018/04/30/2018-09078/strengthening-transparency-in-regulatory-science>

I had also read that you had a public hearing on it in July, so if you happen to have any information on that, that'd be helpful.

Thanks,
Joe Bliss
U.S. Sen. Mike Rounds (R-SD)

Personal Phone / Ex. 6

502 Hart Senate Office Building

Washington, D.C. 20510



Message

From: Kuhn, Kevin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BE20941B4C1144B8B3635E4DF015924A-KUHN, KEVIN]
Sent: 2/9/2018 7:55:31 PM
To: Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]
Subject: RE: Follow up from Administrator Meeting

Hi,

We will be in the middle of the reorg conversation at 10:30. 12 (during lunch) or 3 (during the "cascade" conversation) might be better if Aaron is flexible.

Kevin Kuhn
ORD/EPA
(202) 564-4835
Mobile: (202) 309-3969

From: Yamada, Richard (Yujiro)
Sent: Friday, February 9, 2018 2:30 PM
To: Kuhn, Kevin <Kuhn.Kevin@epa.gov>
Subject: Fwd: Follow up from Administrator Meeting

Will this work, per our EC schedule?? if not we can try to re-schedule - thanks K

Sent from my iPhone

Begin forwarded message:

From: "Ringel, Aaron" <ringel.aaron@epa.gov>
Date: February 9, 2018 at 1:55:01 PM EST
To: "Yamada, Richard (Yujiro)" <yamada.richard@epa.gov>
Cc: "Bolen, Brittany" <bolen.brittany@epa.gov>
Subject: RE: Follow up from Administrator Meeting

Sure, looks like 10:30 on Tuesday morning works for both of you. I'll send around a calendar invite.

-Aaron

From: Yamada, Richard (Yujiro)
Sent: Friday, February 9, 2018 1:53 PM
To: Ringel, Aaron <ringel.aaron@epa.gov>
Cc: Bolen, Brittany <bolen.brittany@epa.gov>
Subject: Re: Follow up from Administrator Meeting

Hi Aaron,

Could we talk early next week? Thanks,

Richard

Sent from my iPhone

On Feb 9, 2018, at 1:38 PM, Ringel, Aaron <ringel.aaron@epa.gov> wrote:

Brittany/Richard, can we discuss this at your earliest convenience? The meeting is in regards to the Honest Act reforms Chairman Smith spoke with the Administrator about. I'm free this afternoon if you have a second.

Thanks!

-Aaron

From: Brazauskas, Joseph [<mailto:Joseph.Brazauskas@mail.house.gov>]

Sent: Friday, February 9, 2018 1:36 PM

To: Ringel, Aaron <ringel.aaron@epa.gov>

Subject: Follow up from Administrator Meeting

Hey Aaron,

I wanted to follow up with you regarding Chairman Smith's meeting with Administrator Pruitt. The Chairman has been asking me for an update on the progress of convening a staff meeting as agreed to in that meeting. I understand that you have been speaking on this issue internally with the Air Office and others. Is it possible that we can set a date for this meeting to take place so that we can meet and get a better understanding of a path forward? Our schedule is pretty flexible, but would be available to meet anytime on Thursday or Friday of next week or any time the week after. Please let me know if any of these days make sense for this meeting. Again, the Chairman has been asking me daily about the status of this meeting, so want to get something on the books as quickly as possible.

Thank you,
Joe

Joseph A. Brazauskas
Staff Director and Senior Counsel
Subcommittee on Environment
Committee on Science, Space and Technology
Lamar Smith, Chairman
P: (202) 225-6371

Message

From: Baptist, Erik [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=10FC1B085EE14C6CB61DB378356A1EB9-BAPTIST, ER]
Sent: 1/12/2018 1:37:18 PM
To: Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]; Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: RE: new initiative on making science available.

Let's plan for 10:30 a.m. I will reschedule my conflict.

Erik Baptist

Senior Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460
(202) 564-1689
baptist.erik@epa.gov

From: Yamada, Richard (Yujiro)
Sent: Friday, January 12, 2018 8:10 AM
To: Bolen, Brittany <bolen.brittany@epa.gov>
Cc: Baptist, Erik <Baptist.Erik@epa.gov>
Subject: Re: new initiative on making science available.

I can be there at 10:30 - if plans change I can be flexible - thanks

Sent from my iPhone

On Jan 12, 2018, at 8:06 AM, Bolen, Brittany <bolen.brittany@epa.gov> wrote:

Hey guys, Ryan and I are part of a larger briefing at 10am that can't be rescheduled. I'm also tied up from 9-10 with an OW briefing. Erik, if you cannot make 1030 work then I believe we'll need to have Richard call in for a later time since he is unavailable after 11am. Alternatively, Richard and I can meet with Ryan at 1030 and I can fill you in later today.

Sent from my iPhone

On Jan 11, 2018, at 8:15 PM, Baptist, Erik <Baptist.Erik@epa.gov> wrote:

That works for me.

Erik Baptist

Senior Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460
(202) 564-1689
baptist.erik@epa.gov

From: Yamada, Richard (Yujiro)
Sent: Thursday, January 11, 2018 8:12 PM
To: Baptist, Erik <Baptist.Erik@epa.gov>
Cc: Bolen, Brittany <bolen.brittany@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>
Subject: Re: new initiative on making science available.

Shall we do 10 am? (I have us down for 10:30) Thanks

Sent from my iPhone

On Jan 11, 2018, at 8:10 PM, Baptist, Erik <Baptist.Erik@epa.gov> wrote:

I'm free before 10:30 a.m.

Erik Baptist
Senior Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460
(202) 564-1689
baptist.erik@epa.gov

From: Yamada, Richard (Yujiro)
Sent: Thursday, January 11, 2018 1:20 PM
To: Bolen, Brittany <bolen.brittany@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>
Cc: Baptist, Erik <Baptist.Erik@epa.gov>
Subject: RE: new initiative on making science available.

11 AM or earlier would be good for me – anytime after that I will have to call in, thanks! Richard

From: Bolen, Brittany
Sent: Thursday, January 11, 2018 1:19 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>
Cc: Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Baptist, Erik <Baptist.Erik@epa.gov>
Subject: Re: new initiative on making science available.

Sure. What time? 11am, 1pm, or after 3pm tomorrow works best for me, but I can move things around!

On Jan 11, 2018, at 10:05 AM, Jackson, Ryan <jackson.ryan@epa.gov> wrote:

Tomorrow.

From: Bolen, Brittany
Sent: Thursday, January 11, 2018 10:01 AM

To: Jackson, Ryan <jackson.ryan@epa.gov>

Cc: Yamada, Richard (Yujiro)

<yamada.richard@epa.gov>; Baptist, Erik

<Baptist.Erik@epa.gov>

Subject: Re: new initiative on making science available.

