



May 9, 2024

U.S. Environmental Protection Agency Science Advisory Board (SAB): Role of the Independent Advisory Committee, Selected Issues, and Legislation

The extent to which scientific and technical information may be used to support the regulatory and nonregulatory actions taken by the U.S. Environmental Protection Agency (EPA) to implement federal environmental pollution control statutes is a perennial issue of congressional oversight. Due to the complexity of scientific and technical information EPA must evaluate to support its actions, in 1978 Congress directed EPA to establish an independent Science Advisory Board (SAB) to review conflicting information and advise EPA on the adequacy and reliability of the technical basis of its actions. This In Focus summarizes the statutory authority for the SAB; its operations, activities, and funding; and selected issues that have arisen since its establishment. In addition to the SAB, EPA maintains nearly two dozen advisory committees—including the Clean Air Science Advisory Committee (CASAC) and the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel—that have specific advisory objectives. This In Focus does not discuss other EPA advisory committees.

Statutory Authority

In the 1970s, Congress enacted multiple Environmental Research, Development, and Demonstration Authorization Acts (ERDDAAs) to authorize EPA research activities separately from its regulatory activities. Section 8 of the ERDDAA of 1978 (P.L. 95-155; codified at 42 U.S.C. §4365) directed EPA to establish the SAB, which shall provide scientific advice as may be requested by EPA. Section 8 provided that the SAB consist of at least nine members with the requisite education, training, and experience to evaluate scientific and technical information on matters referred to the SAB.

Section 8 requires EPA to make available to the SAB for review any proposed environmental criteria document, standard, limitation, or regulation, along with the scientific and technical background information on which such proposed action is based. The SAB may provide advice and comments to EPA on the adequacy of the scientific and technical basis of the proposed action.

Section 3 of the ERDDAA of 1981 (P.L. 96-569) amended Section 8 of the ERDDAA of 1978 to add specific congressional committees as entities in addition to EPA that may request scientific advice from the SAB. The stated intent of the amendment is to enable the SAB to provide advice to Congress without seeking prior permission from EPA.

Section 12307 of the Agricultural Act of 2014 (2014 farm bill; P.L. 113-79) amended Section 8 of the ERDDAA of 1978 to require EPA and the SAB to establish a standing agriculture-related committee to provide scientific and technical advice to the Board relating to matters determined “to have a significant direct impact on enterprises that are engaged in the business of the production of food and fiber, ranching and raising livestock, aquaculture, and all other farming- and agriculture-related industries.” This standing committee is the only one EPA and the SAB were explicitly directed to establish.

Because the SAB is a federal advisory committee, it must comply with the Federal Advisory Committee Act (FACA; 5 U.S.C. §1001 et seq.). Some of these FACA requirements are discussed below in the context of the SAB’s operations and activities. For more information about FACA requirements, see CRS Report R44253, *Federal Advisory Committees: An Introduction and Overview*, by Meghan M. Stuessy.

Board Operations and Activities

To be formally established, all federal advisory committees subject to FACA must submit charters to the General Services Administration (GSA) (5 U.S.C. §1008). Charters provide certain information, such as a description of the federal advisory committee’s objectives and scope of activities, its specific duties, estimated meeting frequency, and general operating guidelines. FACA also requires the federal agency for which the advisory committee is established to file the charter with its Senate and House committees of jurisdiction and the Library of Congress. A committee cannot meet or take action without filing a charter, and the charter must be refiled every two years (5 U.S.C. §1013(b)(2)). EPA approved the SAB’s most recent charter in August 2023, and the charter was filed with Congress in September 2023. According to this charter, the SAB consists of approximately 45 members; the number of members may be adjusted to “provide leadership to SAB committees and panels.” Most SAB members serve as Special Government Employees (SGEs)—agency employees that perform temporary duties, with or without compensation, for not more than 130 days during any period of 365 consecutive days (18 U.S.C. §202). The SAB generally meets six to eight times per year.

The SAB charter provides for the establishment of committees, including the standing agriculture-related committee. Such committees may not work independently of the SAB and must report their recommendations and advice to the SAB for full deliberation, discussion, and

approval. SAB committees are to be chaired by an SAB member and may be augmented with individuals who are not SAB members. Including the Agricultural Science Committee, the SAB has seven standing committees and a number of ad hoc committees and panels for specific tasks.

