

Testimony of
Karen Mongoven
on behalf of the
National Association of Clean Air Agencies
before the
U.S. Environmental Protection Agency
on the
Strengthening Transparency in Regulatory Science Proposal
Docket ID No. EPA-HQ-OA-2018-0259

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Washington, D.C.

Good afternoon. I am Karen Mongoven, Senior Staff Associate at NACAA, the National Association of Clean Air Agencies. I appreciate the opportunity to testify today on behalf of NACAA regarding the U.S. Environmental Protection Agency's proposed rule, Strengthening Transparency in Regulatory Science, which was published in the *Federal Register* on April 30, 2018.¹ NACAA is the national, non-partisan, non-profit association of 156 local and state air pollution control agencies in 41 states, the District of Columbia and four territories. The air quality professionals in our member agencies have vast experience dedicated to improving air quality in the United States. These comments are based upon that experience. The views expressed in this testimony do not represent the positions of every state and local air pollution control agency in the country.

NACAA recommends that EPA withdraw this proposed rule. In our view, the proposal would likely undermine the very objectives that it is supposed to promote. In particular, we believe it would hinder EPA's use of best-available science in environmental regulation and it would likely diminish, rather than improve, public confidence in the integrity of EPA's scientific decision making.

Reliance on best-available science is a fundamental requirement of the Clean Air Act and other environmental statutes that EPA administers. Indeed, science-based decision making is at the very core of our shared mission as air regulators to protect public health and the environment from the harmful effects of air pollution.

There is a long-term trend toward increased transparency in science, including toward providing greater public access to underlying data and analytical techniques after scientific studies are published. We think this trend is a laudable one. But complete public access to underlying data is not always possible, especially in the case of epidemiological studies based on private health data that must remain confidential. And transparency concerns, though important, must not override EPA's obligation to consider the full range of peer-reviewed, sound scientific research that is available and relevant to its regulatory decisions.

¹ 83 Fed. Reg. 18,768 (Apr. 30, 2018).

Full public access to underlying data and models is not necessary to assure the validity of scientific studies. Rather, the most effective assurance of scientific validity and accuracy is the process of peer review itself – a process to which the vast majority of scientific information on which EPA relies has already been subject. When the results of a scientific study are submitted for publication, the uncertainties, assumptions, parameters and theories utilized by the scientists are laid out in the publication. Peer review analyzes all these components to establish validity. The process of peer review has been rigorously developed over centuries. If EPA believes the peer review process is flawed, it should explain exactly why it believes the process is inadequate and how this proposal specifically addresses those inadequacies.

If adopted, the proposed rule could serve to bar EPA's consideration of relevant scientific literature in the establishment of air regulations to protect public health and the environment, resulting in serious, adverse effects on the nation's air program. In a footnote in the proposal, EPA cites two D.C. Circuit cases that upheld the agency's reliance on confidential data in setting health-based air quality standards for lead and fine particulate matter.² In that footnote, EPA states that it is "proposing to exercise its discretionary authority to establish a policy that would preclude it from using such data in future regulatory actions." The clear implication is that EPA will discard rigorously vetted scientific literature in the service of greater transparency. This would be an abdication of EPA's legal obligation and stated intention to rely on the best available science.

NACAA is also concerned with the provision of the proposed rule that would require EPA to conduct its own "independent peer review" of scientific studies underlying its significant regulatory decisions. EPA has included no details about how this fundamental provision would be implemented. Moreover, the proposal fails to acknowledge that EPA already has institutional mechanisms to review and vet scientific information through panels of scientific experts, including its Science Advisory Board and Clean Air Scientific Advisory Committee. EPA has not explained why scientific literature that has already undergone peer review and been vetted by EPA's science advisory panels should be subjected to an additional layer of peer review.

We do recognize that the proposal would allow the EPA Administrator to grant exemptions to the rule's requirements on a case-by-case basis if he or she determines it is "not feasible" to make underlying data publicly available or to conduct independent peer review of scientific studies. However, the rule does not include any criteria for how the Administrator would make such a determination. We believe this provision would have the effect of interjecting the appearance of politics into what should be a fair and unbiased assessment. It is an opportunity for arbitrary decision making and is insufficient to protect against the exclusion of relevant, valid scientific studies.

EPA requested comment on whether the proposed rule should be applied retrospectively, should the agency decide to adopt it. The rule should *not* be applied retrospectively. To do otherwise would create significant regulatory uncertainty by calling into question existing air quality standards as well as the permits, state implementation plans and other decisions that are based on those standards.

In conclusion, NACAA respectfully requests that EPA withdraw the proposed rule. If the agency intends to update its approach to transparency and reproducibility, it should do so in consultation with the National Academy of Sciences and its own scientific advisors. In the spirit of cooperative federalism, EPA

² 83 Fed. Reg. at 18,769 n.3 (citing *Coalition of Battery Recyclers Ass'n v. EPA*, 604 F.3d 613, 623 (D.C. Cir. 2010); *Am. Trucking Ass'ns v. EPA*, 283 F.3d 355, 372 (D.C. Cir. 2002)).

should also consult from the earliest stages with the state and local agencies that are responsible for implementing our nation's environmental laws.

NACAA appreciates the opportunity to provide the testimony I have offered today. We also intend to submit written comments that further elaborate on the concerns I discussed here.

Thank you.