Re: the policy, Richard and I met on this yesterday, and have a path forward. Would you like to discuss later today or tomorrow?

On Jan 11, 2018, at 9:32 AM, Jackson, Ryan
<jackson.ryan@epa.gov> wrote:

Deliberative Process / Ex. 5

Ryan Jackson
Chief of Staff
U.S. Environmental Protection Agency

Message

From: Bennett, Tate [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1FA92542F7CA4D01973B18B2F11B9141-BENNETT, EL]
Sent: 10/25/2017 7:47:08 PM
To: Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]
Subject: FW: Letter of Support
Attachments: Letter of Support for HR 4012 - 87 Experts.pdf

From: Clint Woods [mailto:cwoods@csg.org]
Sent: Wednesday, October 18, 2017 3:00 PM
To: Bennett, Tate <Bennett.Tate@epa.gov>
Subject: Letter of Support

June 23, 2014

The Honorable Lamar Smith, Chairman
House Committee on Science, Space, and Technology
2321 Rayburn House Office Building
Washington, D.C 20515

Dear Chairman Smith,

We write in support of the principles contained in H.R. 4012, the Secret Science Reform Act. This legislation supports a basic tenet: the Environmental Protection Agency's regulations should be based on transparent and reproducible science.

Potentially costly regulations should be grounded in data and analyses that are available to academic, government, and independent scientists. Pushing EPA to ensure that the data, models, and methods it relies on are open to public and scientific scrutiny will make the Agency's regulations more accountable, credible, and enforceable.

While we hail from a variety of scientific and academic disciplines, we agree that the provisions of this legislation could be satisfied by EPA without difficulty. The bill is also consistent with recent trends toward access among major scientific journals across these fields. Transparency and reproducibility in EPA regulatory science will encourage more robust analysis of findings by investigators with diverse perspectives while allowing the Agency to base its policy decisions on the best available science. Complying with H.R. 4012 can be accomplished without imposing unnecessary burdens, discouraging research, or raising confidentiality concerns. Across different disciplines, numerous statistical and technical approaches exist to protect any sensitive information.

We support passage of this legislation and thank your Committee for its leadership on this important issue.

Sincerely,

Dr. Charles A. Ager, PhD
Founder and Chairman, Nanominerals Corp

Dr. Ralph B. Alexander, PhD
Former Associate Professor, Physics, Wayne State University

Mr. Robert A. Ashworth
Chemical Engineer

Dr. Charles R. Anderson, PhD
President and Principal Scientist, Anderson Materials Evaluation, Inc.

Dr. J. Scott Armstrong, PhD
Professor, Marketing, Wharton School, University of Pennsylvania

Dr. James R. Barrante, PhD
Professor Emeritus, Physical Chemistry, Southern Connecticut State University

Dr. Charles Battig, M.D.
President, Piedmont Chapter, Virginia Scientists and Engineers for Energy and Environment

Dr. Denis Beller, PhD
Research Professor, Nuclear Engineering, University of Nevada Las Vegas

Dr. David J. Benard, PhD
Physicist (ret.)

Dr. Michael A. Berry, PhD
Former Deputy Director, National Center for Environmental Assessment, USEPA (ret.) and
Research Professor, Environmental Sciences, University of North Carolina at Chapel Hill

Dr. Charles A. Berst, PhD
Emeritus Professor, English, University of California, Los Angeles

Dr. William M. Briggs, PhD
Statistical Consultant and Adjunct Professor of Statistical Science, Cornell University

Dr. Edward Calabrese, PhD
Professor, Environmental Health Sciences, University of Massachusetts Amherst

Dr. Angelo J. Campanella, PhD
Principal, Campanella Acoustics

Dr. Alan Carlin, PhD
Senior Operations Research Analyst, USEPA (ret.)

Dr. Lawrence M. Cathles, PhD
Professor, Geological Sciences, Cornell University

Dr. Charles R. Christensen, PhD
Research Physicist, Retired from Weapon Sciences Directorate, US Army Aviation and Missile Command.

Dr. Dustin Chambers, PhD
Associate Professor, Economics, Salisbury University

Dr. Michael S. Coffman, PhD
President, Environmental Perspectives, Inc.

Dr. Roger Cohen, PhD
Fellow, American Physical Society

Dr. William F. Condon, PhD
Emeritus Professor, Chemistry, Southern Connecticut State University

Dr. Louis Anthony Cox, Jr., PhD
Chief Sciences Officer, Next Health Technologies; Clinical Professor, Biostatistics and Informatics, University of Colorado Health Sciences Center; and President, Cox Associates

Dr. James Crosswell, MD
Physician

Dr. Tim Davis, PhD
Licensed Specialist Clinical Social Worker

Dr. Ulrich Decher, PhD
Adjunct Faculty, University of Hartford

Dr. Arthur Desrosiers, ScD
Environmental Health Physicist

Dr. Pamela C. Dodds, PhD
Registered Professional Geologist

Dr. Harold H. Doiron, PhD
Chairman, The Right Climate Stuff Research Team

Dr. Nicholas Drapela, PhD
Former Professor, Chemistry, Oregon State University

Mr. John Droz, Jr.
Physicist and Executive Director of the Alliance for Wise Energy Decisions

Mr. John Dale Dunn, MD, JD
Consultant Emergency Services/Peer Review, Civilian Faculty, Emergency Medicine Residency,
Carl R. Darnall Army Medical Center, Fort Hood

Dr. James E. Enstrom, PhD
Researcher (ret.), School of Public Health, University of California, Los Angeles and President,
Scientific Integrity Institute

Dr. Dan Ervin, PhD
Professor, Finance, Perdue School of Business, Salisbury University

Dr. Irvin H. Forbing, DDS
Dentist

Dr. Patrick Frank, PhD
Research Chemist

Dr. Gordon J. Fulks, PhD
Astrophysicist

Dr. Laurence I. Gould, PhD
Professor, Physics, University of Hartford

Dr. Shawn Grannell, PhD
Inventor

Dr. William M. Gray, PhD
Professor Emeritus, Department of Atmospheric Science, Colorado State University

Dr. Tim Groseclose, PhD
Professor, American Politics and Public Policy, University of California, Los Angeles

Dr. William Happer, PhD
Professor, Physics, Princeton University

Dr. Victor Davis Hanson, PhD
Senior Fellow, Hoover Institution at Stanford University

Dr. Doug L. Hoffman, PhD
Former Research Professor, Computer Science, University of North Carolina at Chapel Hill

Dr. Albert Kris Huber, PhD
Electrical Engineer

Dr. W. Reed Johnson, PhD
Professor Emeritus, Nuclear Engineering, University of Virginia

Dr. Jason S. Johnston, PhD
Professor of Law, University of Virginia

Mr. Brian T. Kennedy
President, The Claremont Institute

Dr. E. Christian Kopff, PhD
Associate Professor, Classics, University of Colorado, Boulder

