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U.S. Environmental Protection Agency
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Washington, DC 20460

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COMMENTS on EPA-HQ-OA-2018-0259

**SUPPORT FOR supplement to proposed rule:
“Strengthening Transparency in Regulatory Science”**

The Committee For A Constructive Tomorrow (CFACT or the Committee) is pleased to submit the following comments *in strong support of* the Environmental Protection Agency’s Proposed Rulemaking titled *Strengthening Transparency in Regulatory Science*.

We believe this rulemaking is vitally important, long overdue, and essential to ensuring that all EPA policies and regulations are based on solid, replicable, peer-reviewed science, data, analyses and models. The proposed transparency rule will help ensure that important studies employed in support of significant EPA regulatory actions will be available for transparent reviews by qualified scientists and other experts, as well as citizens, businesses and other observers. It could and should also enable a much-needed review of past analyses and rulemakings that were based on questionable assumptions, hypotheses, data, computer models, studies and analytical practices – and/or on processes that were not transparent.

Simply put, ending secretive science is basic common sense. It is an essential step in ensuring that evidence-based science supports policies and regulations that protect public health and welfare, while safeguarding our freedoms and prosperity, and preserving public support for and confidence in government agencies and regulations. Indeed, without transparency at every step in the process, abuses, fraud, and unnecessarily expensive and burdensome regulations are inevitable.

CFACT therefore agrees with the Environmental Protection Agency’s proposal to:

- apply this rulemaking to both influential scientific information and significant regulatory decisions;
- clarify that the rule does apply to data, models and other evidence employed in support of pivotal science, pivotal regulatory science, influential scientific information and significant regulatory decisions; and
- clarify that the EPA Administrator has the authority to grant exemptions under certain circumstances.

The Committee For A Constructive Tomorrow (CFACT)

With headquarters in Washington, DC, the Committee For A Constructive Tomorrow is a 501(c)(3) national and international environmental and educational organization dedicated to protecting both wildlife and ecological values *and* the needs and aspirations of people, families and communities.

We thank you for this opportunity to present our analysis of EPA’s proposal to end secret science and strengthen transparency in regulatory science and rulemaking processes. The Committee, its more than 150,000 supporters, our families, and all the people we represent and assist were adversely affected by

EPA's past practices of basing mercury, PM2.5 particulate and carbon dioxide emission regulations (and other decisions) on data, analyses, models, expert reviews and activist group input that were highly secretive – devoid of the transparency that any free, open, healthy and prosperous society must demand.

This cannot be allowed to continue, and we strongly support the Administrator's efforts to reform EPA and its processes.

Past EPA Clean Power Plan, Endangerment and other rulemakings were often not only secretive and arbitrary. In all too many cases, they also adversely affected job creation and retention; the price and availability of the energy, food and consumer products needed in the daily lives of all Americans; and ultimately the health and welfare of millions of families, especially poor, minority and blue-collar families in states that rely on coal and natural gas for electricity, industries and factories for jobs and salaries – and on other activities that may have some adverse effects on environmental quality and human health and welfare, but also improve our environment, health and welfare in significant ways.

Indeed, a compelling case can be made that in more than a few instances, EPA's rules themselves have presented a more serious threat to the health, welfare and pursuit of happiness, justice and civil rights progress of our members, the people we represent, and all Americans – than do any reasonably foreseeable damages from the environmental contaminants being regulated. That is especially true when regulations and the science behind them are based on secret science and pressure politics.

Other CFACT recommendations for transparency

The Committee For A Constructive Tomorrow also strongly supports the following changes:

Any individual or organization receiving EPA or other government funding to support research, analyses, modeling or other projects must make all original data and all codes and algorithms publicly available and accessible for third-party expert review. No such information may be treated as proprietary or as private property by such individual or organization.

Any individual or organization presenting data, other evidence, modeling results or other materials to EPA in support of or as a basis for policies or regulations must make such materials publicly available and accessible for third-party expert review, even if such work was not taxpayer-funded. No such information may be treated as proprietary or as private property by such individual or organization.

All data, other evidence, modeling results and predictions, and other materials must be replicated, reproduced or confirmed by EPA and/or outside independent experts before they can be used.

Failure to abide by these and other rules of transparency shall mean the data, studies, models and recommendations will not be considered by EPA in formulating policies or regulations.

CFACT analysis of past EPA actions

The problem of questionable scientific research and government agency reliance on it has become systemic and systematic. Analyses dating back to at least 2005 have found that the vast majority of studies in numerous scientific arenas cannot be replicated, even those published in “reputable” peer-reviewed scientific and medical journals. Findings from experimental work and observational studies have all too often turned out to be irreproducible or nonreplicable, the National Association of Scholars, the National Academies of Sciences and other independent analysts have reported.

