

EPA Proposes to Limit Consideration of Scientific Research From Non-Public Data

MARCH 5, 2020

Yesterday the Environmental Protection Agency (EPA) announced a supplemental proposed rule to give preference to scientific studies developed from publicly available underlying data when promulgating new regulations, a move scientists decry as “nonsensical”[1] - particularly in the arena of public health, as those studies would not be able to share the underlying data without exposing subjects’ confidential health information.

The supplemental proposal covers all data and all studies, and expands the scope to other agency activities, not just the EPA.

Controversy:

Critics say the proposal is designed to weaken regulation by preventing the EPA from “considering epidemiological and other studies in which researchers have promised to protect the privacy of human subjects.”[2] Whether or not the underlying data of a study is made publically available has no bearing on the merit of the research. “Think of this in the context of coronavirus” said Andrew Rosenberg from the Union of Concerned Scientists. [3]

The EPA has said its “rulemaking is designed to increase transparency in the preparation, identification and use of science in rulemaking.”[4]

Background:

In the original version of the proposed rule entitled “Strengthening Transparency in Regulatory Science,” first promoted by former EPA administrator Scott Pruitt in April of 2018, the EPA wanted to *prohibit* the promulgation of regulations based on research concluded from data that was not made publicly available. That proposal was drew more than 600,000 comments and was lambasted by environmental, scientific, and patient advocacy groups for blocking crucial public health research from consideration.[5]

Significance:

The EPA supplemental proposal could limit the science considered by governmental agencies when formulating public health and safety protections.

The supplemental proposal is [available here](#).

Once the supplemental proposal is published in the Federal Register, there will be a thirty-day period for public comments. The EPA says it anticipates promulgating a final rule later this year.[6]

For more information on this topic, contact a member of [Benesch’s Energy Practice Group](#).

[1]

<https://thehill.com/policy/energy-environment/485811-epa-revamp-of-secret-science-rule-will-still-limit-rese>

[2]

<https://www.sciencemag.org/news/2019/11/epa-s-secret-science-plan-back-and-critics-say-it-s-worse>

[3]

<https://thehill.com/policy/energy-environment/485811-epa-revamp-of-secret-science-rule-will-still-limit-rese>

[4]

<https://www.epa.gov/newsreleases/new-york-times-several-glaring-inaccuracies-thats-fit-print>

[5]

<https://www.sciencemag.org/news/2019/11/epa-s-secret-science-plan-back-and-critics-say-it-s-worse>

[6]

<https://news.bloomberglaw.com/environment-and-energy/epa-posts-clarifying-details-to-secret-science-ru>