Dr. Patricia A. Lapoint, PhD
Professor, Management, McMurry University

Dr. Lubert Leger, PhD
Former Assistant Chief, Materials Division, Engineer Directorate, Johnson Space Center, NASA

Dr. Jay Lehr, PhD
Science Director, The Heartland Institute

Dr. Jonathan A. Lesser, PhD
President, Continental Economics

Dr. Richard E. Lindstrom, PhD
Professor Emeritus, University of Connecticut

Dr. Anthony Lupo, PhD
Professor, Atmospheric Science, University of Missouri

Dr. Matthew A. Malkan, PhD
Professor, Physics and Astronomy, University of California, Los Angeles

Dr. Martin J. Mangino, PhD
Professor, Surgery, Virginia Commonwealth University

Dr. Calvin Luther Martin, PhD
Associate Professor of History (ret.), Rutgers University

Dr. John Martinis, PhD
Professor, Physics, University of California, Santa Barbara

Dr. Robert J. Michaels, PhD
Professor, Economics, California State University, Fullerton

Dr. Henry I. Miller, M.D.
Robert Wesson Fellow in Scientific Philosophy and Public Policy, Hoover Institution at Stanford University

Dr. Ferenc M. Miskolczi, PhD
Former Senior Principal Scientist, NASA Langley Research Center

Dr. Dennis M. Moltz, PhD
Owner, High Desert Nuclear Technologies

Dr. Michael Newton, PhD
Professor Emeritus, Forest Ecology, Oregon State University

Dr. Helen Schwiesow Parker, PhD
Licensed Clinical Psychologist

Dr. Nina Pierpont, MD, PhD
Former Clinical Professor of Pediatrics, College of Physicians and Surgeons, Colombia University; currently a pediatrician in private practice

Dr. Jerry L. Punch, PhD
Professor Emeritus, Department of Communicative Sciences and Disorders, Michigan State University

Dr. Forrest J. Remick, PhD
Emeritus Professor, Nuclear Engineering, and Emeritus Associate Vice President, Research, The Pennsylvania State University; and Commissioner (Retired), US Nuclear Regulatory Commission

Dr. James H. Rust, PhD
Professor of Nuclear Engineering (ret.), Georgia Tech

Mr. Donald F. Shaw, Sr.
Senior Engineering Advisor

Dr. Thomas Sheahen, PhD, PE
Physicist

Dr. S. Fred Singer, PhD
Professor Emeritus, Environmental Science, University of Virginia, and Director, Science and Environmental Policy Project

Dr. Thomas L. Steepy, PhD
Plant Pathologist

Dr. Gary Steinberg, DMD
Dentist

Dr. Glenda Tannahill, PhD
CEO/CFO, Good Samaritan

Dr. George S. Taylor, PhD
Director, Palmetto Energy Institute

Dr. David E. Thompson, PhD
Founder and President, Metric Echo, Inc, and Dean Emeritus, College of Engineering, University of Idaho

Dr. Marc Trachtenberg, PhD
Professor, Political Science, University of California, Los Angeles

Dr. Michael Trigoboff, PhD
Instructor, Computer Science, Portland Community College

Dr. Stanley W. Trimble, PhD
Professor Emeritus, Department of Geography, UCLA

Dr. Kirby Tyndall, PhD
Environmental Toxicologist

Dr. James Wanliss, PhD
Associate Professor, Physics, Presbyterian College

Dr. Robert Whitsett, PhD
Former Staff Scientist, Lawrence Berkeley National Laboratory

Dr. Charles Wolf, Jr., PhD
Distinguished Chair in International Economics, RAND Corporation and Professor, Pardee
RAND Graduate School

Dr. George T. Wolff, PhD
Principal Scientist, Air Improvement Resource, Inc.; Former Chair, EPA Clean Air Scientific
Advisory Committee

Dr. Peter W. Wood, PhD
President, National Association of Scholars

Dr. Steven B. Young, PhD
Former Professor of Biology, Middlebury University

Dr. S. Stanley Young, PhD
Assistant Director for Bioinformatics, National Institute of Statistical Sciences

cc: Eddie Bernice Johnson, Ranking Member, House Committee on Science, Space, and
Technology

Message

From: Kuhn, Kevin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BE20941B4C1144B8B3635E4DF015924A-KUHN, KEVIN]
on behalf of Yamada, Richard (Yujiro) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4C34A1E0345E4D26B361B5031430639D-YAMADA, YUJ]
Sent: 7/30/2018 8:02:27 PM
To: Lyons, Troy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=15e4881c95044ab49c6c35a0f5eef67e-Lyons, Troy]
CC: Frye, Tony (Robert) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=58c08abdfc1b4129a10456b78e6fc2e1-Frye, Rober]; Palich, Christian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=330ad62e158d43af93fcbbece930d21a-Palich, Chr]; Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]
Subject: RE: INPUT NEEDED--Administrator Cheat Sheet

Hi Troy,

Here are bullets on formaldehyde, transparency, and advisory committees.

Thanks

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Lyons, Troy

Sent: Monday, July 30, 2018 2:14 PM

To: Wehrum, Bill <Wehrum.Bill@epa.gov>; Ross, David P <ross.davidp@epa.gov>; Wright, Peter <wright.peter@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>; Baptist, Erik <Baptist.Erik@epa.gov>; Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>; Breen, Barry <Breen.Barry@epa.gov>; Ross, David P <ross.davidp@epa.gov>; Forsgren, Lee <Forsgren.Lee@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Chancellor, Erin <chancellor.erin@epa.gov>

Cc: Jackson, Ryan <jackson.ryan@epa.gov>; Palich, Christian <palich.christian@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Frye, Tony (Robert) <frye.robert@epa.gov>

Subject: INPUT NEEDED--Administrator Cheat Sheet

Importance: High

Team—the Administrator would like a single paged cheat sheet on the top issues most likely to be asked. To accommodate this request, please provide 1-2 talking points that the Administrator could read verbatim, if needed. **This needs to be completed by COB today so he can review this evening.** Let me know if I have missed any topics.

Please let me know if you have any questions.

OAR

- CAFE
- California Waiver--OAR
- Cross Border
- Kigali Amendment/Hydrofluorocarbons
- Small Refinery Exemptions
- New Source Review
- Once In, Always In

OCSP

- TSCA Implementation
- Methylene Chloride
- Formaldehyde

OLEM

- CCR
- Risk Management Plan

ORD

- Secret Science
- Science Advisory Boards—Conflicts of Interest

OW

- PFAS
- Lead

Troy M. Lyons

Associate Administrator

Office of Congressional & Intergovernmental Relations

U.S. Environmental Protection Agency

Personal Matters / Ex. 6

.....
(Original Signature of Member)

115TH CONGRESS
2D SESSION

H. R. _____

To direct that certain assessments with respect to toxicity of chemicals be carried out by the program offices of the Environmental Protection Agency, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

M____. _____ introduced the following bill; which was referred to the
Committee on _____

A BILL

To direct that certain assessments with respect to toxicity of chemicals be carried out by the program offices of the Environmental Protection Agency, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Improving Science in
5 Chemical Assessments Act”.