Irreproducibility can result from various causes, but the primary ones are incompetence and outright fraud. Incompetence can involve sloppy data gathering and analysis, or simply a desire to complete a study and present conclusions even if they are not supported by the data. However, outright fraud is also a growing problem.

For example, a 2016 “study” claimed microplastic particles in the ocean endangered numerous species of fish; in reality no research was ever even conducted, and the paper was withdrawn, though not before it had received extensive news coverage and calls for legislation and regulation. Fraud can likewise arise from politically motivated regulatory actions and biased, secretive, highly selective studies and analyses conducted to support and justify predetermined agency actions.

Full transparency, as proposed by EPA and in accordance with CFACT’s further recommendations, would go a long way toward eliminating incompetence, fraud and politics substituting for science – and thereby reducing the number of costly, burdensome regulations that have severely impacted American businesses, communities and families, for few benefits. There is no reason this cannot be done.

The European Food Safety Authority’s decision-making process for assessing the safety of chemicals is transparent, readily accessible, and “can be traced from start to finish,” the director of its pesticide unit has said. “Anyone can go to EFSA’s website and review how the assessment evolved over time. So you can see clearly how experts ... appraised each and every study and also how comments from public consultation were incorporated into the scientific thinking.” EPA could and should be equally transparent.

EPA’s history, especially during the Obama years, further underscores why transparency is essential. Allow us to review just two examples.

PM2.5 Particulate Matter

Obama era EPA officials repeatedly asserted that airborne particulate matter 2.5-microns or smaller in size (PM2.5) “can get deep into your lungs, and some may even get into your bloodstream.” Eliminating all such particles in our air is absolutely essential to human health, longevity and well-being, agency witnesses insisted. There is no threshold below which there is no risk, they claimed.

Studies demonstrate “an association” between “premature mortality and fine particle pollution at the lowest levels measured,” EPA Administrator Gina McCarthy told Congress. There is no level “at which premature mortality effects do not occur,” so reducing emissions and exposure always yields health benefits. An EPA report claimed that broad population-based epidemiological evidence “links” short term PM2.5 exposures (hours or days) to cardiovascular and respiratory mortality, while long-term exposure (years or decades) has been “linked” to respiratory disease and cardiovascular and lung cancer mortality.

Particulate matter doesn’t just make you sick; it is directly related “to dying sooner than you should,” former EPA Administrator Lisa Jackson testified to Congress. “If we could reduce particulate matter to levels that are healthy,” it would be like “finding a cure for cancer” – saving up to 570,000 lives a year.

In fact, EPA insisted, nearly all of the *hundreds of billions of dollars in health and environmental benefits* that the Obama EPA originally (and falsely) attributed to its mercury regulations were supposedly due to the “ancillary” benefits of reducing PM2.5 emissions from power plants, factories, refineries, petrochemical plants, cars, light trucks, and diesel-powered trucks, buses and heavy equipment.

This is all nonsense. It is something the proposed transparency rules would have uncovered.

Epidemiological studies, like those relied on by Administrators McCarthy and Jackson, are corrupted beyond repair by uncontrollable “confounding factors.” There is no way they can reliably identify causes and effects, or attribute all the asserted deaths to particulates. It is absolutely impossible, for instance, to separate PM2.5 particles emitted by vehicles, power plants and factories ... from particles emitted by volcanoes, forest fires, construction projects, dust storms or pollen – or from cigarettes that send 1,000 times more tiny particles into lungs than what EPA says is lethal if they come from other sources.

It is likewise impossible to determine whether a death was caused by airborne particles – and not by viruses, bacteria, dietary habits, obesity, smoking, diabetes, cold weather or countless other factors.

In fact, EPA itself was never able to present a plausible biological explanation for why or how super-tiny particles can cause multiple diseases and deaths simply by getting into lungs or bloodstreams. Its concept of “premature” deaths primarily reflects the fact that more people die on some days than others.

Needing something to back up its faulty epidemiological assertions, EPA resorted to studies that *illegally and unethically* involved *human test subjects*. The studies violated U.S. laws, the Nuremberg Code, the Helsinki Accords and EPA Rule 1000.17 – all of which make it unethical or illegal to conduct toxicity experiments on humans. Moreover, when EPA-contracted researchers explained the experiments to their volunteers, they generally failed to advise them that the agency was adamant in its assertion that the polluted air the test subjects were about to breathe was toxic, carcinogenic and deadly.

