

These comments are presented by David F. Coursen, a former EPA attorney and now a member of the Environmental Protection Network, a nonprofit organization of EPA alumni working to protect the agency's progress toward clean air, water, land and climate protections.

EPA SCIENCE PROPOSAL WOULD BLINDFOLD AGENCY

There are so many things wrong with this proposal that it's easy to downplay the most important one: the harm it will do to people's health and the environment. The proposal hides this in a fog of ambiguous language, meaningless generalities and vague platitudes about the value of "transparency." It requires EPA to wear a blindfold when it is developing major rules by ignoring what relevant and reliable science tells us about health risks any time the raw supporting data is not publicly available. Transparency is important but is not part of the Environmental Protection Agency's mission and certainly cannot be the basis for a one-size-fits-all litmus test for when the agency must ignore what science tells us about the risks of pollutants. The laws governing EPA programs require it to consider all of the available scientific information in deciding how to protect people's health and the environment. Ignoring such information would be both arbitrary and unlawful.

EPA rulemaking has always relied on the "best available science," a principle the proposal gives only lip service as it outlines a scheme to prevent the EPA from using even the best available science if it is not "transparent." The proposal would put even the most persuasive and useful science off-limits, subject only to a vague and standardless exemption process. The proposal does not show that EPA's existing practices have produced bad environmental outcomes, or that increasing so-called transparency will lead to better outcomes. Those are not things the proposal seems to care about. There is no legal or environmental basis for the proposed restriction, and -- not surprisingly -- the proposal fails to mention that EPA statutes do not allow the agency to ignore available information about the risks of pollution. Inevitably, restricting the science EPA considers in rulemaking will produce less informed -- and less protective -- decisions. In effect, the proposal sacrifices relevant and reliable scientific information -- a cornerstone of effective environmental protection -- on the altar of so-called transparency.

The proposal to ignore science when all of the supporting data is not public would preclude using even recent studies that are subject to confidentiality agreements or legal restrictions on disclosure. It also will certainly -- deliberately -- exclude older studies where raw data is no longer available, even if their findings are widely accepted as authoritative and formed the basis for EPA regulations that have proven effective in protecting people's health for many years. The proposal is evasive about its targets, using footnote language only a legal expert can understand to identify two seminal air pollution studies, long disliked by the regulated industry, it would exclude and says nothing at all about what other important studies it would ban.

Written comments from the Environmental Protection Network spell out the proposal's many legal and policy defects in detail. The proposal is brief, evasive, superficial and ambiguous, and provides far too little information to meet the legal requirement to alert the

public to its substance and basis. It would prohibit EPA from considering important science in rulemaking even though the laws governing EPA's use of science require casting as wide a net as possible. It sheds little light on how the proposal would work and no light at all on its environmental consequences. Instead of explaining how EPA will implement and interpret the rule, it largely throws those questions to the public. It doesn't show a need for any rule, much less an absolute rule that sweeps across eight statutes. It claims its approach is consistent with a host of policies and studies but when EPN looked at them, it found almost no support for the proposal and the authors of several of the cited sources have disavowed the proposal's use of their work and *oppose* the proposal.

In sum, there is neither a legal basis nor a need for this rule; it would require that EPA violate explicit statutory provisions and undermine environmental protection. It unlawfully shifts the basis for deciding what science to use in rulemaking away from the statutory goals of scientific reliability and environmental protection to so-called transparency, a term not used in the relevant EPA statutory provisions. It is too full of undefined or ambiguous terms to create a workable legal framework.

In other words, this proposal is unintelligible, unlawful and unworkable. EPN respectfully requests that EPA withdraw it.