1 **SEC. 2. RESEARCH NEEDS AND PRIORITIES OF EPA PRO-**
2 **GRAM OFFICES.**

3 The Environmental Research, Development, and
4 Demonstration Authorization Act is amended by striking
5 section 7 (42 U.S.C. 4364) and inserting the following:

6 **“SEC. 7. RESEARCH NEEDS AND PRIORITIES OF EPA PRO-**
7 **GRAM OFFICES.**

8 “(a) IN GENERAL.—The Administrator of the Envi-
9 ronmental Protection Agency shall assure that the expend-
10 iture of any funds appropriated pursuant to this Act or
11 any other provision of law for environmental research and
12 development related to regulatory program activities shall
13 be coordinated with and reflect the research needs and pri-
14 orities of the relevant program offices, as well as the over-
15 all research needs and priorities of the Agency, including
16 those defined in the five-year research plan.

17 “(b) HAZARD IDENTIFICATION AND DOSE RESPONSE
18 ASSESSMENTS.—Beginning on the date of the enactment
19 of the Improving Science in Chemical Assessments Act,
20 any covered assessments carried out with respect to a
21 chemical substance through the Integrated Risk Informa-
22 tion System program of the Environmental Protection
23 Agency as of the day before such date of enactment shall,
24 in lieu of being carried out through such program, be car-
25 ried out by the relevant program office of the Environ-
26 mental Protection Agency, so long as the relevant program

1 office determines there is a need for such an assessment.
2 Such an assessment shall be carried out using the sci-
3 entific standards specified in section 7B and be based on
4 the weight of the scientific evidence.

5 “(c) TOXICITY VALUES.—In carrying out a covered
6 assessment with respect to a chemical substance under
7 subsection (a), the relevant program office shall assign a
8 toxicity value or values, when scientifically supported by
9 the available data, for such chemical substance. With re-
10 spect to that assignment, the following shall apply:

11 “(1) When supported by the available data, the
12 toxicity value or values shall include a range of point
13 estimates of risk as well as sources and magnitudes
14 of uncertainty associated with the estimates.

15 “(2) When multiple point estimates can be de-
16 veloped, the relevant program office shall—

17 “(A) consider all datasets; and

18 “(B) make a determination about how best
19 to represent the human health risk posed by the
20 chemical substance involved.

21 “(d) CHEMICAL ASSESSMENT DATABASE.—

22 “(1) IN GENERAL.—A toxicity value or values
23 assigned to a chemical substance under subsection
24 (c) shall be included in a chemical assessment data-
25 base to be maintained by the Office of Research and

1 Development of the Environmental Protection Agen-
2 cy.

3 “(2) COMPLETED ASSESSMENTS.—All covered
4 assessments stored, as of the date of the enactment
5 of this Act, in the IRIS database of the Environ-
6 mental Protection Agency shall be retained in the
7 chemical assessment database established pursuant
8 to paragraph (1).

9 “(3) UPDATES.—Such database shall be up-
10 dated pursuant to a covered assessment performed
11 by a relevant program office, including to make a
12 change in the existing toxicity value or values for a
13 chemical substance included in such database.

14 “(e) CERTIFICATION.—Beginning 2 years after the
15 date of the enactment of the Improving Science in Chem-
16 ical Assessments Act and every 2 years thereafter, the Of-
17 fice of Research and Development of the Environmental
18 Protection Agency shall submit to the Committee on
19 Science, Space, and Technology and the Committee on
20 Energy and Commerce of the House of Representatives
21 and the Committee on Environment and Public Works of
22 the Senate, a report containing a certification that each
23 covered assessment completed during the period covered
24 by the report was conducted using the scientific standards
25 specified in section 7B.

1 “(f) DEFINITIONS.—In this section:

2 “(1) The term ‘covered assessment’ means, with
3 respect to the evaluation of the human health effects
4 resulting from chronic exposure to a chemical sub-
5 stance, a chemical hazard identification and dose re-
6 sponse assessment (as such terms are defined by the
7 Environmental Protection Agency on the day before
8 the date of the enactment of this Act).

9 “(2) The term ‘relevant program office’ in-
10 cludes the following offices of the Environmental
11 Protection Agency:

12 “(A) The Office of Water.

13 “(B) The Office of Air and Radiation.

14 “(C) The Office of Land and Emergency
15 Management.

16 “(D) The Office of Chemical Safety and
17 Pollution Prevention.

18 “(E) Any successor to an office specified in
19 subparagraphs (A) through (D) and any other
20 office determined to be relevant by the Adminis-
21 trator of the Environmental Protection Agency.

22 **“SEC. 7A. HAZARD IDENTIFICATION AND DOSE RESPONSE**
23 **STEERING COMMITTEE.**

24 “(a) ESTABLISHMENT.—Not later than 30 days after
25 the date of the enactment of this Act, the Administrator

1 of the Environmental Protection Agency shall establish a
2 chemical hazard identification and dose response steering
3 committee (referred to in this Act as the ‘steering com-
4 mittee’) to coordinate the conduct of covered assessments
5 by relevant program offices for purposes of ensuring that,
6 with respect to such assessments, there is no duplication
7 of effort by such offices.

8 “(b) DUTY.—The duties of the steering committee
9 are the following:

10 “(1) If the steering committee learns that more
11 than one relevant program office intends to conduct
12 covered assessments with respect to the same chem-
13 ical substance, the steering committee shall deter-
14 mine the most effective means of carrying out a sin-
15 gle covered assessment to prevent duplication of ef-
16 fort by such offices.

17 “(2) For purposes of supplementing a covered
18 assessment, the steering committee shall consider
19 any third-party assessment of a chemical substance
20 generated by another Federal, State, or inter-
21 national agency or agencies or members of the sci-
22 entific community that meets the requirements spec-
23 ified in subsection (e).

24 “(c) CHAIR; COMPOSITION.—

1 “(1) CHAIR.—The steering committee shall be
2 chaired by the Assistant Administrator of the Office
3 of Research and Development of the Environmental
4 Protection Agency.

5 “(2) COMPOSITION.—The steering committee
6 shall be composed of 15 members, all of whom shall
7 be active, full-time employees of the Environmental
8 Protection Agency, with at least one member rep-
9 resenting each relevant program office and each re-
10 gional office of the Environmental Protection Agen-
11 cy. The members of the steering committee shall be
12 appointed by the Administrator of the Environ-
13 mental Protection Agency. Any vacancy shall be
14 filled in the same manner as the initial appointment.