Instead, volunteers were told they would face only “minimal risks,” the kind they would ordinarily encounter in daily life, in performing routine physical activities. Others were told they might experience claustrophobia in the small study chambers, or some minor degree of airway irritation, shortness of breath, coughing or wheezing. There is no way such advisories could lead to “informed consent.”

Moreover, the people who EPA claims are most at risk, most susceptible to getting horribly sick, or even dying, from exposure to these particulates were precisely the same people recruited by EPA and its EPA-funded research teams: the elderly, asthmatics, diabetics, people with heart disease, children. To top it off, the test subjects were exposed to eight, thirty or even sixty times *more particulates per volume* – for up to two hours – than they would breathe outdoors, at levels EPA had claimed are dangerous or lethal.

All of this raises issues that to this day EPA has never adequately addressed.

1) How can it be that PM2.5 particulates are dangerous or lethal for Americans in general, every time they step outside – but harmless to human test subjects who were intentionally administered pollution dozens of times worse than what they would encounter outdoors? How can it be, as EPA-funded researchers asserted at the time, that “acute, transient responses seen in clinical studies cannot necessarily be used to predict health effects of chronic or repeated exposure” – when that is precisely what EPA was claiming the studies can and do show, in order to justify its expensive, punitive PM2.5 regulations?

2) If PM2.5 really is lethal, and there is no safe threshold, weren't EPA officials and its hired researchers deliberately misleading volunteers in order to persuade them to breathe deadly, carcinogenic poisons? Weren't they violating laws and ethical guidelines when they experimented on children, in violation of EPA's own rules banning such experiments – and later deleting evidence describing those tests?

3) Thankfully, none of the test subjects died from the soot. However, if no one died, doesn't that mean EPA falsely claimed that there is no safe level, that all PM2.5 particulates are toxic, that its regulations would save countless lives, and that the direct and ancillary benefits vastly outweigh their multi-billion-dollar annual costs of its particulate regulations? And if that is the case, didn't EPA impose those costs not only for no real benefits, but at great harm to the overall health and welfare of Americans?

4) Doesn't all this mean there really are safe levels for airborne soot – and PM2.5 particles are not really toxic or lethal? Doesn't it mean EPA's draconian standards should be significantly modified, and companies, communities and consumers should be compensated for their costs in complying with excessive, unjustified particulate regulations?

It seems quite clear that EPA's PM2.5 rules should be rescinded – and an entirely new rulemaking process should be initiated under EPA's new transparency regulations, with full disclosure and scrutiny of all relevant data, models, claims, analyses and conclusions.

The CO2 Endangerment Finding

EPA's Endangerment Finding claimed emissions of plant-fertilizing carbon dioxide from burning fossil fuels is creating dangerous manmade climate change that threatens the health and welfare of American citizens. It reached this conclusion by looking only at studies and computer models from the Intergovernmental Panel on Climate Change, while ignoring volumes of studies by independent scientists who found no such threat. High-ranking EPA officials even told a senior expert at the agency that his studies were not wanted and would not be shared with agency staff – and he was to cease any further

work on climate change. He was informed that his analyses contradicted EPA's decision and "do not help the legal or policy case for this decision" that fossil fuel CO2 emissions endanger Americans.

EPA was also a principal force behind the "social cost of carbon" analysis that supposedly calculated how much CO2-driven climate change would cost the United States and how those costs would be reduced by slashing fossil fuel use. The alleged cost of damages began at an arbitrary \$22 per ton of carbon dioxide released in 2010, then climbed to an equally random \$30 per ton in 2013 and \$40 per ton in 2016.

To buttress this social cost of carbon plan, EPA also claimed the computer models the agency was relying on can accurately forecast global temperatures, climate and weather, technological advances, economic development, living standards – and supposed damages to *global* civilizations and ecosystems from *United States* carbon dioxide emissions – *for the next 300 years!* These claims are ridiculous.

In reality, climate models cannot even forecast global temperatures accurately. Comparing atmospheric scientist John Christy's graph of average model temperature forecasts with his colleague Roy Spencer's monthly real-world temperature average from satellite measurements shows that the models' predictions are now *a full one-half degree F higher* for April 2020 than they actually are on Planet Earth.

Asserting an ability to make all these forecasts for three centuries in the future is sheer fantasy. Basing far-reaching, economy-hammering policies on such forecasts is not merely fraudulent; it is totalitarian.

