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Congress of the United States
House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

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MEMORANDUM

TO: Committee on Science, Space, and Technology Members and Staff
FROM: Science, Space, and Technology Committee Staff
DATE: June 19, 2014
RE: Full Committee Markup

The Committee on Science, Space, and Technology will meet on **Tuesday, June 24, 2014, at 10:00 a.m.** in Room 2318 of the Rayburn House Office Building to consider the following:

- **H.R. 4012, *The Secret Science Reform Act of 2014***

Background and Need

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

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

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[1] http://www.epa.gov/osa/pdfs/epa_scientific_integrity_policy_20120115.pdf.
[2] http://www2.epa.gov/aboutepa/ruckelshaus-takes-steps-improve-flow-agency-information-fishbowl-policy#memo.
[3] http://www.epw.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_id=d71fd4b6-ce77-3a98-46a0-fb02b0cae0ed
[4] Ibid.

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

Following up on this direction, the White House Office of Science and Technology Policy (OSTP) Memo from December 2010 states that, "agencies should expand and promote access to scientific information by making it available online in open formats. Where appropriate, this should include data and models underlying regulatory proposals and policy decisions."[7] OSTP also issued a 2013 Memorandum on "Increasing Access to the results of Federally Funded Scientific Research," in which the President's Science Advisor, John Holdren, explained that "The Administration is committed to ensuring that, to the greatest extent and with the fewest constraints possible… the direct results of federally funded scientific research are made available to and useful for the public, industry, and the scientific community… Such results include peer-reviewed publications and digital data."[8]

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

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

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

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

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

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

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

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

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

Major Provisions

- Data Transparency. The bill prohibits the EPA Administrator from finalizing, proposing, or disseminating a covered action unless all scientific and technical information relied on to support the covered action is specifically identified and publically available in a manner that is sufficient for independent analysis and substantial reproduction. Nothing in the language of the bill shall be construed as requiring public dissemination of information, the disclosure of which is prohibited by law.

- The bill also defines "covered action" to mean a risk, exposure, or hazard assessment, criteria document, standard, limitation, regulation, regulatory impact analysis, or guidance. The section defines "scientific and technical information" to include materials, data, and associated protocols necessary to understand, assess, and extend conclusions, computer codes and models involved in the creation and analysis of information, recorded factual materials, and detailed descriptions of how to assess and use such information.

Legislative History

In the 113th Congress, the Subcommittee on Environment held a hearing on H.R. 4012. On February 11, 2014, the Subcommittee held a hearing entitled, *Ensuring Open Science at EPA*. The Subcommittee received testimony from expert witnesses, which informed the Committee on the need for improved transparency and reproducibility of regulatory science used by the Environmental Protection Agency. Witnesses were also asked to review and discuss H.R. 4012, The Secret Science Reform Act of 2014. The Subcommittee received testimony from the Honorable John Graham, Dean, School of Public and Environmental Affairs, Indiana University; Dr. Louis Anthony Cox, Jr., Chief Sciences Officer, Next Health Technologies, Clinical Professor, Biostatistics and Informatics, Colorado Health Sciences Center, and President, Cox Associates; Dr. Ellen Silbergeld, Professor, Bloomberg School of Public Health, Johns Hopkins University; and Mr. Raymond Keating, Chief Economist, Small Business & Entrepreneurship Council.

On November 14, 2013, the Committee on Science, Space, and Technology held a hearing entitled, *Strengthening Transparency and Accountability within the Environmental Protection Agency*. The purpose of this hearing was to review science and technology activities at the EPA including: agency-wide policies and practices related to the development and use of science in regulatory decisions; the role of independent scientific advisory bodies such as the EPA Science Advisory Board and the EPA Clean Air Scientific Advisory Committee; and the

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

importance of transparency and integrity in the Agency's science activities. The Committee received testimony from The Honorable Gina McCarthy, Administrator, U.S. Environmental Protection Agency.

In the 112th Congress, the Committee held two hearings focused on science at EPA. On November 30, 2011, the Subcommittee on Energy and Environment held a hearing entitled, *Fostering Quality Science at EPA: Perspectives on Common Sense Reform.* The purpose of the hearing was to provide external perspectives on the need to reauthorize and reform science, research and development activities at EPA; explore the intersection of Agency-supported science and its regulatory mission; and receive focused recommendations to raise the level, quality, usefulness, and objectivity of EPA science, including any necessary changes to the Environmental Research, Development and Demonstration Authorization Act. The subcommittee received testimony from Ms. Susan Dudley, Director, Regulatory Studies Center, and Research Professor of Public Policy & Public Administration, The George Washington University; Dr. Alan Moghissi, President, Institute for Regulatory Science; Dr. Kenneth Green, Resident Scholar, American Enterprise Institute; and Dr. Gary Marchant, Professor of Law and Executive Director, Center for Law, Science & Innovation, Arizona State University.

On February 3, 2012, the Subcommittee on Energy and Environment held a second day of testimony to provide external perspectives on the need to reauthorize and reform science, research and development activities at EPA. The Subcommittee received testimony from Mr. Daniel Greenbaum, President and Chief Executive Officer, Health Effects Institute; Dr. Deborah Swackhamer, Professor, Environmental Health Sciences, University of Minnesota, and Chairwoman, EPA Science Advisory Board; Mr. Michael Walls, Vice President, Regulatory and Technical Affairs, American Chemistry Council; Dr. Richard Belzer, President, Regulatory Checkbook; Dr. Jerald Schnoor, Allen S. Henry Chair in Engineering, Department of Civil and Environmental Engineering, University of Iowa; and Dr. S. Stanley Young, Assistant Director for Bioinformatics, National Institute of Statistical Sciences.