15 “(d) MEETINGS.—The steering committee shall meet
16 at least once each calendar year.

17 “(e) THIRD PARTY ASSESSMENT REQUIREMENTS.—
18 The requirements specified in this subsection with respect
19 to a third-party assessment of a chemical substance are
20 that the assessment —

21 “(1) is conducted using scientific standards
22 specified in section 7B;

23 “(2) has undergone independent scientific re-
24 view for transparency, completeness, and quality;
25 and

1 “(3) reflects the best available science and the
2 weight of the available scientific evidence.

3 **“SEC. 7B. SCIENTIFIC STANDARDS.**

4 “ Covered assessments carried out under section 7
5 and discussion of such assessments and review of third
6 party assessments carried out under section 7A, shall be
7 conducted using scientific information, technical proce-
8 dures, measures, methods, protocols, methodologies, or
9 models in a manner consistent with the best available
10 science. In carrying out such an assessment, the relevant
11 program office shall integrate all lines of scientific evi-
12 dence and consider, as applicable—

13 “(1) the extent to which the scientific informa-
14 tion, technical procedures, measures, methods, proto-
15 cols, methodologies, or models employed to generate
16 the scientific information are reasonable for and con-
17 sistent with the intended use of the scientific infor-
18 mation;

19 “(2) the extent to which the scientific informa-
20 tion is relevant for the relevant program office’s use
21 in making a decision about a chemical substance;

22 “(3) the degree of clarity and completeness with
23 which the data, assumptions, methods, quality assur-
24 ance, analyses employed to generate the scientific in-
25 formation are documented and publicly available in

1 a manner that honors legal and ethical obligations to
2 reduce the risks of unauthorized disclosure and re-
3 identification;

4 “(4) the extent to which the variability and un-
5 certainty in the scientific information, or in the pro-
6 cedures, measures, methods, protocols, methodolo-
7 gies, or models, are evaluated and characterized;

8 “(5) the extent of independent verification or
9 peer review of the scientific information or of the
10 procedures, measures, methods, protocols, meth-
11 odologies, or models;

12 “(6) the ability of the scientific findings and re-
13 search to be replicated or reproduced; and

14 “(7) the extent to which the available scientific
15 information supports dose-response modeling, using
16 non-linear approaches.”.

Message

From: Yamada, Richard (Yujiro) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4C34A1E0345E4D26B361B5031430639D-YAMADA, YUJ]
Sent: 5/22/2018 4:23:58 PM
To: Abboud, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6f5af791a1842f1adcc088cbf9ed3ce-Abboud, Mic]
Subject: RE: reporter question

Deliberative Process / Ex. 5

From: Abboud, Michael
Sent: Tuesday, May 22, 2018 12:17 PM
To: Yamada, Richard (Yujiro) <yamada.richard@epa.gov>
Subject: RE: reporter question

Deliberative Process / Ex. 5

From: Yamada, Richard (Yujiro)
Sent: Tuesday, May 22, 2018 12:15 PM
To: Abboud, Michael <abboud.michael@epa.gov>
Subject: FW: reporter question

Deliberative Process / Ex. 5

From: Scott Waldman [mailto:swaldman@eenews.net]
Sent: Tuesday, May 22, 2018 12:12 PM
To: Yamada, Richard (Yujiro) <yamada.richard@epa.gov>
Subject: reporter question

Hi Richard. I'm writing about how you are a thread connecting three of the most significant EPA efforts, the secret science proposed rule, the science advisory board reforms and the proposed red team exercise. I saw your name mentioned a number of times in emails and public schedules that were recently released under FOIA, and I know those efforts all stem from the House Science Committee as well. I've also spoken with some of the people outside of the EPA who spoke with you on those issues.

Do you have a few minutes to talk today?

Thanks,

Scott Waldman
Reporter
E&E News/Climatewire

Personal Phone / Ex. 6
@scottwaldman

Message

From: Yamada, Richard (Yujiro) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4C34A1E0345E4D26B361B5031430639D-YAMADA, YUJ]
Sent: 4/23/2018 4:41:36 PM
To: Abboud, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6f5af791a1842f1adcc088cbf9ed3ce-Abboud, Mic]; Bowman, Liz [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c3d4d94d3e4b4b1f80904056703ebc80-Bowman, Eli]; Block, Molly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=60d0c681a16441a0b4fa16aa2dd4b9c5-Block, Moll]; Wilcox, Jahan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=88fd588e97d3405d869bcae98d391984-Wilcox, Jah]
Subject: Fwd: Transparency/Data Access Statements of Support
Attachments: Science Transparency TPs cw.docx; ATT00001.htm

Hey Guys - see below for some quotes from scientists about the event for tomorrow - not sure if Stephen G shared, but sending it along, just in case - thanks, Richard

Sent from my iPad

Begin forwarded message:

From: "Woods, Clint" <woods.clint@epa.gov>
Date: April 23, 2018 at 12:36:39 PM EDT
To: "Yamada, Richard (Yujiro)" <yamada.richard@epa.gov>
Subject: FW: Transparency/Data Access Statements of Support

From: Woods, Clint
Sent: Monday, April 23, 2018 10:23 AM
To: Bowman, Liz <Bowman.Liz@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Gordon, Stephen <gordon.stephen@epa.gov>; Konkus, John <konkus.john@epa.gov>; Letendre, Daisy <letendre.daisy@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>
Subject: RE: Transparency/Data Access Statements of Support

Below are 5 statements of support for the release, followed by contact info for two other scientists willing to speak to reporters on the issue. Attached are some talking points which may be helpful. We're talking to OIRA at 11:00 and should have a clean(er) version of proposed rule to share after that call.

Deliberative Process / Ex. 5

"IDEM supports transparency in rulemaking," says **Bruno Pigott, Commissioner of the Indiana Department of Environmental Management (IDEM)**. "Good, sound science leads to better regulations."

"I believe that transparency and independent reproducibility of analyses and conclusions are bedrock principles of sound science," said **Dr. Louis Anthony (Tony) Cox, President, Cox Associates; Member, National Academy of Engineering; and Editor-in-Chief of the journal Risk Analysis**. "Some commentators have expressed concerns that making the data behind policy conclusions and recommendations accessible and transparent might threaten the privacy of individuals. But this concern can be fully met by applying current privacy-protection techniques for data analysis. These techniques have been developed and used successfully for years at the Census Bureau and elsewhere. Thus, we can have the scientific benefits of accessible data while protecting individual privacy."

“EPA’s proposed rule, Strengthening Transparency in Regulatory Science, is badly needed,” said **Dr. Jason Scott Johnston, Director, Olin Law and Economics Program, University of Virginia School of Law**. “Best practice among peer-edited scientific journals is to require that data and statistical routines used in published papers be posted online and/or made publicly available. To apply the same standards to research that EPA says justify regulations affecting billions of dollars in economic activity and millions of human lives is essential for those regulations to truly be scientifically based.”