EPA maintains an SAB Staff Office that manages requests for scientific and technical advice, oversees the formation of the SAB and its committees, and provides policy, technical, and administrative assistance for conducting meetings and preparing reports. The SAB Staff Office announces SAB meetings in the *Federal Register*, providing the public with opportunities to participate in the advisory process. To comply with FACA, each SAB meeting must be attended by a Designated Federal Officer who has the authority to adjourn a meeting if that is determined to be in the public interest (5 U.S.C. §1009(e)). For more information on the SAB, GSA maintains a FACA database that has an entry for the SAB.

Funding

Through the regular annual appropriations process, Congress appropriates funds for administering and operating the SAB and the CASAC within EPA's Environmental Programs and Management account. Over the past 10 fiscal years, enacted appropriations for this program activity have ranged from a high of \$5.1 million in FY2015 to a low of \$3.2 million in FY2019. For FY2024, EPA allocated \$4.2 million for the SAB and the CASAC. The President's FY2025 Budget Request includes \$4.7 million for the SAB and the CASAC. Based on the most recent SAB charter, annual costs to operate the SAB are estimated at \$2.3 million.

Selected Issues

Although the ERDDAA of 1978 authorizes the SAB to provide scientific and technical advice to certain congressional committees if requested, the process by which the SAB receives and responds to such requests has been an area of interest. In 2015, the Government Accountability Office (GAO) examined EPA's procedures for processing congressional requests and recommended that the agency take additional steps to improve its procedures for processing congressional committee requests to the SAB. According to GAO, EPA implemented its recommendations with the exception of one that was closed as not implemented.

Since the SAB's establishment, some policymakers have scrutinized its composition for independence and potential bias. To ensure SAB's independence and avoid conflicts of interest, EPA has established policies and procedures for selecting board members and panelists and resolving potential conflicts of interest. In 2019, GAO examined EPA's process for appointing advisory committee members and recommended that the agency document rationales for proposed membership to the SAB and another related advisory committee, the CASAC, and periodically review the quality of financial disclosures of advisory committee members. According to GAO, EPA implemented GAO's 2019 recommendations.

Certain stakeholders have also questioned the extent to which EPA adopts SAB recommendations, especially when those stakeholders disagree with EPA's evaluation of scientific and technical information to reach decisions that directly affect them. However, while EPA actions are generally informed by scientific and technical information, the agency's actions are not solely based on such information and SAB recommendations are not binding on EPA. EPA is generally directed under the authorities it administers to consider other information, such as cost, when proposing or taking regulatory actions.

Recent Legislation

In the 118th Congress, S. 3719, the Sound Science for Farmers Act of 2024, would amend Section 8 of the ERDDAA of 1978 to revise the process by which EPA receives advice and comments from the SAB and to require EPA to take certain actions with regard to draft or final assessments, risk evaluations, or regulations for chemicals that may have an impact on agriculture or food safety. S. 3719 would expand the scope of information EPA must provide to the SAB for the opportunity to review. Additionally, S. 3719 would direct EPA to publish dissenting views of SAB members to advice or comments issued by the SAB, along with the Administrator's response to such advice, comments, and dissenting views, in the *Federal Register*; it would also direct EPA to include this information in the administrative record. S. 3719 would prohibit EPA from issuing or "peer reviewing" certain draft or final assessments, risk evaluations, or regulations with respect to chemicals that may have an impact on agriculture or food safety unless such assessments, risk evaluations, or regulations have been provided to the U.S. Department of Agriculture (USDA), the Food and Drug Administration, and the Small Business Administration. Additionally, the proposal would require that such draft or final assessments, evaluations, or regulations must be fully reviewed by the standing SAB Agricultural Science Committee. S. 3719 would also authorize certain additional congressional committees to request advice and comments from the SAB, and it would direct EPA to also submit an annual report regarding the membership and activities of the SAB Agricultural Science Committee to the House Committee on Science, Space, and Technology.

Other introduced legislation would direct a USDA advisory committee to inform the SAB of its review of the impact of *waters of the United States (WOTUS)* regulations on agriculture and environmental protection. H.R. 4956 and S. 1023 (the Farmer-Informed WOTUS Act of 2023), among other provisions, would direct this USDA advisory committee to present its findings and recommendations to EPA, the U.S. Army Corps of Engineers, and the SAB. For more information on WOTUS regulations, see CRS Report R47408, *Waters of the United States (WOTUS): Frequently Asked Questions About the Scope of the Clean Water Act*, by Kate R. Bowers and Laura Gatz.

Jerry H. Yen, Analyst in Environmental Policy
Angela C. Jones, Analyst in Environmental Policy

IF12659

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.