



ECOS

# Environmental Council of the States

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May 18, 2020

Cheryl A. Hawkins  
Office of the Science Advisor  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Via [regulations.gov](https://www.regulations.gov): Docket No. EPA-HQ-OA-2018-0259-9322

RE: supplemental notice of proposed rulemaking to the Strengthening Transparency in Regulatory Science proposed rule

Dear Ms. Hawkins:

The Environmental Council of States (ECOS) submits the following comments to the U.S. Environmental Protection Agency (EPA) on the supplemental notice of proposed rulemaking to the Strengthening Transparency in Regulatory Science proposed rule.

As the leaders of the state and territorial environmental agencies, ECOS members rely on EPA to write rules and establish standards based on the best available scientific information.

In August 2018, ECOS commented on the proposed rule and expressed concerns that requiring transparency of all data used in studies that underpin regulations could have negative impacts and unintended consequences. ECOS appreciates EPA clarifying in the supplemental notice of proposed rulemaking that it will consider all available studies. However, we still have concerns that the best available science may potentially be excluded or denied priority consideration if it is protected by CBI or if the data is not readily available for independent validation, which could lead to increased variability between federal and state standards as well as delay federal action.

ECOS also encourages EPA to better define what data must be publicly available. Neither the initial Proposed Rule nor the Supplemental Notice clearly identifies this. Without a clear definition, the requirements of the rule will be open to a variety of interpretations leading to confusion and potential misuse.

The proposed regulatory text at 40 CFR 30.9 in the Supplemental Notice, does not include an effective date for the rule and only allows the EPA Administrator to decide if studies completed before the effective date can be used. As we noted in our comments on the proposed rule, data from older studies may not be in an easily shareable form or may have been discarded over the years. ECOS again asks the Agency to set an effective date that preserves the use of studies completed prior to the development of this rule.

The proposed regulatory text at 40 CFR 30.7 calls on EPA to "conduct independent peer review of all pivotal regulatory science used to justify significant regulatory decisions and on all pivotal science underlying influential scientific information." As states rely on EPA research, we ask the Agency to consider how it will meet this additional workload without impacting the important work of EPA research scientists.

Finally, in an [April 24 letter to the Administrator](#), the Science Advisory Board noted its "concerns about the scientific and technical challenges of implementing some requirements of the Proposed Rule." Additionally,

**Jim Macy**  
Nebraska Department of  
Environment and Energy  
ECOS President

**Patrick McDonnell**  
Pennsylvania Department of  
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**Ben Grumbles**  
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ECOS Secretary-Treasurer

**Becky Keogh**  
Arkansas Department of Energy and  
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ECOS Past President

**Donald Welsh**  
ECOS Executive Director

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the Board listed several factors that it says EPA needs to resolve in the proposed rule to protect privacy, including addressing the legal, ethical, professional, and financial reasons for research confidentiality. As the Board is charged with providing advice and recommendations on “the adequacy and scientific basis of any proposed criteria document, standard, limitation, or regulation”, ECOS encourages EPA to address the Board’s input before finalizing this rule.

ECOS asks EPA to carefully consider states’ comments on the proposed rule. If you would like to speak with ECOS about this rule, please contact me at [dwelsh@ecos.org](mailto:dwelsh@ecos.org) or 202-266-4929.

Sincerely,

A handwritten signature in blue ink that reads "Donald S. Welsh". The signature is written in a cursive style with a clear, legible font.

Donald S. Welsh  
Executive Director