“In the development of regulations based on environmental studies, numerous subjective assumptions and choices must be made regarding the selection of data and models that have a profound impact on the strength of any statistical associations and even whether the associations are positive or negative. The appropriateness of the assumptions and choices are not adequately evaluated in the standard peer review process. That is why it is essential that the data and models be placed in the public domain for a more rigorous evaluation by qualified experts. The proposed regulation, Strengthening Transparency in Regulatory Science, will provide an opportunity for such evaluations,” said **Dr. George Wolff, Principal Scientist, Air Improvement Resource, Inc., and former Chairman of EPA’s Clean Air Scientific Advisory Committee (1992 – 1996)**.

“The proposal represents a major scientific step forward by recognizing the widespread occurrence of non-linear dose responses in toxicology and epidemiology for chemicals and radiation and the need to incorporate such data in the risk assessment process,” stated **Dr. Edward J. Calabrese, Professor, Environmental Health Sciences, University of Massachusetts**

Two others willing to speak to reporters:

- Dr. Gary Marchant, Distinguished Sustainability Scientist, Julie Ann Wrigley Global Institute of Sustainability; Regents' Professor and Lincoln Professor of Emerging Technologies, Law and Ethics, Sandra Day O'Connor College of Law, Arizona State University; Executive Director and Faculty Fellow, Center for the Study of Law, Science and Innovation

Personal Phone / Ex. 6

- Dr. Geoffrey Kabat, Senior Epidemiologist, Albert Einstein College of Medicine

Personal Phone / Ex. 6

From: Bowman, Liz

Sent: Friday, April 20, 2018 3:29 PM

To: Woods, Clint <woods.clint@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Gordon, Stephen <gordon.stephen@epa.gov>; Konkus, John <konkus.john@epa.gov>; Letendre, Daisy <letendre.daisy@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>

Subject: RE: Transparency/Data Access Statements of Support

That would be great, can you send us what you have, as well as the draft of the policy/proposed rule? I can work on the draft press release and talking points, while Daisy/Stephen focus on planning the event with John.

From: Woods, Clint

Sent: Friday, April 20, 2018 2:21 PM

To: Bowman, Liz <Bowman.Liz@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Gordon, Stephen <gordon.stephen@epa.gov>; Konkus, John <konkus.john@epa.gov>; Letendre, Daisy <letendre.daisy@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>

Subject: Transparency/Data Access Statements of Support

Happy to work on some talking points for a release to accompany Tuesday's announcement.

We should have 2-3 sentence statements of support from:

- Jason Scott Johnston, PhD/JD, Director, Olin Law and Economics Program, University of Virginia School of Law
- Edward J. Calabrese, PhD, Professor, Environmental Health Sciences, University of Massachusetts
- Louis Anthony (Tony) Cox, Jr., PhD, President, Cox Associates, Member, National Academy of Engineering, Editor-in-Chief, *Risk Analysis*
- Bruno Pigott, Commissioner, Indiana Department of Environmental Management
- George Wolff, PhD, Former Chair of EPA's Clean Air Scientific Advisory Committee (1993 – 1996)

A few examples:

Clint Woods
Deputy Assistant Administrator
Office of Air and Radiation, U.S. EPA
202.564.6562

Message

From: Bowman, Liz [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C3D4D94D3E4B4B1F80904056703EBC80-BOWMAN, ELI]
Sent: 4/24/2018 6:04:44 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
CC: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]; Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]; Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]; Beck, Nancy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=168ecb5184ac44de95a913297f353745-Beck, Nancy]; Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]; Leopold, Matt [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4e5cdf09a3924dada6d322c6794cc4fa-Leopold, Ma]
Subject: RE: Strengthening Transparency in Regulatory Science

A signed copy would be better

From: Bolen, Brittany
Sent: Tuesday, April 24, 2018 2:04 PM
To: Bowman, Liz <Bowman.Liz@epa.gov>
Cc: Woods, Clint <woods.clint@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Leopold, Matt <Leopold.Matt@epa.gov>
Subject: Re: Strengthening Transparency in Regulatory Science

You can convert this into pdf now and post the unsigned version or wait for the signed copy.

Sent from my iPhone

On Apr 24, 2018, at 2:02 PM, Bowman, Liz <Bowman.Liz@epa.gov> wrote:

Is someone putting this on the website, so that the press release can link to it?

From: Bolen, Brittany
Sent: Tuesday, April 24, 2018 1:26 PM
To: Woods, Clint <woods.clint@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Leopold, Matt <Leopold.Matt@epa.gov>
Subject: FW: Strengthening Transparency in Regulatory Science

For your records, attached is the final word document that is being printed for signature.

Thanks,
Brittany

From: Nickerson, William
Sent: Tuesday, April 24, 2018 1:24 PM

To: Bolen, Brittany <bolen.brittany@epa.gov>

Subject: Strengthening Transparency in Regulatory Science

The signature version

JOHN BARRASSO, WYOMING, CHAIRMAN

JAMES M. INHOF, OKLAHOMA
SHELLEY MOORE CAPITO, WEST VIRGINIA
JOHN SOUDMAN, ARKANSAS
ROGER WICKER, MISSISSIPPI
DEB FISCHER, NEBRASKA
JERRY RICHARD, KANSAS
MIKE ROUNDS, SOUTH DAKOTA
JON LUNST, IDAHO
DAN SULLIVAN, ALASKA
RICHARD SHELLEY, ALABAMA

THOMAS R. CARPER, DELAWARE
BENJAMIN L. CARDIN, MARYLAND
BERNARD SANDERS, VERMONT
SHELDON WHITEHOUSE, RHODE ISLAND
JEFF MERKLEY, OREGON
PATRICK LEAHY, NEW YORK
CORY A. BOOKER, NEW JERSEY
EDWARD J. MARKEY, MASSACHUSETTS
TAMMY DUCKWORTH, ILLINOIS
CHRIS VAN HOLLEN, MARYLAND

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6176

RICHARD M. RUSSELL, MAJORITY STAFF DIRECTOR
MARY FRANCES REHRIG, MINORITY STAFF DIRECTOR

April 24, 2018

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency (EPA)
1200 Pennsylvania Avenue NW
Washington, DC 20004

Dear Administrator Pruitt,

We write to inquire about recent reports regarding your intention to limit the ways in which EPA uses scientific information. Your proposed new policy likely violates several laws with which EPA must comply as the agency writes rules to protect our air, water and land from harmful pollution. The proposed new policy would require EPA to use only data that are public and reproducible. It is very similar to Congressional efforts to require that all raw data from scientific studies is available to the public before EPA can use it to act.¹ In April 2017, Senator Carper sent a letter to you regarding your staff's analysis of one of these efforts, H.R. 1430, the HONEST Act. In that letter, Senator Carper shared his concerns regarding reports that EPA's leadership prevented analysis conducted by EPA career staff analysts from being transmitted to the Congressional Budget Office. That staff analysis found that the HONEST Act would cost \$250 million per year to implement. You have yet to respond to the April 2017 letter.