The fact is, our planet's climate has changed frequently throughout Earth and human history, in response to powerful, interconnected forces that humans cannot control. There is no persuasive evidence in the climate or weather record that government can control climate fluctuations and weather events by limiting the amount of carbon dioxide that humans emit into the atmosphere. There is no persuasive evidence that planetary temperatures or weather events have changed in unprecedented ways or degrees over recent years, or will do so in the future – or that any fluctuations in recent years were manmade in origin.

Indeed, contrary to EPA claims about carbon dioxide being a "dangerous pollutant," more CO2 in Earth's atmosphere will improve crop, forest and grassland growth, even during prolonged droughts and cold periods. This is already occurring, as demonstrated by the increased "greening" of the Sahel and many other regions, improved forest and crop growth, and other phenomena recorded by the Center for the Study of Carbon Dioxide and Global Change, and by many other researchers.

Moreover, rising electricity rates for intermittent, unpredictable, weather-dependent, wildlife and habitat-destroying wind and solar facilities affect everything people make, grow, ship, eat and do. They adversely impact factories, farms, hospitals and schools – and impair livelihoods, living standards and life spans. Poor, minority and working class families are hit hardest.

Especially in the wake of the Coronavirus pandemic and the economic havoc it has wreaked, policies imposed by a future administration, using the Endangerment Finding as a pretext, would prolong and worsen the calamity. Millions of workers will lose or never regain their jobs. More families would be left destitute and welfare dependent. Many would have to choose between buying food and fuel, paying the rent or mortgage, going to the doctor, giving to their church, or saving for retirement.

Factories, school districts, hospitals and cities would have to pay *millions* more every year just for electricity, while trying to pay pensions and other rising costs. Families would face greater sleep deprivation, stress and depression, as they struggle to make ends meet. The incidence of drug and alcohol abuse, spousal and child abuse, theft and robbery would increase – while nutrition and medical care would decline, and the number of strokes, heart attacks, suicides and other premature deaths increased. More elderly people would perish because they cannot afford to eat or heat their homes properly.

Indeed, the real, immediate danger is not climate change. It is energy restrictions imposed in the name of controlling Earth's fickle climate.

These critical issues, temperature and climate fluctuations, threats to plant and animal species from fossil fuels versus from wind turbines, solar panels and other replacement energy sources, the enormous

benefits of using fossil fuels – and much more – could and should have been addressed in open, robust discussions at EPA and throughout America, before this Endangerment Finding was made.

That would have happened at an Environmental Protection Agency governed by transparency rules of the kind proposed by the agency’s “Strengthening Transparency in Regulatory Science” formulation. America’s industries, communities and families would all be better off today if it had been in force when the Endangerment, Clean Power, PM2.5 and other EPA policy decisions were being made.

Response to criticism of the proposed transparency rules

While the Committee cannot possibly address all the misplaced criticisms leveled at this proposed transparency rule, we would like to respond to a few of the most important and erroneous ones.

Some have claimed the transparency rule would force researchers to reveal personal or confidential information about participants in health studies. In reality, such information is not needed and can easily be redacted; only the health data, and location by city and state, is required for these studies.

Critics also claim that EPA can keep Americans safe from harmful chemicals only if it takes full advantage of all available scientific research, including what is based on uncorroborated models and secretive data and analyses. In reality, public health and safety depend on ensuring that research and data purportedly supporting it are made public and carefully reviewed by multiple experts, to ensure accuracy, replicability and integrity. EPA will take full advantage of all available research that passes these tests.

Transparency opponents also say the proposed rules will exclude studies that rely on outside funding sources which limit access to underlying data. On this they are correct. However, such studies *should* be excluded, and their funders compelled to revise their policies to ensure openness and integrity.

Finally, critics claim the rules will exclude so much research that the rules will actually endanger public health. In fact, the only studies EPA will likely not see is what researchers know will not survive robust peer review, and thus do not submit in the first place. The real danger comes from research that is based on shoddy data, algorithms, models and analyses that past researchers have been able to keep secret. That is precisely what the rules will ferret out and correct.

In summary, the proposed rule to end secret science and strengthen transparency in EPA regulatory science will restore integrity to the agency’s decision-making process, restore public confidence in the agency and its regulations, and enormously benefit human health and welfare, wildlife and environmental quality – while also ensuring that land, air and water pollutants which actually do threaten people’s health and well-being are kept at safe levels.

The Environmental Protection Agency is taking the scientifically, legally, economically and ethically correct step in implementing these new transparency rules. We thank you for doing so.

Respectfully submitted,

Craig Rucker

Craig Rucker

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