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FOIA Request Aims To Revive Fight On Validity Of EPA Climate Risk Finding

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A free-market group is pursuing a Freedom of Information Act (FOIA) request with EPA for a slew of documents that it says might show the agency's greenhouse gas (GHG) endangerment finding is scientifically flawed, the latest bid by EPA's critics to invalidate the finding that underpins the agency's climate change regulatory program.

Unless EPA fully grants the **Institute for Trade, Standards and Sustainable Development's (ITSSD) FOIA request filed June 30**, "a significant portion of the American public may reasonably conclude it cannot trust that EPA's climate science-related peer review practices had been in conformance with U.S. law," the request says. **ITSSD claims the documents may show the agency failed to adhere to Information Quality Act (IQA) requirements in crafting the finding.**

Attacking the finding -- in which the agency concluded that vehicle GHGs endanger human health and welfare -- is an ongoing strategy for opponents of Clean Air Act GHG regulation, because it underpins many climate rules. EPA developed first-time vehicle GHG rules based on the finding, and then other climate rules including its GHG permit program that the Supreme Court recently upheld in large part but narrowed in scope.

If ITSSD or others could show that the endangerment finding failed to adhere to IQA guidelines they could potentially file a fresh lawsuit over it. Should such a challenge succeed and undo the finding that would feasibly provide significant new grounds for industry and other EPA critics to scrap the climate regulations.

Critics of the finding however have struggled with prior attempts to undermine it, as the U.S. Court of Appeals for the District of Columbia Circuit in 2012 rejected a legal challenge to the document. And **the Supreme Court in its ruling on the GHG permit program did not address the validity of the endangerment finding.**

EPA's Inspector General (IG) in a 2011 report requested by GOP lawmakers also said EPA's development of the finding met statutory requirements and "generally followed" guidance for ensuring quality control of its data, **although the IG did note that EPA failed to meet all White House requirements for peer review of the finding.**

ITSSD's Concerns

Nevertheless, ITSSD -- which advocates for "scientifically and economically benchmarked and justified, market-driven" regulations -- says prior reviews of the finding's validity were inadequate. **They say their FOIA request, if granted, would provide documents allowing for a broader review of the finding's adequacy.**

"We have gone far beyond" prior industry FOIA requests over the finding, says an ITSSD source. Prior challenges were more narrow in scope, focusing on whether EPA adhered to IQA and peer review requirements for its overall Technical Support Documents that synthesized climate data from various federal agencies.

The group in the FOIA is claiming that each of the 28 "core reference documents" referenced by EPA's Technical Support Document should also have gone through a thorough peer review, but did not.

ITSSD asks for documents reflecting four different levels at which EPA should have followed IQA requirements. First, EPA was obliged to validate the IQA compliance of EPA-developed and reviewed documents classified as "highly-influential scientific assessments" (HISAs) supporting the EPA endangerment finding.

Second, EPA was obliged to validate the IQA compliance of third-parties' peer review of third-party-developed HISAs which it "embraced, adopted and disseminated as its own" in support of the finding.

Third, EPA was obliged to validate the IQA compliance of an interagency panel's peer review of the EPA-developed Technical Summary Document, which contained a summary and synthesis of the 28 HISAs designated as core reference documents, according to the FOIA -- a process the group claims the agency never undertook.

Fourth, "EPA was obliged to validate the IQA compliance of the administrative mechanisms EPA and third parties had employed to ensure that affected persons may seek and obtain correction or reconsideration of scientific information EPA and such third parties had disseminated in violation of" White House Office of Management and Budget guidelines on peer review and public comment for scientific data, according to the FOIA request.

EPA did not respond to a request for comment by press time.

FOIA Request

The 136-page FOIA request covers a massive range of documents, including all relevant peer-review documents held by the agency between January 1, 2005, and December 31, 2011.

In a May 22 press release on the then-pending FOIA request, ITSSD says that EPA's climate regulations "have already begun to raise the cost of living for millions of Americans," and questions both EPA's internal procedures and its vetting of third-party documents, including many of the 28 core reference documents. **"ITSSD research reveals that the peer review science processes EPA had employed to validate these twenty-eight assessments, particularly, those that [the National Oceanic and Atmospheric Administration, or NOAA] had developed, had arguably failed to satisfy the IQA and OMB guidelines scientific peer review process requirements," the group says.**

The group finds that the same scientists participated in multiple overlapping research efforts and peer reviews by different institutions, including NOAA, the National Academy of Sciences (NAS), the National Research Council (NRC) and the United Nations Intergovernmental Panel on Climate Change.

Few NOAA responses to NAS/NRC peer reviewer comments have been made publicly available, the group says. "Some such comments had criticized author statements in various assessment chapters that had been unsupported by the statistical, modeling and other data provided," ITSSD says.

Other comments "highlighted how the authors had inadequately addressed scientific uncertainties concerning reported observations of climate readings and future climate projections based on those observations."

Anything less than a full response from EPA and NOAA "is likely to prompt the general public to call for a reexamination" of the endangerment finding, the group says. -- Stuart Parker (sparker@iwpnews.com)