Analysis of the Sound Science Act (H.R. 1287)

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- General criticisms:
  - Will slow down or block the rulemaking process without improving the quality of agency rules (or the underlying science that informs agency rules); the resulting delays will cause unnecessary regulatory uncertainty all while leaving people and the environmental inadequately protected against unreasonable risks
    - If this bill had been in place, many of the science-based safeguards we depend on today—taking lead out of gasoline, rules to reduce smog in cities, etc.—would have ever been completed
  - Provides an avenue for lobbyists to interfere with and politicize agency science
  - Will lead to needless litigation, wasting scarce judicial resources

- Specific criticisms:
  - Broad scope:
    - Applies to independent regulatory agencies (such as the Consumer Product Safety Commission) and will inhibit their ability to carry out their critical statutory mission (such as developing safeguards mandated by the Consumer Product Safety Improvement Act)
    - Applies to purely scientific determinations that do not constitute final agency actions:
      - Under the Administrative Procedure Act (APA), only final agency actions can be subject to judicial review
      - This bill applies to all "policy decisions," a term that is broadly defined to include agency actions that are not final agency actions; as such, these actions would be judicially reviewable
      - This is a massive departure from the APA
    - Applies to agency guidance:
      - Unlike regulations, guidance by definition does not have the force of law
      - Historically, regulated industries have welcome guidance because they reduce regulatory uncertainty and help clarify their legal obligations; delaying agency guidance would work against the interests and preferences of affected companies
  - Guidelines requirements:
    - Establish several unnecessary and redundant procedural obstacles to the development of agency science that will bog down the rulemaking process, contributing to the existing problem of "paralysis by analysis"

        - Each obstacle provides an avenue for interference by lobbyists operating on behalf of corporate interests that are inconvenienced by regulatory safeguards
        - Industry-led challenges to agency science could potentially go on for decades, as industry will always be able to exploit some minor uncertainty to create doubt about agency science, much as tobacco industry did to forestall effective controls on tobacco products for decades
    - Development and implementation of these guidelines will waste scarce agency resources, at a time when Congress is expanding agencies' scientific-based workload (*see, e.g.*, implementation of the Food Safety Modernization Act)
- Lack of clear definitions:
    - The bill doesn't define key terms, including most notably:
        - "Scientific information"
        - "Compromised"
    - The lack of these definitions will lead to needless time-consuming and resource-intensive litigation (which, given the anti-regulatory nature of this bill, is probably deliberate)
- Problematic enforcement mechanism:
    - It appears that the provisions of this bill are supposed to be judicially enforceable, but this is not clear
    - It's not clear when the bill's provisions become enforceable. Is it when a scientific determination is made or is it when a final agency action taken on the basis of the scientific determination is made? Or is it both?
    - Traditionally, courts have deferred to agency expertise on scientific matters when regulatory actions are challenged. Would this deference continue to apply in cases brought under the bill?
    - Will put non-experts judges in the position of resolving disputes over highly technical and scientific matters