The proposed new policy will require EPA—when developing rules—to rely only on scientific studies where the underlying data have been made public and are available to be reproduced. Such a policy would likely violate several laws that mandate the use of “best available science,” including the Toxic Substances Control Act² and Safe Drinking Water Act³ because it would require EPA to ignore some of the “best” scientific studies. Courts have explained that “best available science” means that agencies “should seek out and consider all existing scientific evidence relevant to the decision” and “cannot ignore existing data.”⁴

In addition to potentially violating statutory requirements, EPA's proposed new policy would also likely run afoul of the Administrative Procedure Act (APA), which requires agencies to consider and respond to all information presented to it pursuant to a rulemaking. Were a comment that contained scientific information that the proposed new policy would exclude from consideration to be submitted as part of a rulemaking, the APA would require that you consider it, setting up a direct conflict between the APA and the proposed new policy.

¹ <https://blogs.scientificamerican.com/observations/scott-pruitt-will-restrict-the-epas-use-of-legitimate-science/>

² 15 U.S.C. 2625(h)

³ 42 U.S.C. § 300g-1(b)(3)(A)

⁴ *Ecology Ctr., Inc. v. U.S. Forest Serv.*, 451 F.3d 1183, 1194 n.4 (10th Cir. 2006)

What's more, this proposed new policy could force EPA to choose whether to ignore non-public information submitted by companies, or to disclose it publicly. For example, EPA might not be able to consider confidential business information when determining whether to allow a chemical company to manufacture a new chemical. Further, the agency might not be able to use proprietary information submitted by auto companies intended to aid in determining appropriate greenhouse gas tailpipe standards unless the data were made public.

Finally, under the new policy's requirement that the underlying data used to develop regulations must be reproducible, EPA could not use unique research study data collected following pollution events. Such a requirement would exclude valuable information, such as the studies done after the BP oil spill⁵ or the human health studies done to study the effects of nuclear weapons,⁶ or the Framingham Heart Study (a 70-years-long cardiovascular study of the residents of Framingham, Massachusetts).

To help us better understand this anticipated policy and how it will be implemented in a manner consistent with EPA's other statutory obligations and responsibility to make sound and informed policy decisions, we respectfully request that you respond to the following questions by May 24, 2018:

1. Please provide a copy of the new policy.
2. The anticipated policy, as well as the HONEST Act and Secret Science Act, were born from the allegation that EPA's work is often based on secret science—i.e., scientific studies whose data has not been made available to and vetted by the public. However, in reality, scientific studies—whether they and the underlying data are made publicly available or not—are subject to rigorous peer review to ensure that the science is sound before agencies rely on it to make policy. In fact, courts have recognized that the best available science required under the law must be peer-reviewed.⁷ Please explain why you believe that the peer review process used in the scientific community is not sufficient to be relied upon for agency policy-making.
3. Please provide all documents (including emails, comments, memos, white papers, meeting minutes and correspondence) related to this new policy and its development.
4. Please provide all documents (including emails, comments, memos, white papers, meeting minutes and correspondence) containing any discussion or analysis regarding how it will be possible to comply with both this policy and the Administrative Procedure

⁵ <https://www.eenews.net/stories/1060076559>

⁶ <https://www.smithsonianmag.com/smart-news/how-bombings-hiroshima-and-nagasaki-still-inform-health-today-180956185/>

⁷ *Chlorine Chemistry Council v. EPA*, 206 F.3d 1286 (D.C. Cir. 2000) ("When EPA relies in any way on scientific information to set SDWA standards, the agency is required to use 'the best available, peer-reviewed science and supporting studies conducted in accordance with sound and objective scientific practices'"); *Ecology Ctr., Inc. v. U.S. Forest Serv.*, 451 F.3d 1183, 1194 n.4 (10th Cir. 2006) ("While the agency's scientific judgments are viewed deferentially it 'must be good science that is reliable, peer-reviewed, or otherwise complying with valid scientific methods.'")

Act. How will EPA treat a study that is ineligible for consideration under the new policy but must be considered and responded to under the Administrative Procedure Act because, for example, a member of the public has submitted it to the Agency during notice and comment on a proposed rule?

5. Please provide all documents (including emails, comments, memos, white papers, meeting minutes and correspondence) containing any discussion or analysis regarding how it will be possible to comply with both this policy and statutory mandates to use the best available science (or other statutory requirements that guide EPA's use of scientific information).
6. Please provide all documents (including emails, comments, memos, white papers, meeting minutes and correspondence) containing any discussion or analysis regarding how EPA will handle confidential personal health information, confidential business information, trade secrets or other information required to be kept non-public under this new policy. How does EPA intend to handle confidential information submitted to it by companies? For example, will EPA reject chemical safety data submitted by chemical companies from being considered under the Toxic Substances Control Act because that data contains confidential business information? Will it disclose proprietary data submitted by car companies, or simply decide not to use it?
7. Has EPA conducted an analysis of the cost of implementing the new policy? If so, please provide a copy of the analysis as well as all documents (including emails, comments, memos, white papers, meeting minutes and correspondence) related to the analysis. Does EPA plan to redact confidential information before the science is made public, or will it just eliminate the study from being utilized completely? If EPA intends to redact the information, has EPA calculated the cost of redacting thousands of documents and ensuring that each page made public is in compliance with EPA's own privacy policy?⁸
8. Have EPA and the White House Office of Information and Regulatory Affairs discussed this new policy? If so, please provide all documents (including emails, comments, memos, white papers, meeting minutes and correspondence) containing any discussions between EPA and the Office of Information and Regulatory Affairs regarding this new policy.
9. Did EPA communicate with scientific advocacy organizations or academies, such as the American Association for the Advancement of Science or the American Geophysical Union, while formulating this new policy? If so, please provide all documents (including emails, comments, memos, white papers, meeting minutes and correspondence) evincing these discussions.
10. Did EPA communicate with any regulated entities or trade associations, such as the American Chemistry Council, about the policy at any time before its release? If so, please provide all documents (including emails, comments, memos, white papers, meeting minutes and correspondence) evincing these discussions. Will the new policy


⁸ <https://www.epa.gov/sites/production/files/2015-09/documents/2151.1.pdf>

apply to all regulated areas (air, water, and land) and regulated industries equally? If not, please explain any differences.

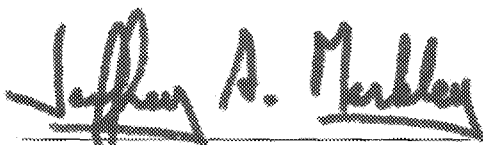
11. Please provide all documents (including emails, comments, memos, white papers, meeting minutes and correspondence) containing any discussions or analysis about how EPA will treat data collected in unique research studies that cannot or should not be reproduced. Will EPA exclude these important studies under the reproducibility prong of the new policy?

Thank you very much for your attention to this important matter. If you have any questions or concerns, please ask the appropriate members of your staff to contact Michal Freedhoff, of the Environment and Public Works Committee staff, at 202-224-8832.


Sincerely,

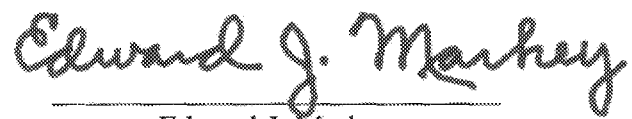

Thomas R. Carper
Ranking Member

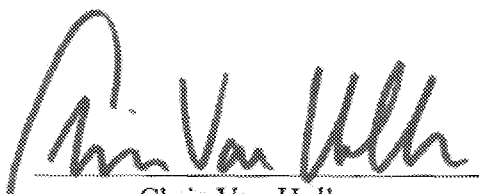

Sheldon Whitehouse
United States Senator


Jeffrey A. Merkley
United States Senator


Kirsten Gillibrand
United States Senator


Cory A. Booker
United States Senator


Edward J. Markey
United States Senator


Chris Van Hollen
United States Senator

Message

From: Lovell, Will (William) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3B150BB6ADE640F68D744FADCB83A73E-LOVELL, WIL]
Sent: 4/24/2018 1:57:41 PM
To: Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]
Subject: RE: OIRA Concluding Review of EPA NPRM entitled Strengthening Transparency in Regulatory Science

FYI, **Deliberative Process / Ex. 5**

From: Yamada, Richard (Yujiro)
Sent: Monday, April 23, 2018 11:05 PM
To: Lovell, Will (William) <lovell.william@epa.gov>
Subject: Fwd: OIRA Concluding Review of EPA NPRM entitled Strengthening Transparency in Regulatory Science

Please see below, **Deliberative Process / Ex. 5** thanks much

Sent from my iPhone

Begin forwarded message:

From: "Laity, Jim A. EOP/OMB" **Personal Matters / Ex. 6**
Date: April 23, 2018 at 11:03:41 PM EDT
To: "Woods, Clint" <woods.clint@epa.gov>, "Bolen, Brittany" <bolen.brittany@epa.gov>, "Beck, Nancy" <Beck.Nancy@epa.gov>, "Yamada, Richard (Yujiro)" <yamada.richard@epa.gov>, "Leopold, Matt" <Leopold.Matt@epa.gov>, "Schwab, Justin" <Schwab.Justin@epa.gov>, "Nickerson, William" <Nickerson.William@epa.gov>
Cc: "Kim, Jim H. EOP/OMB" **Personal Matters / Ex. 6**, "Palmieri, Rosario A. EOP/OMB" **Personal Matters / Ex. 6**, "Schwab, Margo EOP/OMB", "Key, Mike J. EOP/OMB", "Lancini, Dominic J. EOP/OMB", "Rao, Neomi J. EOP/OMB"
Personal Matters / Ex. 6

Subject: OIRA Concluding Review of EPA NPRM entitled Strengthening Transparency in Regulatory Science

Clint: OIRA is concluding review of the attached final draft of the NPRM entitled "Strengthening Transparency in Regulatory Science" with a finding of consistent with change. Thank you for working to address interagency comments on a tight schedule. This email constitutes the "official" conclusion of our review; please upload a clean formatted version into ROCIS at your convenience tomorrow so that we can record the conclusion of review in our recordkeeping system; you do not need to wait for this step to be completed to sign and release to the public.

Please call if you have any questions.

Jim Laity
Chief, Natural Resources and Environment Branch
Office of Information and Regulatory Affairs
Office of Management and Budget

Personal Matters / Ex. 6

PS:

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

This version will be available to the public once the NPRM is published, pursuant to our disclosure procedures under EO 12866.

Message

From: Moody, Christina [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=813EB7F985C845EAA91EDC10C6E9A914-CMOODY]
Sent: 8/10/2018 8:19:32 PM
To: Linkins, Samantha [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b7a94aa2975d4933981a8a9bf12aaa40-Linkins, Samantha]; Hubbard, Carolyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2a93ce3245494318b109e87f7d826284-Hubbard, Carolyn]
CC: Orme-Zavaleta, Jennifer [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3c5a111dc377411595e5b24b5d96146b-Orme-Zavaleta, Jennifer]; Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]
Subject: FW: Comment on EPA Transparency Rule
Attachments: Coons_Comment_EPA_Transparency_Rule.pdf

Good afternoon,

Please see the attached letter from Coons offering comments on the proposed rule. I believe this just needs to be added to the docket? I'm copying both Jennifer and Richard as well so that everyone has it. Let me know if there's anything more I need to do, and if you all are sending out responses to Congressionals of this nature as they come in. If so, I will upload in CMS and assign to your organization.

Look forward to hearing from you.

Enjoy your weekend!

Christina J. Moody | Office of Congressional & Intergovernmental Relations
U.S. Environmental Protection Agency | 1200 Pennsylvania Ave NW (MC-1301A) | Washington DC | 20460
Moody.Christina@epa.gov

From: Frye, Tony (Robert)
Sent: Friday, August 10, 2018 4:06 PM
To: Moody, Christina <Moody.Christina@epa.gov>
Cc: Palich, Christian <palich.christian@epa.gov>
Subject: FW: Comment on EPA Transparency Rule

Hey Christina – Is your team the correct route to have this added to the docket?
Thanks,
Tony

Tony Frye
Special Advisor
Office of Congressional & Intergovernmental Affairs
Environmental Protection Agency
Cell: 202.603.3225

From: Hinks, Mallory (Coons) [mailto:Mallory_Hinks@coons.senate.gov]
Sent: Friday, August 10, 2018 1:27 PM
To: Frye, Tony (Robert) <frye.robert@epa.gov>

Cc: Rubin Shen, Leah (Coons) <Leah_RubinShen@coons.senate.gov>

Subject: Comment on EPA Transparency Rule

Hi Tony,

Senator Coons has submitted the attached letter to Acting Administrator Wheeler as a comment on the “Strengthening Transparency in Regulatory Science” rule (Docket No. EPA-HQ-OA-2018-0259). I wanted to follow up by sending it directly to you. Please let me know if you have any questions.

Best,
Mallory

Mallory L. Hinks Ph.D.

Energy and Environment Legislative Fellow
Office of Senator Chris Coons
127A Russell Senate Office Building
Washington, DC 20510
(202) 224-5042